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002087

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ON

TO:	2. FROM (ORIGINATING DEPARTMENT):	3. DATE:
CITY ATTORNEY	CITY PLANNING & COMMUNITY INVESTMENT	7/2/2007

4. SUBJECT:
FY 2008 Community Parking District Program Agreements

5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.)	6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.)	7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED
Melisa Tintocalis, (619) 236-6476 MS56-D	Scott Kessler, (619) 236-6421 MS56-D	☐

8.COMPLETE FOR ACCOUNTING PURPOSES

FUND					
DEPT.					
ORGANIZATION					
OBJECT ACCOUNT					
JOB ORDER					
C.I.P. NUMBER					
AMOUNT					

9. ADDITIONAL INFORMATION / ESTIMATED COST:
Expenditures of previously appropriated funds of $3202091 from Fund 70303 and $831,769 from Fund 70304 as adjusted to reconcile FY 2007 actual expenditures and revenues.

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	SCOTT KESSLER	7/3/07	8	DEPUTY CHIEF	JAMES T. WARING	7/18/07
2	DEPARTMENT DIRECTOR	WILLIAM ANDERSON	7/3/07	9	COO		7/18/07
3	EOC	STACEY STEVENSON	7/10/07	10	CITY ATTORNEY	MICHAEL NEUMEYER	7/18/07
4	ENVIRONMENTAL REVIEW	KENNETH TEASLEY	7/11/07	11	ORIGINATING DEPARTMENT	MELISA TINTOCALIS	
5	LIAISON OFFICE	ED PLANK	7/13/07		DOCKET COORD: 7/18	COUNCIL LIAISON:	
6	FINANCIAL MANAGEMENT	DEAN ROBERTS	7/17/07 ✓		COUNCIL PRESIDENT	☐ SPOB ☐ CONSENT ☒ ADOPTION	
7	AUDITORS	VICKI TRAN	7/18/07		7-3	☐ REFER TO:	COUNCIL DATE: 7/31/07

11. PREPARATION OF: ☒ RESOLUTION(S) ☐ ORDINANCE(S) ☒ AGREEMENT(S) ☐ DEED(S)

See Attachment A

11A. STAFF RECOMMENDATIONS: Adopt the Resolutions

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S): 1, 2, 3, 7, 8.

COMMUNITY AREA(S): City Heights, College, El Cajon Boulevard, Golden Hill, Hillcrest, La Jolla, Mid-City, Mission Beach, Mission Hills, Ocean Beach, Pacific Beach, University Heights and Uptown.

ENVIRONMENTAL IMPACT: This activity is not a project and therefore not subject to CEQA pursuant to State Guidelines Section 15060 (c) (3).

HOUSING IMPACT: None.

Attachment A
(Continued from Box 11)

1. Authorize the Mayor (or his designee) to execute the FY 2008 agreements with specified non-profit organizations for the operation of the FY 2008 Community Parking District [CPD] Program in the Uptown, Mid-City, La Jolla, Old Town, and Pacific Beach Community Parking Districts, contingent upon certification of funds availability by the city Auditor and Comptroller, those agreements being on file with the Office of the City Clerk.
2. Authorize the City Auditor and Comptroller to expend $3,202,091 from the Uptown CPD Fund (Fund No. 70303) for the operation of the FY 2008 CPD Program in the Uptown Community Parking District, as reduced by the City Auditor and Comptroller to reflect any FY 2007 agreement expenditures incurred in FY 2007 not already deducted from Fund No. 70303, and as increased or reduced by the City Auditor and Comptroller for year-end adjustments to Fund No. 70303 to reflect actual parking meter revenues collected in FY 2007, so that the total amount expended does not exceed the sum of the carryover from the FY 2007 agreement for the administration of the Uptown Community Parking District plus the actual parking meter revenues collected within the Uptown Community Parking District in FY 2007.
3. Authorize the City Auditor and Comptroller to expend $831,769 from the Mid-City CPD Fund (Fund No. 70304) for the operation of the FY 2008 CPD Program in the Mid-City Community Parking District, as reduced by the City Auditor and Comptroller to reflect any FY 2007 agreement expenditures incurred in FY 2007 not already deducted from Fund No. 70304, and as increased or reduced by the City Auditor and Comptroller for year-end adjustments to Fund No. 70304 to reflect actual parking meter revenues collected in FY 2007, so that the total amount expended does not exceed the sum of the carryover from the FY 2007 agreements for the administration of the Mid-City Community Parking District plus the actual parking meter revenues collected within the Mid-City Community Parking District in FY 2007.

002089

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED:	REPORT NO:
ATTENTION:	City Council President and City Counsel
ORIGINATING DEPARTMENT:	City Planning & Community Investment
SUBJECT:	FY 2008 Community Parking District Program - Agreements
COUNCIL DISTRICT(S):	1, 2, 3, 7, 8
CONTACT/PHONE NUMBER:	Melisa Tintocalis 236-6476

REQUESTED ACTIONS:

- Authorize the Mayor (or his designee) to execute the FY 2008 agreements with the specified non-profit organizations for the operation of the FY 2008 Community Parking District [CPD] Program in the Uptown, Mid-City, La Jolla, Old Town, and Pacific Beach Community Parking Districts.
- Authorize the City Auditor and Comptroller to expend $3,202,091 from the Uptown CPD Fund and $831,769 from the Mid-City CPD Fund for the operation of the FY 2008 CPD Program in the Uptown and Mid-City Community Parking Districts, as reduced to reflect any FY 2007 agreement expenditures not already deducted from each CPD Fund, and as increased or reduced for year-end adjustments to reflect actual parking meter revenues collected in FY 2007.

STAFF RECOMMENDATION: Adopt the requested actions.

SUMMARY: Community Parking Districts [CPDs] are authorized under City Council Policy 100-18, adopted on March 4,1997 and amended on November 15, 2005. The Policy establishes a "Community Parking District Program" that allows communities, with the approval of the City Council, to implement parking solutions in neighborhoods that face serious parking challenges. At present, the City has six Community Parking Districts within Downtown, Uptown, Mid-City, La Jolla, Old Town, and Pacific Beach.

Each CPD has a designated Advisory Board responsible for developing plans and expending allocated revenue. The advisory boards operate either through business improvement associations or nonprofit community development corporations, contracting with the City, to develop an Implementation Plan, manage CPD funds, and fulfill the community's parking goals as stated in each Implementation Plan. The Mid-City CPD was established with three sub-districts and is managed by each area's respective organization: El Cajon Boulevard Business Improvement Association, Greater Golden Hill. Community Development Corporation, and University Heights Community Development Corporation. Council Policy 100-18 allows each CPD to retain forty-five percent of new parking meter revenues collected within its boundaries. At this time, however, only three CPDs generate parking meter revenue within their boundaries - Downtown, Uptown, and Mid-City.

The remaining CPDs (La Jolla, Old Town, and Pacific Beach), established by Resolution on July 27, 2005, do not currently have parking meters or other parking revenues generated within their geographic boundaries.

The CPD funds are dedicated for improvements and activities that increase the availability, supply, and effective use of parking to residents, visitors, and employees. Highlights from FY 2007 include the following:

- Downtown completed a successful "Pay and Display" Pilot Program which included the installation and monitoring of 50 new multi-space pay stations which resulted in a 24 percent

increase in parking meter revenue. The pilot also allowed the Downtown Parking Management Group (DPMG) to successfully adjust meter rates and time limits to achieve a target occupancy rate of 85 percent for the meters within the pilot area.

- Uptown initiated the Normal Street Median Reconstruction Project Design which, upon completion, will add 17 new metered spaces and a new landscaped median to the district. They also re-striped the Five Points for parking which will add 25-28 on-street metered spaces in a commercial area with high parking demand.
- Mid-City contracted with Walker Parking Consultants to conduct a parking study for the North Park neighborhood to develop parking management strategies that will improve the use of the North Park parking structure.
- La Jolla organized a community forum with parking expert Professor Donald Shoup who addressed nearly 200 residents. The CPD also drafted a parking management framework for the community that they are currently presenting to the community for feedback.
- Old Town and Pacific Beach were awarded a grant by the Business Improvement District Council to fund parking studies for their communities. The studies are anticipated to be complete by the end of this fiscal year.

FISCAL CONSIDERATIONS:
This action authorizes the expenditure of $3,202,091 for Fund 70303 (Uptown CPD) and $831,769 for Fund 70304 (Mid-City CPD) as reduced by any FY 2007 agreement expenditures incurred not already deducted from these funds and as increased or reduced to reflect actual parking meter revenues collected in FY 2007 for each CPD. Carryover balances exist due to the fact some CPDs are accumulating funds to invest in future capital improvement projects to increase parking availability within their districts. Funds are typically remitted on a reimbursement basis.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: Each year, the City Council approves the Implementation Plans and Budgets for the CPDs and authorizes the appropriation and expenditure of CPD funds. An earlier action, on July 17, 2007, will have authorized the appropriation and transfer of parking meter revenues of $595, 487 to Fund 70303 (Uptown CPD) and $91,281 to Fund 70304 (Mid-City CPD). Pursuant to Council Policy 100-18, the amounts transferred to the CPD Funds would be added to each CPD Fund's previous year balance which includes the FY 2007 year-end adjustments.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Each CPD Advisory Board holds regular monthly meetings and publishes newsletters which are distributed to community residents and business owners. In addition, CPD representatives sit on the citywide Parking Advisory Board and provide updates at meetings that are noticed and open to the public.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Direct beneficiaries of this action include the agencies that administer each CPD: Uptown Partnership, Inc., El Cajon Blvd. Business Improvement Association, Golden Hill Community Development Corporation, University Heights Community Development Corporation, Promote La Jolla, Old Town Chamber of Commerce, and Discover Pacific Beach.

for WA

Bill Anderson
Originating Department

James T. Waring
Deputy Chief/Chief Operating Officer

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE EXECUTION OF AGREEMENTS FOR THE FISCAL YEAR 2008 COMMUNITY PARKING DISTRICT PROGRAM AND THE EXPENDITURE OF FUNDS.

WHEREAS, on July 17, 2007 the City Council Adopted Resolution No. R-_____, in which the City Council, among other things:

a) approved the FY 2008 Implementation Plans and Budgets for the Uptown, Mid-City, La Jolla, Old Town, and Pacific Beach Community Parking Districts;

b) authorized the City Auditor and Comptroller to transfer $2,276,892 in parking meter revenues from General Fund 100 to the respective Community Parking District [CPD] Funds; and

c) authorized the City Auditor and Comptroller to appropriate $3,202,091 and $831,769 for the operation of the FY 2008 CPD Program in the Uptown and Mid-City Community Parking Districts, as reduced by the City Auditor and Comptroller to reflect any FY 2007 agreement expenditures incurred in FY 2007 not already deducted from each CPD Fund, and as increased or reduced by the City Auditor and Comptroller for year-end adjustments to each CPD Fund to reflect actual parking meter revenues collected in FY 2007.

NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That the Mayor (or his designee) is authorized to execute the FY 2008 agreements with the following non-profit organizations for the operation of the FY 2008 Community Parking District [CPD] Program in the Uptown, Mid-City, La Jolla, Old Town, and Pacific Beach Community Parking Districts, contingent upon certification of funds availability by the city

Auditor and Comptroller, those agreements being on file with the Office of the City Clerk under the following document numbers:

Non-profit Organization	CPD	Document No.
Uptown Partnership, Inc.	Uptown	RR-_____
El Cajon Blvd. Business Improvement Association	Mid-City	RR-_____
Greater Golden Hill Community Development Corporation	Mid-City	RR-_____
Univeristy Heights Community Development Corporation	Mid-City	RR-_____
Promote La Jolla, Inc.	La Jolla	RR-_____
Old Town San Diego Chamber of Commerce	Old Town	RR-_____
The Pacific Beach Community Development Corporation dba Discover Pacific Beach	Pacific Beach	RR-_____

2. That the City Auditor and Comptroller is authorized to expend $3,202,091 from the Uptown CPD Fund (Fund No. 70303) for the operation of the FY 2008 CPD Program in the Uptown Community Parking District, as reduced by the City Auditor and Comptroller to reflect any FY 2007 agreement expenditures incurred in FY 2007 not already deducted from Fund No. 70303, and as increased or reduced by the City Auditor and Comptroller for year-end adjustments to Fund No. 70303 to reflect actual parking meter revenues collected in FY 2007, so that the total amount expended does not exceed the sum of the carryover from the FY 2007 agreement for the administration of the Uptown Community Parking District plus the actual parking meter revenues collected within the Uptown Community Parking District in FY 2007.

3. That the City Auditor and Comptroller is authorized to expend $831,769 from the Mid-City CPD Fund (Fund No. 70304) for the operation of the FY 2008 CPD Program in the Mid-City Community Parking District, as reduced by the City Auditor and Comptroller to reflect any

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FY 2007 agreement expenditures incurred in FY 2007 not already deducted from Fund No. 70304, and as increased or reduced by the City Auditor and Comptroller for year-end adjustments to Fund No. 70304 to reflect actual parking meter revenues collected in FY 2007, so that the total amount expended does not exceed the sum of the carryover from the FY 2007 agreements for the administration of the Mid-City Community Parking District plus the actual parking meter revenues collected within the Mid-City Community Parking District in FY 2007.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By _____
Michael D. Neumeyer
Deputy City Attorney

MDN:nda
07/18/07
Or.Dept: City Planning & Community Investment
R-2008-80
MMS#5123

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By_____
Deputy City Clerk

Approved: _____ (date)

_____
JERRY SANDERS, Mayor

Vetoed: _____ (date)

_____
JERRY SANDERS, Mayor

002095

AGREEMENT BETWEEN THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION, AND OLD TOWN SAN DIEGO CHAMBER OF COMMERCE

This Agreement [Agreement] is entered into by the City of San Diego, a municipal corporation [City] and Old Town San Diego Chamber of Commerce [Contractor], hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, pursuant to Council Policy 100-18, the City established the Community Parking District Program [CPD Program], whereby communities unable to meet existing parking demands may devise and implement parking management solutions to meet their specific needs and resolve undesirable parking impacts; and

WHEREAS, Council Policy 100-18 allows for the formation of Community Parking Districts in areas where there are no existing parking revenues, provided that alternative revenue sources are identified to fulfill the community parking district implementation plan; and

WHEREAS, the City Council designated a specific geographic area (Old Town Community Parking District) as the Old Town Community Parking District [District]; and

WHEREAS, on June 27, 2005, the City Council adopted Resolution No. R-300584, in which the City Council designated Contractor as the Advisory Board for the District; and

WHEREAS, on _____, ____, the City Council adopted Resolution No. R-_____, in which the City Council approved the Implementation Plan [Plan] and Budget for FY 2008 to be carried out by Contractor;

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.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.]

ARTICLE II - DEFINITIONS

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

2.1 Operating Manual – The City's "Operating Manual for Economic Development Programs" (revised 2007), which contains prescribed procedures for fiscal management and accountability of programs and/or projects receiving City and/or federal funds.

2.2 Plan Budget – The total amount of money allocated and available to fund this Agreement, as set forth in Exhibit B.

2.3 Subcontractor – Any entity other than the City that furnishes supplies or services (other than office space, standard commercial supplies, printing services, or other administrative or operational services) to Contractor in connection with Contractor's performance of its obligations and/or duties under 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, 2007 and continue for one year until June 30, 2008, 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 City's designated representative 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 if the designated representative is within the Division, shall inform Contractor, in writing, of the new designated representative within ten calendar days of the date of such change. If the new designated representative is outside the Division, and the City has knowledge of the new designated representative ninety calendar days prior to the date of the change, the City will inform Contractor, in writing, of the new designated representative at least ninety calendar days prior to the date of such change. However, if the new designated representative is outside the Division, and the City does not have knowledge of the new designated representative ninety calendar days prior to the date of the change, the City will inform Contractor, in writing, of the new designated representative within five calendar days of City's knowledge of the pending 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. Contractor shall have no authority to bind the City in any manner, nor to incur any obligation, debt or liability of any kind, on behalf of or against the City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by the City.

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. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee, but any such assignment shall be ineffective, null and void.

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 Plan Budget (Exhibit B) and all other terms and conditions of this Agreement.

6.2 The Scope of Services (Exhibit A) shall include measurable objectives to provide a sound basis for the City to effectively monitor Contractor's performance under this Agreement.

ARTICLE VII – PLAN BUDGET AND EXPENDITURES; TOTAL PAYMENT; PLAN REVENUE

7.1 **PLAN BUDGET AND EXPENDITURES.** The Plan 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.

7.2 **(reserved)**

7.3 **TOTAL PAYMENT.** The total payment to be paid to Contractor under this Agreement shall not, under any circumstances, exceed $1 (one dollar).

7.4 **ADDITIONAL FUNDING SOURCES.** If Contractor has received or does receive additional funding for the Plan 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 Plan expenditures to the appropriate funding source at the time incurred. Contractor expressly understands that any cost incurred in connection with the Plan that is properly chargeable to, and actually claimed for compensation or reimbursement under, a funding source other than the City, shall not be allowed as a chargeable cost under this Agreement.

7.5 **(reserved)**

7.6 **PLAN REVENUE.** All revenue that is generated by Contractor as a result of its performance of activities described in the Plan, including interest earned on accrued revenue deposited in an interest bearing account, is considered Plan Revenue. It is anticipated that some of Contractor's services (including capital improvement projects) may generate Plan Revenue. Subject to the provisions stated herein, Contractor may retain and use Plan Revenue for the following purposes:

a) to repay any debt incurred and/or secured by the specific project that generates the revenue;

b) to pay for operational costs of the project;

c) to pay for maintenance costs of the project; and/or

d) to pay for any of the foregoing purposes for other services (including capital improvement projects) that are included in Contractor's Scope of Services (Exhibit A) and Plan Budget (Exhibit B).

Contractor shall account for Plan Revenue separately in the account established pursuant to Section 8.2 below. Documentation of all transactions using Plan Revenue shall be included in the monthly reports and the annual audit.

7.7 **BUDGET ADJUSTMENTS**. Contractor shall have authority to adjust the line items of its Plan Budget. Contractor shall notify the City, in writing, of any Plan Budget line item adjustment greater than five percent, regardless of the sources of funds for that line item.

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 Plan (including, but not limited to, all books, accounting records, invoices, receipts, payroll records, personnel records, and any other data and/or records pertaining to all matters covered in this Agreement or required by the Operating Manual) 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 Plan-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.** Upon one business day written notice by the City and as often as the City deems necessary, Contractor shall permit, and require its Subcontractors to permit, the City, or its authorized agents, to inspect and photocopy, at a reasonable location within the County of San Diego (e.g., the offices of Contractor or relevant Subcontractor), all books, accounting records, invoices, receipts, payroll records, personnel records, and any other Plan-related 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 under this Agreement. 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.

8.4 **STORAGE PERIOD.** Contractor shall store, and require its Subcontractors to store, all Plan-related data and records for a period of not less than five years from the expiration date of this Agreement. 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 its 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 Plan-related data and/or records.

8.5 **ORIGINAL DOCUMENTS.** Notwithstanding the foregoing, upon the expiration or termination of this Agreement, 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.** 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 Plan, 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

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 shall be clearly identified in the audit reports, as well as the dollar amount allocated to the Plan 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. 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 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 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**

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 During the annual budget process each fiscal year, Contractor shall submit to the City a report describing Contractor's accomplishments for the fiscal year to date, a narrative of proposed activities for the coming fiscal year, as well as a proposed

budget and personnel schedule of Contractor's job classifications (identifying salaries and all benefits). Contractor shall provide the City written notice of any changes in Contractor's board (i.e., board of directors and/or advisory board to the district).

9.3.3 Contractor shall prepare an Annual Report, summarizing Contractor's goals and accomplishments for Fiscal Year 2008. The report shall be delivered to the City by November 30, 2008.

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 **CONFLICT 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 Contractor's performance of its obligations and/or duties under this Agreement, 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: 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.** 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 **DRUG-FREE WORKPLACE.**

10.7.1 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.

10.7.2 Contractor shall post in a prominent place at Contractor's office 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.

10.7.3 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.

10.7.4 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.

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

10.8 **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.

10.9 **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.

10.10 **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 CPD Program.

10.11 **POLITICAL ACTIVITY.** Contractor shall not use, and require its subcontractors not to use, any of the funds generated pursuant to this Agreement, or any personnel or materials paid for with funds generated 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.

10.12 **BROWN ACT.** Contractor shall comply with the provisions of the Ralph M. Brown Act, codified in California Government Code sections 54950-54963.

10.13 **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 relating to the activities of the District.

10.14 **OPERATING MANUAL**. Contractor acknowledges receipt of, and shall comply with,

the Operating Manual, which is hereby incorporated in full and made a part of this Agreement by this reference, including, but not limited to, those provisions related to fiscal accountability, eligible and ineligible Plan expenditures, and procedures for financial management, accounting, budgeting, record keeping, reporting, and other administrative functions. If Contractor desires any change to the procedures set forth in the Operating Manual, Contractor shall request such change, in writing, and secure the City's written approval before implementing any such change.

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 16.2.1 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 Scope of Services (Exhibit A). 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 – TERMINATION

13.1 **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).

13.2 **TERMINATION FOR CURABLE DEFAULT.** Except as provided in Section 13.3 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 **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), for reasons including, but not limited to, each of the following:

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, becomes subject to any pending court action or proceeding with respect to the performance of Contractor's obligations and/or duties under this Agreement (or any prior agreement with the City to administer the District), which may jeopardize or adversely affect the Parties' understanding of, and/or Contractor's performance of its obligations and/or duties under, this Agreement;

c) Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors; and/or

d) Contractor is unable or unwilling to comply with any additional terms or conditions concerning the Plan that may be required by newly enacted (or amended) federal, state, and/or local laws, rules, regulations, and/or other directives.

13.4 **CONTINUING RESPONSIBILITIES.** 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. After filing of documents and completion of performance, Contractor shall, upon the termination date of this Agreement, 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.

13.5 **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.

13.6 **NO SUBSEQUENT AGREEMENT.** In the event this Agreement expires and the City elects not to enter into a subsequent agreement with Contractor to administer the District for the following fiscal year, Contractor shall deliver to the City:

a) 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, no later than the expiration date of this Agreement; and

b) the Annual Report, in accordance with Section 9.3.3 above.

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 any action or proceeding 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 reimburse 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 the work or services 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 the City any and all costs the 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, 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.

The City will forward the Subcontractors List to EOCP.

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 that includes the name and contact information of any new or substitute Subcontractor hired to provide the additional Subcontractor services.

The City will forward the updated Subcontractors List to EOCP.

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 10.11 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 deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement.

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: Scott Kessler, Deputy Director
1200 Third Ave., Suite 1400
San Diego, CA 92101

Notice to Contractor shall be addressed as specified in Exhibit A.

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 such information to any third party, without the prior written consent of the City.

18.2 Section 18.1 above 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 – 6270).

ARTICLE XIX – PRODUCT ENDORSEMENTS

19.1 Contractor shall comply with the provisions of City Administrative Regulation 95.65 regarding product endorsements. Contractor shall not create any promotional material or writing that identifies or refers to the City as the user of a product or service, without 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. Any newly adopted rules and regulations or changes to existing rules and regulations shall become effective for the administration of this Agreement upon receipt by the City, and written notice of such newly adopted rules and regulations or changes to existing rules and regulations to Contractor.

20.3 **JURISDICTION AND VENUE.** The Parties agree to submit to the personal jurisdiction of, and that venue shall be in, any State Court within the County of San Diego, State of California, for any dispute, claim, or matter arising out of, or related to, this Agreement, subject to the requirements of Article XIV above.

20.4 **INTEGRATED AGREEMENT.** This Agreement, and the Exhibits and references incorporated into this Agreement, fully express all understandings of the Parties concerning the matters covered in this Agreement. All prior negotiations and agreements are merged into this Agreement.

20.5 **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 payment 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 payment specified under this Agreement, shall be accomplished by a written amendment to this Agreement, provided that:

1) if the change results in a total payment to Contractor of $250,000 or more, then such amendment shall 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 payment to Contractor of less than $250,000, then such amendment shall be signed by the authorized representatives of the City and Contractor.

20.6 **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.

20.7 **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.

20.8 **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.

20.9 **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.

20.10 **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.

20.11 **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.

20.12 **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.

20.13 **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.

20.14 **HEADINGS.** All headings in this Agreement are for convenience only, and shall not affect the interpretation of this Agreement.

20.15 **EXHIBITS INCORPORATED.** All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

IN WITNESS WHEREOF, this Agreement is executed by The City of San Diego, acting by and through its Mayor, pursuant to Resolution No. R-_____, authorizing such execution, and by Contractor.

Dated this _____ day of _____, 200__.

The City of San Diego

By _____
W. Downs Prior
Principal Contract Specialist

Old Town San Diego
Chamber of Commerce

By_____
Fred Grand
President

I HEREBY APPROVE the form and legality of the foregoing Agreement this _____ day of _____, 200__.

MICHAEL J. AGUIRRE
City Attorney

By _____
Michael D. Neumeyer
Deputy City Attorney

COMMUNITY PARKING DISTRICT PROGRAM

The following Scope of Services outlines of the activities/services for the contract period of July 1, 2007 to June 30, 2008. The outline includes: a.) the overarching goals of the Contractor/Agency, b.) the program objectives (described in measurable objectives as appropriate), and c.) a section summarizing operational expenses (Exhibit B).

Old Town Chamber of Commerce for Old Town Community Parking District goals:

To improve the Old Town community by increasing parking options, ensuring safe, friendly streets, and promoting economic revitalization for visitors, residents, employees and business owners.

Program Objectives:

1) Hire and work with consultants to complete one comprehensive plan to determine feasibility, site, and architectural drawings for a parking structure in Old Town.

2) Write a one formal request to obtain city approval of a parking facility site selection.

3) Write five traffic requests to the Traffic Engineering Division of the City (and follow up on each request) to evaluate following intersections and streets for traffic flow and on street parking:
    1. Congress and Taylor Street
    2. Juan Street at Twiggs and Harney Streets
    3. San Diego Avenue at Twiggs, Harney and Conde Streets
    4. Propose one-way street direction on Twiggs and Harney Streets.
    5. Implement angle parking on San Diego Avenue which will result in an increase of 8 additional parking spaces.

4) Hold as a minimum, two (2) community outreach meetings to receive and address issues raised by the Old Town Community.

5) Pursue construction funding through grants, loans, donors, and/or private investors.
6) Complete one survey of existing red and loading zones.
7) Write a formal proposal for shared parking at the Caltrans and Perry's Cafe parking lots.

COMMUNITY PARKING DISTRICT PROGRAM
Fiscal Year 2008

Contractor: Old Town Chamber of Commerce
Mailing Address: P.O. Box 82686 San Diego, CA 92138
Fiscal Year End: June 30, 2008

Uptown Community Parking District: Budget Summary FY08

Expenditure Categories	CPD Funds	OT Chamber Funds
Personnel	$ -	$ 5,000
Operating	$ -	$ 3,900
Outreach/Promotion	$ -	$ 350
Consultant - Parking study /1	$ -	$ 26,500
Contingency Financing	$ -	$ 1,795
TOTAL	$ -	$ 37,545

1/ Grant pass through from the Business Improvement District Council

002121

AGREEMENT BETWEEN THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION, AND THE PACIFIC BEACH COMMUNITY DEVELOPMENT CORPORATION D.B.A. DISCOVER PACIFIC BEACH

This Agreement [Agreement] is entered into by the City of San Diego, a municipal corporation [City] and The Pacific Beach Community Development Corporation d.b.a. Discover Pacific Beach [Contractor], hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, pursuant to Council Policy 100-18, the City established the Community Parking District Program [CPD Program], whereby communities unable to meet existing parking demands may devise and implement parking management solutions to meet their specific needs and resolve undesirable parking impacts; and

WHEREAS, Council Policy 100-18 allows for the formation of Community Parking Districts in areas where there are no existing parking revenues, provided that alternative revenue sources are identified to fulfill the community parking district implementation plan; and

WHEREAS, the City Council designated a specific geographic area (1995 Pacific Beach Community Plan Area) as the Pacific Beach Community Parking District [District]; and

WHEREAS, on June 27, 2005, the City Council adopted Resolution No. R-300585, in which the City Council designated Contractor as the Advisory Board for the District; and

WHEREAS, on _____, ____, the City Council adopted Resolution No. R-_____, in which the City Council approved the Implementation Plan [Plan] and Budget for FY 2008 to be carried out by Contractor;

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.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.]

ARTICLE II - DEFINITIONS

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

2.1 Operating Manual – The City's "Operating Manual for Economic Development Programs" (revised 2007), which contains prescribed procedures for fiscal management and accountability of programs and/or projects receiving City and/or federal funds.

2.2 Plan Budget – The total amount of money allocated and available to fund this Agreement, as set forth in Exhibit B.

2.3 Subcontractor – Any entity other than the City that furnishes supplies or services (other than office space, standard commercial supplies, printing services, or other administrative or operational services) to Contractor in connection with Contractor's performance of its obligations and/or duties under 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, 2007 and continue for one year until June 30, 2008, 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 City's designated representative 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 if the designated representative is within the Division, shall inform Contractor, in writing, of the new designated representative within ten calendar days of the date of such change. If the new designated representative is outside the Division, and the City has knowledge of the new designated representative ninety calendar days prior to the date of the change, the City will inform Contractor, in writing, of the new designated representative at least ninety calendar days prior to the date of such change. However, if the new designated representative is outside the Division, and the City does not have knowledge of the new designated representative ninety calendar days prior to the date of the change, the City will inform Contractor, in writing, of the new designated representative within five calendar days of City's knowledge of the pending 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. Contractor shall have no authority to bind the City in any manner, nor to incur any obligation, debt or liability of any kind, on behalf of or against the City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by the City.

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. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee, but any such assignment shall be ineffective, null and void.

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 Plan Budget (Exhibit B) and all other terms and conditions of this Agreement.

6.2 The Scope of Services (Exhibit A) shall include measurable objectives to provide a sound basis for the City to effectively monitor Contractor's performance under this Agreement.

ARTICLE VII – PLAN BUDGET AND EXPENDITURES; TOTAL PAYMENT; PLAN REVENUE

7.1 **PLAN BUDGET AND EXPENDITURES.** The Plan 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.

7.2 **(reserved)**

7.3 **TOTAL PAYMENT.** The total payment to be paid to Contractor under this Agreement shall not, under any circumstances, exceed $1 (one dollar).

7.4 **ADDITIONAL FUNDING SOURCES**. If Contractor has received or does receive additional funding for the Plan 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 Plan expenditures to the appropriate funding source at the time incurred. Contractor expressly understands that any cost incurred in connection with the Plan that is properly chargeable to, and actually claimed for compensation or reimbursement under, a funding source other than the City, shall not be allowed as a chargeable cost under this Agreement.

7.5 **(reserved)**

7.6 **PLAN REVENUE**. All revenue that is generated by Contractor as a result of its performance of activities described in the Plan, including interest earned on accrued revenue deposited in an interest bearing account, is considered Plan Revenue. It is anticipated that some of Contractor's services (including capital improvement projects) may generate Plan Revenue. Subject to the provisions stated herein, Contractor may retain and use Plan Revenue for the following purposes:

a) to repay any debt incurred and/or secured by the specific project that generates the revenue;

b) to pay for operational costs of the project;

c) to pay for maintenance costs of the project; and/or

d) to pay for any of the foregoing purposes for other services (including capital improvement projects) that are included in Contractor's Scope of Services (Exhibit A) and Plan Budget (Exhibit B).

Contractor shall account for Plan Revenue separately in the account established pursuant to Section 8.2 below. Documentation of all transactions using Plan Revenue shall be included in the monthly reports and the annual audit.

7.7 **BUDGET ADJUSTMENTS**. Contractor shall have authority to adjust the line items of its Plan Budget. Contractor shall notify the City, in writing, of any Plan Budget line item adjustment greater than five percent, regardless of the sources of funds for that line item.

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 Plan (including, but not limited to, all books, accounting records, invoices, receipts, payroll records, personnel records, and any other data and/or records pertaining to all matters covered in this Agreement or required by the Operating Manual) 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 Plan-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.** Upon one business day written notice by the City and as often as the City deems necessary, Contractor shall permit, and require its Subcontractors to permit, the City, or its authorized agents, to inspect and photocopy, at a reasonable location within the County of San Diego (e.g., the offices of Contractor or relevant Subcontractor), all books, accounting records, invoices, receipts, payroll records, personnel records, and any other Plan-related 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 under this Agreement. 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.

8.4 **STORAGE PERIOD.** Contractor shall store, and require its Subcontractors to store, all Plan-related data and records for a period of not less than five years from the expiration date of this Agreement. 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 its 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 Plan-related data and/or records.

8.5 **ORIGINAL DOCUMENTS.** Notwithstanding the foregoing, upon the expiration or termination of this Agreement, 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.** 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 Plan, 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

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 shall be clearly identified in the audit reports, as well as the dollar amount allocated to the Plan 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. 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 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 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**

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 During the annual budget process each fiscal year, Contractor shall submit to the City a report describing Contractor's accomplishments for the fiscal year to date, a narrative of proposed activities for the coming fiscal year, as well as a proposed

budget and personnel schedule of Contractor's job classifications (identifying salaries and all benefits). Contractor shall provide the City written notice of any changes in Contractor's board (i.e., board of directors and/or advisory board to the district).

9.3.3 Contractor shall prepare an Annual Report, summarizing Contractor's goals and accomplishments for Fiscal Year 2008. The report shall be delivered to the City by November 30, 2008.

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 **CONFLICT 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 Contractor's performance of its obligations and/or duties under this Agreement, 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: 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.** 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 **DRUG-FREE WORKPLACE.**

10.7.1 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.

10.7.2 Contractor shall post in a prominent place at Contractor's office 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.

10.7.3 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.

10.7.4 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.

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

10.8 **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.

10.9 **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.

10.10 **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 CPD Program.

10.11 **POLITICAL ACTIVITY.** Contractor shall not use, and require its subcontractors not to use, any of the funds generated pursuant to this Agreement, or any personnel or materials paid for with funds generated 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.

10.12 **BROWN ACT.** Contractor shall comply with the provisions of the Ralph M. Brown Act, codified in California Government Code sections 54950-54963.

10.13 **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 relating to the activities of the District.

10.14 **OPERATING MANUAL**. Contractor acknowledges receipt of, and shall comply with,

the Operating Manual, which is hereby incorporated in full and made a part of this Agreement by this reference, including, but not limited to, those provisions related to fiscal accountability, eligible and ineligible Plan expenditures, and procedures for financial management, accounting, budgeting, record keeping, reporting, and other administrative functions. If Contractor desires any change to the procedures set forth in the Operating Manual, Contractor shall request such change, in writing, and secure the City's written approval before implementing any such change.

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 16.2.1 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 Scope of Services (Exhibit A). 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 – TERMINATION

13.1 **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).

13.2 **TERMINATION FOR CURABLE DEFAULT.** Except as provided in Section 13.3 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 **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), for reasons including, but not limited to, each of the following:

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, becomes subject to any pending court action or proceeding with respect to the performance of Contractor's obligations and/or duties under this Agreement (or any prior agreement with the City to administer the District), which may jeopardize or adversely affect the Parties' understanding of, and/or Contractor's performance of its obligations and/or duties under, this Agreement;

c) Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors; and/or

d) Contractor is unable or unwilling to comply with any additional terms or conditions concerning the Plan that may be required by newly enacted (or amended) federal, state, and/or local laws, rules, regulations, and/or other directives.

13.4 **CONTINUING RESPONSIBILITIES.** 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. After filing of documents and completion of performance, Contractor shall, upon the termination date of this Agreement, 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.

13.5 **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.

13.6 **NO SUBSEQUENT AGREEMENT.** In the event this Agreement expires and the City elects not to enter into a subsequent agreement with Contractor to administer the District for the following fiscal year, Contractor shall deliver to the City:

a) 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, no later than the expiration date of this Agreement; and

b) the Annual Report, in accordance with Section 9.3.3 above.

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 any action or proceeding 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 reimburse 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 the work or services 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 the City any and all costs the 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, 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.

The City will forward the Subcontractors List to EOCP.

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 that includes the name and contact information of any new or substitute Subcontractor hired to provide the additional Subcontractor services.

The City will forward the updated Subcontractors List to EOCP.

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 10.11 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 deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement.

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: Scott Kessler, Deputy Director
1200 Third Ave., Suite 1400
San Diego, CA 92101

Notice to Contractor shall be addressed as specified in Exhibit A.

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 such information to any third party, without the prior written consent of the City.

18.2 Section 18.1 above 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 – 6270).

ARTICLE XIX – PRODUCT ENDORSEMENTS

19.1 Contractor shall comply with the provisions of City Administrative Regulation 95.65 regarding product endorsements. Contractor shall not create any promotional material or writing that identifies or refers to the City as the user of a product or service, without 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. Any newly adopted rules and regulations or changes to existing rules and regulations shall become effective for the administration of this Agreement upon receipt by the City, and written notice of such newly adopted rules and regulations or changes to existing rules and regulations to Contractor.

20.3 **JURISDICTION AND VENUE.** The Parties agree to submit to the personal jurisdiction of, and that venue shall be in, any State Court within the County of San Diego, State of California, for any dispute, claim, or matter arising out of, or related to, this Agreement, subject to the requirements of Article XIV above.

20.4 **INTEGRATED AGREEMENT.** This Agreement, and the Exhibits and references incorporated into this Agreement, fully express all understandings of the Parties concerning the matters covered in this Agreement. All prior negotiations and agreements are merged into this Agreement.

20.5 **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 payment 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 payment specified under this Agreement, shall be accomplished by a written amendment to this Agreement, provided that:

1) if the change results in a total payment to Contractor of $250,000 or more, then such amendment shall 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 payment to Contractor of less than $250,000, then such amendment shall be signed by the authorized representatives of the City and Contractor.

20.6 **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.

20.7 **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.

20.8 **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.

20.9 **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.

20.10 **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.

20.11 **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.

20.12 **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.

20.13 **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.

20.14 **HEADINGS.** All headings in this Agreement are for convenience only, and shall not affect the interpretation of this Agreement.

20.15 **EXHIBITS INCORPORATED.** All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

IN WITNESS WHEREOF, this Agreement is executed by The City of San Diego, acting by and through its Mayor, pursuant to Resolution No. R-_____, authorizing such execution, and by Contractor.

Dated this _____ day of _____, 200__.

The City of San Diego

By _____
W. Downs Prior
Principal Contract Specialist

The Pacific Beach Community Development Corporation, d.b.a. Discover Pacific Beach

By_____
George Ondovchak
President

I HEREBY APPROVE the form and legality of the foregoing Agreement this _____ day of _____, 200__.

MICHAEL J. AGUIRRE
City Attorney

By _____
Michael D. Neumeyer
Deputy City Attorney

002144

COMMUNITY PARKING DISTRICT PROGRAM

The following Scope of Services outlines of the activities/services for the contract period of July 1, 2007 to June 30, 2008. The outline includes: a.) the overarching goals of the Contractor/Agency, b.) the program objectives (described in measurable objectives as appropriate), and c.) a section summarizing operational expenses (Exhibit B).

Discover Pacific Beach for Pacific Beach Community Parking District goals:

To develop a comprehensive parking management plan for the Pacific Beach community that encourages access to the beaches, businesses and residences for visitors, residents, employees and business owners.

Program Objectives:

1. **Complete one comprehensive parking management plan for the Pacific Beach area.**
2. **Meet with City of San Diego staff once a month to identify potential changes to the parking requirements for development projects in Pacific Beach. Produce one report on the process and outcome of these efforts by the end of the contract period.**
3. **Coordinate with Pacific Beach Town Council and the Pacific Beach Planning Group to meet five times during the year to better coordinate activates related to transportation and parking in Pacific Beach.**
4. **Maintain and update the Pacific Beach website to promote existing public and private parking reservoirs.**
5. **Complete one survey of the existing parking reservoirs and resources.**
6. **Participate on the Parking Advisory Board once a month to engage in discussions relating to time relevant issues such as the oversized vehicle ordinance and changes to parking requirement concerning new developments and condo conversions.**

002145

COMMUNITY PARKING DISTRICT PROGRAM
Fiscal Year 2008

Contractor: Discover Pacific Beach for the Pacific Beach Community Parking District
Mailing Address: 1503 Garnet Avenue, Pacific Beach, CA 92109
Fiscal Year End: June 30, 2008

Pacific Beach Community Parking District: Budget FY08

Expenditure Categories	CPD Funds	Other Funds (Discover PB)
Personnel	$ -	$ 13,470
Operating	$ -	$ -
Outreach/Promotion	$ -	$ -
Consultant - Parking study /1	$ -	$ 26,000
Contingency Financing	$ -	
TOTAL	$ -	$ 39,470

1/ Grant pass through from the Business Improvement District Council

002147

AGREEMENT BETWEEN THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION, AND PROMOTE LA JOLLA, INC.

This Agreement [Agreement] is entered into by the City of San Diego, a municipal corporation [City] and Promote La Jolla, Inc. [Contractor], hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, pursuant to Council Policy 100-18, the City has established the Community Parking District Program [CPD Program], whereby communities unable to meet existing parking demands may devise and implement parking management solutions to meet their specific needs and resolve undesirable parking impacts; and

WHEREAS, Council Policy 100-18 allows for the formation of Community Parking Districts in areas where there are no existing parking revenues, provided that alternative revenue sources are identified to fulfill the community parking district implementation plan; and

WHEREAS, the City Council designated a specific geographic area (La Jolla Community Plan Area that lies within Council District One) as the La Jolla Community Parking District [District]; and

WHEREAS, on June 27, 2005, the City Council adopted Resolution No. R-300586, in which the City Council designated Contractor as the Advisory Board for the District; and

WHEREAS, on _____, ____, the City Council adopted Resolution No. R-_____, in which the City Council approved the Implementation Plan [Plan] and Budget for FY 2008 to be carried out by Contractor;

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.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.]

ARTICLE II - DEFINITIONS

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

2.1 Operating Manual – The City's "Operating Manual for Economic Development Programs" (revised 2007), which contains prescribed procedures for fiscal management and accountability of programs and/or projects receiving City and/or federal funds.

2.2 Plan Budget – The total amount of money allocated and available to fund this Agreement, as set forth in Exhibit B.

2.3 Subcontractor – Any entity other than the City that furnishes supplies or services (other than office space, standard commercial supplies, printing services, or other administrative or operational services) to Contractor in connection with Contractor's performance of its obligations and/or duties under 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, 2007 and continue for one year until June 30, 2008, 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 City's designated representative 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 if the designated representative is within the Division, shall inform Contractor, in writing, of the new designated representative within ten calendar days of the date of such change. If the new designated representative is outside the Division, and the City has knowledge of the new designated representative ninety calendar days prior to the date of the change, the City will inform Contractor, in writing, of the new designated representative at least ninety calendar days prior to the date of such change. However, if the new designated representative is outside the Division, and the City does not have knowledge of the new designated representative ninety calendar days prior to the date of the change, the City will inform Contractor, in writing, of the new designated representative within five calendar days of City's knowledge of the pending 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. Contractor shall have no authority to bind the City in any manner, nor to incur any obligation, debt or liability of any kind, on behalf of or against the City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by the City.

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. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee, but any such assignment shall be ineffective, null and void.

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 Plan Budget (Exhibit B) and all other terms and conditions of this Agreement.

6.2 The Scope of Services (Exhibit A) shall include measurable objectives to provide a sound basis for the City to effectively monitor Contractor's performance under this Agreement.

ARTICLE VII – PLAN BUDGET AND EXPENDITURES; TOTAL PAYMENT; PLAN REVENUE

7.1 **PLAN BUDGET AND EXPENDITURES.** The Plan 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.

7.2 **(reserved)**

7.3 **TOTAL PAYMENT.** The total payment to be paid to Contractor under this Agreement shall not, under any circumstances, exceed $1 (one dollar).

7.4 **ADDITIONAL FUNDING SOURCES**. If Contractor has received or does receive additional funding for the Plan 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 Plan expenditures to the appropriate funding source at the time incurred. Contractor expressly understands that any cost incurred in connection with the Plan that is properly chargeable to, and actually claimed for compensation or reimbursement under, a funding source other than the City, shall not be allowed as a chargeable cost under this Agreement.

7.5 **(reserved)**

7.6 **PLAN REVENUE**. All revenue that is generated by Contractor as a result of its performance of activities described in the Plan, including interest earned on accrued revenue deposited in an interest bearing account, is considered Plan Revenue. It is anticipated that some of Contractor's services (including capital improvement projects) may generate Plan Revenue. Subject to the provisions stated herein, Contractor may retain and use Plan Revenue for the following purposes:

a) to repay any debt incurred and/or secured by the specific project that generates the revenue;

b) to pay for operational costs of the project;

c) to pay for maintenance costs of the project; and/or

d) to pay for any of the foregoing purposes for other services (including capital improvement projects) that are included in Contractor's Scope of Services (Exhibit A) and Plan Budget (Exhibit B).

Contractor shall account for Plan Revenue separately in the account established pursuant to Section 8.2 below. Documentation of all transactions using Plan Revenue shall be included in the monthly reports and the annual audit.

7.7 **BUDGET ADJUSTMENTS**. Contractor shall have authority to adjust the line items of its Plan Budget. Contractor shall notify the City, in writing, of any Plan Budget line item adjustment greater than five percent, regardless of the sources of funds for that line item.

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 Plan (including, but not limited to, all books, accounting records, invoices, receipts, payroll records, personnel records, and any other data and/or records pertaining to all matters covered in this Agreement or required by the Operating Manual) 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 Plan-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.** Upon one business day written notice by the City and as often as the City deems necessary, Contractor shall permit, and require its Subcontractors to permit, the City, or its authorized agents, to inspect and photocopy, at a reasonable location within the County of San Diego (e.g., the offices of Contractor or relevant Subcontractor), all books, accounting records, invoices, receipts, payroll records, personnel records, and any other Plan-related 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 under this Agreement. 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.

8.4 **STORAGE PERIOD.** Contractor shall store, and require its Subcontractors to store, all Plan-related data and records for a period of not less than five years from the expiration date of this Agreement. 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 its 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 Plan-related data and/or records.

8.5 **ORIGINAL DOCUMENTS.** Notwithstanding the foregoing, upon the expiration or termination of this Agreement, 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.** 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 Plan, 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

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 shall be clearly identified in the audit reports, as well as the dollar amount allocated to the Plan 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. 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 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 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**

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 During the annual budget process each fiscal year, Contractor shall submit to the City a report describing Contractor's accomplishments for the fiscal year to date, a narrative of proposed activities for the coming fiscal year, as well as a proposed

budget and personnel schedule of Contractor's job classifications (identifying salaries and all benefits). Contractor shall provide the City written notice of any changes in Contractor's board (i.e., board of directors and/or advisory board to the district).

9.3.3 Contractor shall prepare an Annual Report, summarizing Contractor's goals and accomplishments for Fiscal Year 2008. The report shall be delivered to the City by November 30, 2008.

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 **CONFLICT 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 Contractor's performance of its obligations and/or duties under this Agreement, 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: 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.** 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 **DRUG-FREE WORKPLACE.**

10.7.1 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.

10.7.2 Contractor shall post in a prominent place at Contractor's office 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.

10.7.3 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.

10.7.4 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.

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

10.8 **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.

10.9 **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.

10.10 **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 CPD Program.

10.11 **POLITICAL ACTIVITY.** Contractor shall not use, and require its subcontractors not to use, any of the funds generated pursuant to this Agreement, or any personnel or materials paid for with funds generated 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.

10.12 **BROWN ACT.** Contractor shall comply with the provisions of the Ralph M. Brown Act, codified in California Government Code sections 54950-54963.

10.13 **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 relating to the activities of the District.

10.14 **OPERATING MANUAL**. Contractor acknowledges receipt of, and shall comply with,

the Operating Manual, which is hereby incorporated in full and made a part of this Agreement by this reference, including, but not limited to, those provisions related to fiscal accountability, eligible and ineligible Plan expenditures, and procedures for financial management, accounting, budgeting, record keeping, reporting, and other administrative functions. If Contractor desires any change to the procedures set forth in the Operating Manual, Contractor shall request such change, in writing, and secure the City's written approval before implementing any such change.

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 16.2.1 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 Scope of Services (Exhibit A). 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 – TERMINATION

13.1 **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).

13.2 **TERMINATION FOR CURABLE DEFAULT.** Except as provided in Section 13.3 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 **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), for reasons including, but not limited to, each of the following:

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, becomes subject to any pending court action or proceeding with respect to the performance of Contractor's obligations and/or duties under this Agreement (or any prior agreement with the City to administer the District), which may jeopardize or adversely affect the Parties' understanding of, and/or Contractor's performance of its obligations and/or duties under, this Agreement;

c) Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors; and/or

d) Contractor is unable or unwilling to comply with any additional terms or conditions concerning the Plan that may be required by newly enacted (or amended) federal, state, and/or local laws, rules, regulations, and/or other directives.

13.4 **CONTINUING RESPONSIBILITIES.** 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. After filing of documents and completion of performance, Contractor shall, upon the termination date of this Agreement, 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.

13.5 **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.

13.6 **NO SUBSEQUENT AGREEMENT.** In the event this Agreement expires and the City elects not to enter into a subsequent agreement with Contractor to administer the District for the following fiscal year, Contractor shall deliver to the City:

a) 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, no later than the expiration date of this Agreement; and

b) the Annual Report, in accordance with Section 9.3.3 above.

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 any action or proceeding 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 reimburse 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 the work or services 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 the City any and all costs the 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, 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.

The City will forward the Subcontractors List to EOCP.

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 that includes the name and contact information of any new or substitute Subcontractor hired to provide the additional Subcontractor services.

The City will forward the updated Subcontractors List to EOCP.

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 10.11 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 deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement.

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: Scott Kessler, Deputy Director
1200 Third Ave., Suite 1400
San Diego, CA 92101

Notice to Contractor shall be addressed as specified in Exhibit A.

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 such information to any third party, without the prior written consent of the City.

18.2 Section 18.1 above 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 – 6270).

ARTICLE XIX – PRODUCT ENDORSEMENTS

19.1 Contractor shall comply with the provisions of City Administrative Regulation 95.65 regarding product endorsements. Contractor shall not create any promotional material or writing that identifies or refers to the City as the user of a product or service, without 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. Any newly adopted rules and regulations or changes to existing rules and regulations shall become effective for the administration of this Agreement upon receipt by the City, and written notice of such newly adopted rules and regulations or changes to existing rules and regulations to Contractor.

20.3 **JURISDICTION AND VENUE.** The Parties agree to submit to the personal jurisdiction of, and that venue shall be in, any State Court within the County of San Diego, State of California, for any dispute, claim, or matter arising out of, or related to, this Agreement, subject to the requirements of Article XIV above.

20.4 **INTEGRATED AGREEMENT.** This Agreement, and the Exhibits and references incorporated into this Agreement, fully express all understandings of the Parties concerning the matters covered in this Agreement. All prior negotiations and agreements are merged into this Agreement.

20.5 **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 payment 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 payment specified under this Agreement, shall be accomplished by a written amendment to this Agreement, provided that:

1) if the change results in a total payment to Contractor of $250,000 or more, then such amendment shall 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 payment to Contractor of less than $250,000, then such amendment shall be signed by the authorized representatives of the City and Contractor.

20.6 **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.

20.7 **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.

20.8 **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.

20.9 **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.

20.10 **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.

20.11 **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.

20.12 **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.

20.13 **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.

20.14 **HEADINGS.** All headings in this Agreement are for convenience only, and shall not affect the interpretation of this Agreement.

20.15 **EXHIBITS INCORPORATED.** All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

IN WITNESS WHEREOF, this Agreement is executed by The City of San Diego, acting by and through its Mayor, pursuant to Resolution No. R-_____, authorizing such execution, and by Contractor.

Dated this _____ day of _____, 200__.

The City of San Diego

By _____
W. Downs Prior
Principal Contract Specialist

Promote La Jolla, Inc.

By_____
Deborah Marengo
President

I HEREBY APPROVE the form and legality of the foregoing Agreement this _____ day of _____, 200__.

MICHAEL J. AGUIRRE
City Attorney

By _____
Michael D. Neumeyer
Deputy City Attorney

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COMMUNITY PARKING DISTRICT PROGRAM

The following Scope of Services outlines of the activities/services for the contract period of July 1, 2007 to June 30, 2008. The outline includes: a.) the overarching goals of the Contractor/Agency, b.) the program objectives (described in measurable objectives as appropriate), and c.) a section summarizing operational expenses (Exhibit B).

Promote La Jolla for the La Jolla Community Parking District:

Our goal is to develop a comprehensive parking management plan for the La Jolla community that encourages access to the beaches, businesses and residences for visitors, residents, employees and business owners.

Program Objectives:

1. **Create and maintain the La Jolla Community Parking District website.**
2. **List each La Jolla CPD monthly meeting in the local newspaper.**
3. **Purchase $20,000 worth of parking passes from parking garages that are under utilized and re-sell them to the public below market rate.**
4. **Write one traffic request to reconfigure existing on-street parking along the Rainbow Curbing**
5. **Complete one comprehensive parking management plan for the La Jolla area.**
6. **Propose a comprehensive parking management plan to the Traffic Engineering Division of the City of San Diego.**
    a. **Proposal will consider paid on-street parking in the Core Village Commercial Area**
    b. **Proposal will consider a community shuttle**
    c. **Proposal will consider residential parking program**

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COMMUNITY PARKING DISTRICT PROGRAM
Fiscal Year 2008

Contractor: Promote La Jolla for the La Jolla Community Parking District
Mailing Address: P.O. Box 9047 La Jolla, CA 92037
Fiscal Year End: June 30, 2008

La Jolla Community Parking District: Budget FY08

Expenditure Categories	CPD Funds	Other Funds (Promote La Jolla)
Personnel	$ -	$ 12,500
Operating	$ -	$ 2,400
Outreach/Promotion	$ -	$ -
Consultant 1	$ -	$ -
Contingency Financing	$ -	$ -
TOTAL	$ -	$ 14,900