

**AGREEMENT TO ADMINISTER THE REDONDO BEACH TRAVEL & TOURISM  
DISTRICT BETWEEN THE CITY OF REDONDO BEACH AND  
REDONDO BEACH TRAVEL & TOURISM**

This Agreement, dated December 5, 2023, is by and between the City of Redondo Beach, a chartered municipal corporation ("City"), and Redondo Beach Travel & Tourism, a California nonprofit corporation ("Contractor"), collectively referred to as the "Parties".

**RECITALS**

- A. On June 19, 2018, in accordance with California Streets and Highways Code Section 36600 et seq., the City Council of the City of Redondo Beach (hereinafter "City Council") adopted Resolution No. CC-1806-031 declaring its intent to establish the Redondo Beach Tourism Marketing District ("RBTMD"), a benefit assessment district for the purpose of funding activities that benefit the payors through the levy of a special assessment on lodging businesses, comprised of twenty (20) rooms or more, within the RBTMD, as set forth in the Management District Plan.
- B. On August 21, 2018, the City Council adopted Resolution No. CC-1808-053 establishing the RBTMD.
- C. On May 16, 2023, in accordance with California Streets and Highways Code Section 36600 et seq., the City Council adopted Resolution No. CC-2305-046 declaring its intent to renew the RBTMD and levying a special assessment on lodging businesses, comprised of twenty (20) rooms or more, within the RBTMD, as set forth in the Management District Plan.
- D. On July 18, 2023, the City Council adopted Resolution No. CC-2307-068 renewing the RBTMD.
- E. Pursuant to California Streets and Highways Code Section 36612, the City Council designated Contractor as the Owners' Association for the RBTMD to administer and implement the services described in the Management District Plan.
- F. California Streets and Highways Code Section 36651 requires the City to contract with the Owners' Association for provision of RBTMD services.
- G. The City and Contractor desire to enter into this Agreement to set forth the parties' respective roles and responsibilities in administering and implementing the RBTMD, on the terms and conditions below.

## **AGREEMENT**

**NOW, THEREFORE**, the parties agree as follows:

1. Engagement. City hereby retains Contractor to provide the services described in Exhibit "A". Contractor accepts such engagement.
2. Term. The term of this Agreement shall be in accordance with Exhibit "B".
3. Exhibits. This Agreement consists of this Agreement, all attached exhibits, and any other documents specifically incorporated into this Agreement.
  - a. Exhibit "A": Project Description/Scope of Services
  - b. Exhibit "B": Schedule for Completion
  - c. Exhibit "C": Compensation
  - d. Exhibit "D": Insurance Requirements for Contractors
  - e. Exhibit "E": Agreement to Comply with California Labor Law Requirements
4. Independent Contractor. No relationship of employer and employee is created by this Agreement; it being understood and agreed that Contractor is an Independent Contractor. Contractor is not the agent or employee of the City in any capacity whatsoever, and the City shall not be liable for any acts or omissions by Contractor nor for any obligations or liabilities incurred by Contractor.
  - a. Contractor shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, unemployment insurance benefits, civil service protection, or employee benefits of any kind.
  - b. Contractor shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold City harmless from any and all liability which City may incur because of Contractor's failure to pay such amounts.
  - c. In carrying out the work contemplated herein, Contractor shall comply with all applicable federal and state Workers' Compensation and liability laws and regulations with respect to the officers, agents and/or employees

conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered Independent Contractors and shall not be treated or considered in any way as officers, agents and/or employees of City.

- d. Contractor agrees to perform its work and functions at all times in strict accordance with all applicable federal, state, county and city laws, resolutions, regulations, titles, departmental procedures and currently approved methods and practices in the field; and that the sole interest of City is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with standards required by the City.
  - e. Notwithstanding the foregoing, if the City determines that pursuant to state and federal law Contractor is an employee for purposes of income tax withholding, City may upon two (2) week's written notice to Contractor, withhold from payments to Contractor hereunder federal and state income taxes and pay said sums to the federal and state governments.
5. Indemnification. To the maximum extent permitted by law, Contractor hereby agrees, at its sole cost and expense, to defend protect, indemnify, and hold harmless the City, its elected and appointed officials, officers, employees, volunteers, attorneys, and agents (collectively "Indemnitees") from and against any and all claims, including, without limitation, claims for bodily injury, death or damage to property, demands, charges, obligations, damages, causes of action, proceedings, suits, losses, stop payment notices, judgments, fines, liens, penalties, liabilities, costs and expenses of every kind and nature whatsoever, in any manner arising out of, incident to, related to, in connection with or arising from any act, failure to act, error or omission of Contractor's performance or work hereunder (including any of its officers, agents, employees, Subcontractors) or its failure to comply with any of its obligations contained in the Agreement, or its failure to comply with any current or prospective law, except for such loss or damage which was caused by the sole negligence or willful misconduct of the City. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Contractor or Indemnitees. This indemnification obligation shall survive this Agreement and shall not be limited by any term of any insurance policy required under this Agreement.
- a. Nonwaiver of Rights. Indemnitees do not and shall not waive any rights that they may possess against Contractor because the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement.
  - b. Waiver of Right of Subrogation. Contractor, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the Indemnitees.

6. Insurance. Contractor shall comply with the requirements set forth in Exhibit "D". Insurance requirements that are waived by the City's Risk Manager do not require amendments or revisions to this Agreement. Contractor affirms that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code and Contractor further assures that it will comply with such provisions before commencing the performance of work under this Agreement. Contractor shall furnish to City certificate(s) of insurance evidencing Worker's Compensation Insurance coverage to cover its employees, and Contractor shall require all subcontractors similarly to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of Contractor's and subcontractors' employees. Contractor shall provide Workers' Compensation insurance, as applicable, at Contractor's own cost and expense. Neither Contractor nor its carrier shall be entitled to recover from City any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

7. Conformity with Law.

a. In performing services under this Agreement, Contractor shall observe and comply with all applicable laws, resolutions, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. Contractor shall indemnify and hold City harmless from any and all liability, fines, penalties and consequences from any of Contractor's failures to comply with such laws, resolutions, codes and regulations.

b. If a death, serious personal injury or substantial property damage occurs in connection with Contractor's performance of this Agreement, Contractor shall immediately notify the City. Contractor shall promptly submit to City a written report, in such form as may be required by City of all accidents, which occur in connection with this Agreement. This report must include the following information:

- 1) Name and address of the injured or deceased person(s);
- 2) Name and address of Contractor's sub-contractor, if any;
- 3) Name and address of Contractor's liability insurance carrier; and

- 4) A detailed description of the accident and whether any of City's equipment, tools, material, or staff were involved.
- c. Contractor further agrees to take all reasonable steps to preserve all physical evidence and information, which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the City the opportunity to review and inspect such evidence, including the scene of the accident.
8. Payment. Payment shall be in accordance with Exhibit "C" of this Agreement.
9. Taxes. Payment of all applicable federal, state and local taxes shall be Contractor's sole responsibility.
10. Ownership of Documents.
  - a. Contractor hereby agrees to provide to a private nonprofit successor all proposals, plans, specifications, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copied) upon the dissolution of the corporation. Contractor further agrees to assign the City and its assignees all copyright and other use rights in any and all proposals, plans, specifications, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the City, the Contractor, the Contractor's subcontractors or third parties at the request of the Contractor (collectively, "Documents and Materials"). This explicitly includes electronic copies of all above stated documentation.
  - b. Contractor warrants and represents that it has secured all necessary licenses, consents or approvals necessary to the production of the Documents and Materials.
  - c. Contractor shall be permitted to retain copies, including reproducible copies and computerized copies of Documents and Materials. Contractor agrees to take such further steps as may be reasonably requested by City to implement any assignment. Contractor further hereby grants the City and any assignee of the City an express royalty, a free license to retain and use said Documents and Materials and reproduce the Documents and Materials for any purpose. The City's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not Contractor's services set forth in Exhibit "A" of this Agreement have been fully performed or paid.

- d. Contractor shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by Contractor and incorporated into the work as set forth in Exhibit "A", and shall defend, indemnify and hold the City harmless from any claims for infringement of patent or copyright arising out of such selection.
  - e. In the event the use of any of the Documents and Materials or other deliverables hereunder by the City is held to constitute an infringement and the use of any of the same is enjoined, Contractor, at its expense, shall: (a) secure for the City the right to continue using the Documents and Materials and other deliverables by suspension of any injunction, or by procuring a license or licenses for the City; or (b) modify the Documents and Materials and other deliverables so that they become non-infringing while remaining in compliance with the requirements of this Agreement. The Contractor's covenants under this section shall survive the expiration or termination of this Agreement.
  - f. Contractor shall comply with the California Public Records Act, Government Code Section 6250 et seq. with respect to the disclosure of the Documents and Materials.
  - g. Contractor shall defend, indemnify and hold the City, and its elected officials, officers, employees, servants, attorneys, designated volunteers and agents serving as independent contractors, harmless from any loss, claim or liability in any way related to a claim that the City's use of any of the Documents and Materials is violating federal, state or local laws, or any contractual provisions, or any rights or laws relating to trade names, licenses, franchises, copyrights, patents or other means of protecting intellectual property rights or interests in products, ideas or inventions. Contractor shall bear all costs arising from the use of patented, copyrighted, trade secret or trademarked documents, materials, equipment, devices or processes in connection with its provision of the Documents and Materials produced under this Agreement.
11. Conflicts of Interest. Contractor covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with performance of services required under this Agreement.
12. Notices. All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

- a. Personal delivery. When personally delivered to the recipient, notices are effective on delivery.
- b. First Class Mail. When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox.
- c. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.
- d. Overnight Delivery. When delivered by overnight delivery with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.
- e. Addresses for purpose of giving notice are as follows:

Contractor: Redondo Beach Travel & Tourism  
 260 Portofino Way  
 Redondo Beach, CA 90277  
 Attn: Rebecca Elder, Chairperson of the Board

City: City of Redondo Beach  
 Waterfront and Economic Development Department  
 415 Diamond Street  
 Redondo Beach, CA 90277  
 Attn: Laurie Koike, Manager, Waterfront and  
 Economic Development

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address by giving the other party notice of the change in any manner permitted by this Agreement.

- 13. Use of City Property. Contractor shall not use City property, including equipment, instruments and supplies, or personnel for any purpose other than in the performance of its obligations under this Agreement.
- 14. Equal Employment Opportunity Practices Provisions. Contractor certifies that it is in compliance with the Equal Employment Opportunity Requirement of Executive Order 11246, as amended by Executive Order 11375 and supplemented I 45CFR, Part 60, Title VII of the Civil Rights Act and any other

federal or state laws pertaining to equal employment opportunity and that it shall not discriminate on the basis of any non-merit factor, including without limitation, race, color, religion, age, sex, sexual orientation, national origin, ancestry, marital status, political affiliation, disability or physical or mental condition, in matters pertaining to recruitment, hiring, training, upgrading, transfer, compensation or termination.

- a. In all solicitations or advertisements for applicants for employment placed as a result of this Agreement, Contractor shall state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, in accordance with requirements of local, state, and federal law.
  - b. Contractor shall certify that in the performance of this Agreement, it has not discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, in accordance with requirements of local, state, and federal law.
  - c. In accordance with applicable state and federal law, Contractor shall allow duly authorized county, state, and federal representatives access to its employment records during regular business hours in order to verify compliance with the nondiscrimination provisions of this section, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
  - d. Nothing contained in this Agreement shall be construed in any manner to require or permit any act, which is prohibited by law.
  - e. Contractor shall include the provisions set forth in this Section in each of its subcontracts.
15. Compliance with Licensing Requirements. Contractor shall comply with all necessary licensing requirements and shall obtain appropriate licenses and display the same in a location that is reasonably conspicuous, and file copies of the same with the City.



16. Business License. Contractor shall obtain a Redondo Beach Business License before performing any services required under this Agreement. The failure to obtain such license shall be a material breach of this Agreement and grounds for immediate termination by City; provided, however, that City may waive the business license requirement in writing under unusual circumstances without necessitating any modification of this Agreement to reflect such waiver.
17. Audits and Records Access.
- a. Contractor shall make available to the City, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursement of RBTMD assessment funds, and shall furnish to the City, within sixty (60) days after examination, its authorized agents, officers or employees such other evidence or information as the City may require with regard to any such expenditure or disbursement charged by Contractor.
  - b. Contractor shall maintain full and adequate records in accordance with City requirements to show the actual costs incurred by the Contractor in the performance of this Agreement. If such books and records are not kept and maintained by Contractor within the City, Contractor shall, upon request of the City, make such books and records available to the City for inspection at a location within the City or Contractor shall pay to the City the reasonable and necessary costs incurred by the City in inspecting Contractor's books and records, including, but not limited to, travel, lodging and subsistence costs. Contractor shall provide such assistance as may be reasonably required in the course of such inspection. The City further reserves the right to examine and re-examine said books, records and data during the four (4) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the City, and Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for four (4) years after the City makes the final or last payment or within four (4) years after any pending issues between the City and Contractor with respect to this Agreement are closed, whichever is later.
  - c. Contractor shall conduct an annual audit and provide the audit results to the City.

18. Documents and Materials. Contractor shall maintain and make available to City for its inspection and use during the term of this Agreement, all documents, contracts, subcontracts, receipts, invoices, plans, collateral, advertisements and other paper or electronic writings and other materials used for the provision of services under this Agreement (collectively "Instruments"). Contractor's obligations shall continue for four (4) years following termination or expiration of this Agreement, and Contractor shall in no event dispose of, destroy, alter or mutilate said Instruments, for four (4) years following the City's last payment to Contractor under this Agreement.
19. Time of Essence. Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
20. Termination. City may terminate this Agreement as follows.
  - a. City shall also have the right to suspend this Agreement immediately with written notice to the Contractor in the event City disestablishes the RBTMD after finding there has been misappropriation of funds, malfeasance, or other violations of law have occurred in connection with the management of the RBTMD. City retains the right to immediately commence disestablishment proceedings in accordance with Streets and Highways Code Section 36670, which provides in pertinent part that "[a]ny district established or extended pursuant to the provisions of this part, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be disestablished by resolution by the City Council. To adopt the resolution, (1) the City Council must find there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district and a noticed hearing on disestablishment is held, or (2) in the thirty (30) day period following the anniversary of the RBTMD's formation, businesses owners paying fifty percent (50%) or more of the assessment file a written protest with the City and a hearing on disestablishment is held.
  - b. In the event City terminates this Agreement as provided in this section, City may procure upon such terms and in such manner as City may deem appropriate, services similar in scope and level of effort to those terminated, and Contractor shall be liable to City for all its costs and damages, including, but not limited to, any excess costs for such services.

- c. In the event the RBTMD is disestablished, expires, or otherwise terminates, or the Contractor ceases to be a nonprofit corporation, all remaining revenue, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired with the revenues, shall be refunded in the manner described in California Streets and Highways Code Section 36671.
  - d. The rights and remedies of this Agreement are not exclusive and are in addition to any other rights or remedies provided by law or under this Agreement.
21. Choice of Law. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law. Venue for any litigation or other action arising hereunder shall reside exclusively in the Superior Court of the County of Los Angeles, Southwest Judicial District.
22. Advertising or Publicity. Contractor shall not use, reproduce or copy the seal of the City and shall not represent the City in an official capacity as spokesperson or officer or agent or use the name City of Redondo Beach, or the names of the City's officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of the City in each instance unless set forth in this Agreement. Nothing in this section prohibits Contractor from using the name Redondo Beach Tourism Marketing District or City of Redondo Beach for regional identification for promotion and marketing of the RBTMD.
23. Modification of Agreement. This Agreement may be supplemented, amended or modified only by mutual agreement of the parties; however, this Agreement shall be subject to any amendments to the RBTMD Management District Plan adopted by the City Council pursuant to California Streets and Highways Code Section 36600 et seq. No supplement, amendment or modification of this Agreement, except for a duly adopted amendment to the RBTMD Management District Plan, shall be binding, unless it is in writing and signed by authorized representatives of both parties.
24. Authority. City warrants and represents that upon City Council approval, the Mayor of the City of Redondo Beach is duly authorized to enter into and execute this Agreement on behalf of City. The party signing on behalf of Contractor warrants and represents that he or she is duly authorized to enter into and execute this Agreement on behalf of Contractor, and shall be personally liable

to City if he or she is not duly authorized to enter into and execute this Agreement on behalf of Contractor.

25. Conflicting Provisions. In the event of a conflict between the terms and conditions of this Agreement and those of any exhibit or attachment hereto, this Agreement proper shall prevail. In the event of a conflict between the terms and conditions of any two or more exhibits or attachments hereto, those prepared by the City shall prevail over those prepared by Contractor.
26. Integration. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. This Agreement may not be modified except by a written document signed by both parties.
27. Assurance of Performance. If at any time the City has good objective cause to believe Contractor may not be adequately performing its obligations under this Agreement or that Contractor may fail to complete services as required by this Agreement, City may request from Contractor prompt written assurances of performance and a written plan acceptable to City, to correct the observed deficiencies in Contractor's performance. Contractor shall provide such written assurances and written plan within thirty (30) calendar days of its receipt of City's request and shall thereafter diligently commence and fully perform such written plan.
28. Subcontracting/Assignment. Contractor shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the City's prior written approval.
  - a. Neither party shall contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
  - b. Contractor may use subcontractors to provide any portions of the service identified in Exhibit "A" without prior written consent of the City; provided, however, that the subcontractors shall be properly skilled professionals and technical personnel.

- c. Contractor shall ensure compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between Contractor and its subcontractors.
  - d. An assignment shall constitute the sale, assignment, transfer or other disposition, on a cumulative basis, of twenty-five percent (25%) or more of the ownership interest in Contractor or twenty-five percent (25%) or more the voting control of Contractor (whether Contractor is a corporation, limited liability company, partnership, joint venture or otherwise). Further, the involvement of Contractor or its assets in any transaction or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout or otherwise), whether or not a formal assignment or hypothecation of this Agreement or Contractor's assets occurs, which reduces Contractor's assets or net worth by twenty-five percent (25%) or more shall also constitute an assignment for purposes of this Agreement.
29. Non-Exclusivity. Notwithstanding any provision herein to the contrary, the services provided by Contractor hereunder shall be non-exclusive, and City reserves the right to employ other contractors in connection with the project. However, City may not use any RBTMD assessment funds for said services.
30. Non-Liability of Officials and Employees of the City. No official or employee of the City shall be personally liable for any default or liability under this Agreement.
31. Survival. The obligations of this Agreement, which by their nature would continue beyond the termination or expiration of the Agreement, including without limitation obligations regarding indemnification, ownership of documents, and conflicts of interest, shall survive termination or expiration for two (2) years.
32. Severability. If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
33. Claims. Any claim by Contractor against City hereunder shall be subject to Government Code §§ 800 *et seq.* The claims presentation provisions of said Act are hereby modified such that the presentation of all claims hereunder to

the City shall be waived if not made within six (6) months after accrual of the cause of action.

34. Waiver. The waiver by the City of any breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach.

IN WITNESS WHEREOF, the parties have executed this Agreement in Redondo Beach, California, as this 5<sup>th</sup> day of December, 2023.

CITY OF REDONDO BEACH

REDONDO BEACH TRAVEL & TOURISM

\_\_\_\_\_  
William C. Brand, Mayor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

APPROVED:

\_\_\_\_\_  
Eleanor Manzano, City Clerk

\_\_\_\_\_  
Diane Strickfaden, Risk Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael W. Webb, City Attorney

## **EXHIBIT “A”**

### **PROJECT DESCRIPTION / SCOPE OF SERVICES**

#### **A. CONTRACTOR’S DUTIES**

Contractor shall render professional services in accordance with the RBTMD Management District Plan and shall provide work program coordination consisting of program development and implementation, program administration, and financial reports for the RBTMD. These services shall include the following duties.

1. Cooperate with City in the performance of all work hereunder.
2. Provide projects, programs and activities that benefit businesses within the RBTMD in accordance with the RBTMD Management District Plan attached hereto and incorporated by reference, and any subsequent amendments thereto.
3. Perform duties as provided in California Streets and Highways Code Section 36600 et seq., including but not limited to, the following.
  - a. Prepare the Annual Report, which shall include the following items.
    1. Any recommended changes to boundaries;
    2. The improvements and activities to be provided for that fiscal year;
    3. An estimate of cost for providing the improvements and activities;
    4. The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his/her business for that fiscal year;
    5. The amount of any surplus or deficit revenues to be carried over from a previous fiscal year; and
    6. The amount of any contributions to be made from sources other than assessments.
  - b. Deliver the Annual Report within ninety (90) days following September 1<sup>st</sup> of each year of the RBTMD’s term.
  - c. Provide a full disclosure financial statement, including supporting documentation of all revenues and expenditures covering the period from September 1 through August 31 for each fiscal year covered within this contract.
4. Develop and maintain financial records related to receipt and/or expenditure of all funds received from City.

5. Maintain its books and records in accordance with generally accepted accounting principles (GAAP), and in such form as will facilitate accurate preparation of necessary fiscal reports and in such form as required by the City.

**B. CITY'S DUTIES**

1. Collect assessments, using reasonable efforts for the collection of delinquent assessments. Promptly disburse RBTMD assessment funds collected by the City to the Contractor.
2. Review the Contractor's work plan and end-of year-report.



## **EXHIBIT "B"**

### **SCHEDULE FOR COMPLETION**

**TERM.** The term of this Agreement shall commence January 1, 2024 and expire December 31, 2033 ("Term"), unless otherwise terminated as provided herein.

## **EXHIBIT "C"**

### **COMPENSATION**

Provided Contractor is not in default under this Agreement, Contractor shall be compensated as provided below.

- A. **AMOUNT.** Contractor shall only be compensated for work performed under this Agreement out of available RBTMD assessment funds; provided, that no payment shall exceed the amount shown in the Annual Report for the related operational program, project or service. Contractor agrees that all funds received from the City shall only be expended for the RBTMD programs or administrative and renewal costs in such proportions as determined by the Contractor.
- B. **METHOD OF PAYMENT.** Contractor will render a full and accurate accounting for all expenditures annually in accordance with this Agreement. Contractor may be required to provide back-up material upon request.
- C. **SCHEDULE FOR PAYMENT.** Following the execution of this Agreement, City will make Net Disbursements on a monthly basis following the authorization of payment at the third City Council meeting of each month.

## **EXHIBIT "D"**

### **INSURANCE REQUIREMENTS FOR CONTRACTOR**

Without limiting Contractor's indemnification obligations under this Agreement, 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 by the Contractor, its agents, representatives, or employees.

#### Minimum Scope of Insurance

Coverage shall be at least as broad as:

Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).

Workers' Compensation insurance as required by the State of California.

Employer's Liability Insurance.

#### Minimum Limits of Insurance

Contractor shall maintain limits no less than:

General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. The general aggregate limit shall apply separately to this project/location.

Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

Directors and Officers Liability: \$1,000,000 per occurrence.

Employee Theft: \$1,000,000 per occurrence.

#### Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers or (2) the Contractor shall provide a financial guarantee

satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

#### Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

##### Additional Insured Endorsement:

**General Liability:** The City, its officers, elected and appointed officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of work performed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance, or as a separate owner's policy.

**Automobile Liability:** The City, its officers, elected and appointed officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor.

For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, elected and appointed officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

Each insurance policy shall be endorsed to state that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.

Each insurance policy shall be in effect prior to awarding the contract and each insurance policy or a successor policy shall be in effect for the duration of the project. The maintenance of proper insurance coverage is a material element of the contract and failure to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of contract on the Contractor's part.

### Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII and which are authorized to transact insurance business in the State of California by the Department of Insurance.

### Verification of Coverage

Contractor shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on the City authorized forms provided with the contract specifications. Standard ISO forms which shall be subject to City approval and amended to conform to the City's requirements may be acceptable in lieu of City authorized forms. All certificates and endorsements are to be received and approved by the City before the contract is awarded. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

### Subcontractors

Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

### Risk Management

Contractor acknowledges that insurance underwriting standards and practices are subject to change, and the City reserves the right to make changes to these provisions in the reasonable discretion of its Risk Manager.

## **EXHIBIT "E"**

### **AGREEMENT TO COMPLY WITH CALIFORNIA LABOR LAW REQUIREMENTS**

1. Contractor acknowledges that the project as defined in this Agreement between Contractor and the City, to which this Agreement to Comply with California Labor Law Requirements is attached and incorporated by reference, is a "public work" as defined in Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code ("Chapter 1"), and that this Agreement is subject to (a) Chapter 1, including without limitation Labor Code Section 1771 and (b) the rules and regulations established by the Director of Industrial Relations ("DIR") implementing such statutes. Contractor shall perform all work on the project as a public work. Contractor shall comply with and be bound by all the terms, rules and regulations described in 1(a) and 1(b) as though set forth in full herein.

2. California law requires the inclusion of specific Labor Code provisions in certain contracts. The inclusion of such specific provisions below, whether or not required by California law, does not alter the meaning or scope of Section 1 above.

3. Pursuant to Labor Code Section 1771.4, Contractor shall post job site notices, as prescribed by regulation.

4. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Agreement are on file at City Hall and will be made available to any interested party on request. Contractor acknowledges receipt of a copy of the DIR determination of such prevailing rate of per diem wages, and Contractor shall post such rates at each job site covered by this Agreement.

5. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Contractor shall, as a penalty to the City, forfeit the maximum amount allowable by law for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Contractor or by any subcontractor.

6. Contractor shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Contractor and each subcontractor to (1) keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776, (2) certify and make such payroll records available for inspection as provided by Section 1776, and (3) inform the City of the location of the records.

7. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6 and 1777.7 and California Administrative Code title 8, section 200 *et seq.* concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Agreement, Contractor and each of its subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Agreement.

8. Contractor acknowledges that eight (8) hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code Section 1810. Contractor shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the performance of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Contractor in excess of 8 hours per day, and 40 hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1 and 1/2 times the basic rate of pay.

9. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Contractor hereby certifies as follows:

"I am aware of the provisions of Section 3700 of the 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."

10. For every subcontractor who will perform work on the project, Contractor shall be responsible for such subcontractor's compliance with Chapter 1 and Labor Code Sections 1860 and 3700, and Contractor shall include in the written contract between it and each subcontractor a copy of those statutory provisions and a requirement that each subcontractor shall comply with those statutory provisions. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a periodic review of the certified payroll records of the subcontractor and upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any failure.

11. To the maximum extent permitted by law, Contractor shall indemnify, hold harmless and defend (at Contractor's expense with counsel acceptable to the City) the City, its officials, officers, employees, agents, independent contractors, and volunteers from and against any demand or claim for damages, compensation, fines, penalties or other amounts arising out of or incidental to any acts or omissions listed above by any person or entity (including Contractor, its subcontractors, and each of their officials, officers, employees and agents) in connection with any work undertaken or in connection with the Agreement, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses. All duties of Contractor under this Section shall survive termination of the Agreement.