

MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
THE CITY OF CULVER CITY AND
THE CULVER CITY DOWNTOWN BUSINESS ASSOCIATION

This Memorandum of Understanding (the “MOU”) is entered into by and between the City of Culver City (hereinafter “the City”), a California municipal corporation and the Culver City Downtown Business Association (hereinafter “DBA”), a California non-profit corporation, for the purpose of providing for the maintenance of the landscaping, sidewalks, plazas, paseos, alleys and parking structures within the City of Culver City Downtown Business Improvement District boundaries.

RECITALS

WHEREAS, the City has a deep and abiding interest in the maintenance, beautification and preservation of the City of Culver City’s Downtown Business Improvement District, as depicted on the map attached hereto as Exhibit “A” (the “BID”) and incorporated herein by reference; and

WHEREAS, the City has expended significant resources toward the improvement of the sidewalks and general appearance of the City’s downtown areas, including the BID, through the installation of sidewalks, street lighting, aesthetic improvements and planting displays; and

WHEREAS, the City and the DBA have a common interest in protecting, promoting, and maintaining the BID as a healthy and growing area for commerce and an attractive, safe and enjoyable place for public enjoyment; and

WHEREAS, the DBA has the expertise and opportunity to provide maintenance management that is necessary to keep the City’s BID attractive, clean and safe, and the DBA is willing to enter into an agreement with the City to carry out those objectives; and

WHEREAS, representatives from the City and the DBA have met to discuss maintenance standards within the BID and identify ways of accomplishing their mutual objectives; and, as a result, all parties have committed to work toward the achievement of those mutual objectives; and

WHEREAS, since 2008, City and DBA have entered into memorandums of understanding, and amendments thereto, for the purpose of providing for the maintenance of the sidewalks, plazas, paseos and alleys within the City of Culver City

WHEREAS, the parties herein desire to continue its relationship in cooperative providing the maintenance services within the Downtown Business Improvement District by executing a new MOU.

NOW THEREFORE, in consideration of the foregoing, City and DBA mutually agree as follows:

A. Responsibilities of the DBA

Under this MOU, the DBA shall, in general, provide, either directly or indirectly through agreement with a duly qualified contractor or contractors for maintenance, sweeping, pressure washing and emptying trash and recycling containers within the BID. Specific services to be provided by the DBA within the BID include, but are not limited to:

1. Sidewalk trash and recycling receptacles within the BID shall be wiped down daily. Sidewalk trash and recycling receptacles shall be emptied twice per day Monday – Thursday and three times per day Friday through Sunday at a minimum to avoid spillover; dispose all trash and recycling into dumpsters in the BID.

2. Pressure wash, at least once per month, Main Street, downtown sidewalks, Town Plaza, the downtown paseos adjacent to the Kirk Douglas Theater, paseos adjacent to the Watseka parking structure, and the paseos adjacent to the Cardiff parking structure, trash enclosure area at the Kirk Douglas Theater, and the compactor area behind ARCLight Theaters.

3. Daily, perform basic maintenance tasks within the BID to include sweeping the sidewalks, curbs and hotspots;

4. Remove trash, cigarette butts, weed and debris from tree wells and landscaped areas; wipe down benches and furniture; remove stickers, graffiti and flyers

5. Provide extra trash and recycling receptacle maintenance, pressure washing services and other maintenance services as required for special events permitted in the BID.

6. Provide funding in the amount of \$ 38,000.00 for the maintenance, sweeping, pressure washing and emptying trash and recycling containers within the BID

7. Provide monthly invoices from sub-contractor detailing hourly rates and tasks completed.

B. Responsibilities of the City

Under this MOU, the City:

1. Shall provide trash bags and free dumpster space to dispose of trash collected by the DBA from the sidewalk receptacles;
2. Shall maintain all Big Belly receptacles installed in the BID and replace any trash receptacles that are damaged.
3. Shall provide deep cleaning and pressure washing services at least one time annually for Main Street, downtown sidewalks, Town Plaza, the downtown paseos adjacent to the Kirk Douglas Theater, the paseos adjacent to the Watseka parking structure, the paseos adjacent to the Cardiff parking structure, trash enclosure area at the Kirk Douglas Theater, trash area behind ARCLight Theaters, specified alleys and the Canfield Parking lot.
4. May, at the sole discretion of the City Council, appropriate in Fiscal Year 2021 – 2022, an amount equal to \$ 98,720.00 to partially fund the responsibilities of the DBA.
5. Shall fund additional City-provided services including providing trash bags for BID receptacles and maintenance of the Big Belly trash and recycling containers as listed in this MOU and;
6. May, for future fiscal years, consider funding for the services contemplated under this MOU. However, appropriation of such funding, in whole or in part, is at the sole discretion of the City Council.

C. Disbursement of Funding

The funding appropriated by the City Council under Sections B(4), B(5) and B(6), hereof, if any, shall be available to the DBA on a monthly basis. The DBA may request reimbursement under the following conditions:

1. Once per month, the DBA may submit a reimbursement request for costs incurred to the DBA for performing services hereunder. Such reimbursement requests shall be in a form acceptable to the City, and include substantiation for amounts requested, including copies of invoices and other documentation as may be required by the City.

2. Upon receipt of such a reimbursement request, the City shall review the request, and upon approval, issue reimbursement to the DBA within thirty (30) days after receipt of the request.

3. If the reimbursement request is disallowed, in whole or in part by the City at its sole discretion, then the amount approved shall be paid in accordance with Section D(2) above. Within fifteen (15) days after receipt of a reimbursement request, the City shall transmit to the DBA, the amount and reason for any disallowed amounts with an explanation of why the City disallowed the reimbursement request.

4. In no case shall the total amount reimbursed to the DBA for the services performed hereunder during any fiscal year exceed the amount appropriated for these purposes by the City Council.

D. Indemnification

To the fullest extent permitted by law, 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 the Maintenance Services provided pursuant to this Agreement. 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.

E. Insurance

Without limiting its obligations pursuant to Section D 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 MOU as Exhibit B.

F. Termination

Either party, upon the default hereunder by the other party, may terminate this MOU by providing at least thirty-days' (30-days') written notice to the other party. Services provided hereunder shall continue until the date of termination. Reimbursement for said services may be requested by the DBA up to sixty (60) days after the date of termination. Any and all reimbursement requests not received by that date shall not be reimbursed and neither party shall have any further obligation hereunder.

Unless terminated under the terms above, this Agreement shall terminate on June 30 ("Annual Termination Date") of each year unless extended in writing and executed by all parties hereto at least 60 days prior to the Annual Termination Date.

The indemnity provisions set forth in Section D of this MOU shall survive the Termination of the MOU.

G. Default and Cure

Should either party allege default by the other party of its obligations hereunder, then the alleging party shall provide a written notice ("Notice of Default") to the other party ("Defaulting Party") including a description of the default and recommended actions to cure said default. The Defaulting Party shall, in good faith, attempt to cure the default within 15 days of receipt of the Notice of Default.

Failure to cure the default to the reasonable satisfaction of the other party shall be cause for termination of this MOU under Section F hereof.

H. Intent

The City and the DBA are committed to actively pursue the items specified within this MOU toward the increased vitality of the BID. The parties agree the general terms of services set forth in this MOU form the basis for the specific maintenance services required.

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I. Term and Effective Date

The term of this MOU shall be for a period of one year from the effective date of this MOU, unless earlier terminated pursuant to Section F. The effective date of the MOU shall be July 1, 2021. Unless terminated pursuant to Paragraph F of this MOU, this MOU shall terminate on June 30, 2022.

CULVER CITY DOWNTOWN BUSINESS ASSOCIATION

Dated: _____ By: _____

Darrel Menthe
President

CITY OF CULVER CITY

Dated: _____ By: _____

John Nachbar
City Manager

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

Charles Herbertson
Public Works Director/City Engineer

Carol A. Schwab
City Attorney

EXHIBIT B
INSURANCE REQUIREMENTS

A. Policy Requirements.

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

1. An occurrence based Comprehensive 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.

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 \$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. DBA's obligation to indemnify the Indemnitees as required under Section D of this MOU;
- 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, 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 DBA's insurance coverage provides coverage in excess of these required limits, but is eroded by payment or claim reserves, then DBA 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. Business Automobile Liability Insurance coverage in the amount of Three Million Dollars (\$3,000,000), providing coverage for use of mobile equipment (i.e. heavy mobile equipment or vehicles primarily for use in an off-road environment), to the extent that (1) such mobile equipment will be used within the City limits or on City business, and (2) coverage for mobile equipment is not otherwise covered by the CGL policy listed in subparagraph (a), above.

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 DBA.