

AGREEMENT BETWEEN THE CITY OF
HUNTINGTON BEACH AND THE HUNTINGTON BEACH
DOWNTOWN BUSINESS IMPROVEMENT DISTRICT
TO ACT AS THE DISTRICT ADVISORY BOARD

THIS AGREEMENT is made and entered into by and between the CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California, hereinafter referred to as "CITY," and the Huntington Beach Downtown Business Improvement District ("HBDBID"), a California 501c(6) non-profit corporation,."

WHEREAS, in September 2004, the City Council approved Ordinance No. 3661, establishing the Huntington Beach Downtown Business Improvement District (the "District") with the general purpose of funding improvements and promoting activities benefiting all businesses within the assessment boundary area; and

In order to fund these improvements and activities, members of the District pay an annual assessment to the CITY; and

The assessments are collected concurrently with the District member's payment of the CITY's business license fees. The assessment funds are deposited in a separate account held by the CITY. The assessment funds can only be expended pursuant to the mandates of the California Streets & Highways Code §36500, et seq.; and

Pursuant to State Law, the City Council appoints an Advisory Board for the District to prepare an annual report and budget containing, in part, recommendations to the City Council regarding the expenditure of revenues derived from the assessments, the classifications of businesses, and the basis and method of levying the assessments. The Advisory Board's recommendations are then considered by the City Council at a noticed public meeting and approved or modified by the City Council. At this meeting the District business members can protest the levy

of the assessment and if 50% or more of the weighted assessments from businesses protest, the assessment cannot be levied for that year; and

City Council appointed a non-profit corporation known as the HBDBID to act as the Advisory Board for the District and administering agent for the CITY regarding disbursement of the funds collected through the annual assessment in accordance with the mandates of State law; and

The HBDBID is a 501c(6) business based organization focused on creating a thriving downtown by providing consumer marketing, events, security, cleanliness, beautification, and member engagement; and

The HBDBID has agreed to be the CITY's administrating agent regarding the expenditure of annual assessment dollars.

NOW, THEREFORE, it is agreed by the CITY and HBDBID as follows:

1. ADMINISTRATION OF FUNDS

a. The HBDBID shall administer the annual assessments paid by businesses in the District and collected by the CITY in compliance with this Agreement, and the Annual Report/Resolution adopted and approved by the City Council each year (collectively referred to as the "Budget").

b. All funds derived from assessments actually collected by the CITY and transferred to the HBDBID with any interest that actually accrues upon such funds while in the CITY'S possession and control shall separately be accounted for and segmented from other revenue collected by the HBDBID in its accounting and financial records.

c. HBDBID will expend the Budget as set forth in each year approved by City Council and pursuant to any requirements of Streets & Highways Code §36500, et seq. or Federal, State or City laws.

d. The CITY shall be entitled to retain amounts, for costs incurred by the City as a result of engaging in collection efforts including but not limited to collection of agency fees.

e. Assessment funds are collected by the CITY throughout the fiscal year concurrent with the renewal of the business license for each District member. The CITY provides HBDBID with a monthly list of businesses and the assessment funds collected for the prior month. The HBDBID invoices the CITY monthly for the assessment funds collected for that given month and the CITY provides those funds to the HBDBID.

f. HBDBID and City will create a process to refund a business that closes during the Fiscal Year after it has paid the assessment.

2. SCOPE OF SERVICES

The HBDBID shall perform the following tasks:

a. Send representatives to attend City Council meetings where HBDBID and/or the District is on the agenda.

b. Conduct status meetings with the CITY'S Director of Community Development or their designee no less than four (4) times per year as mutually agreed upon between the City and the HBDBID.

c. Provide monthly written status reports to the CITY'S Community Development Director or their designee.

d. The HBDBID shall comply with all federal, state, and local laws, including The Ralph M. Brown Act (Government Code § 54950 et seq.) ("Brown Act") whenever matters within the subject matter of the District are heard, discussed, or deliberated, and the California Public Records Act (Government Code § 6250 et seq.) for all documents relating to activities of

the District and the State records retentions laws including maintain records of HBDBID Board meetings.

e. The HBDBID Board shall award and administer all subcontracts necessary for providing the activities in accordance with the Budget.

f. Work with the City to create and implement a process to competitively bid proposals from vendors and service providers for any contract in excess of \$5,000 when assessment dollars are being expended. For purposes of this section, “best efforts” shall mean that the HBDBID Board will be required to solicit and obtain at least three bids for each service or product the HBDBID Board wishes to secure, and shall award the contract to the lowest responsible and responsive bidder.

g. The HBDBID, officers and employees shall complete Form 700 Statement of Economic Interests and file with the City Clerk if required by the CITY’S Conflict of Interest Code.

h. The HBDBID, officers and employees shall sign and agree to comply with the CITY’S Code of Ethics.

i. Per Streets & Highway Code Section §36533, the HBDBID acting as the Advisory Board, shall prepare a report and budget for each fiscal year for which assessments are to be levied and collected to pay the costs of the improvements and activities described in the report. Such report and budget after approval by the City Council, shall be a portion of the scope of work for each fiscal year.

j. Provide District members with written information detailing the services provided by the District.

3. TERM; ANNUAL EXTENSION; TERMINATION

This Agreement shall commence upon execution of the Agreement by and between the CITY and the HBDBID, and shall automatically renew on the 1st of October of each succeeding year thereafter, until terminated as provided herein.

Either party may terminate this Agreement at any time without cause, upon thirty (30) days prior written notice to the other party.

In the event of termination, all unexpended funds, finished and unfinished documents, exhibits, reports, and evidence shall, at the option of CITY, become its property and shall be promptly delivered to it by the HBDBID.

Immediately following the termination or expiration of this Agreement, the HBDBID will do all of the following: (i) Terminate all of activities of the HBDBID on behalf of the CITY; (ii) Pay all obligations and administration costs it incurred and (iii) Return to the CITY all remaining assessment funds and all assets acquired with HBDBID funds. In the event, however, that the District no longer exists, CITY will utilize the remaining funds for downtown business promotion activities.

4. AUDIT AND RECORDS

The Board shall maintain separate accounting records for all funds received. HBDBID further agrees that all of its records, including those pertaining to funds received from CITY and all other funds received by the HBDBID, must be maintained in accordance with standard accounting procedures and principles. All accounting records and evidence pertaining to all costs of the HBDBID shall be kept available at the HBDBID office, or place of business for a period of not less than three (3) years after funds are disbursed to HBDBID. HBDBID shall make all of its records

available to CITY during regular business hours for the purpose of auditing and shall furnish clerical assistance for this purpose to the CITY as required. The HBDBID shall furnish copies of all records to CITY on request. HBDBID agrees to implement all recommendations made by the CITY, if any.

As part of this Agreement, if the City requests in writing, the HBDBID agrees to undertake, at its own expense, an audit of the previous five (5) fiscal years, including all subsidiary or fiscal agent accounts, by a Certified Public Accountant approved by the CITY. The results of those audits shall be provided to the CITY upon completion. HBDBID agrees to fully cooperate in such audits. HBDBID further agrees that within sixty (60) days after termination of this Agreement, the HBDBID shall submit to CITY, a final financial statement detailing all expenditures made and all income received during the effective period of this Agreement.

In the event HBDBID refuses to conduct an audit per the City's request, HBDBID agrees to pay all necessary and reasonable expenses incurred by the CITY in conducting any audit at the location where said records and books of account are maintained.

5. WORKERS COMPENSATION INSURANCE

Pursuant to California Labor Code section 1861, HBDBID acknowledges awareness of section 3700 *et seq.* of said Code, which requires every employer to be insured against liability for workers compensation; HBDBID covenants that it will comply with such provisions prior to commencing performance of the work hereunder.

HBDBID shall maintain workers compensation insurance in an amount of not less than One Hundred Thousand Dollars (\$100,000) bodily injury by accident, each occurrence, One Hundred Thousand Dollars (\$100,000) bodily injury by disease, each employee, Two Hundred Fifty Thousand Dollars (\$250,000) bodily injury by disease, policy limit.

HBDBID shall require all subcontractors to provide such workers compensation insurance for all of the subcontractors' employees. HBDBID shall furnish to CITY a certificate of waiver of subrogation under the terms of the workers compensation insurance and HBDBID shall similarly require all subcontractors to waive subrogation.

6. INSURANCE

In addition to the workers' compensation and employer's liability insurance and HBDBID's covenant to indemnify CITY, HBDBID shall obtain and furnish to CITY, a policy of general public liability insurance, including motor vehicle coverage covering the activities set forth herein. This policy shall indemnify HBDBID, its officers, employees and agents while acting within the scope of their duties, against any and all claims arising out or in connection with the performance of the activities set forth herein, and shall provide coverage in not less than the following amount: combined single limit bodily injury and property damage, including blanket contractual liability, of One Million Dollars (\$1,000,000) per occurrence. If coverage is provided under a form which includes a designated general aggregate limit, the aggregate limit must be no less than One Million Dollars (\$1,000,000) for the activities set forth herein. This policy shall name CITY, its officers, elected or appointed officials, employees, agents, and volunteers as Additional Insureds, and shall specifically provide that any other insurance coverage which may be applicable to any claim shall be deemed excess coverage and that HBDBID's insurance shall be primary.

Under no circumstances shall said above-mentioned insurance contain a self-insured retention, or a "deductible" or any other similar form of limitation on the required coverage.

7. CERTIFICATES OF INSURANCE; ADDITIONAL INSURED ENDORSEMENTS

Prior to commencing performance of the work hereunder, and for each year of the term of this Agreement, HBDBID shall furnish to CITY certificates of insurance subject to approval of the

City Attorney evidencing the foregoing insurance coverages as required by this Agreement; said certificates shall:

1. provide the name and policy number of each carrier and policy;
2. shall state that the policy is currently in force; and
3. shall promise to provide that such policies will not be canceled or modified

without thirty (30) days' prior written notice of CITY.

HBDBID shall maintain the foregoing insurance coverages in force until the work under this Agreement is fully completed and accepted by CITY.

The requirement for carrying the foregoing insurance coverages shall not derogate from the provisions for indemnification of CITY by HBDBID under the Agreement. CITY or its representative shall at all times have the right to demand the original or a copy of all the policies of insurance. HBDBID shall pay, in a prompt and timely manner, the premiums on all insurance hereinabove required.

HBDBID shall provide a separate copy of the additional insured endorsement to each insurance policy, naming CITY, its officers, elected and appointed officials, employees, agents and volunteers as Additional Insureds, to the City Attorney for approval prior to any payment hereunder.

8. INDEPENDENT CONTRACTOR

HBDBID is, and shall be, acting at all times in the performance of the services of this Agreement as an independent contractor. HBDBID shall secure at its expense, and be responsible for any and all payment of taxes, social security, state disability insurance compensation, unemployment compensation and other payroll deductions for its officers, agents and employees and all business licenses, if any, in connection with the services to be performed hereunder.

9. CITY EMPLOYEES AND OFFICIALS

HBDBID shall employ no CITY official, District Member nor any regular CITY employee in the work performed pursuant to this Agreement. No officer or employee of the CITY or member of the District shall have any financial interest in this Agreement in violation of the applicable provisions of the California Government Code.

10. HOLD HARMLESS

HBDBID hereby agrees to protect, defend, indemnify and hold harmless CITY, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all claims, damages, losses, expenses, judgments, demands and defense costs (including, without limitation, costs and fees of litigation of every nature or liability of any kind or nature) arising out of or in connection with HBDBID (or HBDBID subcontractors, if any) negligent performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement by HBDBID, its officials, agents or employees except such loss or damage which was caused by the sole negligence or willful misconduct of CITY in enforcing this obligation. HBDBID will conduct all defense at its sole cost and expense and CITY shall approve selection of HBDBID's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as limitation upon the amount of indemnification to be provided by HBDBID.

11. NON-DISCRIMINATION

In the performance of this Agreement HBDBID shall not discriminate against any employee or applicant for employment on the basis of race, sex, color, religion, ancestry, national origin, age or as an otherwise qualified handicapped individual. This prohibition shall pertain to employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay and

other forms of compensation; selection for training, including apprenticeship; and any other action or inaction pertaining to employment matters, and shall also apply to proscribe discrimination in any program or activity funded in whole or in part with funds made available under this Agreement.

12. ASSIGNMENT AND SUBCONTRACTING

This Agreement is a personal service contract and the supervisory work hereunder shall not be delegated by the HBDBID to any other person or entity without the consent of CITY.

13. COPYRIGHT/PATENTS

HBDBID shall own all rights to any patent or copyright on any work, time or material produced as a result of this Agreement.

14. IMMIGRATION

HBDBID shall be responsible for full compliance with the immigration and naturalization laws of the United States and shall, in particular, comply with the provision of the United States Code regarding employment verification.

15. LEGAL SERVICES


The City will provide legal services to the HBDBID with regard to activities concerning its role as the District's Advisory Board.

16. ATTORNEY'S FEES

In the event suit is brought by either party to enforce the terms and provisions of this agreement or to secure the performance hereof, each party shall bear its own attorney's fees. The prevailing party shall not be entitled to recover its attorney's fees from the non-prevailing party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by
and through their authorized officers _____ 2022.

THE HUNTINGTON BEACH DOWNTOWN
BUSINESS IMPROVEMENT DISTRICT

By: 

Brett Barnes
print name

ITS: (circle one) Chair/President/Vice President

AND

By: _____

print name

ITS: (circle one) Secretary/Chief Financial
Officer/Asst. Secretary - Treasurer

REVIEWED AND APPROVED:



City Manager

CITY OF HUNTINGTON BEACH, a
municipal corporation of the State of
California

Mayor

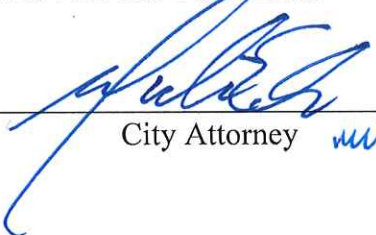
City Clerk

INITIATED AND APPROVED:



Director of Community Development

APPROVED AS TO FORM:



City Attorney *mm*