

# NEW CITY AMERICA SERVICES AGREEMENT WITH THE EAST VILLAGE ASSOCIATION OF SAN DIEGO

September 24, 2022 (Amended)

This Services Agreement, with an effective date of November 1st, 2022, by and between NEW CITY AMERICA, INC., a California corporation and the East Village Association (EVA) Business Improvement District of San Diego, based upon the following recitals.

## RECITALS

- A. NEW CITY AMERICA, INC. is a California Corporation ("NCA") that provides business district revitalization for communities by, among other methods, establishing managing and consulting with Business Improvement District and Community Benefit Districts and their respective management corporations.
- B. Pursuant to the authority contained in the By Laws of the East Village Association of San Diego, the Board of Directors of EVA wishes to contract with New City America for full management services, (excluding providing Clean and Safe management) in compliance with the contractual obligations of the City of San Diego.
- C. The EVA wishes to retain NCA to manage their current Business Improvement District pursuant to the terms and conditions of this Agreement and NCA agrees to provide such services.

## Accordingly the parties agree as follows:

1. The EVA hereby retains NCA to manage its Business Improvement District (BID) and NCA agrees to perform such services for the EVA pursuant to the terms of this Agreement as well as comply with the contract with the City of San Diego.
2. **Scope of Services.** NCA agrees to perform the services specified in the Scope of Services attached to this Agreement as Schedule "1" and incorporated herein by reference.
3. **Compensation.** The EVA Board shall pay NCA for the services performed by and in accordance with the Schedule of Compensation attached hereto as Schedule "2" and incorporated herein by reference.
4. **Invoicing.** NCA shall invoice the EVA monthly on the 1st of each month and the EVA agrees to pay NCA the amount of the invoice within 10 days of the submittal of the invoice.
5. **Expenses.** In addition to paying NCA the compensation set forth in this Agreement, the EVA shall also pay all expenses incurred by NCA in the performance of Services. However, before incurring any expense in excess of \$1,000.00, NCA will obtain written authorization from the Executive Committee before incurring the expense. Written authorization may be by e-mail; or other

electronic transmission. Pre-authorized expenses will only be paid by EVA upon NCA's presentation of a receipt or other documentation evidencing the expense.

6. **Obligations of EVA.** EVA agrees to comply with all reasonable requests of NCA and provide requested information and access to all documents reasonably necessary to the performance of NCA's services. In addition, EVA will perform all Services set forth in Schedule of EVA's Obligations attached hereto as Schedule "3" and incorporated herein by reference. [No schedule attached]
7. **Work/Deliverables by NCA.** NCA shall provide the deliverables set forth in the Scope of Services to EVA pursuant to the schedule set forth in the Scope of Services. EVA will have thirty (30) days to accept or reject any deliverable to insure that they meet the specifications and requirements and the terms of this Agreement. If EVA rejects any deliverable during this Acceptance Period, NCA Will have thirty (30) days to correct the rejected deliverable subject to valuation and acceptance in accordance with this section. All work and deliverables resulting from NCA's performance of the Scope of Services pursuant to this Agreement shall be the property of EVA, and NCA hereby assigns to EVA all of NCA's right, title and interest in and to such work and deliverables. [No deliveries referenced in the scope of services]
8. **Term.** The term of this Agreement will become effective on the date set forth in this Agreement and will continue in effect until the services have been performed unless terminated sooner based on the provisions of this Agreement. The contract will commence, based upon the Scope of Services and compensation agreement as of November 1st, 2022.
9. **Termination by EVA.** EVA shall have the right to terminate this Agreement at any time and for any reason by giving NCA at least ninety (90) days advance written notice. EVA shall also have the right to termination this Agreement if NCA is in default in the performance of this Agreement or commits a material breach of the provisions of this Agreement, provided that EVA has first given NCA thirty (30) days advance notice of the breach and an opportunity to cure.. If NCA fails to cure the alleged default or material breach within the thirty (30) days then EVA may immediately terminate this Agreement.
10. **Termination by NCA.** NCA, at NCA's option, may terminate this Agreement by first giving notification to EVA setting forth the alleged default or alleged material breach of any provision of this Agreement and EVA shall then have thirty (30) days to cure the alleged default or material breach. If EVA fails to cure the alleged default or material breach within 30 days, then NCA may terminate this Agreement.
11. **Grounds for Immediate Termination.** Notwithstanding the provisions of Sections 9 and 10 of this Agreement, this Agreement shall terminate immediately upon the occurrence of any one of the following events:
  - 11.1 Either party violating any provisions of any law, ordinance, rules, and regulations of the State of California, or other local or regulatory governmental agency.
  - 11.2 NCA ceases to do business.

11.3 NCA files a petition for bankruptcy or makes an assignment for the benefit of creditors under the United States Bankruptcy Code.

12. **Effect of Termination on Compensation.** In the event of the termination of this agreement prior to the completion of its term, NCA shall be entitled to all compensation earned by NCA prior to the date of termination.

13. **Duties on Termination.** Upon termination of this Agreement for any reason, NCA shall deliver to EVA all of NCA's records and documents, including in electronic format, maintained, used, or provided to or by NCA in the course and scope of its duties under this Agreement or that pertain to the EVA, all of which shall be the sole and exclusive property of EVA, except those records or documents that constitute a trade secret of NCA.

#### 14. Non-Competition Agreement

14.1 **Trade Secrets Defined.** In conducting its business, NCA has developed confidential trade secrets concerning its business including, without limiting the generality of the foregoing, the manner and methodology of establishing Business Community Benefit Districts, Community Improvement Districts and similar districts, its manner of operating and administering business improvement districts, publicizing business improvement districts and written records used in NCA's business, and other confidential information of, about, or concerning the business of NCA, its manner of operation or other confidential data of any kind, nature or description. All of the foregoing information is hereby referred to as the "Trade Secret Information of NCA." The foregoing trade secret information of NCA is important, material, and effects the successful conduct of NCA's business and its good will.

14.2 **Trade Secrets Remain Property of NCA.** EVA specifically agrees that EVA will not at any time, whether during or subsequent to the term of this Agreement, in any fashion, form or manner, unless specifically consented to in writing by NCA, either directly or indirectly use or divulge, disclose or communicate to any person, firm or corporation, in any manner whatsoever, any Trade Secret Information of NCA of any kind, nature, or description concerning any matters affecting or relating to the business of NCA, including, without limiting the generality of the foregoing, the Trade Secret Information of NCA, the parties hereto stipulating that as between them, the same are important, material and confidential trade secrets and affect the successful conduct of NCA's business and its goodwill, and that any breach of any term of this section is a material breach of this agreement. All equipment, notebooks, computer programs, software data, documents, memoranda, reports, files, samples, books, correspondence, lists, other written and graphic records, and the like, affecting or relating to the business of NCA, which EVA shall prepare, use, construct, observe, possess or control shall be and remain NCA's sole property.

14.3 **EVA's Duties on Termination.** In the event of Termination Agreement with NCA, EVA agrees to deliver promptly to NCA, all equipment, notebooks, computer programs, software, data, documents, memoranda, reports, files, books, correspondence, lists, or other written or graphic records, either in written or electronic form, and the like, relating to NCA's business, which are or have been in EVA's possession or under his control except those pertaining to the work performed by NCA for EVA that is being returned to EVA pursuant to paragraph 13, above..

14.4 **Non-Solicitation of Other Representatives.** During the term of this Agreement, EVA agrees that EVA will not, directly or indirectly or by action in concert with others, induce or influence (or seek to induce or influence) any person who is engaged (as an employee, agent, independent contractor or otherwise) by NCA to terminate his or his employment or engagement.

14.5 **Conflict Between Representative's Obligations.** Nothing contained in Sections 14.3 through 14.5 shall be deemed a waiver of EVA's obligations under Section 14.2, and in the event of any conflict or inconsistency between the provisions of Sections 14.3 through 14.5 and Section 14.2, the provisions of Section 14.2 shall control. The covenants contained in Sections 14.2 through 14.5 shall be construed as separate covenants covering their subject matter in each of the separate counties and states in the United States in which NCA transacts its business; to the extent that any covenant shall be judicially unenforceable in any one or more of said counties or states, said covenant shall not be affected with respect to each other county and state, each covenant with respect to each county and state being construed as severable and independent.

15. **Relationship Created.** NCA understands and agrees that it is an independent contractor to EVA within all applicable laws and regulations, that it is not an employee of EVA, and that nothing herein shall be construed as making NCA an employee of EVA. NCA is free to perform similar services for others and may do so concurrently to performing the Services for the EVA. No agency, partnership, joint venture, or other similar relationship is created with EVA, and neither party shall have the authority to bind the other in any such respect. NCA shall be responsible for paying all fees, wages and taxes to its employees or independent contractors that NCA utilizes for the performance of the Scope of Services.

16. **Confidentiality.** NCA's relationship with EVA creates a relationship of confidence and trust with respect to any information applicable to EVA or its business, or the members of EVA, which will be made known to NCA during the term of this Agreement (the "Proprietary Information"). By way of illustration, but not limitation, Proprietary Information includes private financial information, trade secrets, marketing plans, operations techniques, member information and other business know-how or EVA and its members. NCA agrees that such information is the sole property of EVA and/or its members, as applicable. At all times, both during the term of this Agreement and thereafter, NCA will keep in strict confidence all Proprietary Information and will not use or disclose Proprietary Information without the prior written consent of EVA, except as may be necessary in the performance of this Agreement. NCA further agrees to use at least the same degree of care to protect the Proprietary Information from disclosure, and in no event less than reasonable care, and shall not disclose or use the Proprietary Information to or for the benefit of third parties without the advance written consent of EVA unless NCA is legally required to do so by judicial order or legal process, provided that NCA first gives EVA at least ten (10) days advance notice of any legally required disclosure.

#### 17. **Indemnification.**

17.1 **Indemnification by EVA.** EVA shall indemnify and hold NCA, its shareholders, directors, managers, officers, employees and agents harmless from any and claims, costs, expenses, losses and liabilities which any of them may suffer or incur by reason of EVA's gross negligence or

willful misconduct, or EVA's breach of an obligation pursuant to this Agreement.

- 17.2 **Indemnification by NCA.** NCA shall indemnify and hold EVA and EVA's employees, representatives, and agents harmless from any and all claims, costs, expenses, losses and liabilities which they may suffer or incur by reason of NCA's actions or omissions or NCA's performance under this contract.
18. **Assignment.** Neither this agreement nor any duties or obligations under this agreement may be assigned by either party without the prior written consent of the other party.
19. **Notices.** Any notices to be given hereunder by either party to the other may be effected by personal delivery in writing or by mail, registered or certified, return receipt requested, postage prepaid. Mailed notices shall be addressed to the parties as follows:

TO NCA: \_\_\_\_\_

Marco Li Mandri  
New City America  
2011 W. California Street  
San Diego, CA 92110

To EVA: President  
East Village Association  
1041 Market Street, #200  
San Diego, CA 92101

Each party may change address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of one (1) day after mailing.

20. **Entire Agreement of the Parties.** This agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of services by NCA to EVA and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this agreement shall be valid or binding. Any modification of this agreement will be effective only if it is in writing signed by the party to be charged.
21. **Partial Invalidity.** If any provision in this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
22. **Mediation.** Any controversy or claim arising out of or relating to this contract or the breach thereof will be subject to mediation. If the parties are unable to agree to a mediator, then the mediation will be conducted in accordance with the rules of the American Arbitration

Association. If a party first files a lawsuit without seeking to mediate the dispute, then that party will not be entitled to recover attorney's fees notwithstanding the provisions of Paragraph 23 of this Agreement.

23. **Attorney's Fees.** If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this agreement, the prevailing party will be entitled to reasonable attorneys' fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.
24. **Governing Law and Venue.** This agreement will be governed by and construed in accordance with the laws of the State of California. Exclusive venue of all legal proceedings, including administrative and mediation proceedings, shall be the County of San Diego, State of California.

NEW CITY AMERICA, INC.  
a California corporation

BY:



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Marco Li Mandri, President

TO EVA:



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INTERIM President

TERENCE McCLEARY

East Village Association of San Diego

## SCHEDULE 1:

### Scope of Services:

#### (Desired Skills and Experience)

- Working with a public benefit non-corporation board of directors:

Response: New City America have formed over 70 public benefit corporations which serve in the capacity of District Management Corporations (DMC). We current manage 5 public benefit DMCs statewide and consult with 3 others.

- Experience in public space development and activation:

Response: NCA has had tremendous success in developing public spaces in Little Italy. Our Piazza della Famiglia is one of the most successfully managed public spaces in San Diego County. Over the years, we have created 5 large and small public spaces in Little Italy.

We have also created and managed significant public spaces in Downtown San Leandro, Downtown Hayward, Downtown Glendale, and are working on a public space plan for Third Avenue in Chula Vista. All public spaces are independently funded and have evolved into focal points in their respective communities.

- Ability to effectively communicate with stakeholders and the City Council:

Much of our success in forming and managing BIDs and MADs is based upon our ability to explain complicated situations and propose solutions in various business districts. We have an excellent working relationship with Mayor Gloria's office as well as Councilman Whitburn's office.

- Demonstrated experience in business attraction:

Response: Our best example attracting new businesses is to be found in Little Italy. Even through COVID, NCA working through the Little Italy Association, did not lose one restaurant in the pandemic. We currently have no commercial street front vacancies in Little Italy.

- Demonstrated experience in fundraising to achieve goals:

Response: Little Italy, similar to Gaslamp and East Village, has leveraged its BID funds with parking meter revenues to create a thorough valet program, lighting program and pending bollard program for the district. The ratio of Little Italy MAD/BID annual revenues relative to the overall revenue, pre COVID, was a 3 to 1 revenue rate compared to the assessment district dollars.

- Knowledge of basic accounting principles:

Response: NCA has developed a standard QuickBooks report that reveals monthly income and

expenses so the Board members and public at large can follow the expenditure of funds in the operation of the district. The report is thorough yet simple to understand and read. Shirley Zawadzki and Rosie De Luca perform this function in our company.

- Knowledge of basic property management and maintenance of the public rights of way:

Response: Property management is more the responsibility of the Downtown Clean and Safe program, and not necessarily BIDs. However, since we manage 5 property based BIDs statewide, we have great knowledge of public rights of way property management and can work with apartment and condo HOAs to help them in their property management needs.

- Proficient computer and business e-mail skills:

Response: NCA excels in its knowledge and use of computer and business e-mail skills. Our staff has mastered all aspects of communication using technological devices to distribute information to the stakeholders as well as solicit feedback.

- Proficient understanding of the public records and public notice requirements of the Brown Act.

Response: Since NCA has formed over 85 districts in the state of California and has managed almost 25 districts since 2000, we have deep knowledge of not only the Brown Act open meetings provisions, closed session provisions and the California Public Records Act. We have been responsive to request for public records in nearly all of the districts we have managed. If issues are of a legal nature, we have a locally based legal firm that represents the District Management Corporations and their Board members to ensure that the rules are strictly followed.

- Pursuing successful funding sources outside of the District standard income:

Response: NCA has successfully generated non-BID and non-MAD income for over 20 years. We recently received a \$50,000 grant from a local developer for public art in Little Italy. Over the last 15 years, we have raised well over 2 million dollars to supplement the services of the Little Italy MAD and BID. We have done similar fundraising and received grants in the other districts we have managed throughout the state.

## Scope of Work:

Response: All of the activities listed in this part of the RFP have been successfully done by NCA in the management of its client districts. Those activities and programs include:

- Proposing and siting ideal locations for public space;
- Proposing sustainable strategies to manage the public spaces;
- Seeking contributions for new developments;
- Reviewing current system of public rights of way maintenance;
- Improving District Identity and marketing;
- Creating and maintain district website;
- Serving the district's administrative needs;
- Advocating on behalf the area's business owners;



- Providing a preliminary annual report by Sept. 30th 2022 that gives a realistic timeline for growth of new public spaces;

### Corporate Organizational Support:

New City America staff, based upon our management of 5 district management corporations in California, plus advising 2 others, is fully aware of the requirements for Corporate organizational support and Board operations. We have created the "New City Standards" which is about to be launched as an organizational methodology nationwide. Our experience has led NCA staff to be a leader in the field that are responsive and implement the following tasks:

- NCA staff prepares for and attends all Board and Executive Committee meetings;
- We will prepare all Board packets consistent with the Brown Act and the City of San Diego BID ordinance. It is clear that actions in the past with EVA that should have been specifically listed as "Action Items," on the agenda, have not adhered to the requirements of the Brown Act and the City ordinance;
- We work the President to prepare and distribute the Board and Committee meetings at least 72 hours prior to the meeting beginning;
- We have an excellent record of collaborating with the President and committee chairs, task force and Ad Hoc Committee leaders to prepare agendas and Board packets.
- NCA staff will help direct and manage EVABID Board and Committee discussions;
- NCA staff will write and ensure that Board and Committee meeting minutes are clear and accurate;
- NCA shall maintain all annual election of EVABID Board members;
- NCA shall keep a roster of attendance for all EVABID Board members to ensure compliance with the Bylaws attendance requirements;
- NCA shall prepare all reports, both Financial and other City requirements, to meet the City of San Diego's Economic Development Dept.'s requirements;
- NCA shall provide monthly financial reports to the Board and Executive Committee and work with the CPA to provide accurate financial reports to the State and Federal government, as well as post them on the website;
- Shall ensure that adequate general liability, Directors and Officers and other related insurance.

### General Administration:

New City America staff has probably more experience as compared to any other company in the state, in providing effective and efficient administration of all aspects of the management of the East Village BID.

New City America shall offer the following employees to manage and operate the East Village Association BID:

New City America has 12 staff members working throughout the state. Marco Li Mandri, President, would be the main point of contact for the East Village BID. Our staff will handle all aspects of the district management, leadership and outreach:

Marco Li Mandri – Chief Executive Officer, *Marco Li Mandri will be the main point of contact for the East Village BID*

Shirley Zawadzki – Chief Operating Officer  
 Laura Li Mandri – Controller and Chief Financial Officer Rosie De Luca – BID financial report to the City of San Diego  
 Monica Montes – Database/Administration support  
 Chris Gomez – Design and Layout  
 John Li Mandri – Public Space development and design Jerry Klink – Mapping (sub-contractor)  
 Dominic Li Mandri – Interim District Manager, liaison with the Clean and Safe Program  
 Ryan Huffman, Administration (Glendale)  
 Michelle Mercado – Communications  
 Liam Zawadzki – Research  
 Ethan Olsen, Asst. District Manager assisting Marco and Dominic Li Mandri in the restructuring of the Board and Committees

<b><i>NCA Personnel who will work on the East Village BID</i></b>	<b><i>Title and involvement in this proposal for management of the East Village BID</i></b>	<b><i>Years in this Field</i></b>	<b><i>Years with New City America</i></b>
Marco Li Mandri marco@newcityamerica.com	President, Project Manager, Key personnel of the effort EVA Executive Director	27	Since 1995
Dominic Li Mandri dominic@newcityamerica.com	Interim District Manager		
EVA Asst. District Manager	Ethan Olsen, Assistant District Manager	New	
Shirley Zawadzki Shirley@newcityamerica.com	Assistant Project Manager, Accounting	26	Since 1996
Rosie De Luca, Financial Management	Assistant Project Manager for Financial reporting to the City	26	Since 1996
Chris Gomez chris@newcityamerica.com	District Design and Graphics	21	Since 2001
Laura Li Mandri laura@newcityamerica.com	Controller of Corporation, Administration	17	Since 2005
Monica Montes monica@newcityamerica.com	Database work, meeting coordinator, Executive Assistant	19	Since 2003
Jerry Klink Jerry@newcityamerica.com	Mapping, graphics, public space design, assist in meeting coordination	7	Since 2015
Liam Zawadzki	Research	1	Since 2021

The firm is a C Corporation owned 100% by Marco and Laura Li Mandri. We are a family owned and operated business and have conducted this work since the mid- nineties.

## SCHEDULE 2:

### Compensation:

**Fee:** New City America works on a retainer basis. The fee for managing all aspects of the EVA BID shall be \$15,000 per month or \$180,000 per year. Management fees shall be paid by the 10<sup>th</sup> of each month for the month that the work is to be performed. The first date this \$15,000 retainer shall be due will be on November 10<sup>th</sup>, 2022, and on the 10<sup>th</sup> of each month thereafter for the duration of this agreement.

Nothing in this agreement precludes the EVA Board and New City America from increasing the retainer or creating a bonus incentive for attracting new revenues or income to the Association. Any increase in the retainer or bonus incentive plan shall be in writing signed by EVA and NCA to be enforceable