

DOWNTOWN CPD NEIGHBORHOOD PARKING PROGRAM AGREEMENT FOR FISCAL YEAR 2024- 2025

This Neighborhood Parking Program Agreement (“Agreement”) is dated as of _____, 2023 (“**Effective Date**”), and is entered into between the City of San Diego, a California municipal corporation (“**City**”), and the East Village Association, a California 501(c)(3) nonprofit, (“**Contractor**”) (collectively, the “**Parties**”).

RECITALS

- A. The City administers the Downtown Community Parking District (“DCPD”), which includes the East Village neighborhood.
- B. City Council approved the Fiscal Year (“FY”) 2024 Community Parking District Annual Plan and Budgets, including the DCPD under Resolution R-314992.
- C. The boundaries of the East Village neighborhood encompass the easter part of Downtown San Diego and are generally defined as follows: Interstate 5 to the East and North, State Route 163 to the North, Tony Gwynn Drive to the South, 7th Avenue along E Street and 10th Avenue to 17th Street, to the West (“East Village Neighborhood”).
- D. Under Council Policy 100-18, Contractor has provided to the City a conceptual parking plan to aid in the parking issues facing the East Village neighborhood and wishes to enter into an agreement with the City by utilizing parking meter revenue to implement the conceptual parking plan.
- E. City believes that the Contractor has experience in parking and mobility administration within the District and is qualified and willing to perform the obligations of Contractor under this Agreement. The City desires to retain the services of the Contractor to provide parking administration services for the East Village neighborhood of the DCPD.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions set forth, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties set forth their mutual covenants and understandings as follows:

AGREEMENT

1. **Definitions.** The following terms shall be defined as follows:

- 1.1. **Fiscal Year.** The City’s fiscal year starting July 1 and ending June 30 of the subsequent year.

- 1.2. **Notice.** Any consent, demand, designation, election, notice or request relating to this Agreement. All Notices must be in writing.
- 1.3. **Notify.** To give a Notice.
- 1.4. **Project.** The Scope of Services to be provided by Contractor, a copy of which is attached as Exhibit A.
- 1.5. **Project Funds.** All DCPD Funds (defined below) allocated to this Agreement.
- 1.6. **Project Records.** All administrative or financial records required in connection with the Project that are prepared or gathered by Contractor, including all books, papers, invoices, receipts, accounting records in accordance with Generally Accepted Accounting Principles (GAAP), payroll records, personnel records, designs, plans, reports, financial disclosures, audits, other disclosures, certifications, investigative videos, work product, and any other documents, data or records pertaining to any or all matters covered by this Agreement.
- 1.7. **Reimbursement Period.** This Agreement will allow reimbursement requests for the full Fiscal Year
- 1.8. **Request for Reimbursement.** The packet submitted utilizing City supplied forms and Contractor back-up documentation (consisting of proof of expenses incurred and payments made in conformance with the requirements of this Agreement and Council Policy 100-18 to the satisfaction of the Contract Administrator) that is the basis for requesting reimbursement of eligible Project expenses each Reimbursement Period.
- 1.9. **Subcontractor(s).** Each subcontractor hired by Contractor to the extent directly related to the Project.
- 1.10. **Term.** The meaning as defined in Section 2 below.
- 1.11. **DCPD Funds.** Funds appropriated by the City and approved by the City Council as part of the Fiscal Year Annual Plans and Budget, in accordance with Council Policy 100-18 attached as Exhibit B.
2. **Effective Date; Term of Agreement.** Upon execution of this Agreement by the Parties and approval of this Agreement by the City Attorney in accordance with Charter Section 40, this Agreement shall be effective as of July 1, 2023 (the “Effective Date”) through June 30, 2025 (“Term”).
3. **Contractor Scope of Services.**
 - 3.1 Contractor shall conduct the Project in accordance with Council Policy 100-18, Community Parking District, as amended from time to time.

- 3.2 The Project description shall be in sufficient detail to provide a sound basis for City to effectively monitor Contractor's performance under this Agreement, identify proper expenditures of parking meter revenue consistent with Council Policy 100-18, and all work shall occur only within the Term of this Agreement.
 - 3.3 Contractor shall submit timely performance reports to the City as described in Section 8.
 - 3.4 Contractor shall provide the City with copies of all subcontractor agreements, requests for proposals, and vendor quotes for the Project.
 - 3.5 Contractor shall at all times during the Term be a Federal and State nonprofit corporation in good standing.
 - 3.6 Contractor acknowledges and agrees that because Contractor will be expending public funds in the form of DCPD Funds under this Agreement, all portions of meetings of Contractor's Board of Directors at which this Agreement, Project, or DCPD funds are discussed shall be conducted in accordance with the Ralph M. Brown Act, California Government Code sections 54950-54963.
 - 3.7 Contractor shall maintain an official website and shall post on such official website all of the following: (a) Contractor's Board of Directors roster; (b) all regular Board of Directors and committee meeting agendas; (c) all approved Board of Directors and committee meeting minutes; (d) Contractor's articles of incorporation or formation and amendments; (e) Contractor's bylaws; (f) all annual audits, reports and financial statements or disclosures prepared by Contractor or provided by Contractor to City under Section 9; (g) Internal Revenue Service and California Franchise Tax Board determinations of nonprofit and tax-exempt status.
4. **Contract Administrator; Designated Representative.** City's Sustainability & Mobility Department ("Department") shall be the contract administrator for this Agreement. City shall designate, and from time to time may re-designate, a representative (the "Designated Representative") for the purposes of this Agreement.
- 4.1 **Direction.** Contractor shall work solely under the direction of the Department and the Designated Representative in performing the Project.
 - 4.2 **Consent/Approval.** Contractor shall inform Contract Administrator, in writing, within ten (10) days of the occurrence of any of the following changes: (i) the resignation, retirement, or discharge of its executive director, chief executive officer, or other managing agent; (ii) a majority change in the membership of the board of directors; (iii) a change in programming that significantly deviates from the Contractor's mission or overall purpose; and/or (iv) a change in annual operating income such that any matching fund requirement will not be met by the end of the contract year.

5. **Independent Contractor.** Contractor and any subcontractors employed by Contractor are independent contractors and not agents of City. Any provisions of this Contract that may appear to give City any right to direct Contractor concerning the details of performing or providing the goods and/or services, or to exercise any control over performance of the Contract, shall mean only that Contractor shall follow the direction of City concerning the end results of the performance.
6. **Assignment; Subcontracting.** This Agreement is made in reliance on Contractor's qualifications, experience, and identified personnel. Therefore, Contractor may not assign or subcontract any of its rights or obligations under this Agreement without City's prior written consent. Any purported assignment of any of Contractor's rights or obligations under this Agreement without City's prior written consent shall be void *ab initio* and a default of this Agreement.
7. **Insurance.** Contractor shall deliver to City, and shall ensure that each Subcontractor delivers to City, a current certificate of insurance with attached policy endorsements as described in Exhibit C.
8. **Performance Reporting.** Contractor shall submit to the City performance reports in accordance with the schedule and requirements below.
 - 8.1. **Quarterly Reports.** Contractor shall submit a report each quarter detailing Project work performed and progress towards Project goals in the quarter per the schedule listed in this Agreement. Failure to timely submit a report each quarter may result in cessation of reimbursements until such time as the overdue report is received and reviewed by City staff, and deemed to be in compliance with the requirements of this Agreement. Reports for Quarters 1 through 3 are due to the City within fifteen (15) calendar days of the close of each Report Period.
 - 8.2. **Final Performance Report.** Contractor shall submit a Final Performance Report within seven (7) calendar days of City's Fiscal Year end indicating the extent to which the outcomes of this Agreement have been accomplished. Failure to timely submit a Final Performance Report shall result in cessation of reimbursements until such time as the overdue report is received and reviewed by City staff, and deemed to be in compliance with the requirements of this Agreement. An overdue Final Performance Report must be submitted no later than thirty-one (31) days after the end of the Fiscal Year.
 - 8.3. **Report Acknowledgement.** Each report shall be accompanied by documentation evidencing credit to the City for its financial support, including but not limited to, copies of publicity and advertising materials related to the Project consistent with Sections 21 of this Agreement.

8.4. Statement of Compliance. Contractor shall also attach to the Final Performance Report a Statement of Compliance signed by the executive director or other chief executive officer of the Contractor, certifying that the Contractor has complied with the terms of this Agreement. City shall not make the final payment unless Contractor submits the "Statement of Compliance".

9. **Project Expenditures.**

9.1. Other Funding. Contractor shall not be reimbursed for any expenditure that has been (or will be) properly charged to a funding source other than the City.

9.2. Total Reimbursement. Contractor may be reimbursed only for those expenditures the Contract Administrator approves as reasonable and appropriate costs consistent with Council Policy 100-18, provided that those expenditures are incurred by Contractor during the Term of this Agreement and are already paid for by Contractor.

9.2.1. The City shall not make any payment to Contractor if Contractor is in default of any previous City Agreement.

9.2.2. Expenses requested for reimbursement that are not supported with proper documentation shall be considered ineligible expenditures.

9.2.3. Expenses requested for reimbursement that are ineligible under Council Policy 100-18 or this Agreement, shall be considered ineligible expenditures unless approved, in writing, by the City.

9.2.4. This Agreement is for reimbursement purposes only.

9.2.5. Contractor shall advise City at the beginning of the Fiscal Year whether the Reimbursement Period will be monthly or quarterly.

9.2.6. Request for Reimbursement shall be submitted via email to SUSTPayments@san Diego.gov.

9.2.7. None of the funding provided by the City under this Agreement shall be used to fund any activity that has been or could be funded through the Maintenance Assessment District contract, Business Improvement District Management agreement, or other funding agreements between the Contractor and the City. The purpose of this funding is solely to provide parking management services in the approved budget.

9.3. Reimbursement Schedule. Request for Reimbursement may be submitted during the Term, except that the final Request for Reimbursement must be submitted no later than June 30, 2024. An alternative Reimbursement Schedule may be utilized only after Contractor requests and receives written approval in advance from the Contract Administrator.

9.3.1. Request for Reimbursement shall not exceed one-twelfth (1/12) or one-quarter (1/4) of the Total Reimbursement amount of this Agreement as specified in Section 8.2 unless written approval is provided from the Contract Administrator for an alternative Reimbursement Schedule.

9.3.2. The City reserves the right to temporarily withhold or adjust the final payment, subject to the City's approval of the Final Performance Report, all financial disclosures, and any audits required of Contractor under this Agreement. The City's approval will not be withheld unreasonably.

9.3.3. All DCPD Funds allocated to Contractor under this Agreement and not requested to be paid to Contractor through submission of complete and error-free Requests for Reimbursement (with back-up documentation) by June 30, 2024 shall be forfeited.

9.4. Advances. The City may make an annual advance payment to Contractor in an amount determined by the City Representative and not to exceed fifteen percent (15%) of Project Funds ("Advance Funds"), for project expenses. Advance Funds shall be utilized for projects defined in the approved Annual Plan and Budget and must be consistent with Policy 100-18. Advance Funds shall not be utilized for program overhead expenses. Repayment of such an Advance or accounting for the use of the Advance Funds must be made annually prior to each fiscal year end. The City will, at its sole discretion, either require Contractor to return any unexpended funds from the Advance to the City within thirty (30) calendar days of the expiration date of this Agreement. In the event this Agreement is terminated at an earlier time, Contractor must return to the City any unexpended funds from the Advance upon the termination date of this Agreement.

10. Project Records. Contractor shall maintain, and shall ensure that each Subcontractor maintains all administrative and financial records required by this Agreement (the "Project Records"), including without limitation, all books, accounting records, invoices, receipts, payroll records, personnel records, and any other data and records related to the Project.

10.1. Accounting Standard. Contractor shall create, maintain and ensure that each Subcontractor creates and maintains, complete and accurate accounting

records in accordance with Generally Accepted Accounting Principles (“GAAP”) in the applicable industry.

10.2. Production; Inspection; Audit. Within ten (10) business days after City’s written request for Project Records, Contractor shall make the Project Records available to City and its authorized agents for review and audit. Upon City’s request, Contractor shall deliver to City exact duplicates of all requested Project Records. Contractor shall permit, and shall ensure that each Subcontractor permits, the City and its authorized agents to inspect and photocopy Project Records at any reasonable time and location within San Diego County, such as Contractor’s offices. City may retain copies of Project Records. City shall maintain all copies of Project Records in the strictest confidence allowed by law. If Contractor or a Subcontractor is unable to make Project Records available for inspection within San Diego County, then Contractor shall pay all of City’s travel-related costs to inspect and/or audit the Project Records at the location where the Project Records are maintained.

10.3. Storage Period. Contractor shall store, and shall ensure that each Subcontractor stores, all Project Records for a period of not less than five (5) years after submission of the final expenditure report upon the expiration or the earlier termination of this Agreement, or until all audit findings have been resolved, whichever is longest. All Project Records shall be kept at a protective, secure location. At any time during the storage period, Contractor shall permit, and shall ensure that each Subcontractor permits, City and its authorized agents to examine all Project Records as provided in this Agreement. After the expiration of the storage period, Contractor shall notify City at least thirty (30) calendar days prior to its intent to dispose of Project Records. Contractor shall not dispose of Project Records without City’s prior written consent.

10.4. Original Project Records. At any time after the expiration or earlier termination of this Agreement, City may request original Project Records from Contractor or any Subcontractor. Within ten (10) business days after City’s request Contractor shall deliver the requested original Project Records to City. Contractor, or the applicable Subcontractor, may retain copies of any such Project Records.

10.5. Ownership of Project Records. All Project Records shall be the City’s property. City’s ownership of the Project Documents includes without limitation the use, reproduction, and/or reuse of the Project Documents, as well as all incidental rights.

11. Audits; Financial Disclosures; Other Reports and Disclosures.

11.1. Financial Statement Audits. If Contractor receives \$75,000 or more combined in federal, state, or City funds annually, Contractor shall have a financial statement audit. A financial statement audit is the examination of Contractor's financial statements and accompanying disclosures by an independent auditor. The result of this examination is a report by the auditor, attesting to the fairness of presentation of the financial statements and related disclosures. This financial statement audit shall be prepared in accordance with GAAP and performed by an independent Certified Public Accountant, in accordance with Generally Accepted Auditing Standards (GAAS). Contractor shall deliver a report of each such financial statement audit and accompanying financial statements to City no later than September 30 after the City's fiscal year-end. City may extend the deadline by up thirty (30) calendar days upon Contractor's written request.

Each financial statement audit report shall include the following statements:

11.1.1. a statement of expenditures of City funds by program, identified in the same expenditure classifications as contained in the final budget and compared with the budgeted amounts; and

11.1.2. a statement of revenues and expenditures, and a statement of financial position for all funds received by Contractor; and

11.1.3. a statement certifying compliance with all terms and conditions of this Agreement, and that all required reports and disclosures have been completed and submitted, attested to by an executive officer, general partner, or owner of Contractor.

If Contractor is subject to an audit from a source other than City, Contractor shall deliver a copy of the audit report to City within ten (10) business days after Contractor receives the audit report. City, at its sole discretion, may conduct an annual review of each such third-party audit.

11.2. Financial Disclosures. If Contractor receives \$10,000 or more, but less than \$75,000 combined, in federal, state, or City funds annually, Contractor shall deliver to City within ninety (90) calendar days after the end of the year copies of true, accurate, and complete financial reports and disclosure documents evidencing, to City's reasonable satisfaction, Contractor's financial status. City may extend the deadline by up thirty (30) calendar days upon Contractor's written request.

Contractor shall submit at least the following:

11.2.1. a statement of expenditures of City funds by program, to be identified in the same expenditure classifications as contained in the City funded final budget and approved through the application process and compared with the budgeted amounts; and

11.2.2. a statement of revenues and expenditures, and a statement of financial position of all funds received by Contractor.

11.3. Other Reports and Disclosures.

11.3.1. If Contractor receives less than \$10,000 combined in federal, state, or City funds annually, Contractor shall deliver a report to City within thirty (30) calendar days after the expiration or earlier termination of this Agreement describing how such funds were used during the Term.

11.3.2. If Contractor receives \$500,000 or more combined in federal, state, or City funds annually, or when that combined federal, state, or City funding represents more than ten percent (10%) of Contractor's annual budget, Contractor shall include in its annual documentation required under this Agreement a report itemizing the salary and wage ranges for each of Contractor's job classifications, including actual executives' salaries and benefits packages applicable during the Term.

12. Compliance with Laws and Policies. Contractor shall comply, and shall ensure that each Subcontractor complies, with all applicable laws, rules, regulations, ordinances, resolutions, permits, policies, and directives of the federal, state, and local governments in performing this Agreement.

11.1 Conflicts of Interest Laws. Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to, California Government Code sections 1090, et. seq. and 81000, et. seq., and the Ethics Ordinance, codified in the SDMC. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary documents to City.

11.2 Contractor's Responsibility for Employees and Agents. Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

11.3 Contractor's Financial or Organizational Interests. In connection with any task, Contractor shall not recommend any contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

- 11.4 **Certification of Non-Collusion.** Contractor certifies that: (1) Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.
- 11.5 **Hiring City Employees.** This Agreement shall be unilaterally and immediately terminated by City if Contractor employs an individual who within the twelve (12) months immediately preceding such employment did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the selection of Contractor.
- 11.6 **Product Endorsement.** Contractor shall comply with Council Policy 000-41 which requires that other than listing the City as a client and other limited endorsements, any advertisements, social media, promotions or other marketing referring to the City as a user of a product or service will require prior written approval of the Mayor or designee. Use of the City Seal or City logos is prohibited.
- 11.7 **Prevailing Wage Law Compliance.** Under San Diego Municipal Code section 22.3019, construction work performed or funded under this Agreement cumulatively exceeding \$25,000 and alteration, demolition, repair or maintenance work performed or funded under this Agreement cumulatively exceeding \$15,000 is subject to California Labor Code sections 1720 through 1861 and in performing or funding any and all such work, Contractor and its Subcontractors shall comply with California Labor Code sections 1720 through 1861 and the requirements of Exhibit D attached to this Agreement.

13. Non-Discrimination Requirements.

- 12.1 **Compliance with City's Equal Opportunity Contracting Program ("EOCP").** Contractor shall comply with EOCP Requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Contractor liable for any discriminatory practice of its subcontractors.
- 12.2 **Non-Discrimination Ordinance.** Contractor shall not discriminate on the basis of race, gender, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in performing this Agreement and the solicitation, selection, hiring or treatment of subcontractors. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered

a material breach of the Agreement and may result in termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors.

- 12.3 **Anti-Harassment, Non-Discrimination and Inclusion Policy.** Manager shall establish and implement an anti-harassment, non-discrimination and inclusion policy in the workplace consistent with federal, State and local laws and shall conduct an annual review and update of the policy. Manager shall provide the policy to all employees and its Board of Directors and shall certify that each employee and member of its Board of Directors has received and reviewed the policy by requiring each individual's signature.
- 12.4 **Anti-Harassment, Non-Discrimination and Inclusion Training.** Manager shall conduct annual anti-harassment, non-discrimination and inclusion in the workplace training for all employees and Board of Directors, consistent with federal, State and local laws. Manager shall certify that each employee and member of its Board of Directors has completed the training by requiring each individual's signature.
- 12.5 **Compliance Investigations.** Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City under City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in termination, debarment, and other sanctions.
- 12.6 **Equal Benefits Ordinance Certification.** Unless an exception applies, Contractor shall comply with the Equal Benefits Ordinance ("EBO") codified in the SDMC. Failure to maintain equal benefits is a material breach of the Agreement.
- 12.7 **Local Business and Employment.** Contractor acknowledges that City seeks to promote employment and business opportunities for local residents and firms on all City contracts. Contractor shall, to the extent reasonably possible, solicit applications for employment, as well as bids and proposals for subcontracts for work associated with this Agreement, from local residents and firms as opportunities occur. Contractor shall hire qualified local residents and firms whenever feasible.
- 12.8 **Living Wage Ordinance.** This Agreement is subject to City's Living Wage Ordinance ("LWO"), codified at SDMC sections 22.4201 through 22.4245, if and to the extent that any of the Activities to be undertaken under this Agreement are

services subject to the LWO. The LWO requires payment of minimum hourly wage rates and other benefits to “covered employees” (as defined in the LWO), unless an exemption from the LWO applies. Contractor shall comply, and shall ensure that each Subcontractor complies, with the provisions of City’s Living Wage Ordinance, codified in SDMC sections 22.4201 et seq., in performing this Agreement.

Under SDMC section 22.4215, Contractor or any of its Subcontractors may be exempt from the LWO. For an LWO exemption determination, Contractor or any of its Subcontractors must complete the Living Wage Ordinance Application for Exemption.

Contractor shall submit written proof of compliance or exemption from the LWO on or before the first day of each Fiscal Year during the Term.

- 12.9 **Drug-Free Workplace.** Contractor shall comply with City’s Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Agreement by this reference.
- 12.10 **Contractor Certification for Americans with Disabilities Act (“ADA”) and State Access Laws and Regulations.** Contractor shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (“Title 24”). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City’s ADA Compliance/City Contractors requirements set forth in Council Policy 100-04, which is incorporated into this Agreement by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor’s agreement to abide by the provisions of the City’s Council Policy and any applicable access laws and regulations.
- 12.11 **Storm Water Pollution Prevention.** Contractor shall comply with the City’s Storm Water Management and Discharge Control Ordinance provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of the City regardless of location. Contractor shall comply with the City’s Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended. Contractor shall comply with each City facility or work site’s Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

12.12 **Lobbying and Political Activities.** Contractor shall not use, and shall ensure that each Subcontractor does not use, any of the funds, personnel, or materials received in connection with this Agreement, to influence, or attempt to influence, any governmental decision or election in any manner, whatsoever. This prohibition shall apply to any decision of any kind to be made by any electorate, legislative body, agency, bureau, board, commission, district, or any other instrument of federal, state, or local government. The term, "influence or attempt to influence," shall mean the making, with the intent to influence, of any communication to, or appearance before, any officer, employee, or appointee of any governmental entity, as well as any communication made to any electorate, regarding any ballot measure or candidate election.

12.12.1 By signing this Agreement, Contractor certifies that Contractor is aware of, and promises to comply with, each of the lobbying and political activities provisions of this Agreement. Contractor shall also require this same certification to be included in all subcontracts, sub-grants, and cooperative contracts exceeding \$100,000.

12.12.2 Contractor acknowledges that the duty to disclose lobbying activities is a continuing requirement, and shall make such disclosures at the end of each calendar quarter in which there occurs any event requiring disclosure.

14. **Termination.**

14.1 **City's Right to Terminate for Convenience.** City may, at its sole option and for its convenience, terminate all or any portion of this Agreement by giving thirty (30) days' written Notice of such termination to Contractor. The termination of the Agreement shall be effective upon receipt of the Notice by Contractor. After termination of all or any portion of the Agreement, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs otherwise); and (2) complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's affected performance under the Agreement. After filing of documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimate, summaries, and such other information and materials created or received by Contractor in performing this Agreement, whether completed or in process. By accepting payment for completion, filing and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Agreement with regard to the affected performance.

14.2 **City's Right to Terminate for Default.** If Contractor defaults any portion of this Agreement, City reserves the right to suspend funding until Contractor complies with the terms of the Agreement, and if the Contractor fails to comply with the terms of the Agreement, to reduce payments to the Contractor or to terminate this Agreement. If Contractor fails to satisfactorily cure a default within ten (10)

calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Agreement, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Agreement.

- 14.3 **Survival of Obligations.** All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Contract, as well as all continuing obligations indicated in this Contract, shall survive, completion and acceptance of performance and termination, expiration or completion of the Contract.
- 14.4 **Rights and Remedies Reserved.** City's rights and remedies under this Agreement are cumulative and shall not limit, waive, or deny any other rights or remedies at law or in equity, existing on the Effective Date or later enacted or established.
15. **Informal Dispute Resolution.** If the Parties have any dispute as to their respective rights, obligations, and/or duties under this Agreement, or the meaning or interpretation of any provision, they shall first attempt to resolve such dispute by informal discussion between themselves. Such discussion shall take place as soon as reasonably possibly after delivery of a written notice of dispute.
16. **Mandatory Assistance.** If a third-party dispute or litigation, or both, arises out of, or relates in any way to this Agreement, then upon City's request, Contractor and its agents, officers, and employees shall assist City in resolving the dispute or litigation. Contractor's assistance to City, referred to as "Mandatory Assistance," includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials, or any event related to the dispute resolution and/or litigation.
- 16.1 **Compensation for Mandatory Assistance.** City will compensate Contractor for fees incurred in providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third-party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor or its agents, officers, or employees, then Contractor shall reimburse City for all fees paid to Contractor and its agents, officers, and employees for the Mandatory Assistance.
- 16.2 **Attorneys' Fees Related to Mandatory Assistance.** In providing City with dispute or litigation assistance, Contractor or its agents, officers, and employees may incur expenses and/or costs. Contractor agrees that any attorney fees it may incur as a result of assistance provided under Section 16.2 are not reimbursable.
17. **Indemnification.** To the fullest extent permitted by law, Contractor shall protect, defend (with legal counsel reasonably acceptable to City), indemnify, and hold harmless City and its elected officials, officers, representatives, agents and employees ("Indemnified Parties") from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors),

expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any performance of services under this Agreement by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

18. **Subcontractors.** Within five (5) business days after the Effective Date, Contractor shall deliver to City: (a) a list of all Subcontractors and intended Subcontractors, with their contact information; and (b) a copy of each Subcontractor contract, including the scope of work, a written statement describing the justification for the Subcontractor's services, and an itemization of all costs for the Subcontractor's services. If Contractor hires additional Subcontractors, or modifies any existing Subcontractor contract, Contractor shall deliver to City: (a) an updated list of all Subcontractors, with their contact information; and (b) a copy of each new or modified Subcontractor contract, including the scope of work, a written statement describing the justification for the Subcontractor's services, and an itemization of all costs for the Subcontractor's services. City may forward the Subcontractor lists to EOCP.

18.1 **Contract Activity Report.** Upon request, Contractor shall deliver to City such statistical information and such Subcontractor invoices as City may reasonably require.

18.2 **Prohibited Subcontractors.** Contractor shall not employ, award any contract to, engage the services of, or fund any Subcontractor who is subject to federal, state, or local debarment, suspension, or ineligibility.

19. **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally, sent by United States mail, postage prepaid, or by reliable overnight courier. Any party entitled or required to receive notice under this Agreement may designate a different address to which notices shall be sent. Notice shall be effective upon confirmed receipt. The parties' addresses for notice shall be as follows:

THE CITY OF SAN DIEGO
Attn: Krystal Ayala, Program Manager
Sustainability & Mobility Department
1200 Third Avenue, Suite 1800
San Diego, CA 92101
KAyala@sandiego.gov

With a copy by First Class Mail to:

East Village Association

Attn: Marco Li Mandri
1041 Market Street #200
San Diego, CA 92101
(619) 546-5636
marco@newcityamerica.com

20. Confidentiality. Contractor shall maintain all information it receives from City and related to this Agreement as strictly confidential shall not release any such information to any third party without City's prior written consent. This confidentiality obligation shall not apply to information that: (a) was publicly known, or otherwise known to Contractor, at the time the information was provided; (b) subsequently becomes publicly known, through no act or omission of Contractor; (c) becomes known to Contractor from a source or means other than City; or (d) is considered a "public record" under the California Public Records Act (i.e., California Government Code sections 6250 *et. seq.*).
22. General Provisions.
- 22.1 Municipal Powers. Nothing contained in this Agreement shall be construed as a limitation upon the powers of City as a California Charter City.
- 22.2 Governing Law. The terms and conditions of this Agreement shall be construed and interpreted in accordance with the laws of the State of California. In addition, the terms and conditions of this Agreement are subject to SDMC Sections 82.08 and 82.09.
- 22.3 Jurisdiction and Venue. For any dispute, claim, or legal matter related to this Agreement or the performance of this Agreement, the parties shall submit to the personal jurisdiction and venue of any State Court within the County of San Diego, California.
- 22.4 Integrated Agreement. This Agreement contains the entire understanding of the parties. There is no other written or oral understanding between the parties with respect to this Agreement or the Scope of Services. Each party has relied solely on advice from its own attorneys and experts in entering into this Agreement. No other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Agreement. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement.
- 22.5 Non-Assignment. Contractor may not assign the obligations under this Agreement without the City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Agreement at the City's sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

- 22.6 Amendments. Neither this Agreement nor any provision may be changed, modified, amended, or waived except by a written agreement executed by duly authorized representatives of City and Contractor. Any alleged oral amendments have no force or effect.
- 22.7 Covenants and Conditions. All provisions expressed in this Agreement as either covenants or conditions on the part of City or Contractor shall be deemed to be both covenants and conditions.
- 22.8 Waiver. No failure of any Party to insist upon the strict performance by another Party of any term, covenant, or condition of this Agreement, nor any failure to exercise any right or remedy upon a Default or an Event of Default, shall constitute a waiver of any such Default or Event of Default or the requirement to comply with such term, covenant, or condition. No waiver of any Default or Event of Default shall affect or alter this Agreement, and each and every term, covenant, and condition, in this Agreement shall continue in full force and effect regarding any existing or subsequent breach.
- 22.9 Successors in Interest. This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any party's successor in interest.
- 22.10 Partial Invalidity. If any term, covenant, condition, or provision of this Agreement is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
- 22.11 No Affiliation. Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, or other affiliation between City and Contractor or between City and any other entity or party, or cause City to be responsible in any way for the debts or obligations of Contractor or any other party or entity.
- 22.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 22.13 Headings. All headings are for convenience only and shall not affect the interpretation of this Contract. The section headings and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Agreement. The numbers of the paragraphs and pages of this Agreement may not be consecutive. The lack of consecutive numbers shall have no effect on the enforceability of this Agreement.

- 22.14 Time is of the Essence. Time is of the essence for each provision under this Agreement.
- 22.15 Survival. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in this Agreement, shall survive, completion and acceptance of performance and termination, expiration or completion of this Agreement.
- 22.16 Exhibits. All exhibits referenced in this Agreement are incorporated into this Agreement and are attached to this Agreement as follows:

EXHIBIT A	Project (Scope Of Services)
EXHIBIT B	Council Policy 100-18
EXHIBIT C	Insurance Requirements
EXHIBIT D	Prevailing Wage Requirements

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

Date: Aug 20, 2023

CONTRACTOR

BY: *Terry McCleary*
Terry McCleary (Aug 20, 2023 08:50 PDT)

Name: Terry McCleary

Title: President

Date: Aug 24, 2023

THE CITY OF SAN DIEGO, a California municipal corporation

BY: *Kristy L. Reeser*

Name: Kristy Reeser

Title: Deputy Director

APPROVED AS TO FORM:

MARA W. ELLIOTT, City Attorney

BY: *Katherine A. Malcolm*
Katherine A. Malcolm (Aug 24, 2023 14:04 PDT)

Name: Katherine A. Malcolm

Title: Deputy City Attorney



Proposed FY24 East Village Community Parking District Budget

FY24 Parking Meter Revenue Request \$400,000

Expenses/Programs:

- 2A. Personnel \$52,174**
 - a. Administrative & Bookkeeping – The East Village Association will assign staff time to investigate, implement and recap all eligible projects for FY24, per Council Policy 100-18.

- 2B. Operating \$22,200**
 - a. Rent (Office & Storage) – A portion of the overall rent will be funded by the various revenue streams to support the operations of the Association and the management of the parking programs.
 - b. Printing – The Association will fund this line item with PMRs to produce marketing materials and other promotional mobility option programs.
 - c. Audit – A portion of the complete audit for the Association will be funded by the various revenue streams to support the operations of the Association and the management of the parking programs.

- 2C. Outreach, Publication, & Promotion \$20,000**
 - a. Marketing - A portion of the marketing for the Association will be funded by the various revenue streams to support the operations of the Association and the management of the parking programs. Marketing various mobility and parking options via PR, social media, copywriting, and eblasts.

- 2D. Outreach, Publication, & Promotion \$305,627**
 - 2D2. Managing Parking Inventory \$300,000
 - a. Neighborhood Initiatives & Special Projects – The Association will fund this line item with PMRs to underwrite enhanced pedestrian crosswalks, enhanced pedestrian lighting, etc.
 - 2D3. Managing Parking Demand & Enhancing Utilization \$5,627
 - a. Wayfinding Systems – The Association will fund this line item with PMRs to underwrite a new wayfinding system that has been partially funded in a previous fiscal year.
 - b. Downtown Parking App, Website Update & Maintenance – A portion of the website maintenance and hosting will be funded by the various revenue streams to support the operations of the Association and the management of the parking programs.

EAST VILLAGE ASSOCIATION OF SAN DIEGO

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

SUBJECT: COMMUNITY PARKING DISTRICT
POLICY NO.: 100-18
EFFECTIVE DATE: July 16, 2015

PURPOSE:

The intent of this Policy is to provide a mechanism whereby communities unable to meet existing parking demands may devise and implement parking management solutions to meet their specific needs and resolve undesirable parking impacts. This Policy anticipates that such communities, at their initiative, and with the approval of the City Council, can be responsible for establishing and managing a Community Parking District. This Policy specifies the procedures to be followed to establish a Community Parking District. This Policy also provides for, and specifies the procedures under which, certain parking management-related revenues earned by the City within the geographic boundaries of an existing or newly designated Community Parking District may be allocated to the Community Parking District to implement and manage improvements that address parking impacts. This Policy is not intended to reduce existing City revenue streams derived from various parking management-related fees, citations, permits, etc. Any references in this Policy to allocating a portion of parking meter or other parking management-related fees to Community Parking Districts is intended to apply only to new or prospective revenues. This Policy will be implemented in a manner that precludes any reduction or diminishment of City revenues.

POLICY:

A. Establishment of Community Parking Districts

1. A community planning group, City-owned nonprofit, or a nonprofit managing a City-assessment district may submit to the Mayor or City Manager a request to form a Community Parking District when existing City mechanisms for implementing parking management solutions have been insufficient or such mechanisms do not exist within the community. The Mayor or City Manager shall convey all such requests, along with the Mayor's or City Manager's recommendation regarding each, to the City Council or any of its committees for its consideration. In the event that an organization submits a request that affects an existing Community Parking District, the Mayor or City Manager will present the request to the board of the existing Community Parking District prior to forwarding the request to the City Council or any of its committees for action.

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A request to form a Community Parking District shall contain each of the following:

- a. A map or other description of the geographic area proposed to be designated as a Community Parking District.
- b. Data to verify that the proposed geographic area is in fact adversely impacted by parking demands. Such data may be provided by a parking study commissioned by the Mayor or City Manager or by a qualified private traffic engineer who would be required to submit his/her data and findings to the Mayor or City Manager for review; a combination of project-specific parking studies which, in the aggregate, present credible information regarding parking impacts in the geographic area; or such other information as the Mayor or City Manager may determine to be credible and persuasive.
- c. A conceptual plan for how the Community Parking District will be managed, including, but not limited to:
 - (1) The legal entity proposed to be designated as the Community Parking District Advisory Board for the purpose of managing the District. The City Council may designate as the District Advisory Board the existing board of a nonprofit managing a City-assessment district, a City-owned nonprofit, a community development corporation, or other nonprofit corporation approved by the City Council. A wide representation of community interests within the proposed geographic area shall be sought;
 - (2) How community input will be obtained and incorporated into the management of the District;
 - (3) The sources and amounts of District revenues;
 - (4) Examples of or proposed improvements that would address the District's parking impacts;
 - (5) Anticipated financing for these improvements, provided that no existing financing obligations or commitments shall be jeopardized or restricted; and
 - (6) A first and five year budget.

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2. Prior to consideration of the proposal by the City Council or any of its committees, the requesting entity shall make the proposal publicly available for review and shall conduct a noticed public meeting for affected citizens in the proposed Community Parking District. The requesting entity shall also provide notice of this public meeting to all affected Community Planning Groups.
3. Geographic areas that, prior to December 31, 1997, were established as Parking Meter Districts are hereby now designated as established Community Parking Districts, and the organizations designated by the City Council as Parking Meter District Advisory Boards are hereby now designated as the established Community Parking District Advisory Boards.
4. The Community Parking District Program shall be administered by the Mayor or City Manager.

B. Revenues Subject to Allocation to a Community Parking District

1. Annually, the costs of administering the Community Parking District Program, including the services of dedicated Transportation Engineer(s), and parking meter operations costs shall be subtracted from the total parking meter revenue prior to the calculation of the revenue subject to allocation to the Community Parking Districts.
2. A percentage of the total parking meter revenues, less the administrative and parking meter operations costs described in Section B.1 above, generated within each Community Parking District shall be allocated to that Community Parking District on an annual basis. The percentage shall be forty-five (45%) each fiscal year.
3. In addition to this 45% allocation, the City may allocate all or a portion of the parking management-related revenues to a Community Parking District on a case-by-case basis. Such additional revenues may be allocated to a Community Parking District so long as all of the following requirements are met:
 - a. Any City administrative costs necessary to implement and collect the fees are fully recovered;

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- b. The City conducts, or causes to be conducted, an analysis of the proposed use(s) of the additional parking management-related revenues, and the analysis indicates that the amount allocated, along with any other authorized revenues, is sufficient to implement and manage the proposed use(s);
 - c. The amount allocated is no more than necessary to implement and manage the proposed use(s); and
 - d. The City determines through a fiscal impact analysis that the Community Parking District's proposed use(s) is/are in the City's long-term best interest.
 4. For the purpose of this Policy, City revenues which may be allocated to a Community Parking District in addition to parking meter revenue, if any, may include:
 - a. Fees paid by users to park in a facility operated by the Community Parking District;
 - b. Valet parking fees;
 - c. Residential or shopper parking permit fees;
 - d. Parking in-lieu fees levied on new development; and
 - e. Any other authorized fees obtained to regulate parking in a Community Parking District.
 5. Community Parking District revenues allocated to each Community Parking District will be disbursed pursuant to the adoption and approval of an Annual Plan & Budget submitted to the City Council, as provided in sections C and D below. The Mayor or City Manager shall maintain relevant data indicating the location of each parking meter, revenue earned by each meter, and other revenue sources, for the purpose of projecting and verifying parking management-related revenues allocable to each District.

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6. The Mayor or City Manager will conduct an annual fiscal year-end reconciliation of actual parking management-related revenues. To the extent that actual revenues are less than or greater than the estimate used for the approved Annual Plan & Budget, the difference will be incorporated in the following fiscal year's Community Parking District allocation.
- C. Use of Allocated Community Parking District Funds
1. An allocation of parking meter or other parking management-related revenue to a Community Parking District shall be made only from new or prospective revenues resulting from meter installations or the implementation of other parking management activities within the District, and the allocation shall not result in any reduction of current City revenues or anticipated increases in City revenues.
 2. Community Parking District revenues shall be expended for regulation, management, and control of the parking of vehicles and management and control of traffic (including vehicular, bike and pedestrian), which affects or is affected by the parking of vehicles in the parking meter zones pursuant to San Diego Municipal Code sections 82.08 and 82.09. Such expenditures shall be focused on improvements and activities that increase the availability, supply, and effective use of parking for residents, visitors, and employees within the adopted Community Parking Districts. The purpose of the expenditures may include, but is not limited to, the following:
 - a. Increasing the parking supply (e.g., lease, purchase, or construction of additional on-street or off-street parking accessible to vehicles, including bikes) through means such as self-parking or valet-parking, and generally available to all users. If a subsidy is provided to users (directly or indirectly), the Annual Plan & Budget shall demonstrate (not merely assert) that the subsidy is limited to a reasonable amount which corresponds to a material effect on parking in the parking meter zones and serves a public purpose . Also, every proposed activity which is targeted to specific users, such as an employee parking program, shall demonstrate in the Annual Plan & Budget that such an activity shall not violate general principles of equal protection by ensuring that protected classes of people are not discriminated against. Eligible expenses include the acquisition of land, project design, financing, construction, and/or operation of public parking facilities, but do not include special event parking.

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- b. Managing the existing parking inventory, including such measures as, but not limited to, parking evaluations, reconfiguration of existing on-street parking inventory, residential permit parking programs, employee parking programs, enforcement, reducing excessive red curb, removal of abandoned driveways and replacement with matching sidewalk, curb, and gutter, and mitigation of any adverse effects resulting from the implementation of such program(s). Every program that proposes to provide a subsidy to a user, (e.g. employees) shall demonstrate (not merely assert) that the subsidy is reasonable and equally available to all such users in the parking meter zone (within ¼ mile radius, see Section C.2.i) and shall not favor any one stakeholder, such as a business. Further, the management program shall not violate general principles of equal protection by ensuring that protected classes of people are not discriminated against.
- c. Providing mobility (parking and access) information through wayfinding signage or media (maps, videos, apps or other tools), which communicates the location, availability, cost, and other pertinent information of district-wide parking options and provides navigation in and between parking meter zones within the Community Parking District. The public information being provided may include costs for ribbon-cuttings, press conferences, or like events to communicate information about parking and access. However, any costs associated with promotion of business communities, specific businesses, or special events in the Community Parking District shall be funded by other sources.
- d. Providing funding for community shuttles or circulator systems within the boundaries of the Community Parking District to reduce parking demand in parking meter zones or to assist in the mobility of those parked in parking meter zones. Shuttle service or circulator systems may be leveraged for community or special events within the Community Parking District if the additional cost is covered and accounted for by other funding sources.
- e. Enhancing mobility within the Community Parking District and facilitating the use of alternative forms of transportation to reduce parking demand (e.g., community shuttles, public transit, bicycling, and walking) through activities and improvements including, but not limited to, designing and installing: bike and pedestrian amenities (bike parking, corrals, and bike lanes; pedestrian ramps, crossings, pop-outs, sidewalks, countdown indicators, rectangular rapid flashing beacons); signage; and shuttle stops.

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- f. Providing for extraordinary maintenance and landscaping activities (including, but not limited to landscaping and upkeep of such which provides a necessary safety barrier between vehicles, bikes and pedestrians) and security activities (including, but not limited to safety services at shuttle stops or security for parking areas) as required by law or necessary for the safety or proper functioning of the improvements or activities listed above. “Extraordinary” means beyond what is ordinary or is funded and provided for by other funding sources and the maintenance, landscaping and/or security activity is considered necessary for the related improvements or activities which address parking or controls and manages traffic (including vehicular, bicycle, or pedestrian traffic) which affects or is affected by the parking of vehicles in the parking meter zones.
- g. Providing pedestrian or vehicular safety, comfort and convenience, e.g. through activities and improvements which provide separation or enhance safety for pedestrians and vehicles such as wheel stops, curbs, landscaped areas and lighting. Other eligible expenses may include urban design activities in a particular area, district, or neighborhood that relate to parking or the control and management of traffic (including vehicular, bicycle, or pedestrian traffic) which affects or is affected by the parking of vehicles within parking meter zones.
- h. Inclusion of eligible City Capital Improvement Projects which meet one or more of the above purposes shall be encouraged. City staff shall identify such eligible projects and provide a list of those projects to the respective Community Parking District advisory boards or groups which may select none, one or more to be funded as part of the Annual Plan & Budget. Also, City staff shall work collaboratively with Community Parking District advisory board or groups on identifying projects where the City’s share of parking meter revenue may be used and provide such recommendations for inclusion in the City’s annual budget.

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- i. Parking meter revenue shall be spent within parking meter zones. However, since the impacts from metered parking and related traffic management and control occur in areas adjacent to parking meter zones, parking meter revenue may also generally be expended within a one-quarter (¼) mile radius from a parking meter zone for parking or traffic control and management purposes (including pedestrian and vehicle safety, comfort and convenience) which affects or is affected by vehicle parking in the designated parking meter zones in accordance pursuant to San Diego Municipal Code sections 82.08 and 82.09. Activities or improvements which are primarily aesthetic in nature are not eligible uses of parking meter revenue.
 3. Community Parking District revenues shall supplement, and not supplant, existing or proposed City or public funding sources and program revenues that are earmarked for existing or proposed improvements or activities within a district, such as a Maintenance Assessment District.
 4. The cost of new meters or other parking related equipment and their installation in existing and proposed Community Parking Districts will be shared between the City and the Community Parking District based upon the percentage by which the meter revenues are shared as described in sections B above, unless otherwise proposed in the Community Parking District Plan & Budget and approved by the City Council.
 5. The use of solar-powered parking technology shall be encouraged.
- D. Community Parking District Management
 1. Annually, each Community Parking District Advisory Board shall develop, through community input, and recommend to the City Council an Annual Plan & Budget which shall identify proposed improvements and activities and the associated budget, as required by Section D.2. below. Approval of the Community Parking District Plan & Budget shall rest with the City Council. Such approval may be granted by authorizing the Mayor or City Manager to execute a written Agreement between the City and each Community Parking District Advisory Board, or through the annual citywide budgetary approval process.

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2. Each Community Parking District Annual Plan & Budget shall include the following:
 - a. How community input is obtained and incorporated into the management of the District;
 - b. A one year and five year budget, including Community Parking District funds and other sources of funding. The budget shall follow a standard template provided by the Mayor or City Manager.
 - c. A narrative which indicates:
 - i. Estimated annual costs for the next five fiscal years for each activity and improvement and whether there is an unfunded need;
 - ii. The proposed timing of the use of reserve funds per fiscal year for the five fiscal years;
 - iii. Whether the proposed expenditure is for an activity, non-CIP Improvement, or a Capital Improvement Project;
 - iv. Whether Community Parking District Advisory Board staff or City staff shall be responsible for implementing the proposed activity or improvement;
 - v. How the proposed activity or improvement will address the District's parking impacts and is an eligible use of Community Parking District funds (as identified in Section C2 above); and
 - vi. The source and amount of other funds proposed to be leveraged.

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The narrative shall follow a standard template provided by the Mayor or City Manager.

- d. Metrics for tracking performance and outcomes.
3. In addition to proposed improvements, if any, the Annual Plan & Budget may include recommendations regarding the following:

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- a. Parking meter rates, hours of meter enforcement, parking meter time limits, and additions or removals of parking meters;
 - b. Establishment or removal of time limited parking areas;
 - c. Implementation of valet parking fees, residential or shopper permit parking fees, and in-lieu fees;
 - d. The acquisition of any private property for a public purpose necessary to implement the plan;
 - e. Activities which promote effective parking management; and
 - f. Any other relevant matters pertaining to the effective management of parking demand within the District.
4. Each Community Parking District Advisory Board, or its designated parking advisory group, shall cause to be prepared annually, a Performance Report to be provided to the Mayor or City Manager by January 15 each year (or at a later date as directed by the Mayor or City Manager) and presented to a City Council Committee between February and March each year. The annual Performance Report shall follow a standard template provided by the Mayor or City Manager and shall include for the most recently completed fiscal year and the first six months of the current fiscal year:
- a. Sources and uses of Community Parking District funds and other funds previously included in the Annual Plan & Budget for that fiscal year.
 - b. Metrics on performance and outcomes comparing projected and actual results.
5. Each Community Parking District Advisory Board or its designated parking advisory group, in collaboration with City staff, shall monitor and analyze parking meter utilization, and may monitor and analyze non-metered on-street parking utilization. Each Board or advisory group may also make recommendations to City staff on meter locations, rates, time limits, hours of operation, and new parking meter technology in order to more efficiently manage on-street parking, consistent with achieving the Council-established target utilization rate of 85 percent of all metered parking spaces.

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Each Board or advisory group may request that City staff undertake analysis of parking meter utilization and non-metered on-street parking utilization and provide information to the Board or advisory group for the Board or advisory group to make its recommendations to the Mayor or City Manager. Recommendations on changes to meter rates, time limits, or hours of operation shall be considered by the Advisory Board or its designated parking advisory group as a discussion item during a meeting prior to submission to the Mayor or City Manager.

6. Each Community Parking District Advisory Board shall comply with all State and Federal laws and regulations pertaining to nonprofit corporations, including making its annual filing of IRS Form 990 available to the public, and shall comply with State public records and open meeting laws with regard to the use of Community Parking District funds.
7. Each Community Parking District shall be provided a seat on the City's Parking Advisory Board, and each Community Parking District Advisory Board shall recommend a member of its board to fill the seat.

HISTORY:

Adopted by Resolution R-288408 – 03/04/1997
Amended by Resolution R-299836 – 11/15/2004
Amended by Resolution R-306675 – 03/18/2011
Amended by Resolution R-309826 – 07/16/2015

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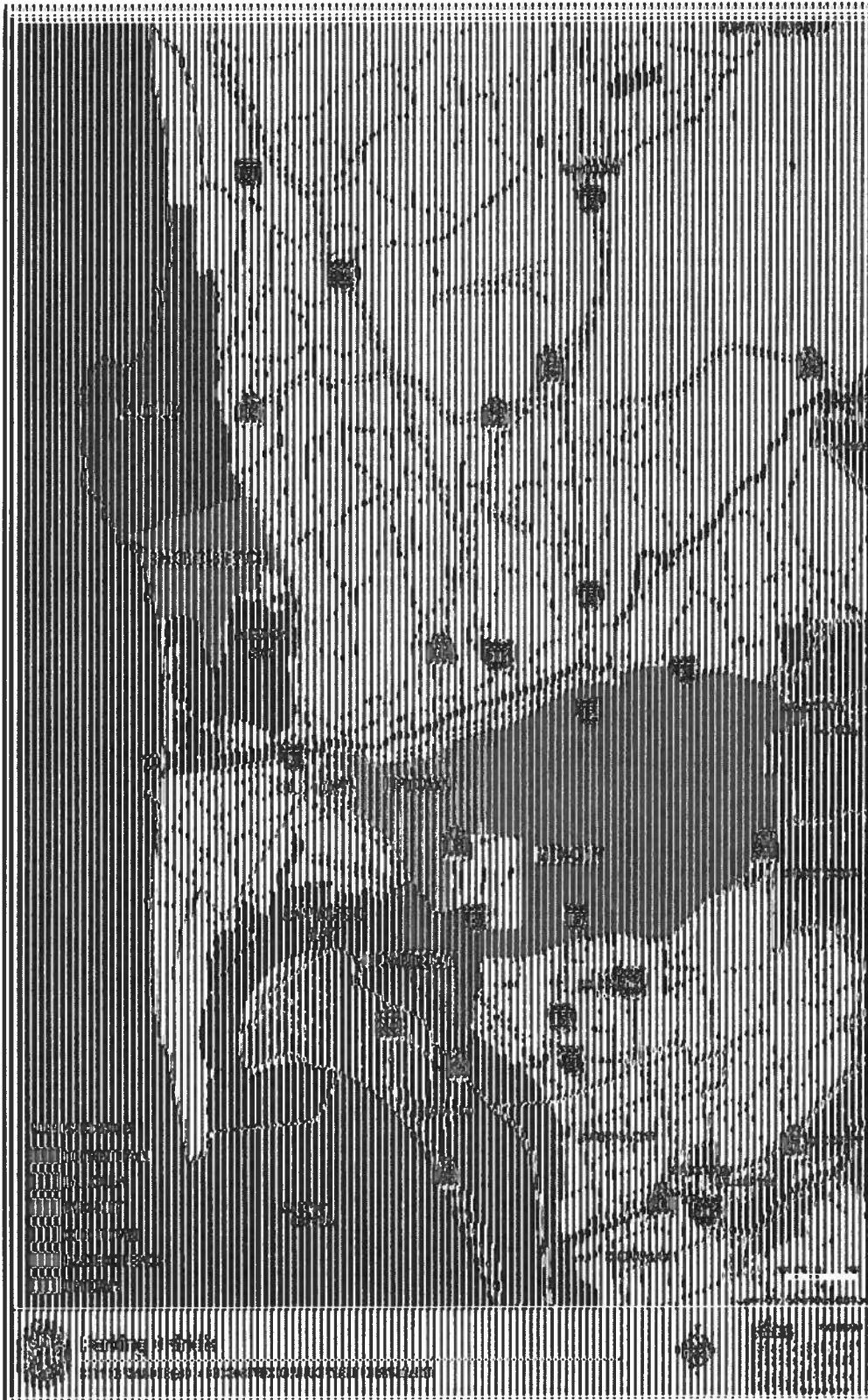


Exhibit C
City of San Diego Insurance Requirements

1. **General Requirements.** Contractor shall not begin any performance under this Agreement until Contractor has: (1) provided City insurance certificates and endorsements evidencing all insurance policies and endorsements described in this **EXHIBIT C**; (2) obtained City approval of each insurance company or companies issuing such insurance policies or endorsements; and (3) confirmed that all insurance policies contain the special provisions described in this **EXHIBIT C**.

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors. Contractor shall provide, at a minimum, the following:

2. **Commercial General Liability.** Insurance Services Office Form CG 00 01 covering commercial general liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury, with liability limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Agreement (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the amount of the required occurrence limit.
3. **Commercial Automobile Liability.** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
4. **Workers' Compensation.** Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
5. **Professional Liability (Errors and Omissions).** For consultant contracts, insurance appropriate to Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

6. **Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:
 - 6.1. **Additional Insured Status.** The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in

connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

- 6.2. **Primary Coverage.** For any claims related to this contract, Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or selfinsurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.
- 6.3. **Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.
- 6.4. **Waiver of Subrogation.** Contractor hereby grants to City a waiver of any right to subrogation which the Workers' Compensation insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
- 6.5. **Claims Made Policies** (applicable only to professional liability). The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
- 6.6. **Self Insured Retentions.** Self-insured retentions must be declared to and approved by City. City may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.
- 6.7. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to City. City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers

(LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers.

- 6.8. **Verification of Coverage.** Contractor shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- 6.9. **Special Risks or Circumstances.** City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- 6.10. **Additional Insurance.** Contractor may obtain additional insurance not required by this Contract.
- 6.11. **Excess Insurance.** All policies providing excess coverage to City shall follow the form of the primary policy or policies including but not limited to all endorsements.
- 6.12. **Subcontractors.** Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as the CG 20 38 04 13 endorsement.

Exhibit D
City of San Diego Prevailing Wage Requirements

1. **PREVAILING WAGES.** Contract and all Subcontractors shall comply with SDMC section 22.3019 requiring compliance with California Labor Code sections 1720 through 1861 (State prevailing wage law) for any and all construction work performed or funded under this Agreement cumulatively exceeding \$25,000 and for any and all alteration, demolition, repair and maintenance work performed or funded under this Agreement cumulatively exceeding \$15,000. Under San Diego Municipal Code section 22.3019, construction work performed or funded under this Agreement cumulatively exceeding \$25,000 and alteration, demolition, repair and maintenance work performed or funded under this Agreement cumulatively exceeding \$15,000 is subject to the State of California prevailing wage law set forth in California Labor Code sections 1720 through 1861 (“**Prevailing Wage Law**”) and in performing or funding any and all such work, Contractor and its Subcontractors shall comply with Prevailing Wage Law, including the requirements set forth in this **EXHIBIT D**. This requirement to comply with Prevailing Wage Law is in addition to any requirement to pay “living wage” under San Diego Municipal Code sections 22.4201 through 22.4245 (“**LWO**”) or this Agreement. If both Prevailing Wage Law and the LWO are applicable to particular work, Contractor and its Subcontractors must determine which per diem rate is highest for each classification of work between the applicable prevailing wage rate and living wage rate, and pay the higher of the two rates to their employees. The LWO may apply to work that is not subject to Prevailing Wage Law.

1.1 **Notice to City.** Contractor shall Notify City whenever Contractor or a Subcontractor intends to commence any activity that is subject to Prevailing Wage Law under this Agreement.

1.2 **Compliance with Prevailing Wage Requirements.** Under Prevailing Wage Law, Contractor and its Subcontractors shall ensure that all workers who perform work that is subject to Prevailing Wage Law are paid not less than the prevailing rate of per diem wages, as determined by the Director of the California Department of Industrial Relations (“**DIR**”), including work performed during the design and preconstruction phases of construction, which encompasses, without limitation, inspection and land surveying work. 1.2.1 *Wage Rates.* Copies of the prevailing rate of per diem wages are on file at City’s Equal Opportunity Contracting Department and are available for inspection to any interested Person on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>.

Contractor or its Subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make this information available to any interested Person upon request. Contractor shall deliver evidence of the required job site posting to City, within 5 calendar days after such posting.

1.2.1 **Wage Rate Effectiveness.** The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published wage rate shall be in effect for the Term of this Agreement. If the published wage rate refers to a

predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Agreement in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the Term of this Agreement, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the Term of this Agreement, such wage rate shall apply to the balance of the Term of this Agreement.

- 1.3 Penalties for Violations.** Contractor and its Subcontractors shall comply with California Labor Code section 1775, if a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. Compliance with California Labor Code section 1775 shall be in addition to any other applicable penalties allowed under California Labor Code sections 1720-1861.
- 1.4 Payroll Records.** Contractor and its Subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Contractor and its Subcontractors shall comply with California Labor Code section 1776, including having provisions requiring such compliance in all contracts with Subcontractors. Any requirement to submit certified payroll records to DIR shall include, without limitation, submitting certified payroll records to DIR through its online system for submission of certified payroll records, as required by DIR, and submitting certified payroll records to City through City's web-based Labor Compliance Program (described in this **EXHIBIT D**, Section 1.9). Further, Contractor and its Subcontractors shall furnish the records specified in California Labor Code section 1776 directly to the Labor Commissioner in the manner required in California Labor Code section 1771.4. Contractor is responsible for ensuring that its Subcontractors submit certified payroll records to City, the Labor Commissioner, and DIR.
- 1.5 Apprentices.** Contractor and its Subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Contractor shall be held responsible for its compliance and the compliance of its Subcontractors with California Labor Code sections 1777.5, 1777.6 and 1777.7.
- 1.6 Working Hours.** Contractor and its Subcontractors shall comply with California Labor Code sections 1810 through 1815, including: (i) restricting working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specifying penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

1.7 Required Provisions for Subcontracts. Contractor and each of its Subcontractors shall include, at a minimum, a copy of the following provisions in any contract it enters into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

1.8 Labor Code Section 1861 Certification. In accordance with California Labor Code section 3700, Contractor and its Subcontractors are required to secure the payment of compensation of their respective employees and by signing this Agreement or any subcontract, respectively, Contractor and each of its Subcontractors certifies that “I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.” Contractor shall include this certification by each Subcontractor in each contract with a Subcontractor.

1.9 Labor Compliance Program. City has its own Labor Compliance Program authorized in August 2011 by DIR. City will withhold payments to Contractor when payroll records are delinquent or deemed inadequate by City or another governmental entity, or it has been established, after an investigation by City or another governmental entity, that underpayment(s) have occurred. For questions or assistance, please contact City’s Equal Opportunity Contracting Department at 619-236-6000.

1.10 Contractor Registration Requirements. All work subject to Prevailing Wage Law is subject to compliance monitoring and enforcement by DIR. Contractor must be registered with DIR before the Effective Date. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal subject to the requirements of California Public Contract Code section 4104, or engage in the performance of any contract for public work, as defined in Prevailing Wage Law, unless currently registered and qualified to perform the work under California Labor Code section 1725.5. In accordance with California Labor Code section 1771.1(a), “[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 2103.5 of the Public Contract Code, provided the contractor is registered to perform public work under Section 1725.5 at the time the contract is awarded.”

1.10.1 Inadvertent Error. A contractor’s inadvertent error in listing a subcontractor who is not registered under California Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive, provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor under Public Contract Code section 4107.

1.10.2 Cancellation. A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation,

provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of California Labor Code section 1725.5.

1.10.3 *Registration Certification.* By entering into this Agreement, Contractor certifies that: (a) Contractor is registered with DIR in compliance with Labor Code sections 1771.1 and 1725.5 and shall provide proof of such registration to City; and (2) Contractor and its Subcontractors have verified or will verify that all Subcontractors used on work subject to Prevailing Wage Law are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and shall provide proof of such Subcontractor registration to City.

1.11 **Stop Order.** If Contractor or its Subcontractor(s) engage in any work without the required registration, in violation of California Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor(s) or unregistered subcontractor(s) on ALL public works until the unregistered contractor(s) or unregistered subcontractor(s) is/are registered. Failure to observe a stop order is a misdemeanor.

1.12 **List of all Subcontractors.** City may ask Contractor for the most current list of Subcontractors (regardless of tier), along with their DIR registration numbers, utilized in performance of any work under this Agreement at any time during performance of this Agreement, and Contractor shall provide the list within ten (10) working days of City's request. Additionally, Contractor shall provide City with a complete list of all Subcontractors utilized in performance of any work under this Agreement (regardless of tier), within ten (10) working days after the completion of the work, along with their DIR registration numbers. City shall withhold any payments to Contractor until 30 days after this information is received by City.

1.13 **Exemptions for Small Projects.** There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. Contractor shall still comply with California Labor Code sections 1720, et. seq. The only recognized exemptions are listed below:

1.13.1 *Registration.* Contractor and its Subcontractors will not be required to register with the DIR for small projects. (California Labor Code section 1771.1).

1.13.2 *Certified Payroll Records.* The records required in California Labor Code section 1776 shall be required to be kept and submitted to City, but will not be required to be submitted online with the DIR directly. Contractor will need to keep these records for at least three (3) years following the completion of the subject work. (California Labor Code section 1771.4).

1.13.3 *List of all Subcontractors.* Contractor will not be required to hire only registered Subcontractors and is exempt from submitting the list of all Subcontractors that is required in this **EXHIBIT D**, Section 1.12. (California Labor Code section 1773.3).

1.14 **Filing of Form PWC-100.** Contractor shall timely file or update a PWC-100 Form (or other form required by DIR) with DIR, as and when required by Prevailing Wage Law, and concurrently deliver a copy of such filed or updated form to City.

1.15 **Filing of Notice of Completion.** Contractor shall record a notice of completion in accordance with California Civil Code section 8182, et seq., with the Recorder for the County of San Diego, California, and concurrently deliver a copy of such recorded notice of completion to City.