

Resolution No. **2017-11-07-1105**

STOCKTON CITY COUNCIL

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE DOWNTOWN STOCKTON ALLIANCE RELATIVE TO THE DOWNTOWN STOCKTON PROPERTY AND BUSINESS IMPROVEMENT DISTRICT

In 1997, the City Council established a Property and Business Improvement District for downtown Stockton; and

The City Council has renewed the Downtown Stockton District as the Downtown Stockton Property and Business Improvement District (DSPBID) and its associated Downtown Management District Plan several times since its formation; and

On May 23, 2017, the City Council adopted Resolution No. 2017-05-23-1401, a Resolution of Intention to renew the DSPBID; and

On July 25, 2017, the City Council adopted Resolution 2017-07-25-1501, approving the renewal of the DSPBID for a ten-year period beginning January 1, 2018; and

The DSPBID was established to provide new services and activities, including enhanced maintenance, public security and safety, and marketing and promotions beyond what the City currently provides; and

The adopted Downtown Management District Plan describes a governance framework for the DSPBID, which requires the City of Stockton to contract with a non-profit corporation to manage DSPBID funds and deliver the enhanced services pursuant to California Streets & Highways Code section 36651; and

The City desires to contract with the Alliance and designate it to continue to deliver the enhanced services; now, therefore,

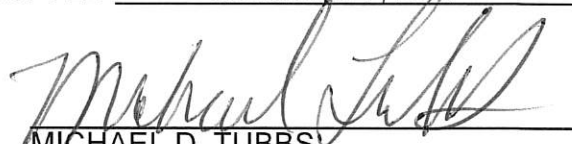
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The City Council designates the Alliance, to operate the DSPBID with responsibility for managing the property tax-based and business assessments and delivery of the enhanced services, as described in the adopted Downtown Management District Plan, dated December 2016, including clean and safe programs, marketing and promotions, enhanced maintenance, and advocacy and management programs.

2. The City Manager is hereby authorized to execute the Agreement between the City and the Alliance, a copy of which is attached hereto as Exhibit 1 and incorporated by this reference.

3. The City Manager is authorized to take whatever actions are necessary and appropriate to carry out the purpose and intent of this Resolution.

PASSED, APPROVED, and ADOPTED November 7, 2017.



MICHAEL D. TUBBS
Mayor of the City of Stockton

ATTEST:



BRET HUNTER, CMC
Interim City Clerk of the City of Stockton



Exhibit 1

**AGREEMENT BETWEEN THE CITY OF STOCKTON
AND THE DOWNTOWN STOCKTON ALLIANCE, INC.
RELATIVE TO THE DOWNTOWN STOCKTON PROPERTY AND
BUSINESS IMPROVEMENT DISTRICT (DSPBID)**

This Agreement is entered into on _____ by and between the CITY OF STOCKTON, a municipal corporation (herein "CITY"), and THE DOWNTOWN STOCKTON ALLIANCE, INC., a California nonprofit corporation (herein "DSA").

RECITALS

The California State Legislature enacted the Property and Business Improvement Law, Chapter 894, Statutes of 1994, Streets on Highways Code sections 36600, *et seq.* effective January 1, 1995 (herein the "Law") authorizing cities to establish property and business improvement districts upon petition by a weighted majority of property owners within the district and affirmative ballot.

On May 23, 2017, the City Council adopted a Resolution of Intention to renew the Downtown Stockton Property and Business Improvement District (DSPBID) and authorized the City Manager to set a date for a public hearing to tabulate the ballots and overrule protests (Resolution No. 2017-05-23-1401).

On July 25, 2017, the City Council conducted a public hearing and, upon tabulation of the ballots with 82% of the votes in favor, adopted a resolution to renew the DSPBID (Resolution No. 2017-07-25-1501), a map of the DSPBID boundary is attached hereto as Exhibit "A".

The Downtown Stockton Alliance ("Alliance"), a nonprofit 501(c)(6) corporation was established to provide enhanced services, including maintenance and security, to the DSPBID.

The City and the Alliance wish to formalize respective roles and responsibilities with regards to maintenance within the district, to ensure that the City continues to provide "baseline" City services, and the addition of privately contracted enhanced services is provided over and above, rather than supplanting, the current levels of City services.

The Alliance represents a large number of property owners within the DSPBID, is instrumental in the established of the DSPBID, and has the capacity to manage the District Improvements to be provided by the DSPBID.

City and Alliance desire to enter into this Agreement to set forth the roles and responsibilities to each party with respect to providing the District Improvements and administering the DSPBID in accordance with the adopted Management District Plan.

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Exhibit 1

AGREEMENT

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **DEFINITIONS.** Certain terms are defined in the heading and recitals to this agreement. In addition to those definitions, as used in this Agreement, the following definitions shall apply:

- a. Management District Plan. The document entitled "Downtown Stockton Property-based Business Improvement District Management District Plan" dated December 2016 which was adopted by the City Council on July 25, 2017 (Resolution No. 2017-07-25-1501) and incorporated herein to this Agreement by reference.
- b. District Improvements. The improvements (or services) to be provided by the DSPBID include sidewalk and alley cleaning, graffiti and litter removal, uniformed guide patrols and economic development and marketing activities, as well as district administration as described in the Management District Plan.
- c. Benefit Zones. An area of land within the DSPBID boundary designated to receive a specific level of District Improvements. The three Benefit Zones are identified in Exhibit "A".

2. **ALLIANCE OBLIGATIONS.** Alliance's obligations under this Agreement shall be as follows:

- a. Provide District Improvements. Alliance shall provide, manage and administer all District Improvements during the following time periods:

Year 1	January 1, 2018 through December 31, 2018
Year 2	January 1, 2019 through December 31, 2019
Year 3	January 1, 2020 through December 31, 2020
Year 4	January 1, 2021 through December 31, 2021
Year 5	January 1, 2022 through December 31, 2022
Year 6	January 1, 2023 through December 31, 2023
Year 7	January 1, 2024 through December 31, 2024
Year 8	January 1, 2025 through December 31, 2025
Year 9	January 1, 2026 through December 31, 2026
Year 10	January 1, 2027 through December 31, 2027

- b. Budget Reports. Alliance shall submit to the City, for review, comment and approval, a report describing the District Improvements and proposed budget for each year of operation. Said report shall be submitted on or before February 1, 2019 for Year 2, and February 1 for each year thereafter. The District Improvements and budget contained in the Management District Plan shall be considered the approved Budget Report for Year 1.

Exhibit 1

The Budget Reports for Years 2-10 shall declare the budget surplus (or deficit) for the prior year.

- c. Financial Statements. Alliance shall submit a statement of income and expenses of the DSPBID, reviewed by a Certified Public Accountant, covering the previous calendar year on or before March 1, 2019 for Year 1, and March 1 for each year thereafter. Within thirty (30) days of written request of the City, the Alliance shall provide all other financial information in relation to the DSPBID as may be reasonably requested from time to time.
- d. Subcontracting. Alliance shall let and administer all subcontracts necessary for providing the District Improvements. In all subcontracting, Alliance shall follow competitive bidding procedures unless Alliance has documented that it is necessary to desirable to award a subcontract on a negotiated basis in order to assure the provisions of adequate improvements at the most advantageous cost.
- e. Work in the Public Right-of-Way. Alliance shall comply with all federal, state, and local laws and shall secure all necessary permits and authorizations pertaining to work within the public right-of-way including, but not limited to, sidewalks, alleys, streets, public easements, public buildings, and public parking areas and garages.
- f. Maintain Database. Alliance shall maintain a complete Database of all parcel and building square footages of assessed properties within the DSPBID. Said Database shall be updated at least once each year during DSPBID operations to reflect changed conditions and to accurately reflect status of assessed parcels. Alliance shall provide a copy of the Database with the submittal of the Budget Reports described in section 2.b. above.
- g. Indemnify and Hold Harmless. To the fullest extent permitted by law, Alliance shall hold harmless, defend at its own expense, and indemnify the City, its officers, employees, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, arising from all acts or omissions of Alliance or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages, or expenses arising from the City's sole negligence or willful acts. The duty to defend and the duty to indemnify are separate and distinct obligations. The indemnification obligations of this section shall survive the termination of this agreement.
- h. Insurance Requirements. Alliance shall maintain insurance in the form identified in Exhibit "B".

3. **CITY OBLIGATIONS.** The City's obligations under this Agreement shall be as follows:

Exhibit 1

- a. District Administration. The City shall provide administration of the annual DSPBID proceedings, including preparation of the City Council reports.
- b. Billing and Collecting. The City will coordinate the annual levy and collecting of assessments for the DSPBID with the County of San Joaquin.
- c. Payments to Alliance. The annual DSPBID assessments will be collected with the regular County property taxes. The Alliance will continue the present practice of directly billing the County in order to receive these revenues. The City will not act as an intermediary to request payments on behalf of the Alliance.
- d. Annual City Contribution. In addition to the payments specified in paragraph C above, the City will make an annual contribution to the DSPBID. The City's contribution will be an aggregate sum based on the number, size, and location of City-owned properties within the DSPBID and the annual assessment rates. The City's contribution for the first year of operation is estimated to be \$325,654, which includes Parking Authority and Successor Agency properties. The City contribution will be paid to the Alliance by March 1 of each year of DSPBID operation.
- e. City commitment to maintain baseline services. The City shall agree to maintain a level of City services to the DSPBID boundary that allows for asset sustainability, and not supplant these services. The intent is not to supplant baseline City services currently provided within the City right-of-way with services to be provided by the DSPBID Management District Plan. However, such maintenance of services shall be subject to the discretionary actions of the City Council.
- f. City contract for Alliance services. The City may enter into contracts for services to request that the Alliance provide certain maintenance functions for City-owned facilities or public right-of-way located within the DSPBID.

4. GENERAL PROVISIONS

- a. Notices. Any notice, tender, delivery or other communications pursuant to the Agreement shall be in writing and shall be deemed to be properly given when delivered or mailed in the manner provided in this paragraph to the following persons:

City of Stockton
Attn: City Manager
425 N. El Dorado Street
Stockton, CA 95202

Exhibit 1

Downtown Stockton Alliance
Attn: Executive Director
125 Bridge Place, Third Floor
Stockton, CA 95202

Any party may change that party's address for these purposes by giving written notice to the change to the other parties in the manner provided in this section. If sent by mail, any notice, delivery, or other communication shall be effective or deemed to have been given 48 hours after it has been deposited in the United States mail, with postage prepaid, and addressed as set forth above.

- b. Term and Termination. The term of this Agreement shall be from the date of execution first noted through December 31, 2027. The Alliance may recommend to the City Council an extension of the termination date to allow Alliance expenditure of remaining DSPBID funds for district improvements in the event all DSPBID funds are not received and spent by December 31, 2027. Said extension, if any, shall be at the sole discretion of the City Council. Following termination, Alliance as expeditiously as is reasonably possible shall terminate all activities of the DSPBID, pay all obligations and costs of administration incurred on behalf of the DSPBID, and return all remaining DSPBID funds to the City. Thereafter, the City shall return remaining DSPBID funds to the owners of the assessed properties in amounts proportionate to the amounts of assessments they paid for the DSPBID.
- c. Attorney's Fees. If the services of any attorney are required by either party to secure the performance of this Agreement, or otherwise upon the breach of the default of either party, or if any judicial remedy or arbitration is necessary to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney fees, costs, and other expenses, in addition to any other relief to which such party may be entitled.
- d. Governing Lease. This Agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of California.
- e. Waiver. The waiver by any party to this agreement of breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provisions of this Agreement.
- f. Entire Agreement. This document, including all Exhibits, contains the entire Agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement.

Exhibit 1

- g. Severability. If any portion of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on this date first set for the above.

CITY OF STOCKTON,
INCORPORATED,
a Municipal Corporation

DOWNTOWN STOCKTON ALLIANCE,
a California Corporation

BY: _____
Kurt Wilson
City Manager

BY: _____
Cynthia Fargo
Chief Executive Officer

APPROVED AS TO FORM:

JOHN M. LUEBBERKE
CITY ATTORNEY

By _____

Exhibit "A"

DSPBID Boundary Map

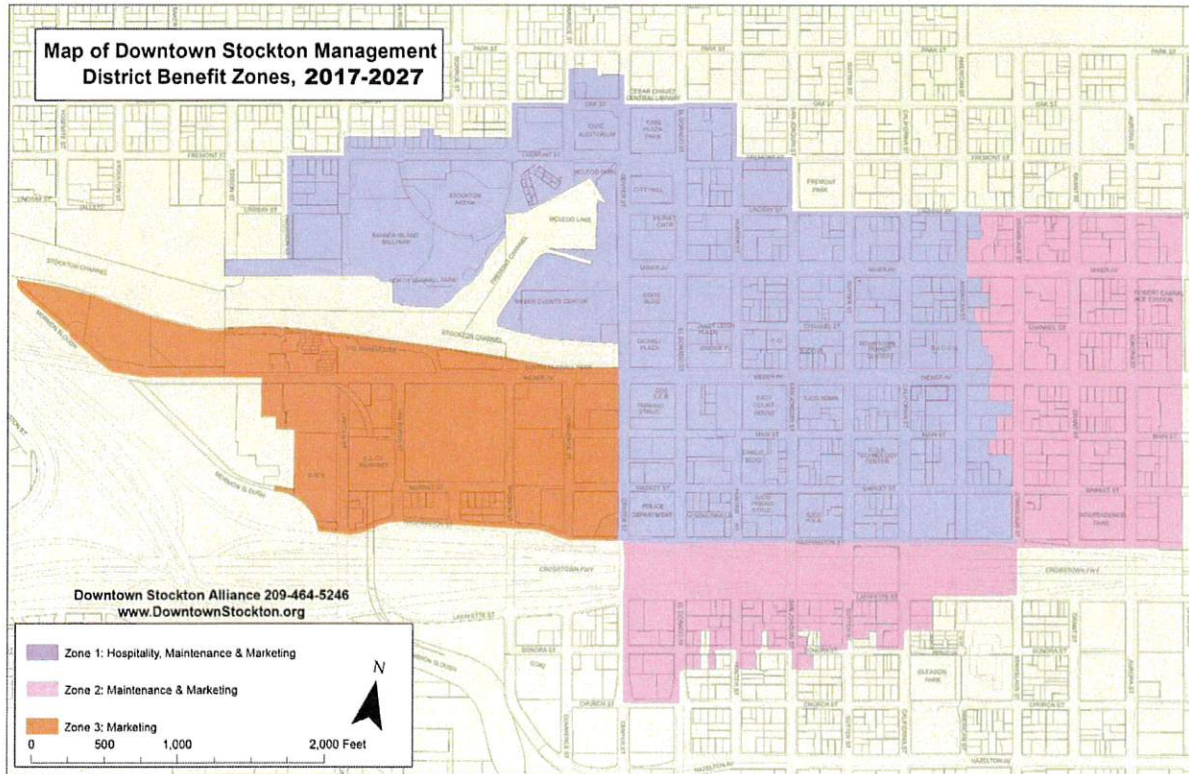


Exhibit 1

Exhibit "B"

Insurance Requirements

Alliance 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 and the results of that work by the Alliance, its agents, representatives, employees or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the **general aggregate limit shall be twice** the required occurrence limit.
2. **Automobile Liability (AL):** ISO Form Number CA 00 01 covering any auto (Code 1), or if Alliance has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

If the Alliance maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Alliance. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

- **Additional Insured Status**
The *City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers* are to be covered as additional insureds on the CGL and AL policy with respect to liability arising out of work or operations performed by or on behalf of the Alliance including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Alliance's insurance (**at least as broad as** ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used). Additional insured Name

Exhibit 1

of Organization shall read "City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers." Policy shall cover City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers for all locations work is done under this contract.

- **Primary Coverage**

For any claims related to this contract, the Alliance's insurance coverage shall be endorsed as primary insurance as respects the *City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers*. Any insurance or self-insurance maintained by the *City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers* shall be excess of the Alliance's insurance and shall not contribute with it. The City does not accept endorsements limiting the Alliance's insurance coverage to the sole negligence of the Named Insured.

- **Notice of Cancellation**

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

- **Waiver of Subrogation**

Alliance hereby grants to the City a waiver of any right to subrogation which any insurer of said Alliance may acquire against the City by virtue of the payment of any loss under such insurance. Alliance agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

- **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by the City of Stockton Risk Services. The City may require the Alliance to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

- **Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII if admitted to do business in the State of California; If not admitted to do business in the State of California, insurance is to be placed with insurers with a current A.M. Best's rating of no less than A+:X.

- **Claims Made Policies**

If any of the required policies provide claims-made coverage:

- The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.

Exhibit 1

- If Claims Made policy form is used, a three (3) year discovery and reporting tail period of coverage is required after completion of work.

- **Verification of Coverage**

Alliance shall furnish the City with original certificates and amendatory endorsements required by this clause. All certificates and endorsements are to be received and approved by the City of Stockton Risk Services before work commences. Failure to obtain the required documents prior to the work beginning shall not waive the Alliance's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time, for any reason or no reason.

Alliance shall, prior to the commencement of work under this Agreement, provide the City with a copy of its Declarations Page and Endorsement Page for each of the required policies.

- **Special Risks or Circumstances**

The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

- **Certificate holder address**

Proper address for mailing certificates, endorsements and notices shall be:

City of Stockton
400 E Main Street, 3rd Floor – HR
Attn: City Risk Services
Stockton, CA 95202

City of Stockton Risk Services Phone: 209-937-5037

City of Stockton Risk Services Fax: 209-937-8558

- **Maintenance of Insurance**

If at any time during the life of the Contract or any extension, the Alliance fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract.

- **Subcontractors**

If the Alliance should subcontract all or any portion of the work to be performed in this contract, the Alliance shall cover the sub-contractor, and/or require each sub-contractor to adhere to all subparagraphs of these Insurance Requirements section. Similarly, any cancellation, lapse, reduction or change of sub-contractor's insurance shall have the same impact as described above.