

Contracting Agreement

February 14, 2023

This agreement is executed by Hillcrest Business Association, a California not for profit corporation (hereinafter referred to as "HBA") whose address is 1601 University Ave., San Diego, CA 92103 and Hillcrest Kiwanis All Access (hereinafter referred to as "Contractor"), whose address is <address>.

The City of San Diego, though not a party to this agreement, is referred to in this agreement as "the City".

The signatories to this agreement shall be collectively referred to as, "the parties".

Definitions

A. Flag. The term "Flag" shall mean a rectangular fabric identifier bearing the likeness of the flag of the United States attached to poles distributed throughout the neighborhood via holes drilled into the sidewalk.

C. Appearance. The term "appearance" shall mean what is viewable by the human eye.

Recitals

The HBA is seeking a partner organization to provide volunteers to deploy Flags in the Hillcrest commercial area of San Diego.

WHEREAS, the HBA desires to engage the services of Contractor for the above stated purposes;

WHEREAS, the HBA is the successor organization to the Hillcrest Mission Hills Lions organization concerning the deployment of the Flags and was gifted the Flags and other related materials by the Lions in 2020;

NOW, therefore, in consideration of the above recitals, and the mutual promises and conditions contained in herein, the Parties, intending to be legally bound, hereby agree as follows:

Agreement

Acknowledgment of Relationships.

The Parties hereby acknowledge that the HBA does not own any real property and is only able to authorize the agreement as a result of existing relationships and agreements with the City of San Diego.

Governing Law and Assignment.

The Parties acknowledge and expressly agree and understand that the laws of the State of California shall govern this agreement and any disputes arising therefrom.

This contract cannot be assigned or transferred without the express written consent of the HBA.

Independent contractor status

Contractor is an independent contractor and not an employee of the City or HBA. All staff and volunteer costs relating to the project must be borne by the Contractor. Contractor shall have no authority to bind the City or HBA in any manner or to incur any obligation, debt, or liability of any kind, on behalf of or against the City or HBA. Signing this agreement does not assign any rights, obligations, and/or duties of Hillcrest Business Association under this agreement to any third party. This agreement does not create a contractual relationship between the City or HBA and any third party.

Agreements with third parties

Prior to signing this agreement the Contractor shall disclose and provide copies of all agreements with third parties relating to the project including rental agreements, service contracts, entertainment agreements, sponsorships, in-kind donations, special payments, and mutual benefit arrangements. Unwritten agreements shall be unacceptable.

Contractor hereby acknowledges other agreements exist between HBA, the City of San Diego, and other third parties that relate to this agreement including but not limited to fabrication, installation and permitting.

The Parties agree to make every effort to ensure that third parties are not presented directly or indirectly as having been a party to this agreement or taking credit for the work of this agreement.

No joint venture or partnership.

This agreement shall not be construed or interpreted to create or establish any joint venture or partnership between the parties.

Supplies and Equipment.

Contractor agrees to provide all labor (paid or volunteer) and related elements required to meet the terms of the agreement.

Supervision.

Contractor shall provide supervision adequate to ensure that the services rendered pursuant to this agreement are of high quality.

Rights, Warranties, and Declarations of Insurance.

HBA hereby represents and warrants that it has at present in force comprehensive public liability insurance.

HBA hereby represents and warrants that at the time this contract is entered into, it carries worker's compensation insurance to the extent required by the appropriate statutes, and Public Liability Insurance including errors and omissions.

All insurance required by the terms of this agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements. If the City is made a party to any judicial or administrative proceeding to resolve the dispute between HBA and Contractor, Contractor shall defend and indemnify the City as described herein.

HBA shall not be held responsible for acts of God, riot or civil turmoil, hurricanes, or war if the event is beyond its reasonable control.

Mutual Benefit

It is expressly understood and agreed that this contract is entered into solely for the mutual benefit of the parties herein and that no benefits, rights, duties, or obligations are intended or created by this contract as to third parties not a signatory hereto.

Duration of and Termination of Agreement.

It's agreed upon by the parties that this contract shall be in full force and effect until the terms of the contract have been satisfied..

Termination shall be effective only when notice in writing to discontinue is sent to either party by certified United States mail, with return receipt, postage prepaid and addressed to the other party hereto shown on this Agreement, at least thirty (30) days prior to the expiration of the term.

Ownership

The parties acknowledge that Hillcrest Taste 'n Tinis, Hillcrest CityFest, the Taste of Hillcrest, the Hillcrest Sign logo, The Fabulous Hillcrest logo, Pride of Hillcrest Block Party, Hillcrest Farmers Market, The Amazing High Heel Race, Hillcrest Hoedown, Walk in ART, and the related marks are, and always have been, the property of the HBA. HBA retains the exclusive rights to sell any HBA related merchandise and tickets and to conduct promotions for any business relating to Hillcrest and the HBA.

Confidentiality.

Contractor agree not to use or disclose any information it receives from the HBA under this Agreement that has been identified as confidential or believed to be confidential in nature.

Miscellaneous.

It is agreed by and between the parties that if any of the terms of provisions of this Agreement shall be determined to be invalid or inoperative, all the remaining terms and provisions shall remain in full force and effect.

The parties, both, hereby acknowledge that each has read, understands, accepts, and will abide by each and every provision and sub provision contained herein.

The Parties agree that any third parties to legal action, both current and previous, , organizations or individuals, resolved or unresolved, will not engage with HBA owned property or enter HBA owned or controlled facilities. This provision shall include any facilities governed by agreements between the City of San Diego and HBA.

Services to be provided

Contractor agrees to provide the services as described in attachment A.

Conflict of interest

Contractor shall comply with all federal, state, and local laws, including conflict of interest laws, statutes, ordinances, regulations, and policies of the City related to public contracts and procurement practices to the extent applicable. HBA and Contractor are unaware of any financial or economic interest of any public officer or employee of the City relating to this agreement. Contractor have been made aware of the HBA's Conflict of Interest policy (attachment B).

Payment

HBA shall pay the Contractor as described in attachment A.

Equal employment and nondiscriminatory provisions

Contractor shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in Contractor's activities pursuant to this agreement, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment. Contractor shall comply with City Council Ordinance No.18173 (San Diego Municipal Code sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated into this agreement. Contractor is individually responsible to abide by its contents. Contractor shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor may be required to comply, and require each of its Subcontractors to comply, with the provisions of the City's Living Wage

Ordinance. It is the responsibility of the Contractor to determine if compliance is required. Contractor is required where applicable to comply with the Americans with Disabilities Act, the City of San Diego Drug Free Workplace requirements, and Storm Water Management and Discharge Control Ordinance.

Arbitration. If a dispute arises out of or relates to this agreement, or the breach thereof, the parties agree first to try in good faith to resolve the dispute by mediation administered by the American Arbitration Association under its rules, before resorting to arbitration. Thereafter, any unresolved controversy or claim arising out of or relating to this agreement, or breach thereof, shall be resolved by arbitration administered by the American Arbitration Association in accordance with its Arbitration Rules, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof pursuant to applicable law.

Court Proceedings in Case of Breach of this Agreement or Other and Remedies.

In addition to any and all legal rights a party may have by law, if either party to this Agreement defaults by failing to substantially perform any provision, term, or condition of this Agreement (including without limitation the failure to make monetary payment when due), the other party may terminate this agreement by providing a written notice by certified mail to the defaulting party.

IN WITNESS WHEREOF, the parties have executed this agreement

on _____, at _____, California.

HILLCREST BUSINESS ASSOCIATION

Contractor

By:

By:

Attachment A: Scope of Work

Contractor agrees to provide the following:

- Provide all labor, volunteer or otherwise, and all related insurance for the deployment of Flags throughout Hillcrest on dates described below generally between sunrise and sunset.
- Not to deploy any flags outside the neighborhood of Hillcrest as defined in the Uptown Community Plan.

HBA agrees to provide the following:

- All Flags required for the deployment of Flags throughout Hillcrest on dates described below.
- Storage for the Flags while not in use.
- When deemed necessary, replacement of the Flags.
- Provide an auger for use in the deployment of the Flags.
- Assistance to the Contractor in the event that Contractor creates a sponsorship program for the Flags. Assistance shall be in the form of special media and email marketing to HBA membership.

The parties agree:

- The deployment dates are as follows: President's Day, July 4th Holiday, Flag Day, Memorial Day.
- That is new deployment dates are added, this must be established in writing by both parties.
- in the event that alternative flags be added (such as a rainbow flag) to the program, this will be established in writing.

Attachment B: Conflict of interest policy

- No contract may be entered into by the Hillcrest Business Association if one of its officers, members, directors, committee members, staff members or volunteers has a material financial interest in the contract or transaction, except in the following circumstances:
- The material facts as to the contract or transaction and as to the party's interest are fully disclosed or known to the member, board or committee voting on the matter;
- The contract or transaction is approved by the members, board or committee in good faith, by a vote sufficient without counting the vote of the interested party or parties;
- The interested party or parties abstains from voting on the matter;
- The contract or transaction is just and reasonable to the Hillcrest Business Association at the time it was authorized, approved or ratified;

- The interested party or parties shall not actively participate in the decision about the contract or transaction, except to answer questions or provide a broad explanation;
- The action is recorded in meeting minutes, noting which members voted, how the members voted, and identifying any members who abstained from voting.

A violation of any provision of this policy shall be grounds for removal of the officers, directors, members, committee members, staff members or volunteers from their positions with the HBA. A contract or transaction entered into in violation of this Conflict of Interest Policy shall be void and unenforceable.