

AGREEMENT FOR SERVICES IN ADMINISTERING
OPERATIONS OF THE DOWNTOWN TACOMA BIA

THIS AGREEMENT, made this 1st day of May 2020, by and between the CITY OF TACOMA, hereinafter called the "City," and the LOCAL DEVELOPMENT COUNCIL OF TACOMA, dba DOWNTOWN TACOMA PARTNERSHIP, a Washington nonprofit corporation, hereinafter referred to as the "Operating Agency."

WHEREAS, pursuant to Chapter 35.87A RCW, the City Council has adopted Ordinance No. 24058, the "BIA Ordinance," establishing a business improvement area, hereinafter called the "BIA," in downtown Tacoma, within the boundaries as more specifically set forth in the BIA Ordinance and renewed by Ordinance No. 28420 and Ordinance No. 28496, and

WHEREAS the Operating Agency is a business association operating primarily within the central commercial area of Tacoma and has requested that, for the benefit of the property owners responsible for payment of the BIA assessments, hereinafter called the "Ratepayers," that it provide services in the administration of the operation of the BIA, which services are to be funded from BIA assessments collected and deposited in the district fund established under the BIA Ordinance, and

WHEREAS the City desires to contract with the Operating Agency for the purposes of administering the operation of the BIA pursuant to RCW 35.87A.110, and the Operating Agency represents that it has the legal capacity and ability to perform such services in respect thereto, and

WHEREAS the Operating Agency will manage and administer approved BIA activities and provide the required services hereunder on a cost reimbursable basis, with a flat negotiated rate for administrative cost overhead and management, as herein below more specifically set forth;

NOW, THEREFORE, for and in consideration of the mutual covenants and promises between the parties hereto, it is mutually agreed as follows:

ARTICLE 1. SCOPE OF SERVICES

The Operating Agency, for the benefit of the Ratepayers, will serve as the program management contractor in carrying out the services and activities, in the attached work program of the BIA (Exhibit A, incorporated herein), and shall do, perform, and carry out in a satisfactory and proper manner the following:

- 1.1 Hold advisory board meetings which shall be open to all Ratepayers and the public, and publication of meetings shall, as a minimum, meet the requirements of the State Open Public Meeting Law, and the requirements as may be approved by the designated City official. The term "designated City official" ("DCO"), as used herein, shall mean the City Manager or a City official designated by the City Manager to act in his stead, or the responsible City official as may be designated by City Charter, ordinance, or resolution.

1.2 Subject to the funding limitations set forth in the approved budget (which budget is marked Exhibit B and incorporated herein), develop and carry out a work program (including specified products or activities and budget for each major item) for the common area maintenance program, the promotion and marketing program, and the security/public relations program as herein below more specifically set forth. The work program and the plan and any amendments shall be subject to review and approval by the City Council, before work or services are commenced.

1.2.1 Common Area Maintenance Program.

- A. The goal of the Common Area Maintenance Program is to maintain the appearance of the BIA area as a clean and inviting area to visit and do business through the providing of maintenance and appearance enhancement of common areas in the BIA, such as the sweeping and cleaning of sidewalks, the removal or covering of graffiti, the removal or prevention of litter, and such other related activities or services which would enhance the appearance of the area and encourage the general public to increasingly visit and do business in the BIA.
- B. The Operating Agency will provide personnel and equipment as required within the limits of the approved budget to provide in a proper manner for the Common Area Maintenance Program. The Operating Agency shall confer with appropriate City public works personnel in order to coordinate sidewalk cleaning and litter pickup to be performed by the Operating Agency with street cleaning and litter pickup provided by the City in order to most effectively render the required services.

1.2.2 Promotion and Marketing Program.

- A. The promotion and marketing component of the work to be provided by the Operating Agency under this agreement has as its purpose and goal the promotion of the downtown Tacoma BIA as a clean, safe, inviting and desirable area to visit, to come for business or other activities, an easy area to travel to and through and as a place for business to locate.
- B. The Operating Agency shall develop a detailed work plan and the associated budget thereof and submit to the designated City official for review and consistency with the overall work plan

1.2.3 Security/Ambassador Program.

- A. The goal and purpose of this component of the BIA program is the operation of a security and ambassador program which will assist in the providing of additional security in the BIA through a combination of public and private personnel and facilities.
- B. The Operating Agency will prepare a detailed work plan for review by the DCO as to the manner in which the services will be provided by the

Operating Agency or its subcontractor for this component of the BIA program. The plan and the services to be provided under this component of the BIA program will be subject to the following conditions and guidelines.

- (1) The Operating Agency will subcontract with an experienced and qualified security firm to provide the private personnel component of the BIA security program. Proposals may be solicited from qualified security firms and evaluated with the purpose of obtaining the best qualified firm to provide quality service and personnel at a reasonable cost.
- (2) The subcontract shall provide that no security personnel objected to by the DCO will provide or continue to provide services in the BIA.
- (3) The subcontract shall contain an appropriate indemnification agreement by the security firm, indemnifying both the Operating Agency and the City in form as may be approved by the DCO.

1.3 The Operating Agency will provide staff assistance to the City, which, upon appeal by a Ratepayer will review claimed errors in assessments and make a ruling based on the merits of the appeal.

1.4 The Operating Agency will provide adequate notice of and hold a Ratepayers hearing on or before March 1 of any given year. At this meeting, the Operating Agency shall submit for comment and recommendation of the Ratepayers a statement of the proposed program and activities to be conducted during the next ensuing fiscal year (May 1 through April 30), the proposed annual budget and a statement of any adjustment to the assessment rates required for financing the proposed activities and budget for the ensuing fiscal year. The Operating Agency shall thereafter, within the time required by the BIA Ordinance, submit to the DCO the proposed annual budget and activities as recommended by the Operating Agency, together with other information as may be requested by the DCO pursuant to Section 12 of the BIA Ordinance.

1.5 Program Reporting.

- A. A written report shall be submitted quarterly to the DCO and shall include a monthly budget and expenditure statement by line item, identifying expenditures, encumbrances and balances as compared with the approved budget.
 - B. Prepare annual reports, budget, and statements as required by the BIA Ordinance and this agreement.
- 1.6 The Term of this agreement shall commence upon execution of this agreement or as of May 1, 2020, whichever is sooner, and terminate April 30, 2021, unless such term is extended by appropriate amendment to this agreement.

ARTICLE 2. CITY ACTIVITIES

- 2.1 Pursuant to the BIA Ordinance No.28496, special assessments will be collected by the City on an annual or semiannual basis. Moneys collected shall be deposited in a special City fund designated as the Downtown Improvement Area Fund District No. 1, hereinafter called the "District Fund," and expenditures from the fund shall be used exclusively for the purposes specified in the BIA Ordinance and, to the extent BIA assessment funds ("BIA Funds") are available in the District Fund, and in accordance with the approved budget, the City will expend BIA Funds for the following purpose:

Payment of costs and administrative expenses associated with the collection of BIA assessments.

- 2.2 The City will provide enclosed space in the Commerce Street Hillclimb area, rent free, to the Operating Agency for use as a maintenance office in the providing of services under this agreement, which benefit the public by increasing the overall cleanliness and safety of the downtown area. The Operating Agency shall be responsible for maintenance, repairs and operations costs thereof (including telephones, janitorial services and other required services), subject to payment/reimbursement of costs incurred, from BIA funds as provided in other provisions of this agreement.
- 2.3 The City will make available to the Operating Agency financial reports related to the District Fund, as needed.

ARTICLE 3. FINANCIAL CONDITIONS

3.1 Project Budget and Expenditures.

- A. Expenditures from the District Fund shall be subject to the prior approval of the DCO and be in accordance with the approved annual budget, and only for programs or services which have been approved by the City.
- B. It is agreed that if the anticipated assessments to be used in carrying out BIA activities and services become unavailable or fall short of expectations and present estimates, then this contract shall thereupon be terminated or limited as, in the sole judgment of the City, is required to properly or prudently comply with the limitations so imposed by the unavailability of funds. It is expressly understood and agreed that this agreement shall not obligate the City to expend any funds other than funds made available from the BIA assessments and the City shall not be required to carry out any BIA service or activity, or be obligated to make any payment under this agreement, if sufficient BIA assessment funds are not available therefore.

3.2 Compensation/Method of Payment.

In consideration of the satisfactory performance of the services and work required to be provided by the Operating Agency under this agreement, the

City will, subject to availability of BIA assessment funds, reimburse the Operating Agency on a monthly basis for actual direct costs incurred, as set forth in the approved budget and the approved detailed work plans, for administration, the Common Area Maintenance Program, the Marketing and Promotions Program, and the Security/Ambassador Program, for the annual period commencing May 1, 2020 for a total amount of \$ 1,321,340.

3.3 Documentation of Costs and Other Financial and Reporting Requirements.

- A. The Operating Agency shall submit a properly executed invoice approximately ten working days after the end of each month. The invoice shall be in the form as required by the City and shall bear the following certification:

"I certify that the above bill is correct and just and that the payment therefor has not been received.

By: _____
_____”

All payments shall be subject to adjustment for any amounts found, upon audit or otherwise, to be improperly invoiced. The City will initiate authorization for payment after receipt and approval of such correct invoice and will make payment to the Operating Agency from available funds in the District Fund within 12 working days from receipt of invoice.

- B. Annual Report. The Operating Agency shall submit to the City an Annual Report that sufficiently outlines the financial health of the Operating Agency as well as its actual performance under the work-plan. The Annual Report shall be due to the DCO no later than 270 days after the conclusion of the Operating Agency's fiscal year.
- C. All costs shall be supported by properly executed payrolls, time records, invoices, vouchers, or other official documentation, as evidence of the nature and propriety of the charges for which payment is requested. All accounting documents pertaining in whole or in part to this agreement shall be clearly identified and readily assessable, and the City shall have the right to audit the records of the Operating Agency as they relate to the work, upon reasonable notice. The Operating Agency shall also: (1) Maintain an effective system of internal control over and accountability for all funds and property supplied, and make sure that the same are used solely for authorized purposes, including the providing of fidelity bonds, if requested by the City Manager; (2) maintain payroll and financial records for a period of three years after receipt of final payment under this agreement; (3) permit inspection and audit of its records with respect to all matters authorized by this agreement by representatives of the City and the State Auditor, and at any time during normal business hours and as often as necessary; (4) repay to the City any funds in its possession at the time of termination of

this agreement that may be due to the City, and (5) establish and maintain all financial records and fiscal control systems in a manner to meet the approval of the City's finance officer and the State Auditor. Records and reports submitted shall be sufficient to meet the approval of the DCO.

- 3.4 The City reserves the right to withhold payments pending timely delivery of program reports or documents, as may be required under this agreement.
- 3.5 All items of personal property which are purchased by the Operating Agency, the cost of which is reimbursed or paid with BIA assessment funds, shall, if not consumed in the proper and ordinary course of carrying out the authorized activities and services under this agreement, become the property of the City and shall be placed in the possession of the City at the termination of this agreement.

ARTICLE 4. GENERAL CONDITIONS

- 4.1 Personnel. The Operating Agency shall furnish all personnel necessary for the expeditious and satisfactory performance of this agreement; each to be competent, experienced, and well-qualified for the work to which such person is assigned. No person or subcontractor objected to by the City shall be assigned by the Operating Agency for work hereunder.
- 4.2 Compliance with Applicable Laws. In the performance of this agreement, the Operating Agency will comply with all applicable federal laws, state laws, municipal ordinances, orders, rules and regulations, including but not limited to those pertaining to social security, income tax withholding, medical aid, payment of required wages, industrial insurance, worker's compensation, fair employment practice and unemployment compensation, and it shall defend, protect and save harmless the City from and against all claims, suits, actions, liabilities, laws, damages and expense arising from any failure of the Operating Agency or its subcontractors to comply with the same. The Operating Agency has received a copy of the BIA Ordinance and Chapter 35.87A RCW, and the Operating Agency agrees to comply with the provisions thereof. Any provision which, by such State statute or BIA Ordinance, is required to be set forth in this agreement is by this reference incorporated herein as though fully set forth at this point.
- 4.3 Limited Liability. It is expressly understood and agreed that any obligation or liability arising out of and/or incurred by the City by reason of this agreement or the carrying out of any activity in connection therewith shall first be satisfied from assessments received from Ratepayers pursuant to the BIA Ordinance, and made available for such purpose. The Operating Agency, subcontractor, or any other persons or entity shall only have recourse to other assets or funds belonging to or held by the City if the specified assessments are insufficient to satisfy said parties' claim. Notwithstanding the above, if the claim against the City is brought by the Operating Agency or a subcontractor for breach of contract unrelated to a tort claim, the Operating Agency or subcontractor's award shall be limited to the extent of the assessments received from Ratepayers.

- 4.4 Liability of Third Parties. The Operating Agency shall hold the City and its officers, agents and employees, acting in their capacity or course of employment, harmless from all suits, claims or liabilities of any nature, including costs and expenses for and on account of damages sustained by any persons or property resulting in whole or in part from activities or omissions of the Operating Agency, its agents, or employees, pursuant to this agreement, or on account of any unpaid wages or other remuneration for services, and if a suit be filed, the Operating Agency shall appear and defend the same at its own cost and expense, and if judgment be rendered or if settlement made requiring payment by the City, the Operating Agency shall satisfy and pay the same. The Operating Agency shall have no duty to indemnify the City for the City's own acts or omissions and the acts or omissions of its officers, agents, and employees. The Operating Agency is expected to be in compliance with all applicable Federal, State, and City laws and regulations.
- 4.5 Insurance. The Operating Agency shall maintain at all times a policy of Commercial General Liability using Insurance Services Office form CG0001(04-13) or the equivalent. Such policy shall include as an additional insured, the City of Tacoma using Insurance Services Office form CG2010(04-13) or the equivalent. Policy limits shall not be less than \$1,000,000 each accident and \$2,000,000 aggregate. The Operating Agency shall also maintain a policy of Commercial Automobile Liability insurance using Insurance Services Office form CA0001 or the equivalent with limits not less than \$1,000,000 each accident providing coverage on all owned automobiles (if any), Non-Owned Automobiles, and Hired Automobiles. The Operating Agency shall also maintain at all times a policy providing Errors and Omissions Liability with limits not less than \$1,000,000 each occurrence and \$1,000,000 aggregate. The Operating Agency shall hold the City harmless from any and all damages which may arise in connection with the services to be provided hereunder, whether or not such damages are alleged to arise or result from acts or omissions which are the sole negligence of the City, its officers, employees and/or agents, or the combined negligence of the City, and others. The Operating Agency will insure all equipment purchased or leased under this agreement against loss or theft; such insurance shall include the City as an additional insured and shall not be reduced or cancelled without thirty days' prior written notice to the City. The insurance provided hereunder shall be primary over any insurance which may be carried by the City and will include a cross liability (Separation of Insureds) clause. Upon written request to the City, the Operating Agency will provide a certificate of insurance and a copy of the additional insured endorsement or a duplicate of the policy as evidence of the insurance protection afforded prior to the time when the Operating Agency commences work for services under this contract.
- 4.6 Conflict of Interest. No member, officer or employee of the City, or its designee or agents, no member of the Tacoma City Council, or any other public official of the City, who exercises any function or responsibility with respect to the programs affected by this contract shall have any financial interest, direct or indirect, in the contract or subcontract, or the proceeds thereof, for work to be performed in connection with such programs, nor shall (s)he for one year after completion of this agreement have any financial interest with the Operating

Agency or any subcontractor of the Operating Agency performing services under this agreement.

- 4.7 Subcontracting Assignment. The Operating Agency shall not assign any money due or to become due hereunder without prior written consent of the City. The Operating Agency shall not subcontract any of the work to be performed under this agreement without the prior written consent of the City, unless such work is authorized to be subcontracted as specifically authorized by other provisions of this agreement. The Operating Agency, if authorized by this agreement or with the written authorization of the City, may propose contracts with one or more parties to carry out its obligations under this agreement insofar as it may deem the same proper, necessary or efficient, provided, however, that all such agreements shall be in writing and subject to the approval of the City prior to the execution and implementation thereof; such contracts, together with all activities by or caused by the Operating Agency, shall not require compensation in excess of the maximum compensation available as set forth under preceding paragraphs hereof. All purchases or leases of personal property, and subcontracts for services, shall be implemented in a manner which will allow reasonable competition to ensure the best product or service at the lowest cost, as prescribed by state law.
- 4.8 Future Support. The City makes no commitment of future support and assumes no obligation for support of the activities contracted herein except as set forth in this agreement.
- 4.9 No Waiver. Neither payment by the City nor performance by the Operating Agency shall be construed as a waiver of either party's right or remedies against the other. Failure to acquire full and timely performance of any provision at any time shall not waive or reduce the right to insist upon complete and timely performance of such provision thereafter.
- 4.10 Non-Discrimination - Equal Employment Opportunity. The Operating Agency shall not discriminate against any employee or applicant for employment because of age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion or disability, unless based upon bona fide occupational qualification. The Operating Agency will take affirmative action to ensure that applicants are employed, and that employees are treated fairly during employment, without regard to their age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Operating Agency agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause. The Operating Agency shall cause the foregoing provision to be inserted in all subcontracts for any work covered by this agreement so that such provisions shall be binding upon such subcontractor, provided the foregoing provision shall not apply to contractors or subcontractors for standard commercial supplies or raw materials. The

Operating Agency shall comply and shall require its subcontractors to comply with the applicable provisions of City, State, and Federal laws pertaining to the implementation of affirmative action programs, and the prohibition of discrimination based on race, color, national origin, ancestry, creed, religion, political ideology, age, sex, or marital status, or the presence of any sensory, mental, or physical handicap, unless based on a bona fide occupational qualification reasonably necessary to the normal operation of a particular business, enterprise, or employment.

4.11 Termination

- A. Termination by City. If, through any cause, the Operating Agency shall fail to fulfill in a timely and proper manner its obligations under this agreement, or if the Operating Agency shall violate any of the covenants, agreements, or stipulations of this agreement, or, in the event for any reason, the commencement, prosecution, or completion by the Operating Agency of any of the project activities for the program contemplated to be undertaken pursuant to this agreement is rendered improbable, impossible or illegal, then, and in that event, the City may suspend any and all of the activities hereunder 30 days after providing the Operating Agency with written notice if said default, condition, or cause is not cured. The written notice must identify the specific default and/or identify the event or conditions rendering a program improbable, impossible, or illegal and describe the program at issue. Failure to cure within 30 days ceases and terminates the City's obligations arising under and pursuant to the agreement. The Operating Agency shall not be relieved of the liability to the City for damages sustained by the City by virtue of any breach of the agreement by the Operating Agency, and the City may withhold any payments to the Operating Agency for the purpose of set-off until such time as the exact amount of damages due the City from the Operating Agency is determined.
- B. Termination by the Operating Agency. This agreement may be terminated by the Operating Agency upon 30 days prior written notice should the City fail substantially to perform in accordance with the terms of the agreement through no fault of the Operating Agency. In the event of termination due to the fault of others, the Operating Agency shall be paid compensation for services performed to termination date, including all authorized expenses then due, including expenses directly attributable to the uncompleted portion of the services covered by this agreement.

- 4.12 Quality of Performance. The Operating Agency shall be responsible for the quality of services rendered and the suitability of the end product and/or service for the intended use. The Operating Agency's responsibilities hereunder shall not be reduced by recommendations or assistance received from the City which vary from the terms and conditions of this agreement unless reduced to writing, signed by the responsible City officer and made addenda to or amendments of this agreement. The City shall judge the adequacy and efficiency of work performed, the sufficiency of records, and the end product of services rendered. If, during the course of the agreement, the services rendered do not meet the desired results, the Operating Agency will correct, modify, remodel, and/or repeat

the process. Failure to make the necessary corrections shall be a material breach of agreement and cause for termination. All work shall be performed and services supplied in the manner to further project purposes and goals and in compliance with guidelines for performance set by this agreement and general direction of the City.

- 4.13 Changes. Either party may request changes in the scope of services, performance, or reporting standards to be performed or provided under this agreement. Such changes, including any increase or decrease in the amount of the agency's compensation, which are mutually agreed upon in writing by and between the Operating Agency and the City shall be incorporated.
- 4.14 Maintenance of Records. The Operating Agency shall establish and maintain records in accordance with the requirements prescribed by the City with respect to all matters covered by this agreement. Except as otherwise authorized by the City, the Operating Agency shall retain such records for a period of six years after receipt of final payment of the terms and provisions of this agreement. All costs incurred by the Operating Agency with respect to this contract for which reimbursement is sought shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or such other official documentation or evidence properly detailing the nature and propriety of said charges, as the City may require.
- 4.15 Contract Monitoring. The City shall have the authority to and will monitor all activities and information sources in the operational and fiscal systems of the Operating Agency and any subcontractors or fourth parties connected with said Operating Agency in the performance of duties and obligations under this agreement in order to ensure that the Operating Agency is maintaining adequate and acceptable progress and systems and to ensure that funds provided under this agreement by the City to the Operating Agency are being used effectively and efficiently to accomplish the purposes for which the funds are being made available.
- 4.16 Contract Evaluation/Audits. In addition to the monitoring authority, the Operating Agency will cooperate with the City in evaluating products, services, and performance of the Operating Agency. All information necessary or required for performing proper evaluations/audits by the City shall be made accessible to the City's evaluation staff as requested by the City. Representatives of the City and of the State Auditor shall be and are hereby authorized to perform period audits of the project described in this agreement at such reasonable times as they may deem necessary and proper.

IN WITNESS WHEREOF the parties hereto have executed this document as of the day and year first above written.

CITY OF TACOMA

LOCAL DEVELOPMENT COUNCIL

By: _____
Elizabeth Pauli
City Manager

By: _____
President

(City of Tacoma use only - blank lines are intentional)

Director of Finance: _____

City Attorney (approved as to form): _____

Approved By: _____

Approved By: _____

Approved By: _____

Approved By: _____

Approved By: _____

Approved By: _____

Approved By: _____

Approved By: _____