

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

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AGREEMENT FOR PARKING AND BUSINESS IMPROVEMENT AREA FUNDS
WITH DOWNTOWN LONG BEACH ALLIANCE

35355

THIS AGREEMENT is made and entered, in duplicate, as of January 28, 2019 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on October 9, 2018, by and between DOWNTOWN LONG BEACH ALLIANCE, a nonprofit corporation organized under the laws of the State of California ("Association"), with a business address of 100 W. Broadway, Ste.120, Long Beach, California 90802, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, Association has the purpose of promoting business and enhancing the quality of the overall environment in the Downtown commercial area of Long Beach; and

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

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

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

1. Association shall perform all activities necessary for the proper management of the PBI in a professional and prudent manner in accordance with all state and local laws and the City Council approved Annual Report during the period of October 1, 2018 through September 30, 2019.
2. Association shall submit an Annual Report to the City each year by early-June consistent with the program for the coming fiscal year. The Annual Report shall

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

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

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

24 5. The Association's financial records relating to the performance of this
25 Agreement shall be kept and maintained in accordance with generally accepted accounting
26 principles. These records shall be current, complete and available for inspection and as
27 deemed necessary by the BID Manager. The Association shall provide all reports,
28 documentation or information requested or required by the City within fifteen (15) days of

1 a written request from the BID Manager to the Executive Director and/or President of the
2 Board unless a longer period of time is otherwise expressly stated by the BID Manager.

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

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

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

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

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

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

27 10. The City will cause to be paid to the Association the total amount of
28 funds collected during each two (2)-month period of the fiscal year. The payment and

1 accompanying reporting will be processed and sent to the Association as soon as possible
2 after the month is closed by the Department of Financial Management. However, the total
3 amount paid to the Association shall not exceed the total amount of Downtown Long Beach
4 Parking and Business Improvement Area ("DLBPBIA") assessments and charges received
5 by the City.

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

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

19 13. Insurance.

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

- 25 i. Commercial general liability insurance or self-insurance
26 equivalent in coverage scope to ISO CG 00 01 10 93 naming the City of Long
27 Beach, and their officials, employees, and agents as additional insureds on
28 a form equivalent in coverage scope to ISO CG 20 26 11 85 from and against

1 claims, demands, causes of action, expenses, costs, or liability for injury to
2 or death of persons, or damage to or loss of property arising out activities
3 performed by or on behalf of the Association in an amount not less than One
4 Million Dollars (US \$1,000,000) per occurrence and Two Million Dollars (US
5 \$2,000,000) in general aggregate.

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

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

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

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

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

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

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

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

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

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

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

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

21 18. This Agreement contemplates that Association will render special
22 promotional services, activities and improvements to the City, as set forth in Exhibit "A",
23 the Annual Report, and it is recognized by the parties that an inducement to the City for
24 entering into this Agreement was, and is, the ability of Association to render these special
25 services. Neither this Agreement nor any interest in this Agreement may be assigned by
26 Association, except that Association may, with the advance written consent of the BID
27 Manager assign any monies due, or to become due, to the Association. Association agrees
28 not to subcontract any portion of the performance contemplated and provided for in this

1 Agreement, except that Association may enter into subcontracts for the sole purpose of
2 carrying out activities within the Annual Report.

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

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

17 21. Any notices to be given under this Agreement, or otherwise, may be
18 given by enclosing the same in a sealed envelope, addressed to the party intended to
19 receive the same at its address, and by depositing the same into the U.S. Postal Service
20 regular mail, postage prepaid. When so given, notice will be effective from the time of
21 mailing of the notice. For these purposes, unless otherwise provided in writing, the address
22 of the City and the proper person to receive any notices on its behalf is the BID Manager,
23 100 W. Broadway, Ste. 550, Long Beach, CA 90802, and the address of the Association
24 is 100 W. Broadway, Ste. 120, Long Beach, CA 90802.

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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.

DOWNTOWN LONG BEACH ALLIANCE, a nonprofit corporation organized under the laws of the State of California

_____, 2019

By Allison Kripp
Name Allison Kripp
Title Secretary Board of Directors

_____, 2019

By Tom Modica
Name Tom Modica
Title Chair

Tom Modica
Assistant City Manager

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER

"Association"

CITY OF LONG BEACH, a municipal corporation

8/23, 2019

By [Signature]
City Manager

"City"

This Agreement is approved as to form on 8-12, 2019.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy