

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

1 AGREEMENT FOR PROPERTY AND BUSINESS IMPROVEMENT DISTRICT FUNDS  
2 WITH DOWNTOWN LONG BEACH ALLIANCE

3 **35351**

4 THIS AGREEMENT is made and entered, in duplicate, as of February 8,  
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 DOWNTOWN  
7 LONG BEACH ALLIANCE, a nonprofit corporation organized under the laws of the State  
8 of California ("Association"), with a business address of 100 W. Broadway, Suite 120, Long  
9 Beach, California 90802, and the CITY OF LONG BEACH, a municipal corporation ("City").

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

13 WHEREAS, a Property and Business Improvement District ("PBID") was  
14 established in the Downtown commercial area in accordance with state law for the purpose,  
15 among other things, of collecting assessments in order to maintain and increase the level  
16 of business activity and to improve the quality of the overall environment in the Downtown  
17 area at Long Beach; and

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

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

23 1. Association shall perform all activities necessary for the proper  
24 management of the PBID in a professional and prudent manner in accordance with all state  
25 and local laws and the City Council approved Management District Plan and Annual Report  
26 during the period of January 1, 2019 through December 31, 2019.

27 2. Association shall submit an Annual Report to the City each year by  
28 September 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 July for the period ending June 30th. The Progress Report shall include:  
14 (a) an update on programs, achievements, and activities; (b) a six-month Financial Report,  
15 which shall include a line-item schedule which matches expenditures with specific amounts  
16 and activities designated in the Annual Report; and (c) performance metrics to help quantify  
17 the impact of the Annual District Program. The Progress Report shall be prepared in a  
18 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-January 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 fifteen percent (15%) 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 paid to the Association the total  
26 amount of funds collected during the term of this Agreement, which payments shall be  
27 made no later than January 15, March 15, May 15, July 15, and September 15 of each  
28 year. However, the total amount paid to the Association shall not exceed the total amount

1 of Downtown Property and Business Improvement District (“DTLBPBID”) assessments and  
2 charges received by the City.

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

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

16 12. Insurance.

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

22 i. Commercial general liability insurance or self-insurance  
23 equivalent in coverage scope to ISO CG 00 01 10 93 naming the City of Long  
24 Beach, and their officials, employees, and agents as additional insureds on  
25 a form equivalent in coverage scope to ISO CG 20 26 11 85 from and against  
26 claims, demands, causes of action, expenses, costs, or liability for injury to  
27 or death of persons, or damage to or loss of property arising out activities  
28 performed by or on behalf of the Association in an amount not less than One

1 Million Dollars (US \$1,000,000) per occurrence and Two Million Dollars (US  
2 \$2,000,000) in general aggregate.

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

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

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

21 B. Any self-insurance program or self-insurance retention must be  
22 approved separately in writing by City and shall protect the City of Long Beach, and  
23 their officials, employees, and agents in the same manner and to the same extent  
24 as they would have been protected had the policy or policies not contained retention  
25 provisions. Each insurance policy shall be endorsed to state that coverage shall not  
26 be suspended, voided, or canceled by either party except after thirty (30) days prior  
27 written notice to City, and shall be primary and not contributing to any other  
28 insurance or self-insurance maintained by City.

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

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

20 13. Indemnification: Association shall defend, indemnify, and hold  
21 harmless the City, its Commissions and Boards, and their officials, employees, and agents  
22 from and against any and all demands, claims, causes of action, liability, loss, liens,  
23 damage, costs, and expenses (including attorney's fees) arising from or in any way  
24 connected or alleged to be connected with Association's performance of the work under  
25 this Agreement and from any act or omission, willful misconduct, or negligence (active or  
26 passive) by or alleged to be by Association, its employees, agents, or subcontractors either  
27 as a sole or contributory cause, sustained by any person or entity (including employees or  
28 representatives of City or Association). The foregoing shall not apply to claims or causes

1 of action caused by the sole negligence or willful misconduct of the City, its Commissions  
2 and Boards, or their officials, employees, or agents.

3 14. Association agrees to notify the BID Manager of the meeting dates of  
4 each meeting of the Board of Directors of Association and the City Manager, BID Manager  
5 or other appointed representative will have the right to attend all meetings of the Board of  
6 Directors.

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

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

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

28 18. As part of the consideration thereof , Association, for itself, its heirs,

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

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

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

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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 [Signature]  
Name Tong Shoo Looi  
Title Chair

\_\_\_\_\_, 2019

By [Signature]  
Name Allison B Krupp  
Title Secretary

**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