~~OPERATING AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO AND CENTRE CITY DEVELOPMENT CORPORATION, INC. FOR CERTAIN SERVICES TO IMPLEMENT THE REDEVELOPMENT OF THE CENTRE CITY AREA~~

~~THIS AGREEMENT~~**Amended and Restated**

Operating Agreement

Between the Redevelopment Agency of the

City of San Diego and

Centre City Development Corporation, Inc.

This Amended and Restated Operating Agreement ("Agreement") is made by the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a ~~municipal corporation~~public body, corporate and politic, organized and existing under Chapter 2 of the ~~constitution and~~ Community Redevelopment Law of the laws of the State of California, ~~herein called "~~("Agency~~,"~~") and CENTRE CITY ~~DEVELOPNENT~~DEVELOPMENT CORPORATION, INC., a California nonprofit public benefit corporation, ~~herein called "~~organized and existing under Division 2, Part 2 of the Corporation's Code of the laws of the State of California, ("Corporation~~"~~").

~~RECITALS~~

~~A. The purpose of this agreement is to express the~~**RECITALS**

A. The original Operating Agreement between the Agency and the Corporation was executed on January 22, 1982 ("1982 Agreement") and an amendment to the 1982 Agreement was executed by the Agency and the Corporation on October 14, 1986 ("1986 Agreement"). The 1982 Agreement together with the 1986 Agreement are collectively referred to as the "Original Agreement." This Agreement amends and restates the Original Agreement in its entirety and

accordingly, upon execution of this Agreement, the Original Agreement shall have no legal force or effect.

B. This Agreement sets forth the amended and restated terms and conditions upon which Agency hires Corporation to provide certain ~~staff~~ services ~~for the implementation of the project as defined herein.~~ as described herein and sets forth the amended and restated representations, warranties, covenants and conditions of the Corporation and Agency in connection with their respective rights and obligations herein.

~~B.~~ C. Agency has determined that the ~~best~~ interests of the inhabitants of the City of San Diego ~~will be~~("City") are served by an arrangement under which a corporation~~, the directors of which are responsible citizens of the San Diego area,~~ ~~assume~~ assumes responsibility for the development of and ~~formulate the policy for~~ the implementation of the ~~project.~~ Project, as defined herein.

~~C.~~ D. Corporation is a nonprofit public benefit corporation formed under the California Nonprofit Corporation Law ~~and~~ ("California Nonprofit Law"). The City of San Diego is the ~~only entity with any interest in the assets of Corporation upon its winding up and dissolution. As of the date of this amended agreement, Corporation' s Board of Directors consists of seven (7) persons of distinguished stature in the San Diego area who, through their effort and effective community leadership have expressed their interest in securing for said area the most efficient, useful and practical means~~sole member of ~~implementation of~~ the ~~project.~~Corporation under the California Nonprofit Law. The ~~organic~~ corporate documents of Corporation ~~secure to City~~include a provision that the City is the sole member of the Corporation and has the power to ~~continue~~

~~to~~ elect and to ~~retain individuals of such dedication and effectiveness on Corporation's~~ remove the Board of Directors ("Board ~~of Directors.~~").

NOW, THEREFORE, in consideration of the recitals and the mutual rights and obligations of the parties hereto as hereinafter expressed, Agency and Corporation agree as follows:

I

DEFINITIONS

Section 1.01. Agency.

"Agency" means the Redevelopment Agency of ~~The~~ the City of San Diego.

Section 1.02. Chairman.

"Chairman" shall mean the Chairman of the ~~Agency.~~ Board of the Corporation.

Section ~~1~~1.03. Project.

"Project" shall mean ~~a project or projects for redevelopment in~~ implementation and furtherance of the Centre City and Horton Plaza Redevelopment Plan(s) for the redevelopment, rehabilitation and revitalization of the Centre City area as defined in that certain ~~exhibit~~map attached hereto as Exhibit "A" ~~and~~ as amended from time to time which is incorporated herein by this reference ~~made a part hereof.~~.

~~Section 1.05. Term.~~

~~This Agreement shall become effective on the day of execution and continue in effect until terminated by either Corporation or Agency.~~

~~Agency may terminate this agreement by providing Corporation a written Notice to Terminate this Agreement ninety (90) days from the date of receipt of said notice.~~

~~Section 1.06. Proposed Budget.~~

~~"Proposed Budget" means a statement prepared by Corporation of the estimated revenues and expenditures of the Corporation during any fiscal year. It shall be prepared in such form as the Agency may require~~ **Section 1.04 Project Funds.** Project Funds shall mean the funds established by Agency to account for the Project cash, other financing resources, related liabilities, residual equities or balances and changes therein.

Section 1.05 Corporation Budget. "Corporation Budget" means a statement prepared by Corporation that i) is based on reasonable assumptions in connection with an appropriate due diligence review which has been approved by the Board, ii) contains its best estimate of the revenues and expenditures of the Corporation for the next succeeding fiscal year, iii) is in complete and final form, and iv) is submitted to the Agency at the time requested by, to the person or persons designated by the Agency Executive Director and in form and content acceptable to the Agency Executive Director or designee and in accordance with the administrative budget policies and procedures of the City and the Agency. In addition, prior to approval by the Board in accordance with subsection i) in the preceding sentence, the Corporation Budget shall first be prepared, reviewed and approved by management of the Corporation, then submitted to the Chief Financial Officer ("CFO") of the City for review and comment, then submitted to the Board for review and approval and finally submitted to the Board of Directors of the Agency ("Agency Board") for review and approval in accordance with this Section 1.05 and with Section 2.07 of this Agreement.

Section 1.06 Project Budget. "Project Budget" means a statement prepared by Corporation that i) is based on reasonable assumptions in connection with an appropriate due diligence review which has been approved by the Board, ii) contains its best estimate of the

revenues and expenditures of the Project for the next succeeding fiscal year, iii) is in complete and final form, and iv) is submitted to the Agency at the time requested by, to the person or persons designated by the Agency Executive Director and in form and content acceptable to the Agency Executive Director or designee, and in accordance with the administrative budget policies and procedures of the City and the Agency. In addition, prior to approval by the Board in accordance with subsection i) in the preceding sentence, all Project Budgets shall first be prepared, reviewed and approved by management of the Corporation, then submitted to the CFO of the City for review and comment then submitted to the Board for review and approval and finally submitted to the Agency Board for review and approval in accordance with this Section 1.06 and Section 2.07 of this Agreement.

In addition to anything else which Corporation may deem pertinent~~, the proposed budget.~~ and the Agency shall request or require, the Project Budget shall contain~~:~~ the following:

(i) ____Corporation's detailed recommendations regarding the specific steps which must or should be taken and in what order to provide for the ~~maintenance,~~ operation, expansion~~, and~~, improvement and general implementation of the Project;

(ii) ___Corporation's best estimate of the costs which may reasonably be expected to result from the adoption of any or all of Corporation's recommendations pursuant to clause (i) of this ~~section; and~~ sub-Section, which estimate is based on reasonable assumptions in connection with an appropriate due diligence review as approved by the Board; and

(iii) ___A statement of the ~~means~~various options (including a listing of, and a ranking of such options in order of preference as approved by the Board) which

Corporation suggests should be used ~~in paying~~to pay for the cost of adopting any or all of Corporation's recommendations pursuant to clause (i) of this sub-section.

~~Section 1.07. Proposed Transfer of Appropriations.~~

Section 1.07 Approved Corporation Budget. "Approved Corporation Budget" means the Corporation Budget that is submitted to the Agency Board for approval, and if the Agency Board, in its unlimited discretion, approves the Corporation Budget for the respective fiscal year, the Budget shall be deemed to be the Approved Corporation Budget.

Section 1.08 Approved Project Budget. "Approved Project Budget" means the Project Budget that is submitted to the Agency Board for approval, and if the Agency Board, in its unlimited discretion, approves the Project Budget, for the respective fiscal year, the Budget shall be deemed to be the Approved Project Budget

Section 1.09 Proposed Transfer of Appropriations. "Proposed Transfer of Appropriations" means a statement prepared by ~~Corporation of the estimated revenues and expenditures of the Corporation and of the Redevelopment Projects administered by the Corporation during any fiscal year of Corporation which, if deemed necessary by Corporation for the most efficient, practical~~the Corporation and ~~economic corporate operation, may from~~submitted to the Agency at the time ~~to time be submitted to Agency. It shall be prepared~~ requested by and ~~submitted as aforesaid~~in form and content acceptable to Agency for the purpose, if necessary, of requesting the transfer of all or part of an unencumbered balance of an appropriation between ~~personal,~~the personnel and non-~~personal and/~~personnel items in the Approved Corporation Budget or ~~contingency categories of the approved budget~~between specific appropriations within the Project Budget if, as determined by the Board, one or more of ~~those~~the categories therein has proved materially insufficient for the fiscal year~~. Such~~ and such transfer of appropriations is necessary.

The Proposed Transfer of Appropriations shall ~~not be necessary for the transfer of budgeted funds between items within any of the above mentioned categories; such transfers shall be made at the discretion of the Corporation as~~ be based on reasonable assumptions in connection with an appropriate ~~for~~due diligence review as approved by the ~~operation of the Corporation and the implementation of the Centre City Redevelopment Projects~~Board.

~~Section 1.08. Approved Budget.~~

~~"Approved Budget" means that budget which, following submission by~~ Corporation agrees that any transfer of ~~the proposed budget, Agency,~~ funds in ~~its unlimited discretion, approves for~~ the Corporation Budget in excess of $10,000 must be presented to and ~~those Redevelopment Projects administered by~~approved by the Board on a monthly basis. All amendments to the ~~Corporation, for~~Project Budget require Agency Board approval except as delegated in the ~~respective fiscal year.~~Annual Appropriation Resolution.

Section 1.~~09.~~ 10 Approved Transfer of Appropriations

. "Approved Transfer of Appropriations" means ~~that budget~~the Proposed Transfer of Appropriations which the Agency Board, in its unlimited discretion, approves for Corporation, and the ~~Redevelopment Projects~~Project administered by the Corporation~~, following the submission to it of any proposed transfer of appropriations.~~.

~~Section 1.10 Long Range Planning~~

~~"Long Range Planning" means the continuing study of the future redevelopment needs of the San Diego area and the development of plans, concepts and proposals to serve these needs.~~

~~II~~

~~COVENANTS OF CORPORATION~~

~~Section 2.01 Covenant to Perform Services.~~

~~(a) Corporation~~

II

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CORPORATION

The Corporation represents, warrants, covenants and agrees that:

Section 2.01 Organization, Corporate Power and Tax Filings. Corporation is a corporation duly organized, validly existing and in good standing under the laws of California with full power and authority to carry on the business in which it is engaged and to execute and deliver and carry out the provisions of this Agreement. Corporation has filed, in accordance with applicable law, all federal and California state tax returns and filings including those filings required by the Attorney General of the State of California for nonprofit public benefit corporations ("Filings"). During the term of this Agreement, Corporation agrees that it shall timely file in accordance with applicable law all such tax returns and Filings.

Section 2.02 Due Authorization and Effect of Agreement. No provisions of the Articles of Incorporation or Bylaws of Corporation, or of any agreement, instrument, understanding, or any judgment, decree, rule or regulation to which Corporation is a party or by which Corporation is bound, has been, or to the knowledge of the Corporation, will be, violated by the execution and delivery of this Agreement or by the performance or satisfaction of any agreement or condition herein contained upon its part to be performed or satisfied, and all requisite corporate and other authorizations for such execution, delivery, performance and

satisfaction have been duly obtained. Upon execution and delivery, this Agreement will be a legal, valid and binding obligation of Corporation, enforceable in accordance with its terms. Corporation is not in default in the performance, observance or fulfillment of any of the terms or conditions of its Articles of Incorporation or Bylaws.

Section 2.03 No Conflict. The execution and delivery of this Agreement and the consummation of the transactions set forth herein are not events that, of themselves or with the giving of notice or the passage of time or both, could constitute on the part of the Corporation a violation of or conflict with, or result in any breach of, or default under the terms, conditions or provisions of any judgment, law, regulation or of the Articles of Incorporation or Bylaws of Corporation, or of any agreement or instrument to which Corporation is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature on the assets of the Corporation or on any of the issued and outstanding debt of the Corporation, if any, as of the date of execution of this Agreement.

Section 2.04 Agendas and Minutes of the Board of Directors and Committees. Corporation has timely prepared all minutes of the proceedings of the Board and any committees thereof at all times. Effective on the date of the execution of this Agreement, Corporation shall prepare, maintain and provide timely public disclosure on its website of all agendas for, and the minutes of, the meetings of all Board and committees of the Board. Corporation shall maintain all minutes of the Board and committees thereof in accordance with applicable Board policies and has maintained and will continue to maintain in the future the originals of all such minutes in its books and records at its principal business address in accordance with applicable law and Board policies.

Section 2.05 Public Disclosure. Corporation shall timely provide at all times on its website, in addition to any other items set forth in this Agreement, copies of all material reports provided by or on behalf of the Corporation which are required to be disclosed, the current year Approved Corporation and Project Budgets as provided herein, the audited financial statements of the Corporation for the prior three (3) fiscal years, the Bylaws and all amendments thereto and the Articles of Incorporation and all amendments thereto.

Section 2.06 Performance of Services.

(a) Corporation agrees that it shall use its best efforts to provide and perform all services set forth in this Agreement in the most cost-effective and efficient manner (and provide such other related services as are requested by the Agency from time to time which services Corporation agrees are included within this Agreement) in accordance with applicable law, the terms and conditions of this Agreement, current best practices in municipal redevelopment, and applicable Board and Agency Board approved policies and procedures.

(b) Corporation shall, without any charge or fee whatsoever to Agency for such ~~service~~services, except as described in Section 3.03 herein, provide general management and any other staff services that are necessary or desirable for Agency for the Project in accordance with and limited by the ~~then~~ current ~~approved budget~~Approved Corporation and ~~approved transfer~~Project Budgets and Approved Transfer of ~~appropriations~~Appropriations, and in accordance with ~~the~~ its policies ~~and practices set forth therein.~~, and procedures and the terms and conditions in this Agreement.

(~~b~~) c) In implementing ~~the covenant expressed in subsection (a) of this~~ sub-section (b) of this Section, and not as a limitation on its generality, Corporation

~~covenants that it~~ shall, subject to the budgeting of funds for such services~~:~~ do the following:

(i) ___Provide overall executive direction for the management and administration of the Project, and Corporation shall report and recommend directly to the Agency Executive Director or designee through its ~~Executive Vice~~ President ~~on these matters.~~ or other appropriate executive officer;

(ii) ___Employ necessary personnel~~,~~ in accordance with Board approved policies and procedures on personnel and related matters; and

(iii) ___Retain, when necessary, appropriate consultants and experts~~, and~~ subject to appropriate Board approved policies and procedures including those for contracts set forth herein.

(iv)~~–~~__Acquire or dispose of real property ~~by any lawful means~~in accordance with this Agreement and Approved Project Budget, provided that property acquisition is included as a line item in the Approved Project Budget.

(~~c)~~ d) ___In the performance of its duties hereunder, Corporation ~~shall be~~agrees and acknowledges it is under the direction of Agency, and shall ~~abide by~~agree to and implement all actions taken, directives given, and policies and procedures adopted with respect to the Project by Agency. Corporation shall ~~report~~provide such reports as are required by Agency on all activities for which it is responsible~~. Subject to the provisions of State of California laws regarding public records, all reports, studies, findings, data, and information obtained or prepared by or at the direction of Corporation shall be the property of Agency, shall be confidential, and shall not be made available to any individual or organization except in connection with performance of the services~~

~~required by this agreement or in accordance with the prior written approval of Agency.~~ in the time and manner requested by Agency.

~~(d) Coordinate~~(e) Corporation shall timely and effectively coordinate and utilize in a cost-effective manner other services provided for the Project by Agency or ~~The~~ the City ~~of San Diego~~, or by consultants selected by and under separate ~~contract~~contracts with the City or Agency, and ~~supervision of~~supervise the work of such consultants, including ~~but not limited to~~ consultant reports, appraisals, engineering studies, marketability and feasibility studies, project improvements data, relocation studies, legal opinions and documentation, surveys of structural and environmental conditions, and architectural design advice~~.~~ and any other necessary or desirable related services.

~~(e) Coordinate~~(f) Corporation shall timely and effectively review, approve, coordinate and submit to the City Comptroller requests for payments related to contracts, services, land acquisition and other costs related to implementation of the Project. All payments related to the implementation of the Project shall comply with the Uniform Accounting Guidelines for Redevelopment Agencies established by the State Controller's Office; with fund restrictions established under CRL, bond covenants, applicable state and local law, grant agreements and any other restrictions on the Project funds; and with accounting policies established by the City Comptroller.

(g) Corporation shall timely and effectively coordinate activities and appearances before Agency and City bodies, agencies, departments and commissions, and Federal, State or ~~State~~local agencies and commissions, as may be necessary in obtaining approval of any ~~Urban Renewal Plan~~applications or ~~application~~related plans or programs for Federal ~~or~~, State

or local financial or technical assistance which would benefit the Project.—, or as requested by Agency.

(f) Coordinateh) Corporation shall timely and effectively coordinate, program and , schedule all, manage, supervise and administer the Project execution activities. .

(g) With respect to Project,(i) Corporation shall provide detailed and cost-effective planning services required for the Project execution, including but not limited to day-by-day analysis of changing conditions, review and analysis of developersdevelopers' proposals, staff services for the public and private entitlement process, the architectural design review process, preparation of graphics and any other materials or services necessary or desirable to stimulate and increase developer interest and participation in the Project.

(h) Coordinate(j) Corporation shall timely and effectively coordinate the real estate acquisition process necessary or desirable to execute the Project, including scheduling, supervision ofsupervising the preparation of appraisals by consultants not parties hereto, selected by and under separate contracts with Agency or Corporation, and obtaining approvals of acquisition prices, if required, from the Agency, and provide any other services necessary or desirable for such real estate acquisition process; provided, however, that Corporation shall not prepare appraisals, or conduct condemnation actions.

(i) Undertake(k) Corporation shall undertake any and all activityactivities which may be necessary and helpfulor desirable to the disposallease or dispose of Project land, including but not limited to supervisionsupervising the preparation of appraisals and reuse appraisals by appraisers selected by and under separate contracts with Agency or the Corporation, prepare preparing other documentation, records, reports and similar matters required or requested by Agency, establishestablishing contact with and attractattracting

the interest and cost-effective participation of developers and tenants; ~~conduct~~conducting negotiations with developers; ~~prepare~~preparing leases, disposition and related agreements~~,~~ ~~supervise~~ with the assistance of Agency General Counsel, supervising developers' performance under disposition ~~and~~, participation and related agreements; coordinating and expediting developers' design and construction activities~~.~~; and providing any other necessary or desirable services in connection therewith.

~~(j) When required by Agency,~~ (l) Corporation shall undertake any and all activities which may be necessary or desirable to conduct relocation ~~and~~, property and site management and related activities for the Project, including the processing of claims for losses of property and moving expenses~~,~~ and any other necessary or desirable services in connection therewith; [provided, however, that all funds received as rental of acquired properties shall be ~~paid over to Agency.~~promptly and appropriately deposited in the Project Funds.]

~~(k) Supervise,~~(m) Corporation shall prepare appropriate documentation reports and shall supervise and administer~~, and inspect (other than as such services are more properly performed by designing~~ licensed professional architects ~~or~~, engineers~~)~~ and construction managers selected by and under separate contracts with Agency or the Corporation pursuant to its duties under this Agreement including regarding the design ~~and~~, construction and inspection of ~~site~~public improvements and supporting facilities ~~provided for by Redevelopment Plans or their supporting documentation~~ to execute the Project.

(n) Corporation shall timely coordinate, program, schedule, inspect (to the extent ~~that~~ Agency is responsible for such ~~supervision, administration and inspection; provided, however, that such supervision, administration and~~ inspection

~~shall be required only to the extent agreed~~under this Agreement or under applicable law) and provide reports to ~~in writing by~~ the Agency ~~and Corporation.~~

~~(l) Coordinate, program, schedule and inspect (to the extent that Agency is responsible for such inspection)~~ or other parties, if applicable, regarding all work required ~~by any redevelopment plan~~ to be performed by Agency or City departments~~.~~ to execute the Project.

~~(m) Supervise~~(o) Corporation shall timely coordinate, supervise, and administer the architectural review process with respect to private construction and, to the extent applicable, public construction ~~within~~to execute the Project ~~area.~~.

(~~n) Provide~~p) Corporation shall timely and effectively coordinate, program, schedule, manage, supervise and administer in coordination with the City, Agency assisted public works projects to execute the Project, to the extent applicable.

(q) Corporation shall provide appropriate and cost-effective staff services and appropriate materials, documents, records, reports and related matters as required or requested for the information and education of the public with respect to Project activities, such services to ~~he~~be coordinated with the ~~public information~~Mayor and the staff ~~services~~ of Agency and City.

(~~o) Provide~~r) Corporation shall provide timely and responsive information ~~respecting~~regarding Project activities in meetings, discussions and other contacts with the public and private civic, business and similar organizations and speak to such groups.

~~(p) Prepare~~ (s) Corporation shall prepare detailed recommendations and options for Agency in accordance with ~~respect to~~Agency standards for policies and procedures pertaining to the Project and determinations to be made by Agency, including ~~but not limited to~~ the following: disposition policies and methods of disposition for each disposition

parcel or group of parcels; cost-effective methods of selection of developers, and selections of such developers; provisions of owner participation ~~and~~, development and rehabilitation agreements, including prices and standards and controls; staging and timing of activities for the Project; descriptions of services to be performed by consultants employed by Agency with respect to the Project and selection of such consultants; timely approval of architectural plans and specifications submitted by developers; timely approval of plans and specifications for demolition of existing structures and construction or rehabilitation of site improvements and facilities; awards of contracts with respect to such demolition and construction and rehabilitation; requests for approvals by appropriate agencies; ~~Project budgets.~~ the Budgets; and provisions of any other necessary or desirable services in connection therewith.

(~~q) Perform~~t) Corporation shall perform such other services, either within ~~adopted project areas~~the Project boundaries or pertaining to other portions of the City as may be assigned to Corporation by Agency, providing that the costs and expenses which are reimbursable to Corporation for providing such services are in compliance with this Agreement and the reimbursement of expenses policies and procedures approved by the Board, together with the other services contemplated herein, ~~will~~shall not exceed the ~~maximum amounts of reimbursement allowable to~~ Approved Corporation Budget for the fiscal period in which such services are to be performed~~.~~

Section 2.~~02. Covenant to Prepare and submit a Proposed Budget.~~

~~(a)~~ **07 Submission of Corporation** ~~covenants that it~~ **Budget and Project Budget.** Corporation shall prepare and submit ~~a proposed budget for Corporation's next succeeding fiscal year to~~ to the Agency ~~by the first Agency meeting~~

~~in March of each year.~~ Board the Corporation and Project Budget in accordance with this Agreement.

Section 2.~~03. Covenant to Adopt a~~ 08 Fiscal Year Accounting Period. Corporation ~~covenants that it shall adopt~~ has adopted a fiscal year accounting period as ~~prescribed~~recommended by Agency in consultation with Corporation and with a view toward the facilitation of this ~~agreement.~~ Agreement. Corporation agrees that such fiscal year accounting period may not be changed without the prior written consent of the Agency.

Section 2.~~04. Covenant to Avoid~~09 No Unauthorized Costs. Corporation ~~covenants that~~shall not, subject to the provisions of Section 2.~~05 hereinbelow, it shall not~~ 10 incur any cost or expense which exceeds the ~~approved budget~~ Approved Corporation or ~~approved transfer of appropriations.~~ Project Budgets or the Approved Transfer of Appropriations.

Section 2.~~05. Covenants Concerning~~ 10 Contracts~~.~~, Agreements and Adoption of Purchasing and Contracting Policies and Procedures.

(a) ~~Corporation covenants that it will not, subject to the exception below,~~ Limitations on Contracts. Subject to compliance with the purchasing and contracting policies and procedures of the Corporation ("Purchasing and Contracting Policies"), Corporation shall not enter into any contract ~~or~~, agreement ~~whatsoever~~or memorandum of understanding for the expenditure of funds in excess of the funds provided in ~~Corporation's approved budget. Corporation~~ its Approved Corporation or Project Budgets. Corporation agrees that the Approved Corporation or Project Budgets shall, to the extent

determined by the Board to be reasonable and practicable, include line item entries that specify the total dollar amounts estimated for all executed or to be executed contracts, agreements or any indebtedness or amendments to those contracts, agreements or indebtedness ("Contracts") that exceed or are expected to exceed two-hundred and fifty thousand dollars ($250,000) in any given fiscal year.

Corporation shall have the right, without the prior approval of the Agency, to enter into agreements and contracts ~~which are not inconsistent with the Budget~~in the usual and ordinary course of business as long as such Contracts are consistent with the Approved Corporation or Project Budgets, and any restrictions ~~without prior approval of Agency. However,~~ contained therein Corporation ~~will~~ shall obtain a certification ~~of~~that the ~~availability of~~necessary funds are currently available and unrestricted, from the City ~~Auditor prior to~~ Comptroller before entering into ~~contracts to be funded through Redevelopment project budgets.~~ any Contracts.

Anything to the contrary herein notwithstanding, Agency agrees that, subject to compliance with the terms of this Agreement, the Bylaws, the Purchasing and Contracting Policies and the Board-approved personnel and related policies, Corporation may enter into a contract of employment for the services of ~~an Executive Vice~~a President ~~which contract(s) may be~~ for ~~periods~~a period not in excess of ~~not to exceed~~ three (3) years~~.~~ in accordance with the selection, compensation and other procedures in Article XI, or any successor Section, of the Bylaws. Any such employment contract, however, shall ~~be the Corporation's~~ state that it is an obligation ~~and~~ of the Corporation only and it is intended that it shall not create an obligation on the part of the Agency~~.~~ or City.

~~Section 2.06. Covenant to Render an~~ (b)Board of Directors Approval. The Board shall approve on or before December 31, 2010, comprehensive written Purchasing and Contracting Policies in accordance with the current best practices, applicable state law and this Agreement. The Purchasing and Contracting Policies and subsequent amendments shall first be submitted to the Board for review and approval, then submitted to the CFO of the City for review and comment, and finally submitted to the Agency Board for review and approval. Such Purchasing and Contracting Policies shall be updated from time to time as determined by the Board with the goal of ensuring such best practices remain current. The Purchasing and Contracting Policies shall also establish: i) a specific dollar limitation that prohibits the staff and officers of the Corporation from approving Contracts that are above such dollar amount, and ii) a specific dollar limit for all Contracts that requires the prior approval of the Agency Board before entering into any Contracts that are above such dollar amount, and all of such limitations shall be agreed to and approved by the Agency Board and the Board. Corporation agrees to provide appropriate and timely public disclosure on its website of all executed Contracts above $250,000, excluding any confidential provisions of such Contracts, if any.

Section 2.11 Adoption of Ethics, Gifts and Record Retention Policies. The Board shall approve and adopt the Ethics, Gifts and Record Retention policies of the Corporation ("Ethics and Record Retention Policies") in accordance with Article 9, Section 3 of the Bylaws, which Ethics and Record Retention Policies are incorporated herein by this reference.

Section 2.12 Adoption of Finance and Fiscal Policies. The Board shall approve and adopt the Finance and Fiscal policies of the Corporation ("Finance and Fiscal Policies") in

accordance with Article 9, Section 4 of the Bylaws, which Finance and Fiscal Policies are incorporated herein by this reference.

Section 2.13 Adoption of Personnel Policies. The Board shall approve and adopt the Personnel Manual ("Personnel Manual") in accordance with Article 9, Section 5 of the Bylaws, which Personnel Manual is incorporated herein by this reference.

Section 2.14 Conflicts of Interest. Corporation shall timely adopt a Conflict of Interest policy in accordance with Article 9, Section 6 of the Bylaws, which Conflict of Interest Policy is incorporated herein by this reference.

Section 2.15 Adoption of Training Program in Ethics, Fiduciary Duties and Corporate Governance. The Board shall have approved and the Corporation shall implement a training program for officers, directors and employees in ethics, fiduciary duties and corporate governance in accordance Article 9, Section 7 of the Bylaws, which Training Program is incorporated herein by this reference.

Section 2.16 Violation of Policies. Corporation agrees and acknowledges that a violation of a Board approved pol cy or applicable City policy ("City Policy") is a material violation of this Agreement and grounds for termination of this Agreement in accordance with the provisions herein. In the event the Corporation does not have a Board approved policy with regard to any matter or matters that are covered by a City Policy, Corporation agrees that the applicable City Policy shall control and be applicable to the Corporation for such matter or matters.

Section 2.17 Accounting and ~~Furnish~~ Financial Reports for Corporation.

~~(a)~~ Accounting Records and Monthly Financial Reports. Corporation ~~covenants that it~~ shall maintain full and complete accounting records and software and information technology

systems related thereto utilizing the standard classification of accounts prescribed by ~~recognized authorities for use by redevelopment agencies.~~

(a) generally accepted accounting principles as updated from time to time. On or before the ~~15th~~30th day of each month, Corporation shall prepare and shall file with ~~Agency an income and expense statement showing~~the person or persons at the Agency designated by the Agency Executive Director the unaudited monthly financial statements of the Corporation. Such monthly unaudited financial statements shall be prepared in accordance with generally accepted accounting principles and be in the form and content requested and approved by the CFO of the City and reflect the business and results of operations of the Corporation for the preceding month. ~~All books and records shall be open to inspection to Agency or its representatives.~~ The Board or the Corporation Audit Committee shall review and approve such unaudited monthly financial statements prior to filing them with the Agency. The unaudited monthly financial statements shall be presented for approval to the Board by the CFO of the Corporation. The presentation to the Board of the unaudited monthly financial statements shall include a comparison of the actual results of operations to the estimates provided in the Approved Corporation Budget, and the CFO shall explain to the Board any material variations between actual results and the Approved Corporation Budget.

(b) ~~(b)~~ Annual Audited Financial Statements. Corporation ~~covenants that~~shall within one hundred ~~twenty (120)~~ thirty five [135] days after the close of each fiscal year of Corporation, ~~it shall~~ submit to ~~Agency a Statement~~the City Comptroller the audited financial statements of ~~Revenues and Expenses of such~~ the Corporation for the prior fiscal year ~~and shall furnish to Agency detailed certified reports of an audit based on an examination in accordance with generally accepted auditing standards,~~including an opinion prepared by an independent certified public

accountant, covering the business and operations of Corporation for such fiscal year ~~and showing the revenues and expenses for such period.~~. The CFO of the Corporation and the President of the Corporation shall review the audited financial statements and present them to the Board or the Corporation Audit Committee for approval. The CFO of the Corporation, President and such other officers of the Corporation as the Agency may designate shall provide certifications to the Agency Board in connection with such audited financial statements in the form required by the Agency.

~~(c)~~ (c) Amounts Exceeding Expenditures at Fiscal Year End. If at the end of any fiscal year of Corporation, amounts actually received by Corporation during such year exceed expenditures, including authorized reserves or contingency items, Corporation shall, no later than ninety (90) days after the close of such fiscal year, ~~pay over such excess to Agency's treasurer or otherwise dispose thereof as Agency may direct.~~request that the City Comptroller determine the appropriate method to return such amounts to the Agency in compliance with applicable nonprofit corporate law.

~~Section 2.07. Covenant to Submit Proposed Transfer of Appropriations~~

~~Corporation covenants that if deemed necessary by Corporation for the most efficient, practical and economic exercise of its duties as specified herein, it shall submit a Proposed Transfer of Appropriations during any fiscal year.~~

~~Section 2.08. Covenant to Obtain Public Liability Insurance.~~

~~Corporation covenants that it will obtain and at all times during the term,~~ **Section 2.18 Performance Audits.** Corporation agrees and acknowledges that the Agency may request that a performance audit of the Corporation be undertaken by the City Auditor or a third party consultant at any time and for any reason in its discretion. Corporation shall pay, in full, all costs and expenses associated with any performance audit requested by the

Agency, provided, however, the Corporation shall be required to pay only one performance audit in each fiscal year.

Section 2.19 Audit Committee. Effective as of December 31, 2010, the Board shall have an Audit Committee in accordance with Article 10, Section 4 of the Bylaws ("Audit Committee"), which Article and Section containing the requirements for the Audit Committee is incorporated herein by this reference.

Section 2. 20 Prohibition on Lobbying. All past members of the Board and prior officers of the Corporation shall be prohibited from advocating, lobbying or otherwise attempting to influence the Corporation, the Agency or the City Council in connection with the business or operations of the Corporation or the Agency, or in connection with any proposed, current or future redevelopment project or related matters that are pending before the Agency, Corporation or City Council for a period of no less than one year after any of such individuals leave office for whatever reason.

Section 2.21 Insurance Requirements. As of the date of this Agreement, Corporation has and shall maintain in full force~~,~~ and effect at all times during the term hereof policies of insurance issued by an underwriter reasonably acceptable to Agency~~, providing~~ of the types and amounts and containing such terms and conditions as are all reasonably acceptable to Agency. The Risk Management Department of the City of San Diego ("Risk Management") shall be consulted by the Agency and provide initial and biannual reviews of such insurance to Corporation. Such insurance shall provide protection against ~~public liability~~any liabilities arising from the operations, business and activities conducted ~~pursuant to this agreement, which insurance shall be in the following amounts:~~by the

Corporation, including errors and omissions insurance for the directors and officers of Corporation and employers liability, as determined by the Agency in its reasonable discretion and for such insurance as the Corporation may reasonably obtain in the market using its best efforts.

~~(a) For death or personal injuries sustained by any and all persons involved in any one mishap, an aggregate amount of at least $500,000.~~

~~(b) For death or personal injuries sustained by any one person involved in any one mishap, the amount of at least $500,000.~~

~~(c) For damage to property, whether real or personal and by whomever owned, resulting from any one mishap, in the aggregate amount of at least $500,000.~~

Corporation ~~covenants that it will~~shall name Agency and ~~The~~the City ~~of San Diego~~ as additional insureds under such policies of public and any other liability insurance ~~"as its interest may appear."~~

~~Corporation covenants that it will~~and shall contract with the underwriter that no policy of ~~public liability~~ insurance obtained by Corporation pursuant to the terms of this ~~section~~Section shall be terminated or amended without thirty (30) days' prior written notice to Agency~~.~~ and to City. Upon a request by either party, Corporation ~~covenants that it will~~shall provide Agency and City with copies of all policies of ~~public liability~~ insurance obtained pursuant to the terms of this ~~section, and that such~~ Section. Such copies shall be certified by the underwriter as true ~~and~~and correct copies of Corporation's policies with such underwriter~~.~~, and provide such other terms and conditions in connection with such insurance and policies as the Agency shall require from time to time in its reasonable discretion.

~~It is the intent of the parties to this agreement that Corporation at all times maintain in force public liability insurance sufficient to protect the parties from any foreseeable liability for injury to persons or damage to property growing out of Corporation's activities and operations.~~

Immediately prior to the date of this Agreement and at all times during the five (5) year period prior thereto, Corporation represents and warrants that i) it maintained all insurance policies as required by the Original Agreement and any additional insurance policies that it obtained, if any, and that such polices were and are valid, binding and enforceable, ii) Corporation did not at any time therein receive any termination, cancellation or similar notices from any of its insurance carriers, iii) to the best of the individual knowledge of the officers of the Corporation signing this Agreement, taken together, the insurance policies of the Corporation during such time provided adequate insurance coverage for the assets, business and operations of the Corporation for all risks normally insured against by redevelopment agencies carrying on the same or similar business, iv) Corporation has given timely notice to the insurer of all claims that were or may have been insured thereby, v) Corporation has not received any refusal of coverage or any notice that a defense will be afforded with a reservation of rights, or vi) Corporation has not received any indication that the issuer of any policy of insurance was or is not willing or able to perform its obligations thereby.

Section 2.~~09. Covenant to Abide by Terms and Conditions of the~~22 Compliance with Community Redevelopment Law of the State of California.

~~Corporation covenants that in~~ In performing its obligations under this ~~agreement it will assume and perform and assist Agency in the performance of all applicable terms and conditions concerning which Agency has heretofore agreed or may hereafter agree in connection with the Horton Plaza Redevelopment Plan and in connection~~Agreement, Corporation shall comply with the Community Redevelopment Law of the State of California as set forth in Section 33000 et seq. of the California Health and Safety Code, ~~including but not limited to Sections~~

~~33126, 33130 and 33130.5 of said Code.~~("CRL") as may be amended from time to time.

~~Section 2.10. Long Range Planning.~~

~~Corporation covenants that it will, at Agency's request and subject to the budgeting of funds, carry out a long range redevelopment planning program and will provide to Agency advice and recommendations to serve future redevelopment needs. Corporation further covenants that in the discharge of this responsibility it will consult regularly with members of the Agency and City staff engaged in the more comprehensive planning effort involving all phases of redevelopment.~~

~~Section 2.11. Covenant Regarding Conflicts of Interest.~~

~~During the term of this agreement, no officer, director or employee of Corporation shall acquire any financial interest, direct or indirect, in any land or property which may be acquired by Agency in the Project area, no shall any such officer, director, or employee acquire any interest, direct or indirect, in any legal entity which shall contract to develop, redevelop, renovate or rehabilitate any land or property acquired by Agency in the Project area or acquire any other interest which would conflict with the performance of his services hereunder, nor shall any such officer, director, or employee derive any financial gain, other than salaries and employee benefits payable pursuant to this agreement, from the expenditures authorized by this agreement. If any officer, director, or employee of Corporation shall at the time of the execution hereof own or control a financial interest in such land, property or legal entity, or thereafter involuntarily acquire the same, he shall immediately disclose such interest in writing to Agency, and the time when such interest was acquired.~~

~~Section 2.12. Affirmative Action~~

Section 2.23 Strategic Plan. Corporation shall develop and present to the Agency Board a strategic plan in accordance with Article 9, Section 12 of the Bylaws ("Strategic Plans"), which Strategic Plan is incorporated herein by this reference.

Section 2.24 Records and Reports. The Corporation shall comply with the requirements to maintain its books and records and to provide inspection rights for its books, records and reports, including its Articles of Incorporation, Bylaws, federal and state tax returns, financial statements and other corporate books and records in accordance with Article 13,

Section 1 through 3 of the Bylaws, which Article 13, Sections 1 through 3 are incorporated herein by this reference

Section 2.25 Compliance with Closed Session Polices of City. The Corporation shall comply with the closed session policies and procedures of the City.

Section 2.26 Intellectual Property Work for Hire.

(a) Work for Hire. Agency and Corporation understand and agree that any and all documentation, data compilations, reports, programming and any other media, materials and objects produced as a result of the work of Corporation under this Agreement, and any other matters, materials, or items delivered by Corporation that are subject to copyright protection and that are developed in connection with the performance of this Agreement (collectively the "Works") shall constitute a work for hire as that term is defined in the Copyright Act of 1976 ("Act"), as amended. As a result, all right, title and interest in and to all such Works shall belong exclusively to the Agency, including without limitation all copyrights and other intellectual property rights therein, subject to, to the extent applicable, if at all, the provisions of Article V of the Articles of Incorporation of the Corporation, and any successor Section, regarding the dedication of the assets of the Corporation to charitable purposes. If for any reason a Work is not deemed to be a work for hire, Corporation hereby grants, transfers, sells and assigns, free of charge, exclusively to the Agency, all title, rights and interest in and to said Works, including all copyrights and other intellectual property rights. The Corporation further agrees to execute and deliver to the Agency a confirmatory grant and assignment of all rights in and to Works and to execute any other proper document the Agency deems necessary to ensure the complete and effective transfer of all rights in Works to the Agency.

In the event that Corporation utilizes consultants or contractor(s) for any portion of the Works that is in whole or a part of the specified Works to be delivered to the Corporation or Agency, Corporation shall include a statement in the Corporation-consultant or contractor agreement ("Consultant Agreement") that identifies that the deliverable/Works to the Corporation or Agency is a work-for hire as defined in the Act and that all intellectual property rights in the deliverable/Works, whether arising in copyright, trademark, service mark or other belongs to and shall vest in the Agency. Further, the Consultant Agreement shall require that the consultant or contractor grants, transfers, sells and assigns, free of charge, exclusively to the Agency, all titles, rights and interests in and to said Works/deliverable, including all copyrights and other intellectual property rights.

(b) Agency Ownership of Works and Related Materials. In accordance with the preceding paragraph, Works developed for the Corporation or Agency in connection with this Agreement are the exclusive property of the Agency as set forth in sub-Section (a) of this Section 2.26. Corporation agrees to deliver all or certain Works to the Agency upon written request by the Agency in accordance with this Agreement or as otherwise agreed to by Agency. Works include but are not limited to editorial drafts, original copy, photographs, proofs, corrected proofs, camera-ready boards and similar editorial materials and all negatives, flats, engravings, photostats, drawings and other production materials. For intellectual technology procurements, if any, Works include executable code, source code, fixes, patches, updates, upgrades, documentation embedded or otherwise, original copy, and other production materials. Upon written request by the Agency, Corporation shall be responsible for delivering all or certain Works to the Agency no later than fifteen (15) business days from the date all or certain Works are required to be delivered by this Agreement, any amendment thereto or otherwise by

agreement with the Agency. In the event the Corporation fails to return all such materials by such deadline and the Agency desires to use Works again, Corporation shall provide the Agency with equivalent materials, at its own expense, or reimburse the Agency, in full, for the cost of developing equivalent materials.

(c) Intellectual Property Warranty and Indemnification. To the best of the individual knowledge of the officers of the Corporation signing this Agreement without any independent investigation, the Corporation represents and warrants that any materials or deliverables, including all Works provided under this Agreement to the Agency are either original, not encumbered and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If deliverables, materials or Works provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, Agency shall have the right, in its sole discretion, to require Corporation to produce, at Corporation's own expense, new non-infringing materials, deliverables or Works as a means of remedying any claim of infringement in addition to any other remedy available to the Corporation under law or equity. Corporation further agrees to indemnify and hold harmless the Agency and the City and their officers, directors, employees, attorneys and agents from and against any and all claims, actions, costs, judgments or damages of any type alleging or threatening that any materials, deliverables, supplies, equipment, services or Works provided under this Agreement infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party ("Third Party Claims of Infringement"). If a Third Party Claim of Infringement is threatened in writing or made before Corporation receives any money from Agency under this Agreement, Corporation agrees that

Agency shall be entitled, upon written notice to Corporation, to offset and withhold some or all of such payment without further notice.

Section 2.27 Confidential Information. The Corporation agrees that it will maintain the confidentiality of all Confidential Information (as defined herein) in accordance with this Section 2.27. Provided, however, Corporation shall comply with the California Public Records Act as set forth at Government Code Section 6250 et. seq. ("PRA") and provide information and documents in the possession of the Corporation in response thereto when the President of the Corporation determines, in consultation with the duly authorized outside counsel for the Corporation ("Outside Counsel"), that a writing must be disclosed under the PRA. Corporation shall timely notify the Agency Executive Director or designee in writing of any PRA requests that seek confidential information of the Agency. Such confidential information shall not be disclosed unless authorized in writing by the Agency. Corporation shall cooperate timely and fully with the Agency, City Attorney, the Mayor's office and any departments or agencies of the City in connection with any and all PRA requests to Agency or Corporation.

The term "Confidential Information" means all financial, technical, personnel and other information and all such copies which either party hereto considers or designates as Confidential Information that may be furnished or disclosed to, or acquired by, Corporation in connection with the services performed herein including information that is of a confidential and proprietary nature to developers and other third parties that intend to or that do business with the Corporation. Any and all Confidential Information furnished, disclosed or otherwise provided to Corporation under this Agreement shall be subject to disclosure under the PRA in accordance with the preceding paragraph of this Section 2.27. For purposes of this Agreement, Confidential Information does not include, and the obligations herein shall not apply to, information that (i) is

now or subsequently becomes generally available to the public through no fault of Corporation, (ii) Corporation can demonstrate the Confidential Information was rightfully in its possession prior to disclosure to Corporation by Agency, (iii) is independently developed by Corporation without the use of any Confidential Information provided by Agency, or (iv) is released or approved for release by the Agency without restriction. Corporation agrees to use reasonable care, but in all events at least the same degree of care that it uses to protect its own confidential and proprietary information of similar importance, to prevent the unauthorized use, disclosure or availability of the Confidential Information and agrees the Agency may require employees of the Corporation with access to the Confidential Information to sign a non-disclosure agreement. Without the prior written consent of the Agency, the Corporation agrees not to use the Confidential Information for any purpose other than the performance of the services performed for the Agency set forth in this Agreement.

Section 2.28 Equal Opportunity Programs.

Corporation ~~covenants that it will develop~~shall continue to maintain and implement ~~affirmative action~~ equal opportunity programs for Corporation employment which from time to time may be required by ~~Redevelopment Agency or other agencies having jurisdiction.~~ Agency or other appropriate agencies and such programs shall comply at all times with applicable Agency policies and Equal Opportunity Contracting Program requirements of the City.

Section 2.29 Notice re Claims, Demands, Litigation, & Arbitration Proceedings.

Corporation shall provide written notice which may be by email, to the Agency Executive Director and the Agency General Counsel of the institution or the threat to institute any

litigation, mediation, arbitration or similar proceedings, or with respect to any claims, demands or similar proceedings filed or threatened against Corporation or Agency within 72 hours after the receipt of notice of such litigation or similar proceeding or after the receipt of any writings which threaten such litigation or claims, demands or similar proceedings in connection with any matter directly or indirectly related to the business, operations or interests of the Corporation or Agency.

III

~~COVENANTS OF AGENCY~~

REPRESENTATIONS, WARRANTIES AND COVENANTS OF AGENCY

The Agency represents, warrants, covenants and agrees that:

Section 3.01~~. Covenant to Consider Proposed Budget.~~ ~~Agency covenants that it~~ **Consideration of Corporation and Project Budgets.** Agency shall act promptly in considering the ~~proposed budget~~Corporation and Project Budgets provided by Corporation in accordance with the provisions of this Agreement and shall take whatever action ~~deemed~~ it deems appropriate with regard thereto. ~~Any action taken as aforesaid shall be the approved budget for the respective fiscal year of the Corporation.~~

Section 3.02~~. Covenant to Consider~~ **Consideration of Proposed Transfer of Appropriations.** Agency shall act promptly in considering the Proposed Transfer of Appropriations provided by Corporation in accordance with the provisions of this Agreement and shall take whatever action it deems appropriate with regard thereto.

~~Agency covenants that it shall act within sixty (60) days in considering any proposed transfer of appropriations and any action taken shall constitute the approved transfer of appropriations.~~

~~Section 3.03. Covenant to Reimburse Corporation.~~

~~Agency covenants to~~ **Section 3.03 Working Capital Advance to Corporation.** Subject to the required prior approval of the Approved Corporation Budget, the Agency may, in its discretion, make a deposit to the Corporation on or about the [first] day of every fiscal year of a working capital advance with a commercial bank designated by Corporation as its depositary. The purpose of such working capital advance is to provide working capital to the Corporation to pay its operating costs and expenses while the Corporation is waiting to receive its monthly reimbursement of Eligible Expenses as defined in Section 3.04 herein. The amount of each working capital advance shall be determined by the Agency in its discretion, but it is intended to generally be an amount equal to approximately 15% of the Approved Corporation Budget ("Working Capital Advance"). All Working Capital Advances provided pursuant to this Section 3.03 shall only be used by Corporation to pay Eligible Expenses as set forth in Section 3.04 herein. Corporation agrees to execute such documents and provide such certifications as requested by Agency in connection with its receipt and use of such Working Capital Advances.

Section 3.04 Reimbursement of Eligible Expenses. Agency shall reimburse Corporation for all Eligible Expenses (hereinafter defined) incurred in connection with services to be rendered hereunder~~.~~, subject to the terms and conditions of this Agreement including compliance with the Board - approved written policies for the reimbursement of Eligible Expenses ("Eligible Expense Policy"). The total amount of ~~such~~ the reimbursements of all Eligible Expenses in any fiscal year shall not in any event exceed the ~~approved budget~~Approved Corporation Budget amounts~~.~~ for that fiscal year.

(a) ~~(a)~~ Requirements for Reimbursement. Eligible Expenses for which reimbursement shall be made to the Corporation include any and all costs which i) are reasonable, actual and ~~appropriate~~necessary to the performance of ~~Corporation's~~ the duties ~~hereunder, including, but not limited~~of the Corporation under this Agreement, ii) are included as Eligible Expenses and iii) are incurred and presented to~~,~~ the Comptroller for reimbursement in accordance with the Eligible Expense Policy. In addition, to be eligible for reimbursement, the reimbursement of each one of such Eligible Expenses by Agency shall be in accordance with generally accepted accounting principles..

~~(a)~~(b) Eligible Expenses. Subject to compliance with the provisions of this Section 3.04 and the Eligible Expense Policy, Eligible Expenses are the following:

(i) Salaries ~~(~~including reasonable fees and other forms of reasonable and customary compensation as determined by the Board, paid or payable by Corporation for the actual services of its officers, agents and employees, together with all reasonable and customary employer contributions in connection therewith, such as those for Internal Revenue Code Section 403(b), if applicable, social security, if applicable to Corporation, and unemployment compensation~~);~~;

(ii) Employee Benefits ~~(~~including contributions to a pension plan and payments for ~~hospitalization~~health insurance~~);~~ which are reasonable and customary in nature, amount and scope as determined by the Board;

(iii) Office Expenses and Overhead ~~(~~which shall all be reasonable, actual, necessary and cost-effective, including rent, taxes, furnishings, office supplies and equipment, repairs, duplicating services, postage, telephone, telegraph and other utility

services, liability, casualty and fidelity insurance, moving expenses and the like~~),~~: all supplies and equipment so purchased shall be and remain the property of Agency;

(iv) Printing and Graphics ~~(~~which shall all be reasonable, actual, necessary and cost-effective, including publications, photography, advertising, and graphic displays prepared for presentation purposes~~),~~: and

(v) General Business Expenses ~~(~~including audits and an audit of Eligible Expenses pursuant to Section 3.04(c) of this Agreement, professional services, travel, entertainment, membership dues, attendance at meetings and conferences, subscriptions, technical books and materials, garage expenses, transportation, including taxi fares, mileage and automobile rental, and the like~~),~~. Provided, however, the Board shall timely adopt a separate expense reimbursement policy for the reimbursement of appropriate business expenses by officers, directors, and employees for expenses that are incurred in the course and scope of their employment that, to the extent practicable and consistent with applicable law for the Agency and the Corporation, is consistent with the applicable and current expense reimbursement policies of the Agency and City and that specifically contains appropriate limitations on the reimbursement of such general business expenses that are consistent with the policies of the City for the general business expenses referred to in this subSection 3.04(b)(v).

(c) ~~(b) Reimbursement shall be effected in the following manner: In addition to the $30,000 deposited with the Corporation under the initial agreement~~Audit and ~~contemporaneously with the execution of this amended agreement, subject to the prior establishment of an Approved Budget, the~~Record Retention. Agency shall ~~cause an additional $70,000.00 to be deposited to the order of Corporation with a~~

~~commercial bank designated by Corporation as its depositary. Corporation may thereafter from~~ have the right at any time ~~to time draw against this account~~ and for ~~payment of~~ any reason to audit the Eligible Expenses~~. As~~ submitted or to be submitted for reimbursement hereunder, and Corporation shall pay the reasonable costs and expenses of any such audit. Corporation shall maintain for review and audit by Agency upon request, adequate and complete documentation of all Eligible Expenses claimed for reimbursement pursuant to this Agreement. Corporation shall cooperate fully with Agency and any auditors retained by Agency in connection with any such audit to permit a determination that the reimbursement of such expenses is allowed. In the event any of the items listed in the headings in subSections (i)–(v) of Section 3.04 (b) above, or for any other items that are submitted for reimbursement are not eligible for reimbursement for any of the reasons set forth in this Section 3.04 or under the Eligible Expense Policy, the reimbursement of such expense(s) will be disallowed and the Working Capital Advance shall be replenished from another source as determined by the Board. Corporation shall include the provisions of this Section 3.04 in an Eligible Expense Policy adopted by the Board in a timely manner.

(d) Conditions Precedent to Reimbursement. Corporation agrees that each of the following conditions must be satisfied and approved by the City Comptroller or designee in its reasonable discretion before any payment to reimburse the Eligible Expenses may be made under this Agreement: i) Corporation provides a certification to the City Comptroller that the Eligible Expenses meet the requirements of Section 3.04 (a) and (b) herein and its Eligible Expense Policy, ii) Corporation provides a certification to the City Comptroller that the services provided by it and upon which such Eligible Expenses are based were provided in accordance with the terms and conditions of this Agreement, iii) as soon as practicable after the end of each calendar month, Corporation ~~shall deliver to Agency a voucher~~delivers to City Comptroller a

written request for reimbursement for the total of Eligible Expenses ~~paid out of the account by Corporation during~~for the previous calendar month~~, such statement~~ which includes a detailed listing of all such Eligible Expenses, such request to be certified ~~as~~by the Chief Financial Officer of the Corporation that the Eligible Expenses meet the requirements of this Agreement and the Eligible Expense Policy and are true, correct, ~~and paid by a corporate officer of Corporation. Thereafter, upon approval by Agency as to receipt of services and availability of funds, Agency shall cause to be deposited in the aforesaid account~~complete and have been paid in full by the Corporation, iv) confirmation by the City Comptroller that the funds to pay the Eligible Expenses are provided for in, available and unrestricted under, the Approved Project Budget, and v) the receipt and approval of such other documents, records or matters that the City Comptroller shall reasonably and in good faith determine are necessary to approve the payment of such Eligible Expenses. The form and content of the certifications provided to City Comptroller in this Section shall be approved by City Comptroller in its discretion. References to the City Comptroller in this Section shall refer to the persons or persons designated in writing by the City Comptroller from time to time. Upon confirmation by City Comptroller that the foregoing conditions are met, City Comptroller shall cause to be deposited in the account of the Corporation the amount of the approved ~~voucher~~request for reimbursement of the Eligible Expenses within 5 business days of City Comptroller confirmation in accordance herewith for the preceding calendar month.

~~(c)~~Termination. Upon the termination of this ~~agreement~~Agreement for any reason all unexpended funds deposited to the credit of Corporation by Agency and not otherwise encumbered in accordance with this Agreement, shall become the sole property of Agency.

~~Section 3.04. Covenant to Consult with Corporation.~~

(e) , or as otherwise provided by the Agency ~~covenants that it~~and in accordance with applicable law.

Section 3.05 Consultation with Corporation. Agency shall refer to Corporation all material matters involving Agency's participation in providing for the redevelopment ~~in~~ of the Project ~~area~~as defined in Exhibit "A" and ~~that~~ the advice and recommendations of Corporation will be considered by Agency in formulating its policies concerning such matters.

IV

~~PROCEDURAL MATTERS~~

GENERAL PROVISIONS

Section 4.01 Law Governing this Agreement and Venue. This ~~agreement~~Agreement is entered ~~into~~ in California and is to be governed by the laws of this State and the parties agree that any action on this Agreement shall be brought in a court of competent jurisdiction in the County of San Diego.

Section 4.02 Headings.

Article and ~~section~~Section headings contained in this ~~agreement~~Agreement are included for convenience and ease in understanding this document. The parties hereto intend that the terms of this ~~agreement~~Agreement, exclusive of such headings, be liberally construed to ~~effect~~affect its purpose. Except insofar as they indicate an entirely contradictory construction not intended by the parties, article and ~~section~~Section headings are not to be considered in construing the terms of this ~~agreement.~~ Agreement.

Section 4.03 Counterparts.

This ~~agreement~~Agreement may be executed in any number of copies all of which, whether taken severally or collectively, shall be treated as a single original of this ~~agreement.~~ Agreement.

~~Section 4.04. Waivers.~~

Section 4.04 Separate Legal Counsel. The parties agree and acknowledge that the law firm of Best, Best and Krieger, General Counsel of the Corporation, has represented the Corporation in connection with the negotiation, drafting and preparation of this Agreement and that the General Counsel for the Agency has represented Agency in connection with the negotiation, drafting and preparation of this Agreement.

Section 4.05 Waivers. Failure of either party to object to any default or to any other act or omission of the other which is in violation of the terms of this ~~agreement~~Agreement shall not be deemed to be a waiver of the right to object to any subsequent default, act or omission, whether similar or dissimilar.

Section 4.~~05.~~ 06 Notice.

(a) Any notice or request for approval to be served under the terms of this ~~agreement~~Agreement must be in writing and will be deemed to have been duly given when i) delivered by hand with written confirmation of receipt, ii) sent by electronic transmission with a electronic transmission receipt; iii) sent by facsimile transmission with a facsimile confirmation receipt, iv) received by addressee, if sent by a nationally recognized overnight delivery service (receipt requested) in each case to the appropriate address set forth herein, or v) deposited in the United States mail, postage prepaid, addressed to San Diego Redevelopment Agency, c/o Agency Executive Director at City Administration Building, 202 "C" Street, San Diego,

California 92101, or at any other reasonable place designated by Agency; addressed to Corporation at the principal office, San Diego, California, or at any other reasonable place designated by Corporation.

(b) Notice or request for approval served pursuant to the terms of ~~subsection~~subSection (a) of this ~~section~~Section shall be deemed received forty-eight (48) hours after the time such notice is deposited in the United States mail.

Section 4.~~06.~~ 07 Existence of Collateral Agreements.

~~Unless amended by the parties in a document executed with equal formality as this agreement, this agreement~~ This Agreement states the entire understanding of the parties, and they have entered into no collateral contracts, agreements, warranties or understandings.

Section 4.~~07.~~ 08 Assignment.

Corporation shall not assign this ~~agreement~~Agreement or any rights accruing to Corporation thereunder without the written consent of Agency. A consent to any one assignment shall not be considered to be a waiver of Agency's right to consent to any subsequent assignment.

~~Section 4.08. Termination.~~

~~(a) Any~~ **Section 4.09 Severability.** In case any one or more of the provisions in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof. This Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 4.10 Amendment. This Agreement may not be amended except by a written instrument executed by both parties. No waiver, change, modification, consent or discharge shall be affected, except by an instrument in writing executed by or on behalf of the party against whom enforcement of any waiver, change, modification, consent or discharge is sought.

Section 4.11 Further Assurances. The parties hereto agree that they shall prepare and deliver all further documents and do all further acts necessary and desirable to accomplish the purposes of this Agreement.

Section 4.12 Indemnification and Hold Harmless. Corporation shall indemnify and hold harmless Agency, the City and their respective officers, directors, agents, attorneys and employees from and against any and all damages, claims, losses, liabilities costs and expenses of every kind and description, contingent or otherwise, including attorney fees, arising out, related to or resulting from the business or operations of the Corporation and the performance by the Corporation of the services provided to Agency set forth in this Agreement caused by any negligent act or omission of Corporation, any party providing services for or on behalf of Corporation or in connection with any redevelopment or other project in which the Corporation was or is directly or indirectly involved in or has provided any services in connection therewith, or anyone directly or indirectly employed by or on behalf of Corporation or its consultants, contractors or subcontractors.

Agency shall indemnify and hold harmless Corporation, its officers, directors, agents, attorneys and employees from and against any and all damages, claims, loses, liabilities costs and expenses of every kind and description, contingent or otherwise, including attorney fees, arising out of, related to or resulting from the operations of the Agency in the performance by the

Agency of services provided to Corporation under this Agreement in connection with any redevelopment or other project of the Corporation and that are caused by any negligent act or omission of the Agency in connection therewith, provided that such redevelopment or other project was authorized under this Agreement; or for any party providing services to the Corporation for the Agency for a redevelopment or other project provided such redevelopment or other project was authorized under this Agreement and such party and services were duly authorized by Agency; or in connection with any redevelopment or other project of the Corporation that is authorized under this Agreement and in connection with such authorized redevelopment or other project of the Corporation, the Agency was or is directly or indirectly involved in and provided material services to Corporation that were duly authorized by Agency in connection therewith, or for anyone directly or indirectly employed by or on behalf of Agency in connection with a redevelopment or other project of the Corporation that is authorized under this Agreement and such employment services were duly authorized by Agency, or by Agency consultants, contractors or subcontractors in connection with a redevelopment or other project and such consultants, etc. were duly authorized and employed by Agency to provide such services in such redevelopment or other project of the Corporation authorized under this Agreement.

Section 4.13 Interpretation. The parties agree and acknowledge that they have participated jointly in the negotiation and drafting of this Agreement. Any rule of construction or interpretation otherwise requiring this Agreement to be construed against any party by virtue of the authorship of this Agreement shall not apply to the construction or interpretation of this Agreement.

Section 4.14 Relationship of Parties. Corporation is an independent contractor, and no agency, partnership, joint venture or employment is created except as otherwise specifically permitted in this Agreement.

Section 4.15 Term. This Agreement shall become effective on the date of execution by the parties hereto and shall continue in effect until terminated by either Corporation or Agency in accordance with the provisions hereof.

Section 4.16 Termination.

(a) Any breach by Corporation of the terms, conditions, representation, warranties, agreements or covenants of Corporation herein contained shall be grounds for immediate termination of this ~~agreement~~Agreement by Agency provided that Agency may, in its sole discretion, waive any breach and demand performance by Corporation in accordance with the terms of this ~~agreement.~~ Agreement.

(b) The foregoing remedy of Agency is in addition to and not exclusive of any other remedy recognized by law.

(c) Notwithstanding any other provision of this ~~agreement~~Agreement, the Agency may terminate this agreement at any time ~~after giving~~with or without cause and without any penalty or the payment of any fee or charge of any kind or nature by providing the Corporation with ninety (90) days' prior written notice.

~~IN WITNESS WHEREOF, this agreement is executed by the Redevelopment Agency of The City of San Diego, acting by and through its Chairman, pursuant to Resolution No. _____, authorizing such execution, and the President and Secretary of Corporation are executing this agreement pursuant to a duly adopted resolution of its Board of Directors.~~