

## Contracting Agreement

September 8, 2015

This Agreement (the "Agreement") is executed by Hillcrest Business Improvement Association, a California not for profit corporation (hereinafter referred to as "HBA") whose address is 3737 Fifth Avenue San Diego, CA 92103 and MFJ Systems (hereinafter referred to as "Consultant"), whose address is . HBA and Consultant are sometimes hereinafter collectively referred to as the "Parties" or individually as a "Party".

### Recitals

HBA administers Hillcrest Business Improvement District and Maintenance Assessment District via contracts with the City of San Diego. This Agreement outlines the bookkeeping and accounting services required by HBA in accordance with the contracts referred to above ("Services").

#### 1. Services:

At the direction of HBA, Consultant shall manage accounting activities of HBA in accordance with the scope of services set forth in Exhibit A, attached hereto and incorporated by reference herein.

#### 2. Term

The Parties agree that this agreement shall commence on date of signing and continue on a month-to-month basis, until terminated by either Party with thirty (30) days prior written notice to the address indicated above. During any thirty (30) day termination period, the Agreement shall remain in full force and effect and all work product shall remain the property of HBA and returned at the end of the termination period.

#### 3. Independent Contractor :

It is agreed by the Parties that Consultant is an independent contractor and is not an employee of HBA. Employee payroll or other direct expenses incurred to perform the scope of services outlined in Exhibit A will be at the sole expense of Consultant, including, but not limited to, Workers Compensation Insurance, local, state and federal payroll taxes, and payroll taxes, or other fees, taxes or assessments mandated by Federal and State law.

#### 4. Supervision

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

#### 5. Governing Law and Jurisdiction:

Contractor shall at all times comply with all applicable laws, statutes, ordinances, and regulations of the City, county, state, and federal governments. Subcontractor shall also comply with all notices issued by the City under the authority of all current or future laws, statutes, ordinances, or regulations. Further, Contractor shall comply with all

Generally Accepted Accounting Principals (GAAP), as revised from time to time by the Federal Government.

6. Conflict of Interest

The Parties agree and acknowledge that neither has been made aware of any financial or economic interest of any public officer or employee of the City relating to this Agreement. Further, prior to commencement of the Agreement, Contractor shall be required to review and execute the Conflict of Interest Policy of the HBA, a copy of which is attached herein as Exhibit B and incorporated by reference herein. And finally, notwithstanding the above, it is agreed between the parties that Contractor shall comply with any 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.

7. Consideration:

It is understood between the Parties that the consideration for the scope of services in Exhibit A performed by Consultant shall be a flat monthly fee of \$700 and shall be paid by HBA within 30 days of receipt of an invoice presented by Consultant representing the completion of the prior month services incurred pursuant Exhibit A.

8. Trademark Licensing, Intellectual Property and Branding:

It is agreed by the Parties that HBA shall retain the exclusive rights to sell any HBA related merchandise and tickets and to conduct promotions for any business relating to Hillcrest and HBA. Further, 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 and the related marks are, and always have been, the property of HBA.

9. Agreements with Third Parties

Prior to execution of any third party agreement, Contractor shall disclose and provide to HBA copies of any agreements with third parties related to activities of the HBA, including rental agreements, service contracts, entertainment agreements, sponsorships, in-kind donations, special payments, and mutual benefit arrangements. Verbal agreements shall be unenforceable, and no reimbursement or other consideration shall be paid by HBA to Consultant for agreements not executed by both Consultant and any third party.

10. Confidentiality:

Consultant shall not disclose or disseminate any information, including but not limited to accounting records, receipts, contracts, agreements, or correspondence to any other party for any reason. It is understood between the Parties that most financial records of HBA are subject to the Public Information Act, all including but not limited to accounting records, receipts, contracts, agreements, contracts or correspondence in their possession, used during the performance of the scope in Exhibit A shall be considered privileged and disclosure or dissemination shall not be released by Contractor in any fashion. Any requests for information shall be forwarded immediately to HBA.

11. Marketing, logos and sponsor recognition

Subject to prior approval of any agreements, only trademarked Hillcrest logos shall be used on all promotional and signage elements for the event including, but not limited to banners, signs, and advertising. All events shall be clearly described as a production of the “Hillcrest Business Association” or “Fabulous Hillcrest”. Any sponsorship agreements shall not create the impression that the event is owned by any third party, and shall be subject to the provisions of paragraph 5 above.

12. 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.

13. 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.

14. Integration

This Agreement supersedes all prior or contemporaneous agreements, understandings, promises, representation, and discussions, whether written or oral, or whether expressed, implied or apparent. No waiver or modification of any term of this Agreement shall be valid or binding unless in writing and executed by both Parties.

15. Assignment

This Agreement and the rights and obligations accruing to the Parties hereto shall not be assigned or delegated without the consent of the other Party; and such consent shall not be unreasonably withheld.

16. Equal Employment and Nondiscriminatory Provisions

Consultant 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 Consultant'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. Consultant 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. Consultant is individually responsible to abide by its contents. Consultant 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. Consultant shall not discriminate against any

employee or applicant for employment on any basis prohibited by law. Consultant 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 Consultant to determine if compliance is required. Consultant 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.

17. Representations and Warranties

Each Party represents and warrants to the other that it has all necessary power and authority to execute and deliver this Agreement and to carry out its obligations hereunder. The Agreement has been duly and validly executed and delivered by the Parties and constitutes the valid and binding agreement, fully enforceable against that Party in accordance with their respective terms. To the best knowledge of each Party, all consents, approvals, orders or authorizations of, or registration, declaring or filing with, any governmental authority in connection with the execution and delivery of the Agreement or the consummation of the transactions contemplated hereby have been obtained.

IN WITNESS WHEREOF, the Parties have executed this Agreement on \_\_\_\_\_, at \_\_\_\_\_, California.

HILLCREST BUSINESS  
ASSOCIATION

CONSULTANT

By: \_\_\_\_\_

By: \_\_\_\_\_

Benjamin Nicholls  
Executive Director, HBA  
ADDRESS:  
3737 Fifth Avenue, #202  
San Diego, CA 92103  
(619) 299-3330 Tel.  
(619) 299-4230 Fax.

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- Exhibit A: Scope of Services
- Exhibit B: Conflict of Interest Policy

## Attachment A: Scope of Services

Consultant agrees to manage book keeping and accounting services for HBA including the following activities:

### General Book Keeping:

- Receive invoices relating to municipal contracts from the Executive Director that will be coded to various municipal contracts and budget accounts.
- Generate checks relating to municipal contracts for payment through HBA's Quickbooks system and code the payments to various budget items and municipal contracts.
- Prepare checks relating to municipal contracts once every two weeks for presentation to the Treasurer for signature.
- File all checks, invoices and deposit records in the HBA filing system on site at HBA offices.
- Provide a financial report each month relative to the municipal contracts, with details specified by the Treasurer, illustrating expenditures and reimbursements.
- Meet monthly with the Executive Director and Treasurer to discuss the financial report.
- If necessary, work with other HBA book keeping staff or consultants to effectively and seamlessly prepare financial documents and reports.
- Provide technology to be able to engage with HBA existing book keeping system either remotely or via regular updates.

### Contract Management

- Provide monthly reports to the City of San Diego related to the management of municipal contracts as described by the details of the contract.
- Work with the Executive Director to provide monthly reimbursement reports to the City of San Diego for the municipal contracts.
- Work with the Executive Director to prepare financial documents as needed for annual processes relating to municipal contracts such as an organizational audit.
- With the inclusion of the Executive Director, engage with municipal contract managers to trouble shoot any issues and answer any questions.

### Annual Audit

- Work with HBA's auditor to provide all documents and records related to municipal contracts as requested.

Attachment B: Conflict of Interest Policy

Attachment C: SOP #2. Financial Operations