

BUSINESS IMPROVEMENT DISTRICT MANAGEMENT AGREEMENT 2020 - 2021

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 ARTS DISTRICT, a California nonprofit mutual benefit corporation organized and existing under and pursuant to the laws of the State of California (hereinafter "CCAD") with reference to the following facts:

RECITALS

- A. Following properly noticed and publicly held meetings and hearings, the City Council created a Business Improvement Area to be known as the Culver City Arts District 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. 2016-003 on February 22, 2016 (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 CCAD contribute to the economic and promotional well being of the community.
- E. The services to be performed by CCAD are of a nature that the interests of the City are better served by an agreement with CCAD 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 CCAD.
- G. The City recognizes the CCAD 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 CCAD, in consideration of the recitals set forth above and the 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, 2020, through December 31, 2021, unless terminated sooner pursuant to the terms hereof. Obligations or expenditures for items not budgeted in the approved work plan shall not be paid through assessments collected for the BID.
- 1.2 The CCAD 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 CCAD. Such termination shall be effective on the sixty-first (61st) day after mailing of such notice.

Section 2. CCAD RESPONSIBILITIES

- 2.1 CCAD shall render professional services and shall cooperate with City's Community Development Director, or his/her designee, to provide work program coordination consisting of project development and implementation, program administration and plans and reports.
- 2.2 CCAD shall submit to the Community Development Director project plans and reports, including the following:
 - 2.2.1 Before the implementation of any project or expenditure of project funds in the public right-of-way, submit a project plan as described further under Sections 2.2.2 and 2.6 below.
 - 2.2.2 By June 30th of each calendar year, submit a mid-year progress report to the Community Development Director, outlining the progress of the approved workplan. The report should also include a statement of income and expense for the CCAD covering the period from January 1 to December 31 of the prior year and certified by an independent Certified Public Accountant..
 - 2.2.3 By the 1st day of October of each year, submit a work plan outlining the project plans, goals, assessment schedule 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.

- 2.3 CCAD responsibilities pursuant to Section 2.2 shall be in conformance with accepted industry standards to the sole reasonable satisfaction of the Community Development Director. CCAD shall administer the entire work program in a prudent manner within the approved annual budget attached hereto and made a part hereof as Exhibit A. CCAD assumes responsibility for contracting for support services as required and paying for all 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 CCAD 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 CCAD 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 CCAD functions and to inform CCAD of their concerns and desires. A representative of the Community Development Director's office may attend as a member of the panel to provide information as required.
- 2.6 In addition to an annual work program, CCAD may choose, for each project to be implemented, to submit for the Community Development Director's 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, CCAD 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

CCAD 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

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

2.6.3 Beautification

CCAD 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

CCAD 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 CCAD 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. CCAD shall provide documentation of such status to the City's Finance Department prior to the disbursement of any funds to CCAD pursuant to this Agreement.
- 2.8 CCAD shall recommend to the City Council for appointment CCAD 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 CCAD or the BID.
- 2.9 The CCAD 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 CCAD, 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 by CCAD to the Community Development Director during the mid-year report process.

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 CCAD, 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 CCAD, the City may authorize an agent to pursue additional collection efforts, as set forth in Section 4, and CCAD shall be solely responsible for all direct and indirect costs associated with such additional collection efforts.
- 3.2 The Community Development Director shall review CCAD's mid-year report.
- 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 CCAD. Notwithstanding, the City's Finance Department shall inform the CCAD when a new business opens within the BID. This shall occur each quarter. The list shall include a method by which the CCAD 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 CCAD shall agree upon and designate a third-party collections agent, to be retained and paid for by the CCAD, to perform any additional collection efforts.
- 4.2 The CCAD may, at its discretion, refer any delinquent BID assessments to the designated third-party collections agent for further collection efforts.
- 4.3 The CCAD shall make and be responsible for any decisions to settle any of these collection matters as well as any decisions regarding the amount for which to settle any of these matters.

- 4.4 Other than those issues delegated to CCAD in Section 4.3, the City shall be solely responsible for directing the designated third-party collections agent regarding all other collection issues, tactics and strategies including, but not limited to, any decision to go to trial on any collection matters which don't settle or otherwise resolve without a trial.

4.4.1 To assure compliance with the provisions of this Section 4, CCAD agrees to either: not enter into any contract or agreement for additional collection efforts by a third party unless City has first reviewed and approved such an agreement or contract; or, to only enter into a tri-party agreement (among CCAD, City and any designated collections agent) to undertake any additional collection efforts.

Section 5. DISBURSEMENTS

- 5.1 The total BID assessments collected for each calendar year shall be disbursed to the CCAD 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 CCAD, 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 CCAD 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 quarterly basis when the CCAD account balance exceeds \$500. The City's standard policy for processing requests for disbursement shall apply.
- 5.5 If CCAD dissolves itself prior to or upon the expiration of this Agreement, any unexpended monies shall be returned to the City.

Section 6. REIMBURSEMENT OF CITY EXPENSES

- 6.1 In addition to the two percent (2%) administrative fee, which the City will retain pursuant to Section 5.2, the City will also retain any amounts necessary to reimburse the City for services provided by City to the BID including, but not limited to, the costs of photocopying, generating real property, parcel or business ownership lists and/or of providing services in support of BID events.

6.2

Section 7. NOTICES

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

City City of Culver City
 Community Development Department
 Attention: Sol Blumenfeld
 9770 Culver Boulevard
 Culver City, CA 90232-0507

CCAD: Culver City Arts District
 Attention: Josetta Spegia, President
 8619 Washington Blvd.
 Culver City, CA 90232

Section 8. OWNERSHIP OF DOCUMENTS

- 8.1 The work product prepared or acquired by CCAD 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. CCAD shall have the right to retain copies of the Work Product. CCAD 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, CCAD 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 CCAD nor paid staff, if any, may enter into any contract on behalf of CCAD, 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, CCAD 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 CCAD shall include all receipts for expenditures incurred. The City reserves the right for the Community Development Director, or his/her designee, to perform a contract compliance audit at any time during the fiscal year. CCAD agrees to keep all receipts and other supporting documents available for inspection during said audits.

Section 11. EQUAL OPPORTUNITY PROGRAM

- 11.1 CCAD 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, CCAD 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 CCAD, 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 CCAD shall submit a duly executed certificate of insurance, with declarations page and endorsement list, which shall be reviewed and approved by the City Attorney, for an occurrence based Comprehensive 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.

13.1.1 The CGL 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, for any claims that relate in any way to this Agreement.

13.1.2 The coverage provided by the CGL policy shall not be excess or contributing with respect to City's self-insurance or any pooled risk arrangements.

13.1.3 The CGL policy shall provide one million dollars (\$1,000,000) combined single limit coverage for owned, hired and non-owned automobile liability.

13.1.4 The CGL policy shall include coverage for liability undertaken by contract, covering, to the maximum extent permitted by law, CCAD's obligation to indemnify City as required under the Indemnity provisions of this Agreement.

13.1.5 The CGL policy shall not exclude coverage for Completed Operations Hazards.

13.1.6 The City of Culver City, members of its City Council and its boards and commissions, officers, agents and employees shall be named as additional insureds in an endorsement to the CGL policy.

13.1.7 The CGL policy shall be issued by an insurance company licensed to do business in the State of California, with a claims paying ability rating of "BBB" or better by S&P (or the equivalent by any other rating agency) and a rating of "A:VII" or better in the current Best's Insurance Reports.

13.1.8 CCAD shall provide City with at least thirty (30) days' prior written notice of any modification, reduction or cancellation of the CGL policy and a minimum of ten (10) days' notice for cancellation of the policy due to non-payment.

13.1.9 City may increase the scope or dollar amount of coverage required under the CGL policy, or may require different or additional coverages, upon prior written notice to CCAD to be provided no later than September 1st of each year.

- 13.2 Acceptance by City of the insurance policy required by this section does not waive any of the indemnification rights City may have pursuant to Section 14.

Section 14. INDEMNITY

- 14.1 To the fullest extent permitted by law, CCAD shall indemnify, defend (at CCAD'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 CCAD 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 CCAD to indemnify a specific Indemnitee from any claim arising from the sole negligence or willful misconduct of that specific Indemnitee; provided, however, CCAD'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 CCAD of a claim within the potential scope of this indemnification provision, and exists regardless of any determination of the ultimate liability of CCAD, City or any Indemnitee.
- 14.5 In the event CCAD or City are sued by a third party for damages arising or allegedly arising from this Agreement, CCAD 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 CCAD 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 CCAD 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. EXTENT OF AGREEMENT

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

IN WITNESS WHEREOF, this Agreement is executed by the CITY OF CULVER CITY, acting by and through its City Manager, and the CULVER CITY ARTS DISTRICT , acting by and through its President.

APPROVED AS TO FORM:
CITY ATTORNEY

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

By _____
Carol Schwab
City Attorney

By _____
John M. Nachbar
City Manager

Date _____

CULVER CITY ARTS DISTRICT

By _____
Josetta Sbeglia
President

Date _____