

BUSINESS IMPROVEMENT DISTRICT
MANAGEMENT AGREEMENT 2023-2024

This Agreement is entered into by and between the CITY OF CULVER CITY, a municipal corporation organized and existing under and pursuant to its Charter and the Constitution of the State of California (hereinafter "City"), and the CULVER CITY DOWNTOWN BUSINESS ASSOCIATION, INC., a California nonprofit mutual benefit corporation organized and existing under and pursuant to the laws of the State of California (hereinafter "CCDBA") with reference to the following facts:

RECITALS

- A. Following properly noticed and publicly held meetings and hearings, the City Council has continued a Business Improvement Area to be known as the Downtown Culver City Business Improvement District (hereinafter "BID"), pursuant to Section 36500 et seq. of the California Streets and Highways Code (hereinafter "Act"), by and through the adoption of Ordinance No. 2000-027 on December 11, 2000 (the "Ordinance").
- B. Pursuant to the Ordinance and enabling law, benefit assessments have been levied upon the various classes of businesses located within the BID.
- C. Such assessments levied and collected by City shall be used only for the purposes set forth in the Ordinance.
- D. The services to be performed by CCDBA contribute to the economic and promotional well being of the community.
- E. The services to be performed by CCDBA are of a nature that the interests of the City are better served by an agreement with CCDBA than by the performance of such services by City.
- F. The City Council of the City has determined the public interest, convenience and necessity require the execution of this Agreement to provide the service to be provided by CCDBA.
- G. The City recognizes the CCDBA BID Advisory Board as the BID advisory board within the meaning of that term as referenced in Section 36530 of the Act.

NOW, THEREFORE, City and CCDBA in consideration of the recitals, mutual promises, covenants, representations and agreements set forth below, hereby promise, covenant, agree and represent as follows:

Section 1. TERM OF AGREEMENT

- 1.1 This Agreement shall be effective from January 1, 2023, through December 31, 2024, unless terminated sooner pursuant to the terms hereof. Obligations or expenditures for items not budgeted shall not be paid through assessments collected for the BID.
- 1.2 The CCDBA may terminate this Agreement in advance of the expiration of the term for cause, by giving sixty (60) days written notice to the City. Such termination shall be effective on the sixty-first (61st) day after mailing of such notice.
- 1.3 The City may terminate this Agreement in advance of the expiration of the term with or without cause, by giving sixty (60) days written notice to the CCDBA. Such termination shall be effective on the sixty-first (61st) day after mailing of such notice.

Section 2. CCDBA RESPONSIBILITIES

- 2.1 CCDBA shall render professional services and shall cooperate with, City's Director of the Office of Economic and Cultural Development, or his/her designee, to provide work program coordination consisting of project development and implementation, program administration and plans and reports.
- 2.2 CCDBA shall submit to the Director of the Office of Economic and Cultural Development, or his/her designee project plans and reports, including the following:
 - 2.2.1 Before the implementation of any project or expenditure of project funds, submit a project plan as described further under Sections 2.2.2 and 2.6 below.
 - 2.2.2 By the 30th day of the first month of each quarter, beginning April 30, 2021, submit a quarterly progress report, outlining the progress of the several projects in relation to the proposed project schedules. This report will be provided with each quarterly or periodic request for disbursement or reimbursable advance.
 - 2.2.3 By the 1st day of October of each year, submit a report outlining the project plans, goals and budget for the period encompassing January 1 to December 31 of the following year, including all documentation required by Section 36533 of the Act as well as all other pertinent provisions of the Act, as amended.

2.2.4 By the 31st day of each March, submit a statement of income and expense for the CCDBA covering the period from January 1 to December 31 of the prior year and certified by an independent Certified Public Accountant.

CCDBA responsibilities pursuant to Section 2.2 shall be in conformance with accepted industry standards to the sole reasonable satisfaction of the Director of the Office of Economic and Cultural Development, or his/her designee.

- 2.3 CCDBA shall administer the entire work program in a prudent manner within the budget attached hereto and made a part hereof as Exhibit A. CCDBA assumes responsibility for contracting for support services as required and paying for all such direct out-of-pocket expenses as may be necessary for the timely completion of work. Obligations or expenditures for items not budgeted shall not be paid through assessments collected for the BID.
- 2.4 CCDBA shall pay to City all standard City fees including, but not limited to, fees or service charges for photocopy and reproduction requests and generation of real property, parcel or business ownership lists, as applicable.
- 2.5 CCDBA shall maintain ongoing liaison with the community, which shall include holding an annual public meeting to be noticed in writing to all assessed business establishments in the BID. This meeting will be conducted in the community in order to allow the business establishments to familiarize themselves with CCDBA functions and to inform CCDBA of their concerns and desires. A representative of the Office of Economic and Cultural Development may attend as a member of the panel to provide information as required.
- 2.6 In addition to an annual work program, CCDBA may choose for each project to be implemented, to submit for the Director of the Office of Economic and Cultural Development, or his/her designee approval a focused project plan, including a project budget and proposed project schedule. Each project shall be implemented within the budget amount specified. If the budget amount for any project is not sufficient, CCDBA has the authority to make reasonable budget adjustments not to exceed twenty-five percent (25%) of the total budget for that project, between several projects as necessary, and as limited by the total annual budget for the program. The projects shall be as follows, in no order of priority:

2.6.1 Commercial Marketing

CCDBA shall develop a general commercial marketing program, which may include such items as a public relations campaign, institutional advertising, a community newsletter, and a business directory and member mailing list of all businesses in the BID.

2.6.2 Special Events and Activities

CCDBA shall develop and carry out an annual program of special events and activities, which may include such items as street fairs, carnivals, circuses, farmers' market and other sales and promotional activities. Prior to conducting such events and activities, CCDBA shall obtain all necessary permits, licenses and approvals.

2.6.3 Beautification

CCDBA shall develop and implement a physical beautification program, which may include items such as special event banners and flags, holiday lighting and decorations, and other area-wide amenities as appropriate.

2.6.4 Other

CCDBA shall provide for other organization-related services, functional duties and expenses such as insurance, bookkeeping/accounting, printing, postage, office supplies, equipment and utilities, as appropriate.

2.7 CCDBA shall maintain tax-exempt status with the United States Internal Revenue Service and the California State Franchise Tax Board for the term of this Agreement. CCDBA shall provide documentation of such status to the City's Finance Department prior to the disbursement of any funds to CCDBA pursuant to this Agreement.

2.8 CCDBA shall recommend to the City Council for appointment CCDBA members who will act as a Business Improvement District Advisory Board (hereinafter "BID Board"). Members of the BID Board shall be limited to representatives of businesses that are within the BID and are subject to the assessments. BID Board members shall be current with respect to Culver City Business Tax and any other debts owed to the City, the CCDBA or the BID.

- 2.9 The CCDBA understands and acknowledges that the BID Board will be subject to all State and City laws and regulations relating to government entities' conflict of interest, open meetings and public records, and hereby agrees to comply with all such laws and regulations.
- 2.10 CCDBA, and subcontractors and consultants, if any, shall be required to obtain all necessary documentation including, but not limited to, any and all certificates, licenses and permits required to do business in the City. A list of said subcontractors and consultants shall be submitted to the City's Chief Financial Officer on a quarterly basis, commencing January 1, 2023.
- 2.11 By the thirtieth (30th) day of the first month of each quarter, CCDBA shall submit in duplicate a quarterly report to the Director of the Office of Economic and Cultural Development, or his/her designee. Such report shall:
1. Include the quarterly progress report, including supporting documentation of expenditures incurred in the previous quarter and an itemized request for disbursement for the current quarter.
 2. Contain a statement by CCDBA certifying that CCDBA staff time, if any, expended and payment requested is for services performed in accordance with the provisions of this Agreement.

Section 3. CITY RESPONSIBILITIES

- 3.1 The City shall be responsible for mailing the annual assessment notices and first delinquent notices, for receiving the assessments and for authorizing disbursements of collected funds to CCDBA, except and unless otherwise agreed upon by both parties. The City is not obligated by this Agreement, or any other policies, rules, regulations or laws, to perform any further collection efforts beyond the mailing of the annual assessment notices and first delinquent notices.
- 3.1.1 Should any collection efforts beyond those provided for in Section 3.1 be requested by CCDBA, the City may authorize an agent to pursue additional collection efforts, as set forth in Section 4, and CCDBA shall be solely responsible for all direct and indirect costs associated with such additional collection efforts.
- 3.2 The Director of Economic and Cultural Development or his/her designee shall review CCDBA's quarterly reports.
- 3.3 Certain types of information obtained and possessed by the City including, but not limited to, certain tax data, have been determined to be

confidential information by the City Attorney and will not be made available to CCDBA. Notwithstanding, the City's Finance Department shall inform the CCDBA when a new business enters the BID. This shall occur each quarter. The list shall include a method by which the CCDBA may contact a new business.

Section 4. ADDITIONAL COLLECTION EFFORTS

Regarding any collection efforts beyond those provided for in Section 3.1:

- 4.1 City and CCDBA shall agree upon and designate a third-party collections agent, to be retained by City, to perform any such additional collection efforts.
- 4.2 The CCDBA may, at its discretion, refer any delinquent BID assessments to the designated third-party collections agent for further collection efforts.
- 4.3 The CCDBA shall make and be responsible for all decisions relating to the settlement of delinquencies.
- 4.4 The City shall be solely responsible for directing the designated third-party collections agent regarding all collection issues, other than those issues delegated to CCDBA in Section 4.3.

Section 5. DISBURSEMENTS

- 5.1 The total BID assessments collected for each calendar year shall be disbursed to the CCDBA by the City's Finance Department, provided that said disbursement does not exceed the total budget, as reflected in the Annual Report and approved by the City Council.
- 5.2 In order to cover City expenses related to the BID program, prior to disbursement of any funds to the CCDBA, the City shall retain for each calendar year an administrative fee in an amount equal to two percent (2%) of the total annual assessment authorized for that year in the Annual Report submitted by CCDBA and approved by City Council.
- 5.3 The City's Chief Financial Officer shall reserve the right to retain a sum equal to the amount of assessments known to be in dispute for a period of forty-five (45) calendar days after the close of each fiscal year, on the 31st day of December of each year, as a contingency fund for the processing of valid claims for refunds or adjustments submitted to the City by business establishments within the BID. The City's standard policy for processing claims for refunds or adjustments shall apply.

- 5.4 Subject to Sections 5.1 through 5.3 and 6.1, the City's Chief Financial Officer shall disburse funds on a monthly basis when the Downtown Culver City Business Improvement account balance exceeds \$100. The City's standard policy for processing requests for disbursement shall apply.
- 5.5 If CCDBA dissolves itself prior to or upon the expiration of this Agreement, any unexpended monies shall be returned to the City.

Section 6. REIMBURSEMENT OF COLLECTION EXPENSES

- 6.1 In addition to the two percent (2%) administrative fee, which the City will retain pursuant to Section 5.2, the City shall use assessment funds to reimburse the designated third-party collections agent for all collection costs incurred as a result of the agent's collection efforts, provided the collections agent submits receipts for such costs and the CCDBA's written authorization to incur such costs. The City's standard policy for processing payment requests shall apply.
- 6.2 The CCDBA shall be solely responsible for reimbursing the collections agent for all authorized collection expenses exceeding the funds available for reimbursement pursuant to Section 6.1.

Section 7. NOTICES

- 7.1 Notices to the parties shall, unless otherwise requested in writing, be sent to:

City	City of Culver City Office of Economic Development and Cultural Affairs Attention: Director of the Office of Economic and Cultural Development, or his/her designee P.O. Box 507 Culver City, CA 90232-0507
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CCDBA:	Culver City Downtown Business Association Attention: President P.O. Box 1322 Culver City, CA 90232
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Section 8. OWNERSHIP OF DOCUMENTS

- 8.1 The work product prepared or acquired by CCDBA pursuant to this Agreement including, but not limited to, any and all data, documents, memoranda, sketches, drawings, photographs, audio tapes, video tapes, computer disks, designs, plans, reports, investigations and materials

(collectively and individually, the “Work Product”) shall be and shall remain property of City and the BID for the exclusive use of the BID. CCDBA shall have the right to retain copies of the Work Product. CCDBA acknowledges that the Work Product shall be and shall remain confidential, to the extent permitted by law, and shall not be made available to any individual or organization without the prior written consent of the City. The Work Product shall, upon demand of the City, be delivered to the City without additional cost or expense to the City.

Section 9. CONFLICT OF INTEREST

- 9.1 For the duration of this Agreement, CCDBA or its employees will not act as consultant or perform services of any kind for any person or entity in regard to the BID without the prior written consent of the City. In addition, neither members of the Board of Directors of CCDBA nor paid staff, if any, may enter into any contract on behalf of CCDBA, nor vote on any BID matters when such contract or matter would be of financial benefit to the member of the Board of Directors over and above the general financial benefit to all businesses in the BID.

Section 10. COST RECORDS

- 10.1 In accordance with generally accepted accounting principles, CCDBA shall maintain full and complete records of services performed under this Agreement. Such records shall be open to the inspection of the City and shall be kept for a 5-year period in case of audit.
- 10.2 The records maintained by CCDBA shall include all receipts for expenditures incurred. The City reserves the right for the Director of the Office of Economic and Cultural Development, or his/her designee, to perform a contract compliance audit at any time during the fiscal year. CCDBA agrees to keep all receipts and other supporting documents available for inspection during said audits.

Section 11. EQUAL OPPORTUNITY PROGRAM

- 11.1 CCDBA shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California and the City. In performing this Agreement, CCDBA shall not discriminate in its employment practices against any employee or applicant for employment because of such person’s race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status or medical conditions.

Section 12. AMENDMENTS

- 12.1 Periodically City may request a change in the scope of services to be performed hereunder. Such changes, which are mutually agreed upon by and between City and CCDBA, shall be incorporated in written amendments to this Agreement.
- 12.2 This Agreement may not be amended except in writing by mutual agreement of both parties. A failure to object to a breach of this Agreement shall not constitute an amendment thereof, nor shall it waive any future breach of this Agreement.

Section 13. INSURANCE

- 13.1 During the term of this Agreement, CCDBA shall comply with all of City's insurance requirements, which are attached to this Agreement as Exhibit A.

Section 14. INDEMNITY

- 14.1 To the fullest extent permitted by law, CCDBA shall indemnify, defend (at CCDBA's sole expense, with legal counsel approved by City) and hold harmless the City, members of its City Council, its boards and commissions, officers, agents, and employees (hereinafter, individually, "Indemnitee" or, collectively, "Indemnitees") from and against all loss, damage, cost, expense, liability, claims, demands, suits, attorneys' fees and judgments arising directly or indirectly from, or in any manner connected to, this Agreement. This indemnification includes, but is not limited to, all loss, damage, cost, expense, liability, claims, demands, suits, attorneys' fees and judgments arising directly or indirectly from the acts of any third-party collections agent performing collection services pursuant to the provisions of Section 4.
- 14.2 CCDBA agrees that this obligation to indemnify, defend and hold harmless extends to liability and/or claims arising from Indemnitees' active or passive negligence.
- 14.3 14.3 Notwithstanding the foregoing, nothing herein shall be construed to require CCDBA to indemnify a specific Indemnitee from any claim arising from the sole negligence or willful misconduct of that specific Indemnitee; provided, however, CCDBA's obligation to indemnify, defend and hold harmless shall remain as to all other Indemnitees.
- 14.4 The duty to defend referenced herein is wholly independent from the duty to indemnify, arises upon written notice by City to CCDBA of a claim within the potential scope of this indemnification provision, and exists regardless of any determination of the ultimate liability of CCDBA, City or any Indemnitee.

- 14.5 In the event CCDBA or City are sued by a third party for damages arising or allegedly arising from this Agreement, CCDBA shall not be relieved of its indemnity obligation to City by any settlement with any such third party unless that settlement includes a full release and dismissal of all claims by the third party against the City.

Section 15. ASSIGNMENT

- 15.1 CCDBA covenants and agrees it will not assign or transfer its rights under this Agreement, either in whole or in part, without first obtaining the written consent of City, which consent may be granted or denied at the sole and absolute discretion of City. Any attempt by CCDBA to assign or transfer its rights or obligations without such prior written consent shall be null and void and may, at the option of City, automatically terminate this Agreement.

Section 16. ASSETS OF THE BID

- 16.1 In the event the BID is disestablished or otherwise discontinued, then the existing assets of the BID shall be the property of City. However, said assets shall only be used (1) to pay the City any outstanding sums due to it by the BID and (2) to, thereafter, disburse the remaining assets to the then current members of the BID on a pro-rata basis.

Section 17. ATTORNEY FEES

- 17.1 If any action is brought in law or equity to enforce or interpret the provisions of the Agreement, the prevailing party shall be entitled to reasonable attorney fees in addition to any other relief to which it may be entitled.

Section 18. SEVERABILITY

- 18.1 If any clause, provision, or section of the Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

Section 19. WAIVER

- 19.1 Waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained.

Section 20. SECTION HEADINGS

20.1 The section headings of the Agreement are for convenience and reference only, and shall in no way be deemed to define, limit or add to the meaning of any provision of the Agreement.

Section 21. GOVERNING LAW/COMPLIANCE WITH LAWS

21.1 The Agreement shall be governed by, and construed in accordance with, the laws of the State of California. The parties hereto agree to be bound by all federal, state and local laws, ordinances, regulations and directives pertaining to the services to be performed hereunder. All disputes arising hereunder shall be resolved in Los Angeles County.

Section 22. COUNTERPARTS

22.1 The Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 23. EXTENT OF AGREEMENT

23.1 This Agreement represents the entire and integrated agreement between the City and CCDBA regarding the subject matter herein and supersedes any and all prior negotiations, representations or agreements, either oral or written.

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(Signatures on Following Page)

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IN WITNESS WHEREOF, this Agreement is executed by the CITY OF CULVER CITY, acting by and through its City Manager, and the CULVER CITY DOWNTOWN BUSINESS ASSOCIATION, acting by and through its President and Vice-President or Secretary.

APPROVED AS TO FORM:
CITY ATTORNEY

CITY OF CULVER CITY, A Municipal
Corporation of the State of California

By _____
Heather Baker
City Attorney

By _____
John M. Nachbar
City Manager

Date _____

CULVER CITY DOWNTOWN
BUSINESS ASSOCIATION

By _____
Darrel Menthe
President

Date _____

EXHIBIT A
INSURANCE REQUIREMENTS

A. Policy Requirements.

CCDBA shall submit duly executed certificates of insurance for the following:

1. An occurrence based Commercial General Liability ("CGL") policy, at least as broad as ISO Form CG 0001, in the minimum amount of Three Million Dollars (\$3,000,000) each occurrence, with not less than Six Million Dollars (\$6,000,000) in annual aggregate coverage.

This CGL Policy shall meet the following requirements:

- a. The policy shall provide coverage for personal injury, bodily injury, death, accident and property damage and advertising injury, as those terms are understood in the context of a CGL policy. The coverage shall be utilized to satisfy, to the extent of the coverage limits, the City's self-insured retention under any other policy of insurance. The coverage shall not be excess or contributing with respect to the City's self-insurance, commercial liability insurance, or any pooled risk arrangements;
- b. The policy shall provide \$3,000,000 coverage per accident, for owned, hired and non-owned automobile liability; automobile liability coverage may be satisfied with a stand- alone policy or as a component of the CGL policy;
- c. The policy shall include coverage for liability undertaken by contract covering, to the maximum extent permitted by law, CCDBA's obligation to indemnify the Indemnitees as required under Paragraph 14.1 of Agreement;
- d. Intentionally Omitted; and
- e. The City of Culver City, members of its City Council, its boards and commissions, officers, agents, and employees will be named as an additional insured in an endorsement to the policy, which shall be provided to the City and approved by the City Attorney.
- f. The Policy shall not contain an "Independent Negligence" provision that would void or otherwise nullify the insurer's obligation to defend and indemnify the City of Culver City in the event that its independent negligence is alleged or proven.

- g. The CGL limits may be satisfied with a primary policy with \$3,000,000 occurrence/\$6,000,000 annual aggregate, OR, by a primary policy with lower limits of coverage plus an Excess or Umbrella policy which will satisfy the occurrence and aggregate limit requirement. If CCDBA's insurance coverage provides coverage in excess of these required limits, but is eroded by payment or claim reserves, then CCDBA or its insurance carrier shall notify the City of Culver City within ten (10) days when the contractual coverage limits provided are below the required coverage limits.
- h. The City of Culver City reserves the right to review and waive or modify the CGL aggregate requirement in the event that an adequate project specific policy and limits are provided.
- 2. Intentionally Omitted.
- 3. Intentionally Omitted.
- 4. If the Agreement will have CCDBA employees working within the City limits, CCDBA shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least one million dollars [\$1,000,000] per accident.) CCDBA shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers.

B. Waiver by City.

City may waive one or more of the coverages listed in Section A, above. This waiver must be express and in writing and will only be made upon a showing by CCDBA that its operations in and with respect to City are not such as to impose liability within the scope of that particular coverage.

C. Additional Insurance Requirements.

- 1. All insurance listed in Paragraph A shall be issued by companies licensed to do business in the State of California, with a claims paying ability rating of "BBB" or better by S&P (and the equivalent by any other Rating Agency) and a rating of A-:VIII or better in the current Best's Insurance Reports;
- 2. CCDBA shall provide City with at least thirty (30) days prior written notice of any modification, reduction or cancellation of any of the Policies

required in Paragraph A, or a minimum of ten (10) days' notice for cancellation due to non-payment.

3. City may increase the scope or dollar amount of coverage required under any of the policies described above, or may require different or additional coverages, upon prior written notice to CCDBA.