

# Business Improvement District Council

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Building neighborhoods that work



# Business Improvement District Council

The Business Improvement District Council (BID Council) is an umbrella organization of San Diego's business improvement districts (BIDs).

Formed as the "Co-ordinating Council" of Business Improvement Districts in 1993, it was started as informal meetings of BID presidents and Executive Directors to pool resources and ideas.

The BID Council remains the only municipal-wide coalition of individual business or property-based special district programs in the nation that is run outside of government.

The model of collaboration outside of government has allowed for the BID Council to introduce revolutionary programs to help small businesses succeed.

# Why the BID Council?

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- Business Improvement District Council has been able provide enormous amount of private sector creativity towards the solution of public problems.
- The BID Council looks for unique and new ways to raise more money to reinvest into our older commercial neighborhoods and business communities.



# Business Improvement District Council

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Micro Districts  
Special Event Support  
Tree Planting Program  
Technical Assistance  
Government Relations &  
Collaboration

# Micro Districts

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12 “Micro BID” groups from all over the City

Maximum funding \$8,500 for each group

Micro Business Districts provide organized and targeted assistance in areas such as business development and retention, marketing, organization, funding, and special events.



The program serves San Diego business districts which have an insufficient number of businesses to form Business Improvement Districts (BIDs).

Provides Technical Assistance to smaller non profits with staff time, mentoring, and expertise in community development to these mostly volunteer groups.





# Special Event Support

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- Free Rental of Equipment
- \$30,000 worth of special event equipment that is free to member BIDs and Micro BIDs
- 30 on call employees that work on events year round



# Tree Planting Program

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Studies show **increase in consumer activity** in those areas that have trees and are well landscaped. Consumers priced goods higher, expressing a willingness to pay 11.95% more in landscaped business districts featuring trees, compared to business districts without these amenities.

This “amenity margin” represents potential revenues for business districts and merchants.

**Last year the BID Council with the BID Foundation and the California Dept. of Forestry Grant funding planted 144 trees in BID communities.**



# Technical Assistance

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- In FY 11 the BID Council helped the City's OSB and Council District 1 find a way to work with the La Jolla Community to develop a new non profit business association in the community that will be applying for management of the La Jolla BID for FY 12.
- Continue to provide in-kind services and/or funding to provide to BIDs, chamber and merchants associations with programs that help their organizations with business development, education and training programs.
- The BID Council provides assistance with Best Management Practices and access to data that might not be available on an individual basis.
- Coordinated the inclusion of 3 new BIDs into the Public Right of Way Program-allowing business owners new revenue opportunities in three new communities.



# Government Relations & Collaboration

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- Advocacy small business issues, regulatory relief & infrastructure improvements
- Funding for group projects
- Grant opportunities and Grant research
- Resource library
- Formation assistance-currently working with Point Loma Village, Midway and Diamond
- Staff training



**FY 2012 AGREEMENT BETWEEN  
THE CITY OF SAN DIEGO AND  
THE BUSINESS IMPROVEMENT DISTRICT COUNCIL  
FOR THE PROVISION OF ECONOMIC DEVELOPMENT SERVICES**

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This Agreement [Agreement] is made between the City of San Diego, a municipal corporation [City], and the Business Improvement District Council, a California corporation [Contractor], hereinafter collectively referred to as the “Parties.”

**RECITALS**

WHEREAS, the City of San Diego has established the Small Business Enhancement Program [SBEP], pursuant to City Council Policy 900-15, subject to the City Council’s annual appropriation of funds to the SBEP; and

WHEREAS, under City Council Policy 900-15, annually appropriated SBEP Funds are available to Contractor to provide for the direct administration of programs and projects under its purview, subject to the obligation of the City to verify that expenditures are made consistent with the Policy and this Agreement;

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions set forth in this Agreement, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

**ARTICLE I- INCORPORATION OF RECITALS**

- 1.1 The Recitals set forth above are true and correct, and are hereby incorporated in full and made a part of this Agreement by this reference.

**ARTICLE II - DEFINITIONS**

For the purposes of this Agreement, the terms listed below are defined as follows:

- 2.1 Operating Manual - The City's FY 2010 “Operating Manual for Social Services and Economic Development Services Programs,” as amended from time to time, which contains prescribed procedures for fiscal management and accountability of projects receiving City and federal funds.
- 2.2 Project – Contractor's Project, as described in the Scope of Services (Exhibit A).
- 2.3 Project Budget – The total amount of SBEP Funds allocated and available to fund this Agreement (Exhibit B).
- 2.4 Project Income – All revenues that accrue to Contractor involving SBEP Funds provided under this Agreement, specifically including interest earned on these funds deposited in an interest-bearing account.

- 2.5 SBEP Funds – General funds appropriated by the City Council as part of the Annual Appropriation Ordinance to be used for the Small Business Enhancement Program in accordance with City Council Policy 900-15.
- 2.6 Subcontractor – Any entity, other than the City, that furnishes supplies and/or services (other than office space, standard commercial supplies, or printing services) to Contractor in connection with this Agreement.

**ARTICLE III – EFFECTIVE DATE; TERM OF AGREEMENT**

- 3.1 Upon the execution of this Agreement by the Parties and approval of this Agreement by the City Attorney in accordance with Charter Section 40, this Agreement shall be effective as of July 1, 2011 and continue for one year until June 30, 2012, (Term) unless terminated earlier in accordance with the terms of this Agreement.
- 3.2 This Agreement may be extended for up to ninety additional calendar days, pursuant to Section 20.5 below.
- 3.3 Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement.

**ARTICLE IV – CONTRACT ADMINISTRATOR; DESIGNATED REPRESENTATIVE**

- 4.1 The City’s Economic Development Division [Division] is the contract administrator for this Agreement. The City will identify a designated representative for the purposes of this Agreement.
- 4.2 The City's designated representative shall communicate with Contractor on all matters related to the administration of this Agreement and Contractor’s performance of its obligations and duties rendered hereunder. Contractor shall work solely under the direction of the designated representative of the Division in performing Contractor’s obligations and duties under this Agreement.
- 4.3 When this Agreement refers to communications to or with the City, those communications shall be with the designated representative, unless the designated representative or the Agreement specifies otherwise. When this Agreement refers to an act or approval to be performed by the City, that act or approval shall be performed by the Mayor (or his designee), unless the Agreement specifies otherwise.
- 4.4 The City, at its sole discretion, may change its designated representative at any time and shall inform Contractor of any change in its designated representative within ten calendar days of the date of such change.

**ARTICLE V – INDEPENDENT CONTRACTOR; ASSIGNMENT;  
DESIGNATED REPRESENTATIVE**

- 5.1 Contractor acknowledges, and shall require each of its Subcontractors to acknowledge, that Contractor and its Subcontractors are independent contractors, and not agents or employees of the City. Any provision of this Agreement that may appear to give the City a right to direct Contractor concerning the details of performing its obligations and/or duties under this Agreement, or to exercise any control over such performance, shall mean only that Contractor shall follow the direction of the City concerning the end results of the performance.
- 5.2 Because this Agreement is entered into by the City in reliance upon Contractor’s qualifications, experience, and personnel identified, Contractor shall not assign or subcontract any of its rights, obligations, and/or duties under this Agreement, without first obtaining the written consent of the City. Any assignment in violation of this Section is grounds for immediate termination of this Agreement, at the sole discretion of the City.
- 5.3 Contractor shall identify a designated representative for the purposes of this Agreement. In the event Contractor changes its designated representative for the purposes of this Agreement, Contractor shall notify the City of the new designated representative within ten calendar days of the date of such change.

**ARTICLE VI- OBLIGATIONS OF CONTRACTOR**

- 6.1 Contractor shall perform the services described in the Scope of Services (Exhibit A), in accordance with the Project Budget (Exhibit B) and all other terms and conditions of this Agreement.
- 6.2 The Scope of Services (Exhibit A) shall be in sufficient detail to provide a sound basis for the City to effectively monitor Contractor’s performance under this Agreement.

**ARTICLE VII – PROJECT BUDGET AND EXPENDITURES; PAYMENTS; PROJECT REVENUES**

**7.1 PROJECT BUDGET AND EXPENDITURES**

- 7.1.1 The Project Budget (Exhibit B) shall be in sufficient detail to provide a sound basis for the City to effectively monitor Contractor’s performance under this Agreement.
- 7.1.2 Contractor shall have authority to adjust the line items of its budget by up to ten percent per line without securing prior City approval. Any budget adjustment greater than ten percent shall be considered an amendment to this Agreement and requires City approval.
- 7.1.3 SBEP Funds shall only be used for reasonable and appropriate expenditures as determined by City, related to Contractor’s activities listed in the Scope of Services (Exhibit A) and Project Budget (Exhibit B).

- 7.1.4 The City shall not reimburse Contractor for, and Contractor shall not seek reimbursement for, any expenditure not eligible under this Agreement, Council Policy 900-15, Operating Manual, and/or any and all laws and regulations governing this Agreement.
- 7.1.5 Contractor shall not use SBEP Funds in its operations, directly or indirectly, during any period of federal, state, or local debarment, suspension, or ineligibility of Contractor, when Contractor has been noticed of such debarment, suspension, or ineligibility.
- 7.1.6 If Contractor receives (or has received) additional funding for the Project from a source or sources other than the City, the use of which requires that Contractor make an accounting to, or be subject to, an audit by such other source, then Contractor shall charge Project expenditures to the appropriate funding source at the time incurred. Any cost incurred in connection with the Project which is properly chargeable to, and actually claimed for compensation under, a funding source other than the City, shall not be allowed as a chargeable cost under this Agreement.

**7.2 TOTAL PAYMENT**

- 7.2.1 The total payment to be paid under this Agreement shall not under any circumstances exceed \$315,000. City shall reimburse Contractor for expenditures upon receipt of proper evidence of expenditures and, as applicable, contractual obligations.
- 7.2.2 Any expenditure by Contractor which is not within the prescribed limitations of this Article, Exhibit B, the Operating Manual, Council Policy 900-15, and applicable laws, rules, and regulations governing this Agreement, are not chargeable to the Project and shall be borne solely by Contractor.

**7.3 ADVANCES**

- 7.3.1 The City may, at its sole discretion, make an advance payment to Contractor in an amount not to exceed \$52,500 to meet Contractor's cost of operating expenses.
- 7.3.2 The advance of \$52,500 will be returned on or before the termination of this Agreement, as either a reduction of the final reimbursement request(s), or as a transfer of funds from Contractor, unless otherwise agreed in writing by the City and Contractor.
- 7.3.3 Contractor shall determine, pursuant to Council Policy 900-15, how the SBEP allocation for Business Improvement District [BID] Management Support is to be allocated among the individual BID's through an agreement among its membership.



7.3.4 The City shall advance to the individual BID's the SBEP Funds in an amount as determined by the BID Management Support allocation formula for the respective BID's, only after all of the following conditions are met:

- a) the execution of this Agreement;
- b) the receipt by the City of the BID Management Support allocation formula; and
- c) the receipt by the City of a copy of the executed agreement between Contractor and each individual BID management corporation.

7.3.5 The agreement between Contractor and each individual BID management corporation shall include each the following:

- a) the purpose and use of the SBEP Funds;
- b) a statement that the SBEP Funds will be advanced through the respective BID fund accounts maintained by the City; and
- c) a statement that the use of the SBEP Funds shall be accounted for, and that supporting documentation shall be submitted to the City for review and approval.

#### **7.4 PAYMENT SCHEDULE.**

7.4.1 Contractor shall request reimbursement from the City no more than once per month during the term of this Agreement. Contractor shall submit Reimbursement Requests to the City in duplicate, with all supporting receipts, invoices, checks, payroll statements, bank statements, and other records for services performed, as described in the Operating Manual. All reimbursement requests shall be accompanied by the following statement: "Contractor certifies that staff time expended and payment requested are for services performed in accordance with the provisions of the FY 2012 SBEP Agreement with The City of San Diego," and be signed by an officer of Contractor .

7.4.2 A Reimbursement Request that is not consistent with the Project Budget, or is not supported with proper documentation per the Operating Manual, as described in Section 7.4.1 above, shall be considered an ineligible expenditure.

7.4.3 Within thirty calendar days of the City's receipt of a properly completed Reimbursement Request from Contractor, the City shall verify the eligibility of each expenditure described in the Reimbursement Request, and reimburse Contractor for all eligible expenditures pursuant to this Agreement.

7.4.4 The final payment to Contractor under this Agreement shall be withheld until all

expenditures have been accounted for, and Contractor has submitted a Final Expenditure Report summarizing the activities Contractor has performed pursuant to this Agreement. No payment shall be made to Contractor for any SBEP Funds appropriated in any subsequent fiscal year until all expenditures have been accounted for and Contractor has submitted the Final Expenditure Report.

- 7.5 **PARTIAL PERFORMANCE.** In the event Contractor performs less than all services required under this Agreement in a proper and timely manner, the City will reimburse Contractor only the reasonable costs of those services actually performed by Contractor during that payment period, as determined by City.
- 7.6 **PROJECT INCOME.** Contractor may use Project Income to improve the services performed by Contractor under this Agreement. Contractor shall separately account for any and all Project Income accrued and/or used by Contractor in the account established pursuant to Section 8.2 below. In addition, Contractor shall include an accounting of any and all Project Income accrued and/or used by Contractor in its monthly report, and in the annual audit, submitted to the City.

## **ARTICLE VIII - DATA AND RECORDS**

- 8.1 **GENERAL.** Contractor shall maintain, and require its Subcontractors to maintain, all administrative and financial records required in connection with the Project (including, but not limited to, all books, accounting records, invoices, receipts, payroll records, personnel records, and any other data and records pertaining to all matters covered in this Agreement) during the term of this Agreement.
- 8.2 **ACCOUNTING RECORDS.** Contractor shall maintain, and require its Subcontractors to maintain, complete and accurate accounting records, in accordance with Generally Accepted Accounting Practices [GAAP] in the industry. Within thirty calendar days of any written request by the City for such records, Contractor shall make available to the City, for review and audit, all Project-related accounting records, documents, and any other financial data and records. Upon the City's request, Contractor shall submit exact duplicates of the originals for all requested records to the City.
- 8.3 **INSPECTION AND PHOTOCOPYING.** At any time during normal business hours and as often as the City deems necessary, Contractor shall permit, and require its Subcontractors to permit, the City, or their authorized agents, to inspect and photocopy, at a reasonable location within the County of San Diego (e.g., the offices of Contractor), all books, accounting records, invoices, receipts, payroll records, personnel records, and any other Project data and records pertaining to all matters covered in this Agreement, for the purposes of auditing, monitoring, and/or evaluating Contractor's performance of its obligations and/or duties in connection with the Project. The City may retain copies of the same, with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. The City will keep all copies of Contractor's data and records in the strictest confidence required by law. If Contractor is unable to make all such data and records available for inspection within the County of San Diego, then Contractor shall

pay all of the City's travel related costs to inspect and/or audit the data and records at the location where the data and records are maintained.

- 8.4 **STORAGE PERIOD.** Contractor shall store, and require its Subcontractors to store, all Project data and records for a period of not less than five years after submission of the final expenditure report for the contract period, or five years after submission of the final expenditure report upon earlier termination of this Agreement, or until all audit findings have been resolved, whichever is longest. All such data and records shall be kept at Contractor's (or relevant Subcontractor's) regular place of business. At any time during the storage period, Contractor shall permit, and require each of its Subcontractors to permit, the City, or their authorized agents to examine all such data and records, for the purposes described in Sections 8.2 and 8.3 above. After the storage period has expired, or all audit findings have been resolved, whichever is later, Contractor shall provide the City with thirty calendar days written notice of its intent to dispose of any Project data and records. Contractor shall not take any action to dispose of such data and records without the prior written consent of the City.
- 8.5 **ORIGINAL DOCUMENTS.** Notwithstanding the foregoing, upon the termination of this Agreement for any reason, the City may request that Contractor deliver, and Contractor shall deliver, within fifteen calendar days of any such request by the City, the originals of all such data and records to the City. Contractor may retain copies of all data and records delivered to the City.
- 8.6 **OWNERSHIP OF DOCUMENTS.** Once Contractor has received any reimbursement from the City for Contractor's performance of its obligations and/or duties under this Agreement, all data and records (including, but not limited to, all documents prepared and/or work product completed directly in connection with, or related to, Contractor's performance under this Agreement) shall be the property of the City. The City's ownership of such documents includes the use, reproduction, and/or reuse of such documents, as well as all incidental rights, whether or not the work for which the documents were prepared has been performed. This Section shall apply whether the Agreement is terminated by the completion of the Project, the expiration of this Agreement, or upon termination of this Agreement, if earlier, in accordance with the terms of this Agreement.

## **ARTICLE IX – AUDITS; FINANCIAL DISCLOSURES; OTHER REPORTS AND DISCLOSURES**

- 9.1 **AUDITS.** Contractor shall ensure that Annual Single Audits and Financial Statement Audits are completed by a Certified Public Accountant. Individual projects funded by the City must be clearly identified in the audit reports, as well as the dollar amount allocated to the Project by the City.
- 9.1.1 In accordance with the Single Audit Act of 1984 (PL 98-502) pertaining to recipients of federal funds, Contractors expending \$500,000 or more (or the current federal threshold) in total federal funding from all sources in a year, shall have an Annual Single Audit conducted in accordance with Federal OMB

Circular Nos. A-110 and A-133. Contractor shall ensure that Single Audits are completed within 180 calendar days of the expiration date of this Agreement. Those Contractors completing audits by calendar year (rather than fiscal year) shall ensure that Single Audits are completed within 180 calendar days of December 31st. Contractor shall provide the City with a copy of the Single Audit within fifteen calendar days of Contractor's receipt of the audit.

9.1.2 Contractors receiving \$75,000 or more in federal, state, and/or City funds shall have Financial Statement Audits prepared in accordance with GAAP and audited by an independent Certified Public Accountant, in accordance with Generally Accepted Auditing Standards [GAAS]. This audit report shall include the following statements:

- a) a statement of expenditure of City funds by program, to be identified in the same expenditure classifications as contained in the final budget and compared with the budgeted amounts;
- b) a statement of revenues and expenditures, and a balance sheet of all funds received by Contractor; and
- c) a statement certifying compliance with all terms and conditions of the City's contract with Contractor, and that all required reports and disclosures have been submitted, completed by an executive officer of Contractor.

Contractor shall provide the City a copy of the Financial Statement Audit within 150 calendar days of the end of Contractor's last complete fiscal year. Extensions of up to thirty calendar days to this deadline may be granted by the City, upon written request by Contractor.

9.1.3 If Contractor has a separate agreement with the City for the use of Community Development Block Grant [CDBG] funds, then the audit provisions of that agreement shall prevail for the accounting of CDBG funds.

9.1.4 If Contractor is subject to an audit from a source other than the City, Contractor shall provide a copy of the audit to the City within thirty calendar days of completion of the audit. The City, at its sole discretion, may conduct an annual review of any such third party audit(s).

9.2 **FINANCIAL DISCLOSURES.** Contractors receiving \$10,000 or more, but less than \$75,000, in federal, state, and/or City funds shall provide the City copies of true, accurate, and complete financial disclosure documentation, evidencing the financial status of Contractor's last complete fiscal year. Specifically, Contractor shall submit the following:

- a) a statement of expenditure of City funds by program, to be identified in the same expenditure classifications as contained in the final budget and compared with the budgeted amounts; and
- b) a statement of revenues and expenditures, and a balance sheet of all funds received by Contractor.

Contractor shall provide the City these documents within ninety calendar days of the end of Contractor's last complete fiscal year. Extensions of up to thirty calendar days to this deadline may be granted by the City, upon written request by Contractor.

9.3 **OTHER REPORTS AND DISCLOSURES.**

9.3.1 Contractors receiving less than \$10,000 in federal, state, and/or City funds shall provide a report of how the funds were used during the contract period. Contractor shall provide the City with a copy of this report within thirty calendar days of the expiration date of this Agreement. If Contractor is also in receipt of an Annual Single Audit or Financial Statement Audit, Contractor shall submit a copy of such audit to the City within fifteen calendar days of Contractor's receipt of the audit.

9.3.2 If Contractor receives \$500,000 or more in federal, state, and/or City funds, when that funding represents more than ten percent of Contractor's annual budget, Contractor shall include in its annual SBEP documentation an itemization setting forth the salary and wage ranges for each of Contractor's job classifications, including actual executive salaries and benefits packages, applicable for the contract period.

9.3.3 Contractor shall, on or before the last business day of each month, submit to the City a Monthly Report (CEO Report), outlining the progress of Contractor's activities and projects during the previous month.

**ARTICLE X – COMPLIANCE WITH LAWS AND POLICIES**

10.1 **GENERAL.** Contractor shall comply, and require each of its Subcontractors to comply, with all applicable laws, rules, regulations, ordinances, resolutions, permits, and policies of the federal, state, and local governments, as they pertain to this Agreement. In addition, Contractor shall immediately comply, and require each of its Subcontractors to immediately comply, with all directives issued by the City, or its authorized representatives, under authority of any law, statute, ordinance, rule, or regulation.



## 10.2 CONFLICTS OF INTEREST.

10.2.1 Contractor shall comply with all federal, state, and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including, but not limited to, each of the following:

- a) California Government Code sections 1090 et. seq., and 81000 et. seq.;
- b) California Corporations Code sections 7230 – 7238 (applicable to nonprofit mutual benefit corporations) and sections 5230 – 5240 (applicable to nonprofit public benefit corporations);
- c) the City’s Ethics Ordinance, codified in San Diego Municipal Code sections 27.3501 – 27.3595; and
- d) the “Conflict of Interest and Procurement Policy for Non-profit Corporations Contracting with the City of San Diego” (Exhibit C).

10.2.2 The Parties are unaware of any financial or economic interest of any public officer or employee of the City relating to this Agreement. If such a financial and/or economic interest is determined to exist, the City will promptly terminate this Agreement by giving written notice thereof.

10.2.3 If, in performing its obligations and duties set forth in this Agreement, Contractor makes, or participates in, a “governmental decision,” as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same (or substantially all the same) duties for the City that would otherwise be performed by a City employee holding a position specified in the City’s conflict of interest regulations, Contractor shall be subject to the City’s conflict of interest regulations, requiring the completion of one or more statements of economic interests, disclosing Contractor’s relevant financial interests.

10.2.3.1 Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. Contractor shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City’s determination that Contractor is subject to the City’s conflict of interest regulations. Contractor shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which Contractor was subject to the City’s conflict of interest regulations.

10.2.3.2 If the City requires Contractor to file a statement of economic interests as a result of the obligations and duties performed, Contractor shall be considered a “City Official,” subject to the provisions of the City’s Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Agreement.

- 10.2.4 Contractor shall establish, and make known to its agents and employees, appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, and/or other relationships.
- 10.2.5 Contractor's personnel, employed in performing the obligations and duties under this Agreement, shall not accept gratuities, or any other favors, from any Subcontractor or potential Subcontractor. Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.
- 10.2.6 If Contractor violates any conflict of interest law, or any of the provisions of Section 10.2 of this Agreement, the violation shall be grounds for immediate termination of this Agreement, and/or the imposition of other remedies set forth in Exhibit C. Further, any such violation shall subject Contractor to liability to the City for attorney's fees and all damages sustained as a result of the violation.

### 10.3 **EQUAL EMPLOYMENT OPPORTUNITY.**

- 10.3.1 Contractor shall comply, and require its Subcontractors to comply, with the City's Equal Employment Opportunity [EEO] Outreach Program, codified in San Diego Municipal Code sections 22.2701 - 22.2707. Contractor and all of its Subcontractors are individually responsible for abiding by its contents.
- 10.3.2 Contractor shall comply, and require each of its Subcontractors to comply, with Title VII of the Civil Rights Act of 1964, as amended (Executive Orders 11246, 11375, and 12086), California Fair Employment Practices Act, and any other applicable federal and state laws and/or regulations hereinafter enacted.
- 10.3.3 Contractor shall not discriminate, and require each of its Subcontractors not to discriminate, on the basis of race, gender, religion, national origin, sexual orientation, age, or disability, in performing any obligation or duty in connection with this Agreement, including, but not limited to, the provision of services, privileges, facilities, advantages, and accommodations.
- 10.3.4 Contractor, and each of its Subcontractors, shall provide equal opportunity in all employment practices.
- 10.3.5 Contractor shall submit to the City, a current Work Force Report, and if requested by the Equal Opportunity Contracting Program [EOCP] staff, an Equal Employment Opportunity Plan, as required by San Diego Municipal Code section 22.2705.

- 10.3.6 Contractor understands that compliance with the EEO provisions shall be monitored and reviewed by the City's EOCP staff.
- 10.3.7 Contractor's failure to comply with the above requirements, or its submittal of false information in response to these requirements, may result in any of the following: the withholding of progress payments until Contractor complies with the above; termination of this Agreement; debarment; and/or other sanctions, including suspension from participating in future City contracts (as a prime or Subcontractor) for a period of not less than one year. For additional or subsequent violations, the period of suspension may be extended for a period of up to three years. Failure to satisfy penalties imposed pursuant to this Section shall prohibit Contractor from participating in future City contracts, until all penalties have been satisfied.
- 10.3.8 Nothing in this Section shall be interpreted to hold Contractor liable for any discriminatory practice of its Subcontractors.

#### **10.4 NON-DISCRIMINATION IN CONTRACTING**

- 10.4.1 Contractor shall comply, and require each of its Subcontractors to comply, with the City's Nondiscrimination in Contracting Ordinance, codified in San Diego Municipal Code sections 22.3501 - 22.3517.
- 10.4.2 Contractor shall not discriminate, and require its Subcontractors not to discriminate, on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability, in the solicitation, selection, hiring, or treatment of its employees, any applicants for employment, any Subcontractors, vendors, or suppliers.
- 10.4.3 Within sixty calendar days of a request by the City, Contractor shall provide the City a truthful and complete list of the names of all Subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor shall fully cooperate in any investigation conducted by the City, pursuant to the City's Nondiscrimination in Contracting Ordinance, referenced above.
- 10.4.4 Violation of any provision of Section 10.4 shall be considered a material breach of this Agreement, and may result in remedies being ordered against Contractor up to, and including, termination of this Agreement, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance.

- 10.5 **LOCAL BUSINESS AND EMPLOYMENT.** Contractor acknowledges that the City seeks to promote employment and business opportunities for local residents and firms on all City contracts. Contractor shall, to the extent reasonably possible, solicit applications for employment, as well as bids and proposals for subcontracts for work associated with this Agreement, from local residents and firms, as opportunities occur. Contractor shall hire qualified local residents and firms, whenever feasible.
- 10.6 **LIVING WAGE ORDINANCE.** If applicable, Contractor shall comply, and require each of its Subcontractors to comply, with the provisions of the City's Living Wage Ordinance, codified in San Diego Municipal Code sections 22.4201 et seq., in performing its obligations and/or duties under this Agreement.
- 10.7 **EQUAL BENEFITS ORDINANCE.** Contractor shall comply with the City of San Diego's Equal Benefits Ordinance (San Diego Municipal Code, Chapter 2, Article 2, Division 43, sections 22.4301-22.4308), which requires Contractor to offer the same benefits to employees with domestic partners as are offered to employees with spouses. The City's execution of this Agreement shall be contingent upon receipt of Contractor's Certification of Compliance (Exhibit D) wherein Contractor agrees to maintain equal benefits for its employees for the duration of this Agreement. The failure of Contractor to maintain equal benefits for employees shall be a material breach of this Lease.
- 10.8 **DRUG-FREE WORKPLACE**
- 10.8.1 Contractor shall comply, and require its Subcontractors to comply, with the City's Drug-Free Workplace requirements, set forth in City Council Policy 100-17, as adopted by City Council Resolution R-277952 and incorporated into this Agreement by this reference. Contractor shall certify, and require its Subcontractors to certify, that it shall provide a drug-free workplace, by submitting to the City a "Contractor Certification for a Drug-Free Workplace" form.
- 10.8.2 Contractor shall post in a prominent place at the Project site a statement setting forth its drug-free policy, notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace, and specifying the actions that shall be taken against employees for violations of the prohibition.
- 10.8.3 Contractor shall establish a drug-free awareness program to inform employees about each of the following:
- a) the dangers of drug abuse in the workplace;
  - b) the policy of maintaining a drug-free workplace;
  - c) the availability of drug counseling, rehabilitation, and employee assistance programs; and

- d) the penalties that may be imposed upon employees for drug abuse violations.

10.8.4 Contractor shall ensure that all subcontracts in connection with this Agreement shall contain language that binds the Subcontractor to comply with the provisions of Section 10.7 of this Agreement, as required by Sections 2A(1) – (3) of City Council Policy 100-17.

10.8.5 Contractor, and its Subcontractors, shall be individually responsible for their own drug-free workplace program.

10.9 **AMERICANS WITH DISABILITIES ACT.** Contractor shall comply with City Council Policy 100-04, as adopted by City Council Resolution R-282153, relating to the federally-mandated Americans with Disabilities Act [ADA]. Contractor, and its Subcontractors, shall be individually responsible for their own ADA program.

10.10 **STORM WATER POLLUTION PREVENTION.** Contractor shall comply, and require each of its Subcontractors to comply, with the City’s Storm Water Management and Discharge Control Ordinance, codified in San Diego Municipal Code sections 43.0301 et seq., in performing its obligations and/or duties under this Agreement.

10.11 **HIRING OF FULL-TIME STAFF.** Contractor shall conduct all hiring of full-time staff using an open, competitive process. This process shall include the publication of a Request for Qualifications in a newspaper of general circulation.

10.12 **EMPLOYMENT OF CITY STAFF.** Pursuant to City Council Policy 300-11, the City may, at its sole discretion, unilaterally and immediately terminate this Agreement if Contractor employs an individual, who, within twelve months immediately preceding such employment, did, in the individual’s capacity as a City officer or employee, participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council, the Mayor, or former City Manager in connection with the selection of Contractor for the City’s SBEP Program.

10.13 **POLITICAL ACTIVITY.** Contractor shall not use, and require its subcontractors not to use, any of the funds received pursuant to this Agreement, or any personnel or materials paid for with funds received pursuant to this Agreement, for political activity. The term, “political activity,” shall mean a communication made to any electorate in support of, or in opposition to, a ballot measure or candidate in any federal, state, or local government election.



- 10.14 **OPEN MEETINGS.** All meetings of a majority of the members of the BID Council shall be open and public. An agenda containing the date, time and location of the meeting, and a general description of each item of business to be discussed or transacted, shall be posted in a place freely accessible to the public at least 72 hours prior to the meeting. The agenda shall also be sent to each member of the BID Council, and every member of the public requesting notification of the meetings, by facsimile, United States Mail, or electronic mail, at the time of the posting of the agenda.
- 10.15 **PUBLIC RECORDS ACT.** Contractor shall comply with the provisions of the California Public Records Act, codified in California Government Code sections 6250-6270, for all documents and records pertaining to all matters covered in this Agreement.
- 10.16 **OPERATING MANUAL.** Contractor acknowledges receipt of, and shall comply with, the Operating Manual, including, but not limited to, those provisions related to fiscal accountability, eligible and ineligible project expenditures, and procedures for financial management, accounting, budgeting, record keeping, reporting, and other administrative functions. Any desired changes by Contractor to the procedures set forth in the Operating Manual must be requested by Contractor, in writing, and approved by the City, in writing, before such changes are implemented.

#### **ARTICLE XI – (reserved)**

#### **ARTICLE XII – INSURANCE**

##### **12.1 PREREQUISITES TO COMMENCEMENT OF WORK.**

- 12.1.1 Prior to the execution of this Agreement by the Parties and approval of this Agreement by the City Attorney in accordance with Charter Section 40, and prior to Contractor's performance of its obligations and/or duties under this Agreement, Contractor shall complete each of the following:
- a) comply with Section 12.2 below regarding insurance companies;
  - b) obtain all insurance coverage required in Sections 12.3, 12.4, and 12.5 below;
  - c) obtain, and provide to the City, insurance certificates, reflecting evidence of all insurance coverage required in Sections 12.3, 12.4, and 12.5 below; and
  - d) confirm that all insurance policies and insurance certificates contain the specific provisions required in Sections 12.3, 12.4, and 12.5 below.
- 12.1.2 Contractor shall not allow any Subcontractor to commence work on a subcontract in connection with this Agreement, unless and until all insurance required of the Subcontractor (as described in Sections 12.3, 12.4, 12.5, and 16.4.1 below) has been obtained.

12.2 **INSURANCE COMPANIES.** Contractor shall ensure that all insurance coverage required in Sections 12.3, 12.4, and 12.5 below is carried only by insurers that have been rated “A-, VI,” or better, by the current A.M. Best Key Rating Guide, and that are licensed to do business in the State of California. The City will accept insurance provided by non-admitted “surplus lines” carriers, only if the carrier is authorized to do business in the State of California and is shown on the List of Eligible Surplus Lines Insurers.

12.3 **COMMERCIAL GENERAL LIABILITY INSURANCE.**

12.3.1 At all times during the term of this Agreement, Contractor shall maintain, in full force and effect, Commercial General Liability Insurance, written on an ISO Occurrence form CG 00 01 07 98, or an equivalent form providing coverage at least as broad, which shall cover liability arising from any and all personal injury, bodily injury, and property damage in the amount of \$1,000,000 per occurrence, subject to an annual aggregate of \$2,000,000.

12.3.2 The policy shall expressly provide that:

- a) all defense costs shall be outside the limits of the policy; and
- b) the policy cannot be cancelled or materially changed, except after thirty calendar days written notice by the insurer to the City by certified mail.

12.3.3 The policy shall be endorsed to expressly provide that:

- a) the City of San Diego, its elected officials, officers, agents, employees, and representatives are named as additional insureds; and
- b) the policy is primary and non-contributory to any insurance that may be carried by the City.

12.3.4 There shall be no endorsement or modification of the policy limiting the scope of coverage for insured vs. insured claims, or for contractual liability.

12.4 **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.**

12.4.1 At all times during the term of this Agreement, Contractor shall maintain, in full force and effect, Commercial Automobile Liability Insurance for all of Contractor’s automobiles (including owned, hired, and non-owned automobiles), written on an ISO form CA 00 01 12 90 or a later version of this form, or an equivalent form providing coverage at least as broad, which shall cover liability arising from any and all bodily injury and property damage, for a combined single limit of \$1,000,000 per occurrence.

12.4.2 The policy shall expressly provide that the policy cannot be cancelled or materially changed, except after thirty calendar days written notice by the insurer to the City by certified mail.

12.4.3 The policy shall be endorsed to expressly provide that the City of San Diego, its elected officials, officers, agents, employees, and representatives are named as additional insureds.

**12.5 WORKERS' COMPENSATION INSURANCE.**

12.5.1 At all times during the term of this Agreement, Contractor shall maintain, in full force and effect, Workers' Compensation Insurance for all of Contractor's employees who are subject to this Agreement, to the extent required by the State of California, providing a minimum of \$1,000,000 of employers' liability coverage.

12.5.2 The policy shall expressly provide that the policy cannot be cancelled or materially changed, except after thirty calendar days written notice by the insurer to the City by certified mail.

12.5.3 The policy shall be endorsed to expressly provide that the insurer waives the right of subrogation against the City of San Diego, its elected officials, officers, agents, employees, and representatives.

**12.6 ENDORSEMENTS.** All endorsements required under Sections 12.3.3, 12.4.3, and 12.5.3 above shall be in full force and effect for the entire term of this Agreement.

**12.7 CITY'S RIGHT TO REQUEST AND REVIEW CONTRACTOR'S INSURANCE POLICIES.** The City reserves its right to request, and Contractor shall immediately submit to the City upon the City's request, copies of any policy required in Sections 12.3, 12.4, and 12.5 above, and its right to review, at any time, Contractor's insurance coverage, limits, deductibles, and self-insured retentions to determine if they are sufficient, given the level of risk associated with the services described in the Budget Report. If the City determines that any such insurance coverage, limits, deductibles, and/or self-insured retentions is insufficient, the City and Contractor shall amend this Agreement to increase such insurance coverage, limits, deductibles, and/or self-insured retentions to a sufficient level, as determined by the City, and Contractor shall comply with any such amendment.

**12.8 DEDUCTIBLES AND SELF-INSURED RETENTIONS.** All deductibles and self-insured retentions on any policy shall be the responsibility of Contractor, and shall be disclosed on the insurance certificates and acceptable to the City at the time the required evidence of insurance is provided to the City.

- 12.9 **CONTRACTOR’S LIABILITY NOT LIMITED TO INSURANCE COVERAGE.** Contractor’s liability, including, but not limited to, Contractor’s indemnity obligations under this Agreement, shall not be deemed limited in any way to the insurance coverage required in this Article.
- 12.10 **MODIFICATIONS AFFECTING CITY’S EXPOSURE TO LOSS.** Contractor shall not modify any policy (or endorsement thereto), which increases the City's exposure to loss for the duration of this Agreement.
- 12.11 **ADDITIONAL INSURANCE.** Contractor may obtain additional insurance not required by this Agreement.
- 12.12 **EXPIRATION OF POLICIES.** At least thirty calendar days prior to the expiration of each insurance policy required in Sections 12.3, 12.4, and 12.5 above, Contractor shall provide the City an insurance certificate (accompanied by all required endorsements), showing that a new or extended policy has been obtained which meets the requirements of this Agreement.
- 12.13 **REQUIREMENT TO MAINTAIN INSURANCE COVERAGE.** Contractor’s maintenance of the insurance coverage required in Sections 12.3, 12.4, and 12.5 above is a material provision of this Agreement. Any failure by Contractor to maintain or renew such coverage, or to provide the City evidence of renewal, during the term of this Agreement, shall constitute a material breach of contract.

### **ARTICLE XIII – SUSPENSION AND TERMINATION**

- 13.1 **SUSPENSION OR DISALLOWANCE OF PAYMENTS.**
- 13.1.1 Other provisions of this Agreement notwithstanding, if Contractor fails to comply with any term or condition of this Agreement, the City’s remedies include, but are not limited to, each of the following:
- a) suspending one or more payments to Contractor, pending correction of the activity or action not in compliance; and/or
  - b) disallowing funds for all or part of the cost of the activity or action not in compliance.
- 13.1.2 If the City notifies Contractor that the City has suspended payments or disallowed funds, Contractor shall not expend any funds related to, or connected with, any area of controversy or conflict that resulted in the suspension or disallowance of funding.
- 13.2 **TERMINATION FOR ANY REASON.** Notwithstanding the term of this Agreement as specified in Section 3.1 above, the City or Contractor may terminate this Agreement for any reason at any time during the term of this Agreement upon sixty calendar days

written notice of the termination to the other party (delivered in accordance with the provisions of Article XVII below).

**13.3 TERMINATION FOR CURABLE DEFAULT.**

13.3.1 Except as provided in Section 13.4.1 below, the City, at its sole discretion, may terminate this Agreement upon thirty calendar days written notice to Contractor (delivered in accordance with the provisions of Article XVII below), if Contractor fails to comply with (i.e., defaults on) any term or condition of this Agreement. The written notice shall include a description of Contractor's default. If Contractor fails to cure the default within thirty calendar days of the date Contractor receives the written notice, the City may immediately terminate this Agreement.

13.3.2 The City reserves the right to suspend one or more payments to Contractor during the thirty calendar day notice period described in Section 13.3.1 above.

**13.4 TERMINATION FOR INCURABLE DEFAULT.** The City, at its sole discretion, may immediately terminate this Agreement upon written notice to Contractor (delivered in accordance with the provisions of Article XVII below) if:

- a) Contractor makes material misrepresentations in regard to information furnished to the City pursuant to this Agreement, regardless of whether Contractor had knowledge or intent with respect to the misrepresentation;
- b) Contractor, or any of its officers or directors, engages in conduct that results in Contractor, or any of its officers or directors, being convicted of a felony that materially and adversely affects Contractor's performance of its obligations under this Agreement;
- c) Contractor misappropriates funds;
- d) Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors; and/or
- e) Contractor is unable or unwilling to comply with any additional terms or conditions concerning the Program that may be required by newly enacted (or amended) federal, state, and/or local laws, rules, regulations, and/or other directives.

**13.5 CONTINUING RESPONSIBILITIES.**

13.5.1 In the event this Agreement is terminated, Contractor shall complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's performance of its obligations and duties under this Agreement. For

services rendered in completing the work, Contractor shall be entitled to fair and reasonable compensation for the services performed by Contractor before the effective date of termination. After filing of documents and completion of performance, Contractor shall deliver to the City all data and records (including, but not limited to, all documents and/or work product) prepared and/or completed directly in connection with, or related to, Contractor's performance under this Agreement. By accepting payment for completion, as well as filing and delivering documents as called for in this Section, Contractor discharges the City of all of the City's payment obligations and liabilities under this Agreement

13.5.2 Upon the expiration or termination of this Agreement, Contractor shall transfer to the City any SBEP Funds on hand at the time of the expiration or termination, and any accounts receivable attributable to the use of SBEP Funds.

13.6 **RIGHTS AND REMEDIES.** The City's termination of this Agreement shall terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Agreement. The rights and remedies of the City enumerated in this Article are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Article otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against Contractor.

#### **ARTICLE XIV – INFORMAL DISPUTE RESOLUTION; ATTORNEY'S FEES; MANDATORY ASSISTANCE**

14.1 **INFORMAL DISPUTE RESOLUTION.** If the City and Contractor have any dispute as to their respective rights, obligations, and/or duties under this Agreement, or the meaning or interpretation of any provision contained herein, they shall first attempt to resolve such dispute by informal discussion between their respective representatives. Within five calendar days of determining the existence of any such dispute, the party determining there is such dispute shall give written notice to the other party of the existence of the dispute and the need to meet informally to resolve such dispute. The Parties shall endeavor thereafter to meet within five calendar days of the second party's receipt of such notice, or at such time thereafter as is reasonable under the circumstances.

14.2 **ATTORNEY'S FEES.** If either party brings suit to enforce, protect, or establish any right or remedy arising out of, or based upon, this Agreement, including, but not limited to, the recovery of damages for its breach, the prevailing party in the action or proceeding shall be entitled to recovery of its costs and reasonable attorney's fees, in addition to any other award made in such action or proceeding.

14.3 **MANDATORY ASSISTANCE.**

14.3.1 If a third party dispute or litigation, or both, arises out of, or relates in any way to, the Services provided under this Agreement, upon the City's request, Contractor, its agents, officers, and employees shall assist the City in resolving the dispute or litigation. Contractor's assistance to the City, hereinafter referred to as "Mandatory Assistance," includes, but is not limited to, providing professional

consultations, attending mediations, arbitrations, depositions, trials, and/or any event related to the dispute resolution and/or litigation.

- 14.3.2 The City will compensate Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and/or employees, Contractor shall reimburse the City for all fees paid to Contractor, its agents, officers, and/or employees for Mandatory Assistance.
- 14.3.3 In providing the City with Mandatory Assistance, Contractor, its agents, officers, and/or employees may incur expenses and/or costs. Any attorney's fees Contractor may incur as a result of providing Mandatory Assistance are not reimbursable. This provision does not in any way affect the Parties' rights to seek attorney's fees under Section 14.2 above.

## **ARTICLE XV – INDEMNIFICATION**

- 15.1 **INDEMNIFICATION AND HOLD HARMLESS AGREEMENT.** Contractor shall defend, indemnify, protect, and hold harmless the City, its elected officials, departments, officers, employees, representatives, and agents from and against any and all claims asserted, or liability established, for damages or injuries to any person or property, including, but not limited to, injury to Contractor's officers, employees, invitees, guests, agents, and/or Subcontractors, which arise from, or are connected with, or are caused, or claimed to be caused, by this Agreement, or by the acts or omissions of Contractor, its officers, employees, representatives, agents, and/or Subcontractors in performing any work or services related to this Agreement, whether or not such work or service is required or authorized herein, and all expenses of investigating and defending against same, including, without limitation, attorney's fees and costs. However, Contractor's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its elected officials, departments, officers, employees, representatives, and/or agents. The City may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If the City elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, Contractor shall pay the City for all costs related thereto, including, without limitation, attorney's fees and costs.
- 15.2 **ENFORCEMENT COSTS.** Contractor shall pay City any and all costs City incurs enforcing the indemnity and defense provisions set forth in Section 15.1 above.

## **ARTICLE XVI – SUBCONTRACTORS**

### **16.1 SUBCONTRACTORS LIST AND SUBCONTRACTS**

- 16.1.1 On or before the date this Agreement is executed by the Parties, Contractor shall provide the City with each of the following:

- a) a completed Subcontractors List, which City will forward to EOCP, listing the names and contact information of all Subcontractors it has hired or retained, or intends to hire or retain, in connection with this Agreement; and
- b) a copy of all subcontracts entered into in connection with this Agreement, including the scope of work, along with a written statement describing the justification for the Subcontractor services, and an itemization of all costs for the Subcontractor services.

16.1.2 If, during the Term of this Agreement, Contractor identifies a need for additional Subcontractor services, Contractor shall, within ten calendar days of the date of any subcontract for such services, provide the City with each of the following:

- a) a copy of the subcontract, including the scope of work, along with a written statement describing the justification for the additional Subcontractor services, and an itemization of all costs for the additional Subcontractor services; and
- b) an updated Subcontractors List, which City will forward to EOCP, that includes the name and contact information of any new or substitute Subcontractor hired to provide the additional Subcontractor services.

16.1.3 Contractor shall procure the services of all Subcontractors in conformance with the procedures set forth in Exhibit C. Contractor shall maintain documentation of the process used to procure any such Subcontractor services, and shall provide a copy of all such documentation to the City within ten calendar days of any written request by the City.

16.2 **REQUIRED LANGUAGE.** Contractor shall ensure that all subcontracts entered into in connection with this Agreement contain the information described in Sections 5.1, 8.1, 8.2, 8.3, 8.4, 10.1, 10.3, 10.4, 10.6, 10.7, 10.9, and 10.12 above, and provide as follows:

16.2.1 Subcontractor shall obtain all insurance coverage required in Sections 12.3, 12.4, and 12.5 of the City's Agreement with Contractor, and shall maintain, in full force and effect, such insurance coverage during any and all work performed in connection with the City's Agreement with Contractor. Subcontractor shall not begin work on a subcontract until all insurance required of the Subcontractor under this Section has been obtained.

16.2.2 In any dispute between Contractor and Subcontractor pertaining to the City's Agreement with Contractor, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. Contractor shall defend and indemnify the City (as described in Section 15.1 of City's Agreement with Contractor) in any dispute between Contractor and Subcontractor, should the City be made a party to any judicial or administrative proceeding to resolve the dispute.



16.3 **CONTRACT ACTIVITY REPORT.** Within ten calendar days of a written request by the City, Contractor shall provide the City:

- a) statistical information (as described in the City's Contract Activity Report), including the amount of subcontracting provided by firms during the period covered by the Contract Activity Report; and
- b) an invoice from each Subcontractor listed in the Contract Activity Report.

16.4 **PROHIBITION ON USE OF CERTAIN SUBCONTRACTORS.** Contractor shall not employ, award any contract to, engage the services of, or fund any Subcontractor during any period of federal, state, or local debarment, suspension, or ineligibility of Subcontractor, when Contractor has been noticed of such debarment, suspension, or ineligibility.

#### **ARTICLE XVII – NOTICE**

17.1 In all cases where written notice is required under this Agreement, service of such notice shall be personally served, or deposited in the United States Postal Service, postage paid, or by reliable overnight courier. Notice shall be effective upon personal service, or five calendar days after deposit into United States Postal Service, or one business day after deposit with reliable overnight courier.

17.2 For the purposes of this Agreement, unless otherwise modified by written amendment to this Agreement, notice to the City shall be addressed to:

City of San Diego  
Economic Development Division  
Attn: Beth Murray, Deputy Director  
1200 Third Ave., Suite 1400  
San Diego, CA 92101

Notice to Contractor shall be addressed to:

Business Improvement District Council  
Attention: Tiffany Sherer, CEO  
1010 Second Avenue, Suite 1835  
San Diego, California 92101

#### **ARTICLE XVIII – CONFIDENTIALITY OF INFORMATION**

18.1 All information provided by the City to Contractor in connection with this Agreement is for the sole use of Contractor. Contractor shall not release any of this information to any third party, without the prior written consent of the City.

- 18.2 Section 18.1 does not apply to information that:
- a) was publicly known, or otherwise known to Contractor, at the time the information was provided to Contractor by the City;
  - b) subsequently becomes publicly known, through no act or omission of Contractor;
  - c) becomes known to Contractor from a source or means other than the City; or
  - d) is considered a “public record,” pursuant to the California Public Records Act (California Government Code sections 6250 et seq.).

## **ARTICLE XIX – PROMOTIONAL MATERIALS**

- 19.1 **USE OF SBEP FUNDS.** Contractor shall include the following language on all promotional materials (including, but not limited to, brochures, newsletters, advertising, facts sheets, news releases, and Internet web sites): “Partially funded by the City of San Diego’s Small Business Enhancement Program.” Such acknowledgment shall be prominently displayed on all such promotional materials. When any such promotional material expresses an opinion regarding a matter of public policy, the acknowledgment shall note that the opinion(s) stated in the promotional materials does not necessarily reflect the policy of the City of San Diego. Contractor shall secure the prior written approval by the City of the content, form, and location (on the promotional material) of any such acknowledgments, and the City will not unreasonably withhold its approval of such acknowledgements.
- 19.2 **PRODUCT ENDORSEMENTS.** Contractor shall comply with the provisions of City Administrative Regulation 95.65 regarding product endorsements. Contractor shall not create any advertisement or writing that identifies or refers to the City as the user of a product or service, without first obtaining the prior written approval of the City.

## **ARTICLE XX – MISCELLANEOUS PROVISIONS**

- 20.1 **MUNICIPAL POWERS.** Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.
- 20.2 **GOVERNING LAW.** The terms and conditions of this Agreement shall be construed and interpreted in accordance with the laws of the State of California.
- 20.3 **ENTIRE UNDERSTANDING.** This Agreement contains the entire understanding of the parties. City and Corporation, by signing this Agreement, agree that there is no other written or oral understanding between them with respect to the subject matter of this Agreement. Each party has relied on its own advice from its own attorneys, and the terms, covenants, and conditions of the Agreement itself. Each party to this Agreement agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Agreement. The failure or refusal of any party to read the Agreement or other documents and obtain legal or other advice relevant to this

transaction constitutes a waiver of any objection, contention, or claim that might have been based on such actions

20.4 **CHANGES OR AMENDMENTS TO AGREEMENT.** Should circumstances require that any of the terms or conditions of this Agreement be changed or amended, such change or amendment shall be accomplished only as follows:

- A) a change to any of the terms or conditions of this Agreement, that does not affect the total compensation herein, shall be accomplished by a written amendment to the Agreement, signed by the authorized representatives of the City and Contractor;
- B) a change which affects the total compensation specified under this Agreement, shall be accomplished by a written amendment to this Agreement, provided that:
  - 1. if the change results in a total compensation to Contractor of \$250,000 or more, (in accordance with the then current threshold for obtaining City Council approval) then such amendment must be approved by the City Council, and signed by the authorized representatives of the City and Contractor; or
  - 2. if the change results in a total compensation to Contractor of less than \$250,000 (in accordance with the then current threshold), then such amendment shall be signed by the authorized representatives of the City and Contractor.

20.5 **COVENANTS AND CONDITIONS.** All provisions herein, expressed as either covenants or conditions on the part of the City or Contractor to be performed or observed, shall be deemed to be both covenants and conditions.

20.6 **NO WAIVER.** No failure of either the City or Contractor to insist upon the strict performance by the other of any term, covenant, or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any term, covenant, or condition of this Agreement, shall constitute a waiver of any such breach of such term, covenant, or condition. No waiver of any breach shall affect or alter this Agreement, and each and every term, covenant, and condition, herein shall continue in full force and effect to any existing or subsequent breach.

20.7 **SUCCESSORS IN INTEREST.** This Agreement, and all rights, obligations, and/or duties under this Agreement, shall be in full force and effect, whether or not any party to the Agreement has been succeeded by another entity, and all rights, obligations, and/or duties under this Agreement shall be vested and binding on any party's successor in interest.

20.8 **SEVERABILITY.** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or

illegal.

- 20.9 **CONFLICTS BETWEEN TERMS.** If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, then the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.
- 20.10 **DRAFTING AMBIGUITIES.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, covenants, and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each party. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement.
- 20.11 **COUNTERPARTS.** This Agreement may be executed in counterparts, which, when taken together, shall constitute a single signed original, as though all Parties had executed the same page.
- 20.12 **HEADINGS.** All headings in this Agreement are for convenience only, and shall not affect the interpretation of this Agreement.
- 20.13 **EXHIBITS INCORPORATED.** All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.
- 20.14 **JURISDICTION AND VENUE.** The jurisdiction and applicable laws for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in accordance with the laws of the State of California. The venue for any suit or proceeding concerning this agreement, the interpretation or application of any of its terms, or any related disputes shall be the County of San Diego, State of California.
- 20.14 **SIGNING AUTHORITY.** The representative for each party signing on behalf of a corporation, partnership, joint venture, or governmental entity declares that he or she has

obtained actual authority to sign on behalf of the corporation, partnership, joint venture, or entity, and shall hold the other party or parties hereto harmless if it is later determined that such authority does not exist.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date:

Date: \_\_\_\_\_ BUSINESS IMPROVEMENT DISTRICT COUNCIL,  
a California non-profit corporation

BY: \_\_\_\_\_

Name: Patrick Edwards  
Title: President

Date: \_\_\_\_\_ THE CITY OF SAN DIEGO, a California municipal  
corporation

BY: \_\_\_\_\_

Name: Hildred Pepper, Jr.  
Title: Director, Purchasing and Contracting Dept.

*APPROVED AS TO FORM AND LEGALITY:*

Date: \_\_\_\_\_ JAN I. GOLDSMITH, City Attorney

BY: \_\_\_\_\_

Name: Adam Wander  
Title: Deputy City Attorney

**Exhibit A**  
**BID Council FY12 Scope of Services**

**BIDC-Program Support and Operations**

Contractor shall provide required administration of the BID Council as a nonprofit corporation, as follows:

- a) Provide staff support for the conduct and operation of the BID Council. Including but not limited to, conducting at least one general membership meeting per year and a minimum of six board meetings for the operation of the corporation, and filing of required notices, tax forms, and other documentation.
- b) Maintain books of account and other required financial and operational records, preparing and submitting reimbursement requests to City.
- c) Pay for an annual audit to be conducted of the organization.
- d) Carry and provide proof of insurance and other such requirements in the annual Agreement.
- e) Provide the City any reports necessary as part of the annual agreement.

Contractor shall operate programs and projects as follows:

1. Provide Support services for member BID's as follows:
  - a) Establish and maintain a BID Council website.
  - b) Produce a periodic BID Council newsletter.
  - c) Maintain a standardized accounting standards and methodology for accounting and reporting by BID management corporations and the BID Council and provide training to staff on such standards and practices.
    - a. Host 2 workshops a year about this subject.
  - d) Develop and maintain programs to benefit member organizations and businesses.
  - e) Monitor, research, report to the membership, and advocate in the interest of the membership regarding federal, state, and local legislative issues.
  - f) Support and produce BID Business of the Year Awards and participate in Small Business Week 2011.
  - g) Maintain a Library of resource materials for BID members.
  - h) Maintain membership in professional organizations including Board Source, Main Street, IDA, or other memberships that serve the member organizations.
2. Provide the promotion, marketing and media relations of the BID Council and member BID's as directed by the Board of Directors.
3. In partnership with the City Special Events Staff, on an as need basis conduct economic studies regarding estimate of annual revenues and economic stimulation that are derived from special events held within the BID's in San Diego.
  - a. Implement the Economic Development Reporting Tool for special events.
4. **BID Management Support funds allocations** Determine through an agreement among its membership, the formula or budget for distribution of SBEP funds to the individual management corporations under contract with the City to manage a BID and provide a copy thereof to the city by August 2011.
5. **City Fees and Services Offset formula:** Determine through an agreement among its membership, the formula for offsets for SBEP City Fees and Services which individual management corporations under contract with the City to manage a BID may request but not to exceed 90% of the cost and provide a copy thereof to the city by August 2011.

## Technical Assistance

Provide in-kind services and or funding to augment grants and funds provide to BIDs, chamber and merchants associations to assist the organization and member businesses. Technical assistance may include efforts to revitalize commercial neighborhoods through initiatives as follows or for other activities of the benefit to businesses:

1. Business development, education and training programs – including but not limited to the: formation of special assessment districts; mixed-use development; parking garage development; strategic planning and reorganization; assistance with recruiting, planning, and implementing Storefront Improvement Program projects; public improvements; public improvements; grant and availability and writing, and such other matters of interest as requested by the membership.
  - a. Work with a local grant writer to review all of the members grant applications and provide writing services.
  - b. Provide free consulting via the CEO of the BID Council to the board/committee members engaged in developing a BID or managing a newly established BID.
  - c. Procure and subsidize a Life Insurance Policy and Benefit for the staffs of all member organizations managing a BID as a collective employment resource.
2. Special Events Services – solicit sponsorship, purchase equipment for BID special events, establish procedures for the use of the equipment, make it available for BID special events, store and account for it, and maintain it as needed. Explore feasibility of obtaining group special event insurance. Provide a workforce for Special Events equipment delivery; operate communication tools for employees of the special events program. Maintain insurance for Special Events employee(s); provide accounting services for the special events program. Provide technical assistance associated with managing the special events equipment for BID and micro district special events. This program employs 20 people on a seasonal basis and assists over 60 events around the City. The BID Council through this program hosts over \$40,000 in free rental equipment for our member organizations managing BIDs and micro districts.
3. Landscaping and Tree Plantings- planned installation of landscaping subject to obtaining required permits, watering agreements, and limited by City approved cost for specified tree sizes and site conditions.

Specific activities with objectives and measurable outcomes shall be submitted to the City for review and consideration prior to project implementations.

**Micro Districts and Commercial Neighborhoods (Grant funding in-kind services)**

Administer, and manage with the approval of the BID membership as required, a program to provide support to geographic-based business organizations including but not limited to “local chambers of commerce” and areas designated as “micro business districts”. A competitive application process will be required in order to provide funding and or services to eligible geographic based organization in support to their small business constituents. Elements of the program include development and publishing applications and guidelines, soliciting applications; application review; development of funding/in-kind support and service recommendations; board review and approval of the awardees, collection of data on measurable outcomes and submittal of reports and reimbursement request to the City. An attachment of funded groups will be forwarded to the City when the process is completed.



**BID COUNCIL  
FY 12  
SBEP BUDGET  
CORRECTED**

	SBEP - BID Council	SBEP Micro Districts	SBEP Tech Assistance	TOTAL
	FY 12	FY 12	FY 12	FY 12
<b>Income</b>				
40020 · BID COUNCIL DUES				5,100.00
4 0055 BID FOUNDATION				
CARRY OVER		6,948.01		6,948.01
40065 · SPECIAL EVENT SERVICES				51,282.00
4 0150 GRANT				
4 0085 CONTRIBUTION/FUNDRAISING				
4 1180 · SBEP	185,000.00	75,000.00	55,000.00	315,000.00
<b>Total Income</b>	185,000.00	81,948.01	55,000.00	378,330.01
<b>Expense</b>				
<b>I · PERSONNEL</b>				
50001 · CEO SALARY	75,000.00			75,000.00
50003 · CEO ALLOWANCE	3,240.00			3,240.00
50006 · OFFICE STAFF	22,370.00	6,948.01		29,318.01
50007 · SPECIAL EVENT STAFF			1,500.00	37,010.00
50014 · PAYROLL TAX EXPENSE	8,894.00		190.00	13,556.00
50016 · HEALTH INSURANCE	6,500.00			6,500.00
<b>Total I · PERSONNEL</b>	116,004.00	6,948.01	1,690.00	164,624.01
<b>II · OPERATING</b>				
50050 · RENT-OFFICE	15,000.00			18,000.00
50055 · PHONE/FAX/E-MAIL	2,200.00			2,200.00
50060 · PARKING/TRANSPORTATION	6,000.00			6,000.00
50065 · COPIER LEASE	3,200.00			3,200.00
50070 · WORKER'S COMP INSURANCE	1,200.00			5,200.00
50075 · LIABILITY/D&O INSURANCE	5,000.00			5,000.00
50080 · POSTAGE	500.00			500.00
50085 · ACCOUNTING	24,000.00		2,000.00	26,000.00
50090 · DUES/MEMBERSHIPS				1,500.00
50095 · BANK AND OTHER FEES				100.00
50100 · MEETINGS			5,500.00	5,900.00
50105 · OFFICE SUPPLIES	1,000.00			1,000.00
50110 · REPAIR & MAINTENANCE	496.00			496.00
50115 · EQUIPMENT / FURNITURE				0.00
50120 · BID LIFE INSURANCE			4,310.00	4,310.00
50125 · AUDIT/TAX PREPARATION	7,500.00			7,500.00
<b>Total II · OPERATING</b>	66,096.00	0.00	11,810.00	86,906.00
<b>III · OUTREACH PROMOTION</b>				
51525 · ADVERTISING / MARKETING			8,500.00	8,500.00
51530 · BUSINESS WORKSHOPS			7,000.00	7,000.00
CERT TRAINING			5,000.00	0.00
51535 · POLICY DEVELOPMENT/ LEGAL	0.00		2,000.00	0.00
<b>Total III · OUTREACH PROMOTION</b>	0.00	0.00	22,500.00	22,500.00
<b>IV · SPECIAL PROJECTS &amp; EVENTS</b>				
52130 - GRANT WRITING			3,000.00	3,000.00
52140 · WEB SITE	900.00		1,000.00	1,900.00
52150 · SPECIAL EVENT SUPPLIES/SVCS.			10,000.00	17,300.00
52155 · TREE CONSULTANTS & MTRLS.			5,000.00	5,000.00
52165 - BID BUSINESS OF THE YEAR	2,000.00			2,000.00
52170 - BIDC LEGISLATIVE MIXER				100.00
52190 - MICRO DISTRICTS		75,000.00		75,000.00
<b>Total IV · SPECIAL PROJECTS &amp; EVENTS</b>	2,900.00	0.00	19,000.00	104,300.00
<b>Total Expense</b>	185,000.00	81,948.01	55,000.00	378,330.01
<b>Net Income</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>

## EXHIBIT C

### Purpose

It is important for the City and its citizens to have confidence in the integrity of nonprofit corporations which contract with the City to administer programs, and which receive funding from or through the City. This policy is not intended to supersede, negate or otherwise invalidate any statute, ordinance or policy, but is intended to supplement existing authorities governing these subjects.

### Board Roster

All nonprofit corporations contracting with the City shall provide, within 30 days of execution of an agreement, a list of the names of all board members and their business affiliations. In the event that the board membership changes, the corporation shall provide the City with an updated list.

### Procedures for Procurement of Goods and Services

All procurement of goods and services shall comply with Divisions 30-36 of Article 2, Chapter 2, of the San Diego Municipal Code, and all other laws and policies applicable to the City's procurement of such goods and services.

When a *contract* provides for an expenditure greater than \$5,000, but equal to or less than \$10,000, the Nonprofit Corporation may award the *contract* but shall seek competitive prices either orally or in writing.

When a *contract* provides for an expenditure greater than \$10,000 but equal to or less than \$50,000, the Nonprofit Corporation may award the *contract* but shall solicit written price quotations from at least five potential sources.

When a *contract* provides for an expenditure greater than \$50,000 but equal to or less than \$1,000,000, the Nonprofit Corporation may award the *contract* only after advertising it for a minimum of one day in the City Official Newspaper.

### Remedies

A violation of any provision of this policy shall be grounds for termination of the corporation's contract with the City. A contract or transaction entered into in violation of the conflict of interest and procurement provisions of this policy shall be void and unenforceable, and shall not entitle the corporation or the contractor to any reimbursement or payment for goods or services provided pursuant to the void contract.

**BID COUNCIL  
FY 12  
SBEP BUDGET**

	SBEP - BID Council	SBEP Micro Districts	SBEP Tech Assistance	TOTAL
	FY 12	FY 12	FY 12	FY 12
<b>Income</b>				
40020 · BID COUNCIL DUES				5,100.00
40055 · BID FOUNDATION				
CARRY OVER		6,948.01		6,948.01
40065 · SPECIAL EVENT SERVICES				51,282.00
40150 · GRANT				
40085 · CONTRIBUTION/FUNDRAISING				
41180 · SBEP	185,000.00	75,000.00	55,000.00	315,000.00
<b>Total Income</b>	185,000.00	81,948.01	55,000.00	378,330.01
<b>Expense</b>				
<b>I · PERSONNEL</b>				
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50080 · POSTAGE	500.00			500.00
50085 · ACCOUNTING	24,000.00		2,000.00	26,000.00
50090 · DUES/MEMBERSHIPS				1,500.00
50095 · BANK AND OTHER FEES				100.00
50100 · MEETINGS			5,500.00	5,900.00
50105 · OFFICE SUPPLIES	1,000.00			1,000.00
50110 · REPAIR & MAINTENANCE	496.00			496.00
50115 · EQUIPMENT / FURNITURE				0.00
50120 · BID LIFE INSURANCE			4,310.00	4,310.00
50125 · AUDIT/TAX PREPARATION	7,500.00			7,500.00
<b>Total II · OPERATING</b>	66,096.00	0.00	11,810.00	86,906.00
<b>III · OUTREACH PROMOTION</b>				
51525 · ADVERTISING / MARKETING			8,500.00	8,500.00
51530 · BUSINESS WORKSHOPS			7,000.00	7,000.00
CERT TRAINING			5,000.00	0.00
51535 · POLICY DEVELOPMENT/ LEGAL	0.00		2,000.00	0.00
<b>Total III · OUTREACH PROMOTION</b>	0.00	0.00	22,500.00	22,500.00
<b>IV · SPECIAL PROJECTS &amp; EVENTS</b>				
52130 · GRANT WRITING			3,000.00	3,000.00
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52165 · BID BUSINESS OF THE YEAR	2,000.00			2,000.00
52170 · BIDC LEGISLATIVE MIXER				100.00
52190 · MICRO DISTRICTS		75,000.00		75,000.00
<b>Total IV · SPECIAL PROJECTS &amp; EVENTS</b>	2,900.00	0.00	19,000.00	104,300.00
<b>Total Expense</b>	185,000.00	81,948.01	55,000.00	378,330.01
<b>Net Income</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>

<b>REQUEST FOR COUNCIL ACTION</b> CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) pending
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TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): CPCI-Economic Development	DATE: 02/23/2011
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SUBJECT: FY 2012 SMALL BUSINESS ENHANCEMENT PROGRAM AGREEMENT WITH THE BUSINESS IMPROVEMENT DISTRICT COUNCIL

PRIMARY CONTACT (NAME, PHONE): Alicia Martinez-Higgs, 619-236-6488	SECONDARY CONTACT (NAME, PHONE): Meredith Dibden Brown, 619-236-6485
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**COMPLETE FOR ACCOUNTING PURPOSES**

FUND	100000				
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER	1612121212				
OBJECT / GENERAL LEDGER ACCT	512059				
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	\$315,000.00	0.00	0.00	0.00	0.00

FUND					
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER					
OBJECT / GENERAL LEDGER ACCT					
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

**COST SUMMARY (IF APPLICABLE):** Pursuant to Council Policy 900-15, \$315,000 of Small Business Enhancement Program (SBEP) funds anticipated to be budgeted in FY2012 are to be expended under this agreement.

**ROUTING AND APPROVALS**

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Environmental Analysis	ORIG DEPT.	Anderson, William	2/25/2011
Financial Management	CFO		
Equal Opportunity Contracting	DEPUTY CHIEF		
	COO		
	CITY ATTORNEY		
	COUNCIL		

		PRESIDENTS OFFICE			
PREPARATION OF:	<input checked="" type="checkbox"/> RESOLUTIONS	<input type="checkbox"/> ORDINANCE(S)	<input checked="" type="checkbox"/> AGREEMENT(S)	<input type="checkbox"/> DEED(S)	
<p>1. Authorize the Mayor (or his designee) to execute the FY 2012 Agreement between the City of San Diego and the Business Improvement District Council to expend an amount not to exceed \$315,000 in Small Business Enhancement Program (SBEP) funds for the provision of economic development services, contingent upon approval of the Fiscal Year 2012 Appropriation Ordinance and contingent upon the Chief Financial Officer certifying that the funds necessary for expenditure are or will be available.</p> <p>2. Authorize the Chief Financial Officer to expend an amount not to exceed \$315,000 in Small Business Enhancement Program (SBEP) funds for the provision of economic development services, contingent upon approval of the Fiscal Year 2012 Appropriation Ordinance and contingent upon the Chief Financial Officer certifying that the funds necessary for expenditure are or will be available.</p>					
<p>STAFF RECOMMENDATIONS: Approve requested actions.</p>					
SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)					
COUNCIL DISTRICT(S):	Citywide				
COMMUNITY AREA(S):	Citywide				
ENVIRONMENTAL IMPACT:	This activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and is therefore not subject to CEQA pursuant to State CEQA Guidelines Section 15060(c)(2)				
CITY CLERK INSTRUCTIONS:	None				

**COUNCIL ACTION  
EXECUTIVE SUMMARY SHEET  
CITY OF SAN DIEGO**

DATE: 02/23/2011

ORIGINATING DEPARTMENT: CPCI-Economic Development

SUBJECT: FY 2012 SMALL BUSINESS ENHANCEMENT PROGRAM AGREEMENT  
WITH THE  
BUSINESS IMPROVEMENT DISTRICT COUNCIL

COUNCIL DISTRICT(S): Citywide

CONTACT/PHONE NUMBER: Alicia Martinez-Higgs/619-236-6488

**DESCRIPTIVE SUMMARY OF ITEM:**

1. Pursuant to Council Policy 900-15 (Small Business Enhancement Program), enter into an agreement for \$315,000 with the Business Improvement District Council for FY2012 to implement: BIDC Program Support and Operations; Micro Districts and Commercial Neighborhoods grants and services; and Technical Assistance projects; as specified in the policy.
2. Authorize the Chief Financial Officer (CFO) to expend an amount not to exceed \$315,000 in SBEP funds for the provision of these services, contingent upon approval of the FY2012 Appropriation Ordinance and contingent upon the CFO certifying that the funds necessary for expenditure are or will be available.

**STAFF RECOMMENDATION:**

Approve requested actions.

**EXECUTIVE SUMMARY OF ITEM BACKGROUND: EXECUTIVE SUMMARY OF ITEM**

**BACKGROUND:** In 1995, the City Council established a Small Business Enhancement Program (SBEP). The purpose of the SBEP was to provide continuing support to small businesses in recognition of their vital economic, employment, service, and cultural roles, and their importance in sustaining and revitalizing older commercial and residential areas. In 1999, the City Council established Council Policy 900-15 (Small Business Enhancement Program) to clarify SBEP's unique annual appropriation formula and to provide for accountability, efficiency, and flexibility in the administration of the program. In 2008, the policy was updated to reflect evolving conditions and the funding was set at a specified annual amount based on 80,000 small businesses registering with the City on an annual basis.

A key element of the policy has been the partnership between the City and the Business Improvement District Council (BIDC) to effectively provide services to the City's small business communities. The BIDC is a non-profit organization whose members are the non-profit organizations managing the City's Business Improvement Districts (BIDs). The BIDC was incorporated in 1993 to promote the improvement of business conditions within the City of San Diego.

The policy provides for SBEP funds to be split between Citywide programs and Business District (geographic business-based) programs. Within the Business District programs, the Policy

provides for an agreement amount of \$315,000 with the BIDC to provide programs in BIDs and other commercial neighborhoods throughout the City.

Specifically, the agreement budgets the funds into three allocations:

BIDC – Program Support and Operations	\$185,000
Micro-Districts and Commercial Neighborhoods (Grants/In-kind Services)	\$75,000
Technical Assistance	\$55,000
Total	\$315,000

The “Program Support and Operations” funding assists the BIDC with providing general services to its members including conducting meetings, maintaining financial records, communicating on issues and legislation of interest to small businesses, developing and maintaining insurance programs for member organizations and for small businesses in general, marketing the commercial neighborhoods, and conducting economic studies as needed.

The “Micro-Districts and Commercial Neighborhoods” funding is for a competitive application process, administered by the BIDC, to fund and/or provide in-kind services to eligible geographic-based organizations in support of their small business constituents. In FY2010 funding and assistance was provided to eleven different commercial neighborhoods ranging from Otay Mesa to San Diego North and from Barrio Logan to the College Neighborhood (Montezuma). The funded activities include creating and distributing business directories, conducting business trainings, and installing banners and pedestrian amenities.

“Technical Assistance” includes efforts to revitalize commercial neighborhoods through initiatives such as: business development, education and training programs; special events services and equipment supply; tree plantings; public art programs; and other activities of benefit to businesses. Technical Assistance programs are available to BID organizations, neighborhood business chambers and micro-district organizations.

**FISCAL CONSIDERATIONS:** There is no projected additional fiscal impact since the funds are proposed to be budgeted in the City’s FY2012 Budget in accordance with Council Policy 900-15.

**EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):** This agreement is not subject to the City’s Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) This agreement is subject to the City’s Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517) as is stated in the agreement in Article 10.

**PREVIOUS COUNCIL and/or COMMITTEE ACTION:** In accordance with Council Policy 900-15 (SBEP), the City annually enters into an agreement with the BIDC. The last agreement was approved by Council on May 26, 2010. This item is scheduled to be heard by the Public Safety and Neighborhood Services Committee on March 16, 2011.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

The proposed scope of services and budget was reviewed and discussed at noticed, open meetings of the Board of the Business Improvement District Council in January and February of 2011. The Scope and Budget were approved at the Board Meeting held on February 24, 2011.

**KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):**

These agreement services are proposed to benefit small business within the City of San Diego and to further the economic revitalization of our commercial neighborhoods.

Anderson, William

Originating Department

\_\_\_\_\_  
Deputy Chief/Chief Operating Officer