

CITY OF CULVER CITY

MEMORANDUM OF UNDERSTANDING

WITH: DOWNTOWN BUSINESS ASSOCIATION

FOR: SPECIAL EVENTS AND ACTIVITIES

This Memorandum of Understanding (“MOU” or “Agreement”) is entered into by the City of Culver City (the “City”), a California municipal corporation, and the Culver City Downtown Business Association (the “DBA”), a California non-profit corporation (collectively, the “Parties”).

RECITALS

WHEREAS, the DBA manages the Culver City Downtown Business Improvement District established by Ordinance dated as of September 28, 1998.

WHEREAS, on August 17, 2009, the Culver City City Council approved a memorandum of understanding with the DBA which, among other things, defined the DBA’s relationship with the City and delineated the functions, duties and responsibilities of the Parties with respect to their partnership in community events and the general economic development of the City, and has renewed such arrangement over the years; and,

WHEREAS, the City has a significant and long-standing interest in enhancing the City’s economic and business environment by attracting business and investment to the community; and,

WHEREAS, the City, in cooperation with the DBA, has expended and continues to expend resources on events and projects that serve to benefit the community and the economic development of the City; and,

WHEREAS, the Parties have a common interest in promoting and maintaining the City as a healthy and growing area for commerce and business; and,

WHEREAS, the DBA has the expertise and ability to produce events and projects that attract businesses to, and improve the overall quality of life within, the community and the Parties desire to enter into an agreement to continue to carry out these objectives; and,

WHEREAS, representatives from the Parties have met to identify and discuss the methods and means of accomplishing these mutual objectives and, as a result,

have committed to working cooperatively toward achieving these mutual objectives; and,

WHEREAS, the Parties desire to continue this relationship by executing this MOU, which shall be applicable to calendar years 2022 through 2025.

NOW, THEREFORE, based on the foregoing recitals, and in consideration of the terms and conditions set forth herein, the Parties agree as follows:

1. **GENERAL RESPONSIBILITIES OF THE DBA**: Under this MOU, the DBA shall, in general:

- A. Produce events or projects that promote and maintain the City as a healthy and growing area for commerce and business;
- B. Assist the City in communicating with the business community, including, but not limited to, providing notice regarding City-related business to its members;
- C. Assist the community in directing the public to the appropriate City departments or other governmental agencies; and,
- D. Assist City staff in coordinating meetings on business issues.

2. **SPECIFIC EVENTS AND PROJECTS**: The City and the DBA shall work together to offer special events which shall include, but are not limited to the following:

A. Annual Holiday Tree Lighting Event:

i. The DBA shall:

- a. in consultation with City staff, select the date, location, program content and any additional essentials of the event; and,
- b. select, contract for (when applicable), and pay any expenditures needed for the location, caterer, decorations, and design and printing of any promotional and program materials.

ii. The City:

- a. hereby designates the event a City-sponsored event;
- b. shall, at the DBA's request, and City resources permitting, install banners at any or the City's three banner locations, if available, and waive the applicable permit and City installation fees, as approved by the City Manager or the City Council.

- c. hereby designates City staff and allocates approximately 20 hours of City staff time, City resources permitting, to assist the DBA with the planning, preparation and/or promotion of the event, and waives applicable fees for up to 20 hours per event of City staff time;
 - d. shall allow the use of Town Plaza as set forth in Section 5 of this Agreement, if available, or an alternate location as agreed upon by the Parties; and
 - e. The City shall facilitate the processing of any City permits it deems necessary for the event. Requests for permit fee waivers may be approved by the City Manager, or deferred to the City Council for consideration, at the City Manager's discretion. The DBA shall cooperate with any requests for information to assist the City in any City permitting process. The DBA shall be responsible for obtaining any other non-City permits required for this event.
- B. Annual Holiday Tree Display: As part of the Annual Holiday Tree Lighting Event, the City shall designate, as City-sponsored, the annual display of holiday tree during the period specified in the related license agreement (see Section 5). The display of the holiday tree shall be accompanied by a sign or plaque identifying the City of Culver City and DBA as sponsors of the display.
- C. Annual Halloween Event: (including trick-or-treating at downtown merchants, live music, and photo opportunities):
 - i. The DBA shall:
 - a. in consultation with City staff, select the date, location, program content and any additional essentials of the event; and,
 - b. select, contract for (when applicable), and pay any expenditures needed for the location, caterer, decorations, and design and printing of any promotional and program materials.
 - ii. The City:
 - a. hereby designates the event a City-sponsored event;
 - b. shall, at the DBA's request, and City resources permitting, install banners at any or all of the City's three banner locations, if available, and waive the applicable permit and City installation fees, as approved by the City Manager or the City Council.

- c. hereby designates City staff and allocates approximately 20 hours of City staff time, City resources permitting, to assist the DBA with the planning, preparation and/or promotion of the event, and waives applicable fees for up to 20 hours City staff time; and,
- d. shall allow the use of Town Plaza as set forth in Section 5 of this Agreement, if available, or an alternate location as agreed upon by the Parties.
- e. The City shall process any City permits it deems necessary for the event. Requests for permit fee waivers may be approved by the City Manager, or deferred to the City Council for consideration, at the City Manager's discretion. The DBA shall cooperate with any requests for information to assist the City in any City permitting process. The DBA shall be responsible for obtaining any other non-City permits required for this event.

3. CANCELLATION OF EVENTS: If the DBA reasonably determines the production of a particular event to be financially infeasible in any given year, the DBA may cancel an event by giving the City sixty (60) days' written notice of such cancellation. Any event cancelled in one year shall resume in the following years unless written notice of cancellation is provided in any of the following years in accordance with the provisions of this Section.

4. ADDITIONAL EVENTS: The Parties may, from time to time, agree to conduct joint events in addition to the Annual Holiday Tree Lighting Event and Annual Halloween Event in Town Plaza or another location as agreed upon by the parties. Additional events must be approved by the Culver City City Council at a public meeting. Any additional event approved by the City Council, pursuant to this Section 4 of this MOU, shall be subject to all applicable terms and conditions of this MOU. For each event approved in accordance with the provisions of this Section, the City may:

- a. designate the event as a City-sponsored event; and,
- b. shall, at the DBA's request, and City resources, permitting, install banners at any or the City's three banner locations, if available, and waive the applicable permit and City installation fees, as approved by the City Manager or the City Council.
- c. designate City staff and allocate approximately 20 hours of staff time to assist the DBA with the planning, preparation and/or promotion of the event, and waive applicable fees for up to 20 hours of City staff time; and,

- d. allow the use of Town Plaza, if a as set forth in Section 5 of this Agreement, if available, or alternate location as agreed upon by the parties.
- e. facilitate the processing of any City permits it deems necessary for the event. Requests for permit fee waivers may be approved by the City Manager or deferred to the City Council for consideration, at the City Manager's discretion. The DBA shall cooperate with any requests for information to assist the City in any City permitting process. The DBA shall be responsible for obtaining any other non-City permits required for a specific event

5. LICENSE FOR USE OF TOWN PLAZA: The City hereby grants a license to DBA ("Licensee") for use of the City-owned property known as Town Plaza and illustrated on Exhibit A, attached hereto and incorporated herein ("Premises"), for the sole purpose of conducting the events, activities or displays identified in Section 2 of this Agreement (collectively, "Permitted Events") and as further set forth below in Section 5.I, subject to the execution of a written letter agreement for each Permitted Event, specifying the dates/times of the License Term, a general description of activities and location for the Permitted Event, and acknowledgement that Licensee and City shall be bound by the terms and conditions of this MOU. Such letter agreement shall be in the form attached to this MOU as Exhibit C. The licenses granted under this Agreement shall be referred to as "License" and shall be subject to all of the following terms and conditions:

- A. License Term: The License shall run concurrently with the dates of the Permitted Events ("License Term") and shall be in effect solely during the Permitted Events, including set-up and break-down.
- B. Use of Premises: With the exception of the purposes described in this Section 5, Licensee shall not be authorized to use the Premises for any other purpose whatsoever. Licensee may use the Premises only for the setup, operation and break down of the Permitted Events, as more particularly described in the related permits issued by the City for each Permitted Event ("Special Event Permit") and shall be limited to the activities specifically described therein.
- C. Security Deposit: For each Permitted Event, Licensee shall submit to City a deposit in the amount of \$5,000.00 as security at least five business days prior to that Permitted Event, which shall be applied by City to repair or replace any broken or damaged property or equipment and perform required maintenance of the Premises not otherwise performed by Licensee at the conclusion of that Permitted Event (See Section 5.F), to pay third party expenses incurred on behalf of City, as a result of Licensee's actions, and/or to compensate City for time expended responding to complaints or needs arising from Licensee's activities related to that Permitted Event. In the event

the cost of the expenses described in this Section 5.C exceeds the \$5,000 security deposit, Licensee shall be solely responsible for such costs and shall pay any outstanding balance within 30 days of the conclusion of that Permitted Event.

- D. Property Management Fee: For each Permitted Event that takes place on the portion of Town Plaza managed by Hackman Capital Partners (HCP), Licensee shall be responsible for and submit directly to Hackman Capital Partners a reasonable Property Management Fee for coordination, inspection and oversight of the Premises before during and after the Permitted Event. The Property Management Fee shall depend on services and time required by Licensee before, during and after the Permitted Event, and may be waived by HCP in its sole discretion. The Property Management Fee shall be paid at least five business days prior to that Permitted Event, with written proof of payment submitted to City.
- E. Compliance with Laws and City Requirements: Licensee shall comply with all federal, state and local laws, statutes and ordinances in connection with Licensee's entry onto and use of the Premises under this Section 5. City shall coordinate and cooperate with Licensee in Licensee's activities to obtain all necessary government permits and permissions from the City. In addition, during all times Licensee uses the Premises, Licensee shall comply with all of the following:
- i. The conditions of approval of the Special Event Permit issued for each Permitted Event.
 - ii. All requirements of City, including, but not limited to Community Development, Public Works, Police and Fire Departments.
 - iii. Signage placed on the Premises shall be limited only for the purposes set forth in the Special Event Permit for each Permitted Event, unless otherwise specifically approved, in writing, by the City Manager or his/her designee.
 - iv. For each Permitted Event at which alcohol is served, Licensee shall obtain a liquor license from the California Department of Alcoholic Beverage Control for the sale or other distribution of alcoholic beverages on the Premises by Licensee during that Permitted Event.
- F. Condition of Premises Upon Vacation and Repair of Property and Equipment: Upon vacation of the Premises after each Permitted Event, Licensee shall remove all trash and debris from the Premises, remove any substances placed on the Premises, and leave the Premises in the same condition in which the Premises were found upon commencement of Licensee's use of

the Premises, pursuant to this License. Licensee shall repair or replace, to the reasonable satisfaction of the Public Works Director/City Engineer, broken or damaged City-owned or operated real or personal property or public right-of-way caused, directly or indirectly, by Licensee's activities related to the Permitted Events.

- G. Hazardous Materials: Licensee shall not store or use or consent to the storage or use of any Hazardous Materials on the Premises. As used in this Agreement, "Hazardous Materials," means any substance, material or waste which is or becomes regulated by the United States government, the State of California, or any local or other governmental authority, including, without limitation, any material, substance or waste which is (i) defined as a "hazardous waste", "acutely hazardous waste", "restricted hazardous waste", or "extremely hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code; (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code; (iii) defined as a "hazardous material", "hazardous substance", or "hazardous waste" under Section 25501 of the California Health and Safety Code; (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code; (v) petroleum; (vi) asbestos; (vii) a polychlorinated biphenyl; (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Code of Regulations, Chapter 20; (ix) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317); (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. Section 6903); (xi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601); or (xii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any governmental requirements either requires special handling in its use, transportation, generation, collection, storage, treatment or disposal, or is defined as "hazardous" or is harmful to the environment or capable of posing a risk of injury to public health and safety.
- H. Event Insurance: For each Permitted Event, Licensee shall procure and maintain, at Licensee's own cost and expense and for the duration of the License Term, insurance coverage as set forth in Section 7 of this Agreement.
- I. Premises Subject to Availability: Nothing in this Agreement or the License granted hereunder shall guarantee Licensee the use of the Premises for the Permitted Events. Licensee's use of the Premises shall be subject to availability and may be granted or denied in the sole discretion of the City.

- J. *Business Improvement District License*: In consideration of the DBA's management of the Culver City Downtown Business Improvement District, which includes Town Plaza, the City Manager is authorized to administratively grant, in their sole discretion, a license to the DBA for additional limited activities within Town Plaza, such as the installation of decorations and production of live music. The City Manager's authorization shall take the form of a written letter agreement, specifying the dates/times of the License Term, a general description and location of the activities, and acknowledgement that Licensee and City shall be bound by the terms and conditions of this MOU. Such letter agreement shall be in the form attached to this MOU as Exhibit C.

6. INDEMNIFICATION: To the fullest extent permitted by law, the DBA shall indemnify, defend (at DBA's sole expense, with legal counsel approved by City) and hold harmless the City of Culver City, members of its City Council, its boards and commissions, officers, agents, and employees (hereinafter, "Indemnitees"), from and against all loss, damage, cost, expense, liability, claims, demands, suits, reasonable attorneys' fees and judgments arising out of or in any manner related to this Agreement and the License granted hereunder. This indemnification includes, but is not limited to, tort liability to a third person for bodily injury and property damage.

DBA agrees that this obligation to indemnify, defend and hold harmless extends to liability and/or claims arising from Indemnitees' active or passive negligence.

Notwithstanding the foregoing, nothing herein shall be construed to require DBA to indemnify an Indemnitee from any claim arising from the sole negligence or willful misconduct of that Indemnitee.

The duty to defend referenced herein is wholly independent from the duty to indemnify, arises upon written notice by City to DBA of a claim within the potential scope of this indemnification provision, and exists regardless of any determination of the ultimate liability of DBA, City or any Indemnitee.

7. INSURANCE: Without limiting its obligations pursuant to Section 5.G and Section 6 of this Agreement, DBA shall procure and maintain, at DBA's own cost and expense and for the duration of this Agreement, insurance coverage as set forth in "Insurance Requirements" attached to and incorporated into this Agreement as Exhibit B.

8. DEFAULT AND CURE: Should any party allege default by the other party of the other party's obligations under this MOU, the party alleging default shall provide a written notice of default to the other party and include a description of the default and requested actions to cure said default. The other party shall, in good faith, attempt to cure the default within fifteen (15) days of receipt of the notice of default.

Failure of the other party to cure the default to the reasonable satisfaction of the party alleging default within fifteen (15) days of receipt of the notice of default shall be cause for termination of this MOU under Section 9 hereof.

9. TERMINATION AND TERM: Any party, upon the default hereunder by the other party, may terminate this MOU by providing at least thirty (30) days' written notice to the other party. Services provided hereunder shall continue until the date of termination.

The term of this MOU shall be from June 30, 2022, through December 31, 2025, unless terminated under the provisions of this Section, and shall supersede the MOU currently set to expire December 31, 2022.

10. FURTHER ASSURANCES: Each of the parties hereto shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent and agreements of the parties hereto.

11. GOVERNING LAW: The terms of this Agreement and the License granted hereunder shall be interpreted according to the laws of the State of California. Should litigation occur, venue shall be in the Superior Court of Los Angeles County.

12. LITIGATION FEES: Should litigation arise out of this Agreement or the License granted hereunder or the performance thereof, the court shall award costs and expenses, including attorney's fees, to the prevailing party. In awarding attorney's fees, the court shall not be bound by any court fee schedule, but shall award the full amount of costs, expenses and attorney's fees paid or incurred in good faith.

13. TRANSFERABILITY AND ASSIGNABILITY: This Agreement and the License granted hereunder are neither transferable nor assignable by the DBA.

14. NOTICES: All notices given or required to be given pursuant to this Agreement shall be in writing and may be given by personal delivery or by mail. Notice sent by mail shall be addressed as follows:

To City: City of Culver City
Attention: City Manager
9770 Culver Boulevard
Post Office Box 507
Culver City, California 90232-0507

To Licensee: Culver City Downtown Business Association
Attention: Sylvia Bianchi
P.O. Box 1322

15. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement of the parties hereto relating to the Premises and shall supersede prospectively from the date it is entered into any and all prior written or oral negotiations or agreements of the parties relating to the Premises. This Agreement shall not be modified in any particular manner except by a written amendment duly executed by the parties.

16. AUTHORITY TO ENTER INTO AGREEMENT: The individual(s) executing this Agreement on behalf of each party is (are) authorized to execute this Agreement on behalf of said party. Each party has taken all actions required by law to approve the execution of this Agreement.

17. SIGNATURES AND COUNTERPARTS: The Parties acknowledge and agree that this Agreement may be executed in counterpart, and by faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature.

City of Culver City:

Downtown Business Association:

By: _____
John Nachbar
City Manager

By: _____
Darrel Menthe
President

Dated: _____

Dated: _____

Approved as to Content:

Approved as to Form

**Heather Baker
City Attorney**

EXHIBIT A
TOWN PLAZA PREMISES



EXHIBIT B

INSURANCE REQUIREMENTS

A. Policy Requirements.

DBA 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 One Million Dollars (\$1,000,000) each occurrence, with not less than Two Million Dollars (\$2,000,000) in annual aggregate coverage.

The CGL Policy shall have 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 \$1,000,000 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. DBA's obligation to indemnify the Indemnitees as required under Section 6 of this Agreement;
- d. The Policy shall not exclude coverage for Completed Operations, Hazards or Athletic or Sports Participants; and
- e. **The City of Culver City, members of its City Council, boards and commissions, and its officers, agents, and employees shall be named as additional insureds** 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 \$1,000,000 occurrence/\$2,000,000 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 Consultant's insurance coverage provides coverage in excess of these required limits, but is eroded by payment or claim reserves, then Consultant 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. Reserved.

3. Reserved.

4. If the Agreement will have DBA employees working within the City limits, DBA 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.) DBA 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 the DBA 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. DBA 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 DBA.

EXHIBIT C

LETTER AGREEMENT FOR PERMITTED EVENT

This Letter Agreement for an additional Permitted Event is entered into by and between the City of Culver City (the “City”), a California municipal corporation, and the Culver City Downtown Business Association (the “DBA”), a California non-profit corporation (collectively, the “Parties”) pursuant to the following terms:

1. The Parties agree that the DBA may conduct the Permitted Event described herein.
2. The Parties agree to be bound by all terms and conditions of that certain MOU for Special Events and Activities dated _____.
3. This Letter Agreement is entered into pursuant to Section 5 of the MOU for Special Events and Activities, which allows the Parties to agree to additional Permitted Events.
4. A general description of the activities for the Permitted Event follows: _____.
5. The location of the Permitted Event is _____.
6. The date and time of the Permitted Event is _____.

City of Culver City:

Downtown Business Association:

By: _____
John Nachbar
City Manager

By: _____
Darrel Menthe
President

Dated: _____

Dated: _____

Approved as to Content:

Approved as to Form

Dated: _____

Dated: _____
Heather Baker
City Attorney