

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 AGREEMENT FOR PARKING AND BUSINESS IMPROVEMENT AREA FUNDS
2 WITH BIXBY KNOLLS BUSINESS IMPROVEMENT ASSOCIATION

3 **35266**

4 THIS AGREEMENT is made and entered, in duplicate, as of January 28,
5 2019 for reference purposes only, pursuant to a minute order adopted by the City Council
6 of the City of Long Beach at its meeting on October 9, 2018, by and between BIXBY
7 KNOLLS BUSINESS IMPROVEMENT ASSOCIATION, a nonprofit corporation organized
8 under the laws of the State of California ("Association"), with a business address of 4321
9 Atlantic Avenue, Long Beach, California 90807, and the CITY OF LONG BEACH, a
10 municipal corporation ("City").

11 WHEREAS, Association has the purpose of promoting business and
12 enhancing the quality of the overall environment in the Bixby Knolls commercial area of
13 Long Beach; and

14 WHEREAS, a Parking and Business Improvement Area ("PBIA") was
15 established in the Bixby Knolls commercial area in accordance with state law for the
16 purpose, among other things, of collecting assessments and charges with business license
17 taxes in order to maintain and increase the level of business activity and to improve the
18 quality of the overall environment in the Bixby Knolls area at Long Beach; and

19 WHEREAS, maintenance and increase in business activity and improvement
20 in the quality of the overall environment will serve to maintain and increase the tax revenue
21 derived by the City from the Bixby Knolls area and improve the local economy;

22 NOW, THEREFORE, in consideration of the mutual terms, covenants, and
23 conditions in this Agreement, the parties agree as follows:

- 24 1. Association shall perform all activities necessary for the proper
25 management of the PBIA in a professional and prudent manner in accordance with all state
26 and local laws and the City Council approved Annual Report during the period of October
27 1, 2018 through September 30, 2019.
- 28 2. Association shall submit an Annual Report to the City each year by

1 early-June consistent with the program for the coming fiscal year. The Annual Report shall
2 be prepared in a manner acceptable to the City Manager or his designee, the Business
3 Improvement District Program Manager ("BID Manager"), and shall meet all minimum State
4 law requirements for Annual Reporting, which include: (a) any proposed changes to
5 boundaries of the district or to any benefit zones within the district; (b) improvements,
6 maintenance, and activities to be provided for that fiscal year; (c) estimate costs of
7 improvements, maintenance, and activities for that fiscal year; (d) method and basis of
8 levying the assessment in sufficient detail to allow each member to estimate the amount of
9 their levy for that fiscal year; (e) estimated amount of any surplus or deficit revenues to be
10 carried over from a previous fiscal year; and (f) amount of any contributions to be made
11 from sources other than assessment levies.

12 3. Association will prepare and file with the BID Manager a six-month
13 Progress Report of the activities described in the Annual Report. The Progress Report shall
14 be filed annually by mid-April for the period ending March 31st. The Progress Report shall
15 include: (a) an update on programs, achievements, and activities; (b) a six-month Financial
16 Report, which shall include a line-item schedule which matches expenditures with specific
17 amounts and activities designated in the Annual Report; and (c) performance metrics to
18 help quantify the impact of the Annual District Program. The Progress Report shall be
19 prepared in a manner and format approved by the BID Manager.

20 4. Association will prepare and file with the BID Manager an end-of-the-
21 year Financial Report, which shall include a line-item schedule which matches
22 expenditures with specific amounts and activities designated in the Annual Report to be
23 reviewed by the BID Manager for consistency with the Annual Report. The end-of-the-year
24 Financial Report shall be submitted no later than mid-October every year.

25 5. The Association's financial records relating to the performance of this
26 Agreement shall be kept and maintained in accordance with generally accepted accounting
27 principles. These records shall be current, complete and available for inspection and as
28 deemed necessary by the BID Manager. The Association shall provide all reports,

1 documentation or information requested or required by the City within fifteen (15) days of
2 a written request from the BID Manager to the Executive Director and/or President of the
3 Board unless a longer period of time is otherwise expressly stated by the BID Manager.

4 6. Association may accrue surplus of funds paid by the City to
5 Association, but not expended by Association, provided that Association identifies such
6 surplus in the Annual Report and shows the use of the surplus along with other assessment
7 funds.

8 7. Assessment money may be used to finance fund-raising activities
9 intended to generate additional revenue for use by the Association. However, the sum of
10 all assessment money used for this purpose shall be accounted for and proceeds from the
11 fund-raiser equal to that sum shall be used for purposes approved by the City Council and
12 conforming to the purposes of the assessment levy as defined by State law.

13 8. Association is authorized to adjust expenditures in any expenditure
14 category that carries out actual programs and activities, such a Promotions and Special
15 Projects, provided that: (a) prior written approval is obtained from the BID Manager, and
16 (b) the change does not exceed twenty percent (20%) of the category total. Furthermore,
17 the Association may adjust line items within any category as long as the limits on categories
18 as described above are maintained, and the total expenditures do not exceed the total
19 budget or the total assessment revenue available, whichever is less.

20 The amount of assessment revenue expended in categories of
21 administration and general office can be increased only with the City Council's approval,
22 but may be decreased or reallocated between line items with the prior written approval of
23 the BID Manager.

24 Use of contingency funds may be made for purposes defined in the
25 Annual Report.

26 9. The BID Manager will cause to be reported to the Association the total
27 assessment revenue collected by the City every two (2)-month period of the fiscal year.

28 10. The City will cause to be paid to the Association the total amount of

1 funds collected during each two (2)-month period of the fiscal year. The payment and
2 accompanying reporting will be processed and sent to the Association as soon as possible
3 after the month is closed by the Department of Financial Management. However, the total
4 amount paid to the Association shall not exceed the total amount of Bixby Knolls Parking
5 and Business Improvement Area ("BKPPIA") assessments and charges received by the
6 City.

7 11. Association will use none of the funds it receives from the Agreement
8 for any expense, including administration and overhead, in support of any political activity.
9 These expenses shall also conform to City regulations and policy pertaining to conflict of
10 interest regulations and non-discrimination in the hiring of vendors.

11 12. It is further agreed that Association will reimburse the City for all costs
12 incurred by City in providing special services specifically requested and approved in writing
13 by the Association, and related to the Annual Report during the term of this Agreement.
14 These costs will be determined and certified by the BID Manager and forwarded to the
15 Association Executive Director and/or President. The City will then invoice the Association
16 for the cost of the service, which shall be paid within thirty (30) days of receipt. In the event
17 that payment is not received within ninety (90) days of the date of invoice, City shall transfer
18 that amount from the BKPPIA monies in the PPIA Fund to the General Purpose Fund to
19 compensate City for incurred costs.

20 13. Insurance.

21 A. As a condition precedent to the effectiveness of this
22 Agreement, Association shall procure and maintain at Association's expense for the
23 duration of this Agreement from an insurance company that is admitted to write
24 insurance in the State of California or that has a rating of or equivalent to an A:VIII
25 by A.M. Best and Company the following insurance:

26 i. Commercial general liability insurance or self-insurance
27 equivalent in coverage scope to ISO CG 00 01 10 93 naming the City of Long
28 Beach, and their officials, employees, and agents as additional insureds on

1 a form equivalent in coverage scope to ISO CG 20 26 11 85 from and against
2 claims, demands, causes of action, expenses, costs, or liability for injury to
3 or death of persons, or damage to or loss of property arising out activities
4 performed by or on behalf of the Association in an amount not less than One
5 Million Dollars (US \$1,000,000) per occurrence and Two Million Dollars (US
6 \$2,000,000) in general aggregate.

7 ii. Workers' compensation coverage as required by the
8 Labor Code of the State of California and Employer's liability insurance with
9 minimum limits of One Million Dollars (US \$1,000,000) per accident or
10 occupational illness. The policy shall be endorsed with a waiver of the
11 insurer's right of subrogation against the City of Long Beach, and their
12 officials, employees, and agents.

13 iii. Commercial automobile liability insurance equivalent in
14 coverage scope to ISO CA 00 01 06 92 in an amount not less than Five
15 Hundred Thousand Dollars (US \$500,000) combined single limit (CSL)
16 covering Symbol 1 ("Any Auto").

17 iv. Commercial crime insurance or a surety bond in an
18 amount at least equal to the maximum amount of funds potentially held at
19 any one time by Association and that guarantee that such funds will not be
20 mismanaged or misplaced, providing protection to the City of Long Beach if
21 it experiences any losses, damages, or penalties resulting from any
22 malfeasance or misfeasance by the Association, its officers, employees, or
23 agents. Claim payments under such policy or bond shall name the City of
24 Long Beach as loss payee.

25 B. Any self-insurance program or self-insurance retention must be
26 approved separately in writing by City and shall protect the City of Long Beach, and
27 their officials, employees, and agents in the same manner and to the same extent
28 as they would have been protected had the policy or policies not contained retention

1 provisions. Each insurance policy shall be endorsed to state that coverage shall not
2 be suspended, voided, or canceled by either party except after thirty (30) days prior
3 written notice to City, and shall be primary and not contributing to any other
4 insurance or self-insurance maintained by City.

5 C. Any subcontractors which Association may use in the
6 performance of this Agreement or using funds provided by this Agreement shall be
7 required to indemnify the City to the same extent as the Association and to maintain
8 insurance in compliance with the provisions of this section with the exception of (d)
9 as part of their separate contracts with Association.

10 D. Association shall deliver to City certificates of insurance and
11 original endorsements for approval as to sufficiency and form prior to the start of
12 performance hereunder. The certificates and endorsements for each insurance
13 policy shall contain the original signature of a person authorized by that insurer to
14 bind coverage on its behalf. "Claims-made" policies are not acceptable unless City
15 Risk Manager determines that "Occurrence" policies are not available in the market
16 for the risk being insured. In a "Claims-made" policy is accepted, it must provide for
17 an extended reporting period of not less than one hundred eighty (180) days. Such
18 insurance as required herein shall not be deemed to limit Association's liability
19 relating to performance under this Agreement. City reserves the right to require
20 complete certified copies of all said policies at any time. Any modification or waiver
21 of the insurance requirements herein shall be made only with the approval of City
22 Risk Manager. The procuring of insurance shall not be construed as a limitation on
23 liability or as full performance of the indemnification provisions of this Agreement.

24 14. Indemnification: Association shall defend, indemnify, and hold
25 harmless the City, its Commissions and Boards, and their officials, employees, and agents
26 from and against any and all demands, claims, causes of action, liability, loss, liens,
27 damage, costs, and expenses (including attorney's fees) arising from or in any way
28 connected or alleged to be connected with Association's performance of the work under

1 this Agreement and from any act or omission, willful misconduct, or negligence (active or
2 passive) by or alleged to be by Association, its employees, agents, or subcontractors either
3 as a sole or contributory cause, sustained by any person or entity (including employees or
4 representatives of City or Association). The foregoing shall not apply to claims or causes
5 of action caused by the sole negligence or willful misconduct of the City, its Commissions
6 and Boards, or their officials, employees, or agents.

7 15. Association agrees to notify the BID Manager of the meeting dates of
8 each meeting of the Board of Directors of Association and the City Manager, BID Manager
9 or other appointed representative will have the right to attend all meetings of the Board of
10 Directors.

11 16. Association acknowledges and agrees that because Association will
12 be expending public funds in the form of assessments under this agreement, Association
13 shall comply with the Ralph M. Brown Act at its meetings, and with the California Public
14 Records Act for all documents relating to activities of the PBIA.

15 17. Neither the City nor any of its officer or employees will have any control
16 over the conduct of Association or any of its employees, except as provided above, and
17 Association expressly warrants not in any manner or at any time to represent that its
18 officers, agents, servants or employees are in any manner the officers, agents, servants or
19 employees of the City, it being distinctly understood that Association is and at all times will
20 remain as to the City, an independent contractor, and the obligations of Association to the
21 City are solely as prescribed by this Agreement.

22 18. This Agreement contemplates that Association will render special
23 promotional services, activities and improvements to the City, as set forth in Exhibit "A",
24 the Annual Report, and it is recognized by the parties that an inducement to the City for
25 entering into this Agreement was, and is, the ability of Association to render these special
26 services. Neither this Agreement nor any interest in this Agreement may be assigned by
27 Association, except that Association may, with the advance written consent of the BID
28 Manager assign any monies due, or to become due, to the Association. Association agrees

1 not to subcontract any portion of the performance contemplated and provided for in this
2 Agreement, except that Association may enter into subcontracts for the sole purpose of
3 carrying out activities within the Annual Report.

4 19. As part of the consideration thereof , Association, for itself, its heirs,
5 personal representatives, successors-in-interest, assign, and subcontractors, if any, does
6 hereby covenant and agree that, subject to the application of relevant laws, rules and
7 regulations, no person shall be excluded from participation, denied the benefits of, or be
8 otherwise subjected to discrimination relating to any services or activities furnished
9 pursuant to this Agreement or any subcontract awarded by Association, on the basis of
10 race, religion, national origin, color, age, sex, sexual orientation, AIDS, HIV status,
11 handicap, or disability.

12 20. The term of this Agreement will commence upon its execution and will
13 be automatically extended on a year-to-year basis upon annual approval of the Annual
14 Report and related levy assessments of the City Council, and provided that the City and
15 the Association may terminate this Agreement and any rights, duties and liabilities accruing
16 in this Agreement at any time by giving written notice of election to terminate to the other
17 party at least thirty (30) days prior to the end of the fiscal year.

18 21. Any notices to be given under this Agreement, or otherwise, may be
19 given by enclosing the same in a sealed envelope, addressed to the party intended to
20 receive the same at its address, and by depositing the same into the U.S. Postal Service
21 regular mail, postage prepaid. When so given, notice will be effective from the time of
22 mailing of the notice. For these purposes, unless otherwise provided in writing, the address
23 of the City and the proper person to receive any notices on its behalf is the BID Manager,
24 100 W. Broadway, Ste. 550, Long Beach, CA 90802, and the address of the Association
25 is 4321 Atlantic Avenue, Long Beach, California 90807.

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IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

BIXBY KNOLLS BUSINESS IMPROVEMENT ASSOCIATION, a nonprofit corporation organized under the laws of the State of California

4-12-, 2019

By [Signature]
Name Blair Coon
Title Executive Director

_____, 2019

By [Signature]
Name Sergio Ovezo
Title President

Tom Modica
Assistant City Manager

**EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER**

"Association"

May 29, 2019

CITY OF LONG BEACH, a municipal corporation

By [Signature]
City Manager

"City"

This Agreement is approved as to form on 5-2, 2019.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy