

**RESTATED ARTICLES OF INCORPORATION
OF
CIVIC SAN DIEGO**

_____ and _____ certify that:

1. They are the Chairman of the Board and Secretary, respectively, of Civic San Diego, a California nonprofit public benefit corporation ("Corporation").
2. The Articles of Incorporation of this Corporation are amended and restated to read as follows:

**ARTICLE I
NAME**

The name of the Corporation is Civic San Diego ("Corporation").

**ARTICLE II
PURPOSES**

A. This Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for charitable purposes.

B. This Corporation was incorporated on March 31, 1975 and was formerly known as Centre City Development Corporation, Inc.

C. The specific purposes of this Corporation are to: (i) raise capital for and engage in activities that promote economic growth and community development; (ii) provide project management, consulting and other similar community development services to public and private entities or persons; (iii) enter into agreements, contracts or memoranda of understanding with any public or private entity or person in furtherance of the purposes for which the Corporation is formed; (iv) engage in any other activities in furtherance of the purposes for which the Corporation is formed; and (v) receive, invest and utilize for the purposes for which the Corporation is formed (a) gross receipts from activities related to the Corporation's exempt functions, and (b) funds and property acquired through solicitation of contributions, loans, investment, donations, grants, gifts, bequests and the like.

**ARTICLE III
LIMITATION ON CORPORATE ACTIVITIES**

A. This Corporation is organized and operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

53015

B. Notwithstanding any other provision of these articles, this Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code or (b) by a corporation to which contributions are deductible under section 170(c)(2) of the Internal Revenue Code.

C. No substantial part of the activities of this Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in any political campaign (including the publishing or distribution of statements) on behalf of, or in opposition to, any candidate for public office.

ARTICLE IV DEDICATION AND DISSOLUTION

A. The property of this Corporation is irrevocably dedicated to charitable purposes, and no part of the net income or assets of this Corporation shall ever inure to the benefit of any director, officer or member thereof or to the benefit of any private person. Upon the dissolution or winding up of this Corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of the Corporation shall be distributed to a nonprofit fund, foundation, or corporation which is organized and operated exclusively for charitable purposes and which has established its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

B. If the Corporation holds any assets in trust, or if the Corporation is formed for charitable purposes, then such assets shall be disposed of on dissolution in conformity with these Articles of Incorporation or the Bylaws of the Corporation subject to complying with the provisions of any trust under which such assets are held. The disposition shall be in such manner as may be directed by decree of the Superior Court of the county in which the Corporation has its principal offices, on petition thereof by the Attorney General or by any person concerned in the liquidation, in a proceeding to which the Attorney General is a party. Such decree of the Superior Court may be waived if the Attorney General makes a written waiver of objections to the disposition.

3. The foregoing amendment and restatement of Articles of Incorporation has been duly approved by the board of directors.

4. The foregoing amendment and restatement of Articles of Incorporation has been duly approved by the Corporation's former sole member, the City of San Diego, acting by and through its City Council.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Dated: _____

Chairman of the Board

Dated: _____

Secretary

00-21082⁻¹

CLERK'S FILE COPY

AMENDED AND RESTATED BYLAWS OF CIVIC SAN DIEGO

Document No. 00-21082-2
Filed JUN 18 2019
Office of the City Clerk
San Diego, California

ARTICLE 1 ORGANIZATION

1.1 Name. The name of this Corporation is CIVIC SAN DIEGO ("Corporation"), formerly known as Centre City Development Corporation, Inc.

1.2 Purposes. This Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for charitable purposes. The specific purposes of this Corporation are to:

- (i) raise capital for and engage in activities that promote economic growth and community development;
- (ii) provide project management, consulting and other similar community development services to public and private entities or persons, including but not limited to, providing investments to low-income communities;
- (iii) enter into agreements, contracts or memoranda of understanding with any public or private entity or person in furtherance of the purposes for which the Corporation is formed;
- (iv) engage in any other activities in furtherance of the purposes for which the Corporation is formed; and
- (v) receive, invest and utilize for the purposes for which the Corporation is formed (a) gross receipts from activities related to the Corporation's exempt functions, and (b) funds and property acquired through solicitation of contributions, loans, investments, donations, grants, gifts, bequests and the like.

1.3 Principal Offices. The principal office of the Corporation shall be located in the City of San Diego, County of San Diego, State of California. The Board of the Corporation ("Board") may at any time, or from time to time, change the location of the principal office from one location to another within said city or county.

1.4 Limitation on Corporate Activities. This Corporation has been formed under the California Nonprofit Public Benefit Corporation Law (the "Law") and is organized and operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. This Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code or (b) by a corporation to which contributions are deductible under section 170(c)(2) of the Internal Revenue Code. No substantial part of the activities of this Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and the

Corporation shall not participate in or intervene in any political campaign (including the publishing or distribution of statements) on behalf of, or in opposition to, any candidate for public office.

1.5 Dedication of Assets. The properties and assets of this nonprofit corporation are irrevocably dedicated to charitable purposes. No part of the net earnings, properties, or assets of this Corporation, on dissolution or otherwise, shall inure to the benefit of any private person or individual, Director (defined below) or officer of this Corporation. On liquidation or dissolution, all remaining properties and assets of the Corporation shall be distributed and paid over to an organization dedicated to charitable purposes which has established its tax- exempt status under Section 501(c)(3) of the Internal Revenue Code.

ARTICLE 2 MEMBERSHIP

2.1 No Membership. The Corporation shall have no members as that term is defined in Section 5056 of the Law, and shall be governed solely by its Board in accordance with these Bylaws. Pursuant to Section 5301(b) of the Law, any action which would otherwise require approval by a majority of all members shall only require the approval of the Board.

ARTICLE 3 BOARD OF DIRECTORS

3.1 General and Specific Powers. Subject to the provisions and limitations of the Law and any other applicable laws of the State of California, and subject to any limitations in the Articles and these Bylaws, the business and affairs of the Corporation shall be managed, and all corporate powers shall be exercised, by or under the direction of the Board. The Board may delegate the management of the day-to-day operation of the business of the Corporation to a committee composed of Directors, or other persons, provided that the business and affairs of the Corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board.

3.2 Number, Nomination and Qualification of Directors.

3.2.1 Number. The authorized number of Directors shall be nine (9), until changed by amendment of the Articles or these Bylaws, provided that any amendment which reduces the number of Directors shall not have the effect of terminating the unexpired term of any Director.

3.2.2 Nomination. Any person qualified, pursuant to this Article, to be a Director may be nominated by any method of nomination authorized by the Board or by any other method authorized by law.

3.2.3 Qualifications. Directors shall have relevant experience in one of the following disciplines: (i) banking or finance; (ii) real estate development; (iii) law; (iv) affordable housing; (v) community or economic development; or (vi) similar professions consistent with the Corporation's purposes. Care shall be taken to ensure that a broad spectrum of the foregoing disciplines is represented on the Board and that no more than two (2) Directors shall represent each

of the foregoing disciplines. A majority of the Directors shall be aligned with the core mission of the Corporation.

3.3 Election. Directors shall be elected at the Annual Meeting by existing Directors and shall hold office until expiration of the term for which elected and until a successor is elected and qualified. The candidates receiving the highest number of votes up to the number of Directors to be elected are elected.

3.4 Term of Office. The term of each Director shall be three (3) years, or until a successor has been elected and qualified.

3.5 Vacancies. A vacancy on the Board shall exist on the occurrence of the following: (a) a death, disqualification, resignation, removal, suspension, expulsion or termination of any Director; (b) the declaration by resolution of the Board of a vacancy in the office of a Director who has been declared of unsound mind by an order of any court, convicted of a felony or found by final order of judgment of any court to have breached a duty under Article 3 of Chapter 2 of Division 3 of the Law; or (c) the increase in the authorized number of Directors.

3.6 Vacancy During Term of Office. A vacancy occurring in the office of a Director may be filled by the remaining Directors at a regular or a special meeting for the balance of the unexpired term and until a successor has been elected and qualified.

3.7 Resignations of Directors. Except as provided in these Bylaws, any Director may resign by giving written notice of the Secretary of the Board. The resignation shall be effective when the notice is given unless it specifies a later time for the resignation to become effective. If a Director's resignation becomes effective at a later time, the Board may elect a successor to take office as of the date when the resignation becomes effective.

3.8 Removal of Directors. A Director may be removed from office, with or without cause, by the vote of the majority of the Directors then in office.

3.9 Fees and Compensation of Directors. Directors may not receive any compensation for their services as such, but may receive reasonable reimbursement of expenses incurred in the performance of their duties, including advances as provided in Section 5.2, as may be fixed or determined by resolution of the Board. Directors may not be compensated for rendering services to this Corporation in any capacity other than as a Director, unless such compensation is reasonable and approved as provided in Section 5.3 of these Bylaws.

3.10 Inspection Rights of Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of every kind and the physical properties of the Corporation and each of its subsidiary corporations ("Subsidiary Corporations") subject to the execution of a confidentiality agreement for confidential records and documents as determined by counsel to the Corporation. The inspection may be made in person or by an agent or attorney during normal weekday hours, and shall include the right to copy and make extracts of documents. If a Director wishes to be accompanied by an attorney during such inspection, then the inspection will be scheduled at a time when the Corporation's attorney will be present at the election of the Corporation.

ARTICLE 4

MEETINGS OF THE BOARD

4.1 Legal Compliance. Subject to the other provisions of these Bylaws, all meetings of the Board shall be held in compliance with the requirements of the Law.

4.2 Annual Meeting. An annual meeting of the Board shall be held each year on a date and at a time designated by resolution of the Board. The annual meeting shall be held for the purpose of organization, election of Directors and officers and the transaction of such other business as may properly be brought before the Board at an annual meeting.

4.3 Regular Meetings. Regular meetings of the Board shall be held on such date and time as designated by resolution of the Board. In the event that the Chairperson of the Board shall determine that there is no business required to be transacted by the Board at any such regular meeting, such regular meeting shall not be required to be held and the notice of the meeting cancellation shall be provided to the Directors no less than 24 hours prior to the regular meeting time.

4.4 Special Meetings. Special meetings of the Board for any purpose or purposes may be called by the Chairperson, Secretary or a majority of the Directors. Notice of the time and place of special meetings shall be given to each Director upon four (4) days' notice by first-class mail, or forty-eight (48) hours' notice delivered personally or by telephone, including a voice messaging system or by electronic transmission by the Corporation at such times that are fixed by the Board. The call and notice shall specify the time and place of the special meeting and the business to be transacted at the special meeting. No other business shall be considered at these special meetings of the Board. Provided, however, notice of a special meeting of the Board may be waived by any Director who at or prior to the time the special meeting convenes delivers to the Secretary a written waiver of notice. The waiver of notice may be given by electronic mail. All waivers of notice of the special meeting shall be filed with the corporate records or made a part of the minutes of the meetings of the Board. The written notice of any special meeting of the Board may also be dispensed with as to any Director who is actually present at the special meeting at the time the meeting convenes.

4.5 Meetings by Telecommunication Equipment. Any meeting may be held by conference telephone or other communications equipment permitted by the Law, as long as all Directors participating in the meeting can communicate with one another and all other requirements of the Law are satisfied. All such Directors shall be deemed to be present in person at such meeting.

4.6 Quorum: Action at a Meeting. The presence of a majority of the Directors authorized in these Bylaws at a meeting of the Board constitutes a quorum for the transaction of business. Every act done or decision made by a majority of the Directors present at a meeting at which a quorum is present shall be regarded as the act of the Board, unless a greater number, or the same number after disqualifying one or more Directors from voting, is required by the Articles, these Bylaws or the Law. Directors may not vote by proxy. A meeting at which a quorum is initially present, including an adjourned meeting, may continue to transact business notwithstanding the withdrawal of Directors, if any action taken is approved by at least a disinterested majority of the

required quorum for such meeting, or such greater number as required by the Articles, these Bylaws or the Law.

4.7 Adjourned Meeting and Notice. A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than twenty-four (24) hours, notice of any adjournment to another time or place shall be given to the Directors who were not present at the time of the adjournment as provided in these Bylaws. Such notice may not be waived under any circumstances.

4.8 No Action Without a Meeting. The Board may not take any action by unanimous written consent without a meeting and without prior notice as required by this Article 4 under any circumstances. Any such action by the unanimous written consent of the Board shall be invalid.

4.9 Conduct of Meetings. Meetings of the Board shall be presided over by the Chairperson, or in his or her absence, by the Vice Chairperson, or in the absence of the Chairperson and the Vice Chairperson, by a person chosen by the majority of the Directors present at the meeting. The Secretary shall act as secretary of all meetings of the Board; provided, however, that, in his or her absence, the presiding officer shall appoint another person to act as secretary of the meeting.

ARTICLE 5 STANDARD OF CARE

5.1 General. A Director shall perform the duties of a Director, including duties as a member of any committee of the Board on which the Director may serve, in good faith, in a manner such Director believes to be in the best interest of this Corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like situation would use under similar circumstances.

In performing the duties of a Director, a Director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

5.1.1 One or more officers or employees of the Corporation whom the Director believes to be reliable and competent in the matters presented;

5.1.2 Counsel, independent accountants or other persons as to matters which the Director believes to be within such person's professional or expert competence; or

5.1.3 A committee of the Board upon which the Director does not serve, as to matters within its designated authority, which committee the Director believes to merit confidence, so long as the Director acts in good faith, after reasonable inquiry when the need therefore is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

Except as provided in these Bylaws, a person who performs the duties of a Director in accordance with the above shall have no liability based upon any failure or alleged failure to discharge that person's obligations as a Director, including, without limiting the

generality of the foregoing, any actions or omissions which exceed or defeat a public or charitable purpose to which the Corporation, or assets held by it, are dedicated.

5.2 Loans; Advances. This Corporation shall not make any loan of money or property to, or guarantee the obligation of, any Director or officer, unless approved by the California Attorney General; provided, however, that this Corporation may advance money to a Director or officer of this Corporation for expenses reasonably anticipated to be incurred in the performance of the duties of such officer or Director so long as such individual would be entitled to be reimbursed for such expenses absent that advance.

5.3 Compensation of Officers and Employees. No officer or any of the two highest compensated employees of the Corporation may receive compensation, as such compensation is determined by the books and records of the Corporation, directly or indirectly, from the Corporation unless such compensation is first determined by the disinterested Directors, as defined in the Law, or an authorized committee thereof, to be just and reasonable to the Corporation. In this regard, the following procedures shall apply:

5.3.1 The names of the persons who were present for discussions and votes relating to the compensation arrangement, the content of the discussion, including any of the information used to determine the reasonableness of the compensation and a record of any votes taken in connection with the proceedings shall be maintained in the minutes of the Corporation.

5.3.2 The determination of reasonableness shall be based upon information about compensation paid by similarly situated organizations for similar services, current compensation surveys compiled by independent firms or actual written offers from similarly situated organizations. Similarly situated organizations may include both taxable and tax-exempt organizations.

5.3.3 No officer or employee shall participate in the discussion and approval of his or her compensation, except that such persons may provide information to the disinterested Directors.

5.4 Board Review of Fairness of Compensation. The Board shall review the fairness of compensation, including benefits paid, in accordance with the requirements of Government Code Section 12586(g), or any successor section, of any person, regardless of title, with powers, duties or responsibilities comparable to a president, chief executive officer, treasurer or chief financial officer upon the occurrence of the following events:

5.4.1 The officer is hired;

5.4.2 The officer's term of employment is extended or renewed; or

5.4.3 The officer's compensation is modified, unless such modification occurs pursuant to a general modification of compensation that extends to all employees.

5.5 Periodic Reviews. The Board shall conduct periodic reviews to ensure the Corporation operates in a manner consistent with charitable purposes and does not engage in

activities that could jeopardize its tax-exempt status. The periodic reviews shall, at a minimum, include the following subjects:

5.5.1 Whether compensation arrangements and benefits payable to officers, Directors and employees are reasonable, based on competent survey information, and the result of arm's length bargaining.

5.5.2 If applicable, whether partnerships and joint ventures conform to the Corporation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

When conducting the periodic reviews as provided for above, the Corporation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of its responsibility for ensuring that periodic reviews are conducted.

5.6 Restriction on Interested Directors. No person serving on the Board at any time may be an interested person. An interested person is (1) any person currently being compensated by the Corporation for services rendered to it within the previous twelve (12) months, whether as a full-time or part-time employee, independent contractor, or otherwise, and (2) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person. However, any violation of the provisions of this Section shall not affect the validity or enforceability of any transaction entered into by the Corporation.

5.7 Indemnification. In accordance with the provisions of these Bylaws, , this Corporation shall indemnify its Directors, officers and employees and including persons formerly occupying any such position, and their heirs, executors, and administrators, against all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by them in connection with any "proceeding," as that term is used in said Section 5238(a) of the Law, and including an action by or in the right of the Corporation, by reason of the fact that the person is or was a person described in that Section, if: (i) such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Corporation and, (ii) in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful. "Expenses" shall have the same meaning as in Section 5238(a) of the Law.

No indemnification shall be made if any of the conditions set forth in Section 5238(c)(1) through (3) or any successor provision of the Law are present. Except as provided in subdivision (d) of Section 5238 of the Law, any indemnification shall be made by the Corporation only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the Director, officer and employee has met the applicable standard of care set forth in subdivision (b) or (c) of Section 5238 of the Law, by: (i) a majority vote of a quorum consisting of Directors who are not parties to such proceeding; or (ii) the court in which such proceeding is or was pending upon application made by the Corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney or other person is opposed by the Corporation. Such right of indemnification shall not be deemed exclusive of any other rights to which such persons may

be entitled apart from this Section, provided, however, any other such indemnification rights shall be consistent with this Section.

5.8 Insurance. The Corporation shall purchase and maintain insurance on behalf of its Directors, officers and employees as determined and approved by the Board against any liability asserted against or incurred by the Director, officer and employee in such capacity or arising out of the Director's, officer's and employee's status as such.

ARTICLE 6 COMMITTEES OF THE BOARD

6.1 Committees. Except as limited by this Section, the Board may, by resolution adopted by a majority of the Directors then in office, provided that a quorum is present, designate one or more committees for any purposes and delegate to such committees any of the powers and authorities of Board to the extent permitted by Section 5212 of the Law and to the extent of the powers specifically delegated in a resolution of the Board or in these Bylaws. All such committees shall consist of two (2) or more Directors to serve at the pleasure of the Board. The Board may designate one or more alternate members of any committee, who may replace any absent member at any meeting of the committee. The Board may also designate one or more advisory committees that do not have the authority of the Board. However, no committee, regardless of Board resolution, may:

6.1.1 Fill vacancies on, or remove members of, the Board or in any committee that has the authority of the Board;

6.1.2 Amend or repeal the Articles or the Bylaws or adopt new bylaws;

6.1.3 Amend or repeal any resolution of the Board that by its express terms is not so amendable or repealable;

6.1.4 Appoint any other committees of the Board or their members;

6.1.5 Approve a plan of merger, consolidation; voluntary dissolution; bankruptcy or reorganization; or for the sale, lease, or exchange of all or substantially all of the property and assets of the Corporation otherwise than in the usual and regular course of its business; or revoke any such plan; or

6.1.6 Approve any self-dealing transaction, except as provided by Section 5233 of the Law.

No committee shall bind the Corporation in a contract or agreement or expend corporate funds, unless authorized to do so by the Board.

6.2 Meetings and Actions of Committees. Meetings and actions of all committees shall be governed by, and held and taken in accordance with, the provisions of Article 4 of these Bylaws, concerning meetings and actions of Directors, with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the Board and its members, except that the time for regular meetings of committees may be determined either by

resolution of the Board or by resolution of the committee. Special meetings of committees may also be called by resolution of the Board, or by the chair of such committee or a majority of the members of such committee. Notice of special meetings of committees shall also be given to any and all alternate members, who shall have the right to attend all meetings of the committee. Minutes shall be kept of each meeting of any committee and shall be filed with the corporate records. The Board may adopt rules not inconsistent with the provisions of these Bylaws for the governance of any committee.

6.3 Executive Committee. Pursuant to Section 6.1, the Board may appoint an Executive Committee composed of three (3) or more Directors, one of whom shall be the Chairperson. The Executive Committee, unless limited in a resolution of the Board, shall have and may exercise all the authority of the Board in the management of the business and affairs of the Corporation between meetings of the Board; provided, however, that the Executive Committee shall not have the authority of the Board in reference to those matters enumerated in Section 6.1. The Secretary shall send to each Director a summary report of the business conducted at any meeting of the Executive Committee.

6.4 Audit Committee.

6.4.1 Membership. The Board shall appoint an Audit Committee. The committee may be comprised of two (2) or more persons and may include a non-voting citizen member. The Audit Committee shall comply with the requirements of Government Code Section 12586(e)(2) ("Section 12586(e)(2)") or any successor section, regarding the requirements and membership of the Audit Committee including that the Membership of the Audit Committee shall not include the following persons:

- (a) The President or the Chairperson;
- (b) The Chief Financial Officer or the Treasurer,
- (c) Any employee of the Corporation; or
- (d) Any Director with a material financial interest in any entity doing business with the Corporation.

As required by Section 12586(e)(2), in the event that the Board appoints a Finance Committee, members of the Finance Committee must constitute less than one-half of the Membership of the Audit Committee and the Chair of the Finance Committee shall not serve on the Audit Committee.

6.4.2 Duties. The Audit Committee shall assist the Board in fulfilling its responsibility for the oversight of the integrity of the Corporation's financial statements and internal control procedures and the Corporation's compliance with legal and regulatory requirements. The Audit Committee shall also be responsible for recommending to the Board the retention or termination of the independent auditor to prepare the audited financial statements of the Corporation, who shall be an independent certified public accountant; assist the Board in the selection, review of qualifications, supervision of the independent auditor's management independence, and review of performance; and shall negotiate the independent auditor's

compensation on behalf of the Board. Moreover, the Audit Committee shall confer with the independent auditor to satisfy its members that the financial affairs of the Corporation are in order, shall review and determine whether to accept the audit; shall ensure that any non-audit services, if any, performed by the independent auditor conform with statutory and regulatory standards for auditor independence; and shall approve the performance of non-audit services, if any, by the independent auditor.

ARTICLE 7 OFFICERS

7.1 Officers. The officers of the Board shall consist of a Chairperson, Vice Chairperson, Secretary, and Treasurer whose duties as treasurer may be set forth in a resolution of the Board. The officers of the Corporation shall consist of the President and Chief Financial Officer. The Board may appoint such other officers of the Board or Corporation as the Board may designate by resolution including a fiscal agent. The same person may hold any number of offices, except that neither the Secretary nor the Treasurer may serve concurrently as the Chairperson or as President. In addition to the duties specified in this Article, officers shall perform all other duties customarily incident to their office and such other duties as may be required by law, by the Articles, or by these Bylaws, subject to control of the Board, and shall perform such additional duties as the Board shall from time to time assign. The Chairperson, Vice Chairperson, Secretary and Treasurer shall be elected by the Board from its members. The President and the Chief Financial Officer shall be employees of the Corporation. The following procedures shall apply to officers of the Board:

7.1.1 Election of Officers. The officers of the Board shall be chosen by election of the Board, and such officers shall serve at the pleasure of the Board.

7.1.2 Removal. Any officer of the Board may be removed with or without cause by the Board.

7.1.3 Resignation. Any officer of the Board may resign at any time by giving written notice to the Board, the Chairperson or the Secretary. Any resignation shall take effect on the date of the receipt of such notice or at any later time specified in the resignation; and, unless otherwise specified in the resignation, the acceptance of the resignation shall not be necessary to make it effective.

7.1.4 Vacancy. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these Bylaws.

7.2 Officers of the Board

7.2.1 Chairperson. The Chairperson shall, when present, preside at all meetings of the Board and Executive Committee. The Chairperson is authorized to execute in the name of the Corporation all the contracts and other documents authorized either generally or specifically by the Board to be executed by the Corporation, except when by law the signature of the President is required.

7.2.2 Vice Chairperson. The Vice Chairperson shall, in the absence of the Chairperson, or in the event of his or her inability or refusal to act, perform all the duties of the

Chairperson, and when so acting shall have all the powers of, and be subject to all the restrictions on, the Chairperson.

7.2.3 Treasurer. The Treasurer shall be responsible for the oversight of the financial affairs of the Corporation. The Treasurer shall also be the chair of the Budget/Finance and Administration Committee, if any, and shall be assigned any other duties as determined by the Board.

7.2.4 Secretary. The Secretary, or his or her designee, shall be custodian of all records and documents of the Corporation which are to be kept at the principal office of the Corporation, shall act as secretary of all the meetings of the Board, and shall keep the minutes of all such meetings in books proposed for that purpose. He or she shall attend to the giving and serving of all notices of the Corporation, and shall see that the seal of the Corporation is affixed to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these Bylaws.

7.3 Officers of the Corporation.

7.3.1 President.

(a) Duties. Subject to the control, advice and consent of the Board, the President shall, in general, supervise and conduct the activities and operations of the Corporation, shall keep the Board fully informed and shall freely consult with them concerning the activities of the Corporation, and shall see that all orders and resolutions of the Board are carried into effect. Where appropriate, the Board shall place the President under a contract of employment. The President shall be empowered to act, speak for, or otherwise represent the Corporation between meetings of the Board. The President shall be responsible for the hiring and firing of all personnel except the Chief Financial Officer, and shall be responsible for keeping the Board informed at all times of staff performance and for implementing any personnel policies adopted by the Board. The President shall be authorized to contract, receive, deposit, disburse, and account for funds of the Corporation; to execute in the name of the Corporation all contracts and other documents authorized either generally or specifically by the Board to be executed by the Corporation; and to negotiate all material business transactions of the Corporation.

(b) Selection. The Board shall appoint a qualified candidate to the position of President.

(c) Review and Compensation. The Board shall set the compensation of the President and perform an annual performance evaluation of the President in accordance with the review process set forth in these Bylaws.

(d) Suspension: Termination. The Board shall have the right at any time to suspend and terminate the President, with or without cause.

(e) Vacancy. In the event of a vacancy in the office of the President, for whatever reason, or in the event the President is unable to or refuses to perform the duties set forth herein or as assigned by the Board, the Board shall select a qualified person to serve as the interim

President until the President is able to return to his or her duties or a permanent replacement is selected by the Board.

7.3.2 Chief Financial Officer.

(a) Duties. The Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and other matters customarily included in financial statements. The Chief Financial Officer shall deposit or cause to be deposited all moneys and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board. The Chief Financial Officer shall disburse or cause to be disbursed the funds of the Corporation as may be ordered by the Board, and shall render to the Chairperson, President and Directors, whenever they request it, an account of all of the Chief Financial Officer's transactions as Chief Financial Officer and of the financial condition of the Corporation. If required by the Board, the Chief Financial Officer shall give the Corporation a bond in the amount and with the surety or sureties specified by the Board for faithful performance of the duties of the Chief Financial Officer's office and for restoration to the Corporation of all its books, papers, vouchers, money and other property of every kind in the Chief Financial Officers' possession or under the Chief Financial Officer's control on his or her death, resignation, retirement, or removal from office. If required, the Corporation shall pay the cost of such bond.

(b) Selection. The Chief Financial Officer shall be appointed by the Board, and shall serve at the pleasure of the Board, subject to the rights, if any, under his or her contract of employment.

(c) Review and Compensation. The Board shall set the compensation of the Chief Financial Officer and perform an annual performance evaluation of the Chief Financial Officer in accordance with the review process set forth in Section 5.5.

(d) Vacancy. In the event of a vacancy in the office of the Chief Financial Officer, for whatever reason, or in the event the Chief Financial Officer is unable to or refuses to perform the duties set forth herein or as assigned by the Board, the Board shall select a qualified person to serve as the interim Chief Financial Officer until the Chief Financial Officer is able to return to his or her duties or a permanent replacement is selected by the Board.

ARTICLE 8 EXECUTION OF CORPORATE INSTRUMENTS

8.1 Execution of Corporate Instruments. The Board may, in its discretion, determine the method and designate the signatory officer or officers or other person or persons, to execute any corporate instrument or document, or to sign the corporate name without limitation, except when otherwise provided by law, and such execution or signature shall be binding upon the Corporation.

All checks and drafts drawn on banks or other depositories on funds to the credit of the Corporation, or in special accounts of the Corporation, shall be signed by such person or persons as the Board shall authorize to do so.

8.2 Loans and Contracts. No loans or advances shall be contracted on behalf of the Corporation and no note or other evidence of indebtedness shall be issued in its name unless and except as the specific transaction is authorized by the Board. Without the express and specific authorization of the Board, no officer or other agent of the Corporation may enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation.

ARTICLE 9

RECORDS, FINANCIAL STATEMENTS AND REPORTS

9.1 Maintenance and Inspection of Articles and Bylaws. The Corporation shall keep at its principal office the original or a copy of its Articles and Bylaws as amended to date, which shall be open to inspection by Directors at all reasonable times during office hours.

9.2 Maintenance and Inspection of Federal Tax Exemption Application and Annual Information Returns. The Corporation shall keep at its principal office a copy of its federal tax exemption application and its annual information returns for three (3) years from their date of filing, which shall be open to public inspection and copying to the extent required by law.

9.3 Maintenance and Inspection of Other Corporate Records. The Corporation shall keep adequate and correct books and records of accounts; written minutes of the proceedings of the Board and committees of the Board. All such records shall be kept at such place or places designated by the Board, or, in the absence of such designation, at the principal office of the Corporation. The minutes shall be kept in written or typed form, and other books and records shall be kept either in written or typed form or in any other form capable of being converted into written, typed, or printed form. Upon leaving office, each officer, employee, or agent of the Corporation shall turn over to his or her successor, the Chairperson or President, in good order, such corporate monies, books, records, minutes, lists, documents, contracts or other property of the Corporation as have been in the custody of such officer, employee, or agent during his or her term of office.

9.4 Preparation of Annual Audited Financial Statements. The Corporation shall prepare annual audited financial statements which shall be audited by an independent certified public accountant, in conformity with generally accepted accounting principles and under supervision of the Audit Committee established by these Bylaws. The Corporation shall make these financial statements available to the California Attorney General and members of the public for inspection no later than nine (9) months after the close of the fiscal year to which the statements relate.

The audited financial statements of the Corporation shall also include information related to the financial performance of the Subsidiary Corporations.

The Chief Financial Officer and the President shall review the financial statements upon presentation to the Board (or the Audit Committee).

9.5 Monthly Financial Reports. On or before the 30th day of each month, the Corporation shall prepare unaudited monthly financial statements of the Corporation and its Subsidiary Corporations prepared in accordance with generally accepted accounting principles which reflect the business and results of operations for the preceding month. The Board (or the Audit Committee) shall review and approve such monthly financial statements.

9.6 Reports. The Board shall comply with Sections 6321 and 6322 of the Law, or any successor sections, and cause an annual report to be sent to all Directors within 120 days after the end of the Corporation's fiscal year, containing the following information:

9.6.1 The audited financial statements of this Corporation at the end of each fiscal year containing the information required by Section 6321 of the Law.

9.6.2 The information required by Section 6322 of the Law concerning certain self-dealing transactions involving more than \$10,000 or indemnifications or advances aggregating more than \$10,000 which took place during the fiscal year.

9.6.3 The annual audited financial statements of this Corporation shall also include information related to the financial performance of the Subsidiary Corporations.

The annual report containing the audited financial statements shall be accompanied by the report of the independent public accountants who prepared the audited financial statements.

ARTICLE 10 AMENDMENTS

10.1 Amendment of Articles. The amendment of the Articles of the Corporation is provided for by California state law and requires the affirmative vote of the Board and the filing of a certificate of amendment with the Secretary of State.

10.2 Amendment of Bylaws. Only the Board, by majority vote, may adopt, amend, or repeal bylaws

ARTICLE 11 MISCELLANEOUS

11.1 Fiscal Year. The fiscal year for this Corporation shall begin on July 1 and shall end on June 30th.

11.2 Bonding. All Directors, officers or employees handling funds shall be properly bonded, if so required by the Board.

11.3 Gifts and Donations. The Board may accept on behalf of the Corporation any contributions, gifts, bequests or devises for the general purpose or for any special purpose of the Corporation not in violation of the Articles.

11.4 Nondiscrimination. The Corporation shall not refuse service or employment to any person, nor in any other way discriminate against any person, solely because of such person's sex, race, color, religion, creed, ancestry, national origin, age, marital status, physical disability, mental disability, preexisting medical condition or any other factor prohibited by law.

11.5 Interpretation and Construction. Any conflict between these Bylaws and the Articles shall be resolved in favor of the Articles. Unless the context otherwise requires, the general provisions, rules of construction, and definitions contained in the Law as amended from time to

time shall govern the construction of these Bylaws. Without limiting the generality of the foregoing, the masculine gender includes the feminine and neuter, the singular number includes the plural and the plural number includes the singular, and the term "person" includes a corporation as well as a natural person. If any competent court of law shall deem any portion of these Bylaws invalid or inoperative, then so far as is reasonable and possible (i) the remainder of these Bylaws shall be considered valid and operative, and (ii) effect shall be given to the intent manifested by the portion deemed invalid or inoperative.

11.6 Dissolution. The Corporation shall not be voluntarily dissolved, except by approval of the Board. In the event of dissolution of the Corporation in any manner and for any cause, after the payment or adequate provision for the payment of all of its debts and liabilities, all of the remaining funds, assets and properties of the Corporation shall be paid or distributed as provided for in the Articles.

11.7 Corporate Seal. The Board may adopt, use, and alter a corporate seal. The seal shall be kept at the principal office of the Corporation. Failure to affix the seal to any corporate instrument, however, shall not affect the validity of that instrument.

§ 5.01

CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify:

1. That I am the duly elected and acting Secretary of Civic San Diego, a California nonprofit public benefit corporation ("Corporation"), formerly known as Centre City Development Corporation, Inc.; and

2. That the foregoing Amended and Restated Bylaws, comprising _____ pages, constitute the Bylaws of said Corporation; and

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Corporation this _____ day of _____, 20__.

_____, Secretary

00-21082-2

**OPERATING AGREEMENT BETWEEN
THE CITY OF SAN DIEGO AND CIVIC SAN DIEGO TO PROVIDE SUCCESSOR
AGENCY AND HOUSING SUCCESSOR SERVICES**

This Operating Agreement (Operating Agreement)¹ is made by the City of San Diego, a municipal corporation (City) and Civic San Diego, a California nonprofit public benefit corporation (Civic) (collectively, the Parties). This Agreement is made with reference to and in light of the following recited facts.

RECITALS

A. Civic is a nonprofit public benefit corporation formed by City in 1975 under the California Nonprofit Corporation Law (California Nonprofit Law). Civic was formerly known as the Centre City Development Corporation (CCDC), and Civic is also the successor to the former Southeastern Economic Development Corporation (SEDC).

B. CCDC and SEDC were originally formed by City to provide redevelopment and economic development services under contract with City's former Redevelopment Agency (Former Agency). Over their more than 30-year history, these corporations and Civic, as their successor, provided operational functions to City and to Former Agency, and now to City as both the Successor Agency to the Former Agency (Successor Agency) and the City acting in its capacity as housing successor to the Former Agency (Housing Successor) through various agreements, including the following:

1. The January 1975 Operating Agreement Between the Redevelopment Agency of the City of San Diego and Centre City Development Corporation, Inc. For Certain Services to Implement the Redevelopment of Centre City Area (Redevelopment Agency (RA) Doc. No. 312), as amended on August 3, 1976 (RA Doc. No. 377), on April 19, 1977 (RA Doc. No. 406) and October 23, 1978 (RA Doc. No. 484).

2. The January 1975 Agreement Between the City of San Diego and Centre City Development Corporation, Inc. for Staff Services Concerning the Centre City Redevelopment Area (RA Doc. No. 313).

3. The December 1981 Operating Agreement Between the Redevelopment Agency of the City of San Diego and Centre City Development Corporation, Inc. For Certain Services to Implement the Redevelopment of the Centre City Area (RA Doc. No. 862), as amended October 14, 1986 (RA Doc. No. 1400).

4. The July 2010 Amended and Restated Operating Agreement Between the Redevelopment Agency of the City of San Diego and Centre City Development Corporation, Inc. (RA Doc. No. D04498). The July 2010 Amended and Restated Operating Agreement added significant new City oversight and transparency provisions that were based in part on a performance audit of CCDC.

¹Capitalized terms are defined in Section 6 of this Agreement.

5. The June 2012 Agreement for Consulting Services by and Between the City of San Diego and Civic San Diego for Successor Agency and Housing Successor Agency Services (City Clerk (CC) Doc. No. RR 307537-1), as amended on November 26, 2012 (CC Doc. No. RR-307849) (Successor Agency Agreement).

6. The June 2012 Agreement for Consulting Services by and Between the City of San Diego and Civic San Diego for Administration of Certain Planned Districts, the Downtown Community Parking District and Economic Development Services (CC Doc. No. RR-307537-2) (Downtown Services Agreement).

7. The annual Memoranda of Understanding (MOU) Between City and Civic Regarding the Downtown Community Parking District, most recently, the FY 2015-FY 2020 MOU (CC Doc. No. RR-309837-8) (Downtown Parking District MOU) and other agreements pertaining to administration or management of parking garages and facilities.

8. The December 2016 Operating Agreement Between the City of San Diego and Civic San Diego (CC Doc. No. RR-310809) and the December 2016 Agency Agreement Between the City of San Diego and Civic San Diego to Administer Certain Legislative Enactments of the City of San Diego (CC Doc. No. RR-310810).

C. Consistent with the agreements listed above, Civic provided City and Former Agency with a range of services that included, among other things: redevelopment and affordable housing project management functions within the Centre City and Horton Plaza project areas; plan implementation and permitting functions in specified areas in accordance with City-approved regulations, plans, and policies including the Centre City Community Plan, the Centre City, Gaslamp and Marina Planned District Ordinances and related documents; parking management functions for the Downtown Community Parking District in accordance with the Comprehensive Downtown Parking Plan; economic development functions; and special projects as assigned by City or Former Agency. As described in more detail below, the services Civic has provided City include services related to the elimination of redevelopment agencies in California.

D. After the State Legislature's adoption of legislation dissolving redevelopment agencies across the state (the Dissolution Law), City elected to serve as successor to the Former Agency for the purpose of carrying out the wind-down and reporting activities required by the Dissolution Law for redevelopment and affordable housing. (City Council Resolution No. R-307238, Jan. 12, 2012.) City, in its role as Successor Agency, entered into the June 2012 Successor Agency Agreement with Civic for Civic to perform the activities required by the Dissolution Law. City entered into the June 2012 Downtown Services Agreement with Civic for Civic to continue providing plan implementation, permitting, parking management, and economic development functions.

E. Following the direction of the Oversight Board and approval of the California Department of Finance, on January 28, 2013, the Successor Agency transferred the Former Agency's affordable housing assets to City as Housing Successor to be held in the Low and Moderate Income Housing Asset Fund created for that purpose. Revenue generated by the housing assets, including the sale of any assets, is deposited to the Low and Moderate Income Housing Asset Fund. On May 30, 2013 by Resolution R-308142, the City Council approved and authorized

the Affordable Housing Master Plan, outlining the strategy for the use and disposition of the housing assets to maximize continued affordable housing production and promote affordable housing goals in the City, and authorizing Civic to implement the plan.

F. In 2016, City and Civic updated and clarified the agreements under which Civic provides services to the City through the 2016 Operating Agreement, and the separate 2016 Agency Agreement.

G. City and Civic desire to enter into this Operating Agreement to limit the services provided by Civic to the City to Successor Agency and Housing Successor services, as described in this Operating Agreement.

H. As of the Effective Date, City and Civic intend for this Operating Agreement to replace and supersede both the 2016 Operating Agreement and the 2016 Agency Agreement. City and Civic also intend that this Operating Agreement not assume or take over any services currently being performed by City employees.

NOW, THEREFORE, in consideration of the Recitals, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

AGREEMENT

1. TERM

1.1 **Effective Date and Term.** This Operating Agreement shall become effective as of the date that the last party has signed (Effective Date) and continue in effect for five years, unless extended by City at its option described below.

1.2 **City's Option to Extend.** In its sole and absolute discretion, City shall have the option to extend the Term by one additional five-year period by giving Civic at least ninety (90) days' prior written notice of such extension, which extension may be renewed only by a vote of the City Council, and only if certain external triggers are met, such as unforeseen delays. The revival of redevelopment in California, if it were to occur, does not permit the City to exercise its option to extend the Term.

1.3 **Termination.**

1.3.1 **City's Right to Terminate for Convenience.** City may, at its sole option and for its convenience, terminate this Operating Agreement by giving at least one hundred eighty (180) days prior written notice of such termination to Civic.

1.3.2 **City's Right to Terminate for Default.** If Civic fails to satisfactorily perform any obligation required by this Operating Agreement, Civic's failure constitutes a Default. If Civic fails to satisfactorily cure a Default within thirty (30) calendar days of receiving written notice from City specifying the nature of the Default or, for defaults that cannot be cured in thirty (30) calendar days, fails to satisfactorily commence cure, then City may terminate this Operating Agreement, and terminate each and every right of Civic to performance of this Operating Agreement, and those of any person claiming any rights by or through Civic under this Operating

Agreement. The rights and remedies of City enumerated in this Section are cumulative and City does not limit, waive, or deny any of its rights under any other provision of this Operating Agreement, nor any right or remedy, at law or in equity, existing as of the date of this Operating Agreement or hereinafter enacted or established, that may be available to City.

1.3.3 Partial Termination of Services. In addition to the Parties' ability to amend this Operating Agreement through a written amendment, City may, at its sole option and for its convenience, unilaterally terminate a material part of the services to be provided by Civic under this Agreement, by giving at least one hundred eighty (180) days prior written notice of such termination. Such authorization and approval may take place as part of the Mayor's approvals of the annual Operating Budget and Work Plan. In that case, the partial termination of services shall be effective on July 1 of the new fiscal year, unless the Approved Operating Budget contains funding for the continuation of services until a later date.

1.3.4 Completion of Performance. In the event City chooses to terminate or partially terminate this Operating Agreement for its convenience, then at City's discretion, Civic shall accomplish a complete transition of the services being terminated from Civic and Civic's subcontractors to City, or to any replacement provider designated by City, without any unreasonable interruption of or adverse impact on the services being performed. Civic shall fully cooperate with City and any new service provider and otherwise promptly take all steps, including, but not limited to providing to City or any new service provider all requested information or documentation required to affect a complete transfer of the affected services, Civic shall provide all information or documentation needed including, but not limited to, data conversion, files, training staff assuming responsibility, and related professional services. Civic shall provide for the prompt and orderly conclusion of all work required under the Operating Agreement, as City may direct, including completion or partial completion of projects, documentation of work in process, and other measures to assure an orderly transition to City or City's designee. All services requested by City and performed by Civic shall be paid by City pursuant to the terms of this Operating Agreement.

2. CIVIC'S RIGHTS, DUTIES AND OBLIGATIONS

2.1 Performance of Work and Annual Work Plan. Civic shall take all steps necessary to perform or exercise the rights, duties and obligations described below in accordance with a City-approved annual work plan (Work Plan) and operating budget (Operating Budget), applicable state and local laws, regulations, and applicable policies. Commencing with the Fiscal Year 2019-2020 budget process, and annually thereafter, Civic shall prepare and submit a proposed Work Plan for City's review and approval by the Mayor in conjunction with review and approval of the Operating Budget, and pursuant to the process and requirements set forth in more detail below. Civic's approved Work Plan shall list the Successor Agency and Housing Successor functions and services to be performed by Civic for that fiscal year. Civic shall work closely with City staff to develop its proposed Work Plan for the subject fiscal year:

2.1.1 Successor Agency and Housing Successor Functions. Pursuant to the Work Plan and Operating Budget, Civic shall provide staffing and other services to support and carry out the necessary functions of City in its role as Successor Agency and Housing Successor. Civic shall take all steps necessary and desirable by City to perform the functions required to

implement the winding down of redevelopment including but not limited to (a) completing projects of the Former Agency and (b) managing the assets of the Former Agency in accordance with (i) the Dissolution Law, (ii) the decisions of the Oversight Board, (iii) the direction of City as Successor Agency and Housing Successor, and (iv) approved funding. Civic's services shall include the following:

2.1.1.1 Administration. Performing the administrative functions required by the Dissolution Law or desired by City as Successor Agency and as Housing Successor for implementation of the Dissolution Law, including, for example, supporting the Oversight Board, financial accounting, reporting, and coordinating with other local agencies and with the State.

2.1.1.2 Asset Management. Managing the assets of the Successor Agency consistent with the Dissolution Law, including but not limited to collecting all revenue, paying all expenses, and enforcing all obligations.

2.1.1.3 Project Completion. Managing the completion of projects for the Successor Agency or the Housing Successor Entity as identified in the ROPS as enforceable obligations, through the Long Range Property Management Plan, Affordable Housing Master Plan, as otherwise required by the Dissolution Law, or as specified in this Operating Agreement. Such project completion work includes, but is not limited to, the following projects: Park Blvd. At-Grade Crossing, East Village Green, 14th Street Green Streets Blocks 1, 2 and 3, Children's Park Improvements, Wayfinding Signage, E Street Greenway Master Plan and St. Joseph's Park GDP. Civic's work would include providing Program Management and Public Works Management.

2.1.1.4 Long Range Property Management Plan. Administering and managing the property identified in the approved Long Range Property Management Plan, including but not limited to providing all services necessary for acquiring and disposing of property, entering into, managing, and enforcing rental agreements, and supervising maintenance and security.

2.1.1.5 Affordable Housing Master Plan and Housing Assets. Managing the affordable housing assets of the Housing Successor consistent with the Dissolution Law, and administering and managing the approved Affordable Housing Master Plan to maintain and create affordable housing, including but not limited to: administering loans, bond proceeds, financial obligations, leases, affordability covenants, and other agreements related to the program; providing all services necessary for acquiring and disposing of property for projects that will meet Affordable Housing Master Plan goals; on behalf of the City, negotiate and present to City Council agreements that facilitate the development of the housing assets included in the Affordable Housing Master Plan, tracking and reporting units created and other obligations as required by the Dissolution Law; entering into, managing, and enforcing rental agreements; supervising maintenance and security; collecting all revenue, paying all expenses, and enforcing all obligations.

2.1.2 Ancillary Services. Civic shall provide the ancillary services necessary to support its work and functions such as, for example, finance, accounting, audit, IT, marketing, and communications services.

2.2 Manner of Performance.

2.2.1 **Best Practices.** Civic shall take all steps necessary to perform the services and functions required by this Operating Agreement in the most cost-effective, efficient, and professional manner and in accordance with Civic's Articles of Incorporation, Civic's Bylaws, the California Nonprofit Law, applicable policies, and applicable local, state and federal law, and in accordance with the standard of care and skill that would be used by a reputable, experienced and competent professional practicing in the same field in California. Approval by City to Civic's use of any practice or procedure does not relieve Civic of responsibility for complying with all applicable laws, codes, and best practices.

2.2.2 **Compliance with Policies.** Civic and City agree that Civic will comply with applicable City policies in performing its obligations under this Operating Agreement.

2.2.3 **Subcontracting.** Civic may hire and retain third parties in its own name as appropriate and necessary to perform the functions required by this Operating Agreement in an efficient, cost-effective, and professional manner. This may include, for example, retaining consultants with expertise not held by Civic staff, contractors to construct projects or to meet other specific project needs, and contracts for the purchasing of goods, equipment, and materials. Civic shall enter into such contracts in accordance with Civic's Purchasing and Contracting Policy.

2.2.4 **Maintenance of Records.** Civic shall maintain pursuant to a Board-approved records retention policy, and shall require its subcontractors to maintain, complete and accurate records in accordance with generally accepted accounting practices in the industry, and shall make such records, documents and other financial data, as it relates to services performed under this Operating Agreement, available to City upon City's request, including exact duplicates of originals if requested.

2.3 No Expansion. It is specifically agreed to by the Parties that the work included in the annual Work Plan to be performed pursuant to this Operating Agreement is work that has been performed by Civic for City and included in prior agreements between Civic and City or Civic and the Former Agency. This Operating Agreement is not an expansion of the work or services to be provided, and the scope of Civic's services shall not be expanded beyond what is set forth in this Operating Agreement without the prior written consent of the Parties.

3. **CITY'S RIGHTS, DUTIES AND OBLIGATIONS**

3.1 Funding. City shall reimburse or advance funds to Civic to allow Civic to perform the functions required by this Operating Agreement in accordance with the Approved Operating Budget and Work Plan.

3.2 City's Oversight. City shall have the right to oversee and supervise Civic's performance of this Operating Agreement. City's oversight and supervision shall include:

3.2.1 **Approval and Oversight of Operating Budget and Work Plan.**

3.2.1.1 City, through the Mayor or Mayor's designee, shall consider and approve the Operating Budget and Work Plan annually.

3.2.2 Review and Approval of Funding. All funding provided by City to Civic shall be provided in accordance with the applicable Approved Operating Budget. In addition to City's role in the annual process for preparation, review, and approval of Civic's Operating Budget, City shall review and approve the monthly Eligible Expenses Report submitted by Civic for compliance (see Section 4).

3.2.3 Regular Oversight by Contract Administrator. Mayor or Mayor's designee is the contract administrator (Contract Administrator) and shall regularly communicate, consult, and cooperate with Civic to be informed of Civic's activities, to coordinate Civic's activities with those of City, to ensure Civic's activities are consistent with the Approved Work Plan and this Operating Agreement, and to provide direction to Civic regarding its performance of services. When this Operating Agreement requires communications to or with the City, or for actions to be taken by City, those communications will be with or actions taken by the Contract Administrator, unless specified otherwise.

3.3 City's Right to Audit and Inspect Records. Civic shall make available to City for examination at its offices in San Diego at any time during normal business hours and as often as City deems necessary, all available data and records with respect to all matters covered by this Operating Agreement, any and all implementing agreements, and subcontracts (City's Right). City's Right includes the right to audit all invoices, materials, payrolls, and other data and media relating to all matters covered by the subject agreements. City's Right includes the right to inspect and photocopy same, and to retain copies outside of Civic's premises with appropriate safeguards if such retention is deemed necessary by City. This information shall be kept by City in the strictest confidence allowed by law. Civic shall maintain such data and records for a period of not less than five years following termination of this Operating Agreement, or alternatively, shall transfer such data and records to City. Civic shall include City's Right as described in this Section in any and all of its subcontracts, and shall ensure that it is binding upon all of its subcontractors. City's Right shall survive the termination of this Operating Agreement.

3.4 Right to Audit. City retains the right to review and audit, and the reasonable right of access to Civic's and any subcontractor's premises, to review and audit Civic's or a subcontractor's compliance with the provisions of this Operating Agreement (City's Right). City's Right includes the right to inspect, photocopy, and retain copies of any and all books, records, documents and any other information (Records) relating to this Agreement outside of Civic's premises if deemed necessary by City in its sole discretion. City shall keep these Records confidential to the extent permitted by law.

3.4.1 Audit. City's Right includes the right to examine Records of procedures and practices that City determines are necessary to discover and verify that Civic or s subcontractor is in compliance with all requirements under this Operating Agreement.

3.4.2 Cost Audit. If there is a claim for additional compensation or for additional services, the City's Right includes the right to Records that the City determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

3.4.3 **Accounting Records.** Civic and all subcontractors shall maintain complete and accurate Records in accordance with generally accepted accounting practices. Civic and its subcontractors shall make available to City for review and audit all Records relating to the services performed hereunder. Upon City's request, Civic and its subcontractors shall submit exact duplicates of originals of all requested records to City.

3.4.4 **City's Right Binding on Subcontractors.** Civic shall include City's Right as described in this Section 3.4 in any and all of their subcontracts, and shall ensure that these sections are binding upon all subcontractors.

3.5 City's Right to Terminate. City has the right to terminate all or part of this Operating Agreement (see Section 1.3).

4. BUDGET AND FUNDING

4.1 Compensation. City shall pay Civic for work performed and services rendered in accordance with the Approved Work Plan, Approved Operating Budget and this Operating Agreement.

4.2 Approval and Amendment of Operating Budget and Work Plan.

4.2.1 **Proposed Operating Budget and Work Plan.** Each year in advance of the start of the new fiscal year, Civic shall prepare and submit to City, through the Mayor or Mayor's designee, for approval a proposed budget (Proposed Operating Budget) including position detail for the performance of the functions required by this Operating Agreement and set forth in the proposed Work Plan (Proposed Work Plan) for each fiscal year during which this Operating Agreement is in effect.

4.2.2 **Schedule for Submission and Approvals.** Civic shall submit the Proposed Operating Budget by February 15 to the Mayor or Mayor's Designee for review and comment. Civic shall then submit the Proposed Operating Budget and Proposed Work Plan to Civic's Board for its review and action by March 30. Civic shall submit the Proposed Operating Budget and Proposed Work Plan to the Mayor or Mayor's Designee for review and final approval by May 30. The Proposed Operating Budget and Proposed Work Plan shall be in a format specified by the Mayor or Mayor's designee and shall contain Civic's best estimate of the cost of the work to be performed.

4.2.3 **Effect of Approved Documents.** The Operating Budget and Work Plan approved by the Mayor shall constitute the Approved Operating Budget and Approved Work Plan for that fiscal year. Civic shall perform the functions and projects authorized by the Approved Operating Budget and Approved Work Plan in accordance with this Operating Agreement.

4.2.4 **Amendment of Approved Operating Budget and Work Plan.** The Approved Work Plan may be amended from time to time as necessary and agreed to in writing by Civic and City through the Mayor or Mayor's designee. Civic may not change the Approved Work Plan without City's written approval. In the event increases in the Approved Operating Budget are required to perform the functions set forth in the Approved Work Plan, Civic may propose an amendment to the Approved Operating Budget for consideration by the Mayor or Mayor's

designee as a mid-year or year-end adjustment. The Mayor's approval is required for both an increase to the Approved Operating Budget and an amendment to the Approved Work Plan.

4.3 Manner of Payment.

4.3.1 Working Capital Advance. Consistent with the Approved Operating Budget, and upon written request of Civic, City may, at its sole discretion, advance payment to Civic on or about the first day of every fiscal year (the Working Capital Advance) with a commercial bank designated by Civic as its depository. The purpose of the Working Capital Advance is to provide working capital to Civic to pay its operating costs and expenses while Civic is waiting to receive its monthly reimbursement of Eligible Expenses, as defined herein. The total amount of the Working Capital Advance shall be determined by City in its discretion, but, if City determines to make such an advance, the Working Capital Advance shall not be less than two twelfths (2/12) of the Approved Operating Budget. Working Capital Advance funds shall be used only for eligible expenditures under this Operating Agreement. City may also, at its sole discretion, choose to roll over Working Capital from one fiscal year to the next to avoid the need for a Working Capital Advance.

4.3.2 Reimbursement.

4.3.2.1 Civic shall request reimbursement from City not more than once per month.

4.3.2.2 On a monthly basis, Civic shall submit to City a report detailing all of Civic's Eligible Expenses for the prior month and allocating expenses to the Approved Operating Budget. The report shall identify all of Civic's activities performed in connection with the Eligible Expenses and income for the same time period. Civic shall certify that staff time and expenditures submitted are for services performed in accordance with the provisions of this Operating Agreement.

4.3.2.3 Any expenditure contained in the report documenting activities, income and expenditures described in the preceding subsection that is not consistent with this Operating Agreement shall be considered an ineligible expenditure.

4.3.2.4 Any unused funds from the Working Capital Advance shall be returned to City upon termination of this Operating Agreement.

4.3.3 Reimbursement of Eligible Expenses.

4.3.3.1 City shall reimburse Civic for its reported Eligible Expenses incurred in performance of the functions required by this Operating Agreement and subject to the terms and conditions of this Operating Agreement. The total amount of all Eligible Expenses reimbursed in any fiscal year shall not exceed the Approved Operating Budget for that fiscal year, including any amendments.

4.3.3.2 As soon as practicable after the end of each calendar month, Civic shall submit to the City's Department of Finance (DoF) or designee a properly completed Eligible Expenses report and reimbursement request, including the following:

(a) A written report of all Eligible Expenses paid in the preceding month allocating expenses to the Approved Operating Budget. The report shall identify all of Civic's activities and income for the prior month; and

(b) Written certification signed by Civic's Chief Financial Officer that: (i) the Eligible Expenses report and request are complete, true and correct; (ii) the requested reimbursement is for Eligible Expenses that have been paid in full by Civic; and (iii) the Eligible Expenses included in the report were incurred in the course of providing services under this Operating Agreement, and (iv) that such services were provided in accordance with the terms and conditions of this Operating Agreement; and

(c) Confirmation by the DoF that the funds to pay the Eligible Expenses are provided for in, available and unrestricted under, City's budget; and

(d) Such other documents, records or matters that the DoF shall reasonably and in good faith determine are necessary to approve the payment of such Eligible Expenses.

4.3.3.3 City shall review the completed Eligible Expenses report and reimbursement request from Civic, and verify the eligibility of expenditures and that each the conditions stated above is satisfied. Upon City's confirmation that the conditions have been met, City shall reimburse Civic for all Eligible Expenses, less those eligible expenditures already paid for by Civic from other sources of funds received by Civic, including any Working Capital Advance.

4.3.3.4 Expenses for which reimbursement shall be made to Civic include any and all costs which are: (i) reasonable, actual and necessary to the performance of Civic's obligations under this Agreement; (ii) included as Eligible Expenses; (iii) incurred; and (iv) presented to the DoF for reimbursement in accordance with this Agreement. In addition, the reimbursement of each one of such Eligible Expenses by City shall be in accordance with generally accepted accounting principles.

4.3.3.5 City shall have the right at any time and for any reason to audit Civic's books and records (including all expenditures) related to services performed under this Operating Agreement, and Civic shall pay the reasonable cost and expense of such audit which shall be considered an Eligible Expense. Civic shall maintain for review and audit by City upon request, adequate and complete documentation of all Eligible Expenses claimed for reimbursement. Civic shall cooperate fully with City and any auditor retained by City in connection with an audit to provide full access to relevant documents and staff. If the audit finds that one or more items submitted for reimbursement or reimbursed are not Eligible Expenses, then Civic shall reimburse City for such expenses. City may, in its discretion, obtain repayment by deducting the amount owed from pending or future requests for reimbursement,

4.3.3.6 References to the DoF in this Section shall refer to the persons or person designated in writing by the DoF from time to time.

4.3.4 **Direct Payment.** City may, at its sole discretion, directly pay for approved budgeted items on behalf of Civic.

5. INSURANCE AND INDEMNITY

5.1 Insurance Requirements.

5.1.1 As of the Effective Date, Civic has and shall maintain in full force and effect at all times during the term hereof policies of insurance issued by an underwriter reasonably acceptable to City of the types and amounts and containing such terms and conditions as are all reasonably acceptable to City, and meeting at least the requirements set forth in the attached Exhibit A. City's Risk Management Department shall be consulted by City and provide initial and biannual reviews of such insurance to Civic. Such insurance shall provide protection against any liabilities arising from the operations, business and activities conducted by Civic, including errors and omissions insurance for the directors and officers of Civic and employers' liability, as determined by City in its reasonable discretion and for such insurance as Civic may reasonably obtain in the market using its best efforts.

5.1.2 Civic shall name City as an additional insured under such policies of public and any other liability insurance and shall contract with the underwriter that no policy of insurance obtained by Civic pursuant to the terms of this Section shall be terminated or amended without sixty (60) days' prior written notice to City. Upon request by City, Civic shall provide City with copies of all policies of insurance obtained pursuant to the terms of this Section. Such copies shall be certified by the underwriter as true and correct copies of Civic's policies with such underwriter, and provide such other terms and conditions in connection with such insurance and policies as City shall require from time to time in its reasonable discretion.

5.1.3 Immediately prior to the Effective Date and at all times during the five (5) years prior to the Effective Date, Civic represents and warrants that (i) it maintained all insurance policies as required by the agreements referenced in the recitals above and in effect during that five-year period and any additional insurance policies that it obtained, if any, and that such policies were and are valid, binding and enforceable, (ii) Civic did not at any time therein receive any termination, cancellation or similar notices from any of its insurance carriers, (iii) Civic's insurance policies during such time provided adequate insurance coverage for the assets, business and operations of Civic for all risks normally insured against by agencies carrying on the same or similar business, (iv) Civic has given timely notice to the insurer of all claims that were or may have been insured thereby, (v) Civic has not received any refusal of coverage or any notice that a defense will be afforded with a reservation of rights, and (vi) Civic has not received any indication that the issuer of any policy of insurance was or is not willing or able to perform its obligations thereby.

5.2 Indemnity Requirements. For the purpose of applying the requirements contained in this Section 5.2. the term "City" means and includes both the City of San Diego and the Successor Agency.

5.2.1 **Civic's Indemnification and Hold Harmless of City.** With respect to any liability, including, but not limited to, claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of Civic or Civic's employees, agents, and officers, arising out of any services or functions performed under this Agreement, Civic agrees to defend, indemnify, protect, and hold harmless City, it

agents, officers, and employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of City, its agents, officers, or employees, or any third party. Civic's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of City, its agents, officers or employees.

It is the express intent of the Parties, and it is specifically agreed by the Parties, that should Civic be required to indemnify City for any matter under this Operating Agreement, City shall not be required to reimburse or otherwise pay Civic or any other third party for any such losses or payments or otherwise be responsible for any such losses or payments.

5.2.2 Notice Regarding Demands, Litigation, and Arbitration Proceedings.

Each Party shall provide written notice, which may be by e-mail, to the other Party, of the institution or the threat to institute any litigation, mediation, arbitration or similar proceedings, or with respect to any claims, demands or similar proceedings filed or threatened against the Party within 72 hours after the receipt of notice of such litigation or similar proceeding or after the receipt of any writings which threaten such litigation or claims, demands or similar proceedings in connection with any matter directly or indirectly related to the business, operations or interests of Civic, or to performance of this Operating Agreement.

6. DEFINITIONS

6.1 Definitions. As used in this Agreement, the following terms have the following meanings:

6.1.1 **Affordable Housing Master Plan** shall mean the Affordable Housing Master Plan approved by the Housing Successor and as amended from time to time.

6.1.2 **Approved Operating Budget** shall mean the Operating Budget approved by the Mayor in accordance with Section 4.2.3.

6.1.3 **Approved Work Plan** shall mean the Work Plan approved by the Mayor in accordance with Section 4.2.3.

6.1.4 **California Nonprofit Law** shall mean the California Nonprofit Public Benefit Corporation Law, California Corporations Code sections 5002 et seq., as amended.

6.1.5 **City** shall mean the City of San Diego.

6.1.6 **City Council** or **Council** shall mean the City Council for the City of San Diego.

6.1.7 **Civic** shall mean Civic San Diego, formerly known as the Centre City Development Corporation and successor to the Southeastern Economic Development Corporation.

6.1.8 **Contract Administrator** shall mean the Mayor or the Mayor's designee.

6.1.9 **Default** shall mean Civic's failure to satisfactorily perform an obligation of this Operating Agreement, as described in Section 1.3.2.

6.1.10 **Dissolution Law** shall mean Assembly Bill No. xl 26, as modified by the California Supreme Court pursuant to California Redevelopment Association v. Matosantos et al. (2011) 53 Cal.4th 231, as further modified and amended by Assembly Bill Nos. 1484, 1585 and 341, and as those bills may further be amended in the future.

6.1.11 **Eligible Expenses** shall mean all customary and ordinary expenses associated with the operation of a nonprofit corporation in performance of the functions required by this Operating Agreement, including, but not limited to:

6.1.11.1 Salaries and associated benefits including reasonable fees and other forms of reasonable and customary compensation for the actual services of Civic's officers, agents and employees, together with all reasonable and customary benefits and employer contributions in connection therewith, such as those for Internal Revenue Code section 403(b), if applicable, social security, if applicable, unemployment compensation, health insurance and other benefits which are customary in amount and scope;

6.1.11.2 Office, equipment and leasehold expenses and overhead, which are all reasonable, actual and necessary, including rent, taxes, furnishings, office supplies and equipment, repairs, duplicating services, postage, telephone, telegraph and other utility services, liabilities, casualty and fidelity insurance, moving expenses and the like which are customary in amount and scope; and

6.1.11.3 General business expenses, including legal and audits services, professional services, publications, photography, graphic services and displays, advertising, travel, membership dues, attendance at meetings, conferences, seminars, subscriptions, technical books and materials, garage expenses, transportation, including taxi fare, mileage and automobile rental, and the like.

6.1.12 **Former Agency** shall mean the former Redevelopment. Agency of the City of San Diego.

6.1.13 **Housing Successor** shall mean the City of San Diego, acting in its capacity as the housing successor to the Former Agency in accordance with Dissolution Law.

6.1.14 **Long Range Property Management Plan** shall mean the most recent version of the Long Range Property Management Plan approved by the Successor Agency, the Oversight Board, and the State Department of Finance in accordance with the Dissolution Law, along with any amendments made in accordance with the Dissolution Law.

6.1.15 **Mayor** shall mean the Mayor of the City of San Diego or the Mayor's designee.

6.1.16 **Operating Agreement** shall mean this Operating Agreement Between the City of San Diego and Civic San Diego.

6.1.17 **Party or Parties** shall mean, individually, Civic or City and, collectively, Civic and City.

6.1.18 **Program Management** shall mean the negotiation and oversight of one or more agreements required to complete or facilitate the completion of projects by third parties or the direct management of a program or project by Civic.

6.1.19 **Proposed Operating Budget** shall mean the budget prepared by Civic and processed with the City as described in Section 4.2 of this Operating Agreement.

6.1.20 **Proposed Work Plan** shall mean the work plan prepared by Civic as described in Section 4.2, and processed in conjunction with the Proposed Operating Budget.

6.1.21 **Public Works Management** shall mean to cause the construction of infrastructure, public spaces, facilities or other improvements as required by this Operating Agreement.

6.1.22 **Successor Agency** shall mean the City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic, as specified in Resolution R-2012-400, in accordance with the Dissolution Law.

6.1.23 **Working Capital Advance** shall mean the advance payment to Civic for the performance of the functions requirement by this Agreement as described in Section 4.3.1 of this Agreement.

7. CITY'S GENERAL CONTRACTING REQUIREMENTS

7.1 Compliance with the City's General Terms and Provisions. Civic shall comply with City's General Terms and Provisions attached hereto as Exhibit A; provided, however, that the terms and provisions of this Operating Agreement shall supersede and govern over any terms and provisions in Exhibit A that conflict with the terms and provisions of this Operating Agreement.

8. GENERAL PROVISIONS

8.1 Notices. In all cases where written, notice is required under this Operating Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement, For the purpose of this Operating Agreement, unless otherwise agreed in writing, notices shall be addressed to:

City

The City of San Diego
202 C Street, 11th Floor
San Diego, CA 92101
Attn: Mayor of San Diego

Civic

Civic San Diego
401 B Street, Suite 400
San Diego, CA 92101
Attn: President of Civic

8.2 Time of the Essence. Time is of the essence for each provision of this Operating Agreement. Civic shall immediately notify City in writing if Civic experiences or anticipates delay in performing its obligations under this Operating Agreement, stating the reasons for and estimated length of the delay, and shall work with City to minimize the effect of such delay. If in City's opinion the delay materially affects performance of the Work Plan, City may exercise its rights to terminate this Operating Agreement.

8.3 Non-Assignment. Civic shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without City's prior written approval. Any assignment in violation of this paragraph shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of City. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

8.4 Relationship of Parties. For the purpose of this Operating Agreement, Civic and any subcontractors employed by Civic, are independent contractors and not agents of City, and neither Civic's employees nor the employees of its subcontractors are employees of City. Provisions in this Agreement that give City the right to direct Civic mean Civic shall follow City's direction concerning the end result of Civic's performance.

8.5 Compliance with Controlling Law. Civic shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Operating Agreement. In addition, Civic shall comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations.

8.6 Jurisdiction. The jurisdiction and applicable laws for any suit or proceeding concerning this Operating Agreement, the interpretation or application of any of its terms, or any related disputes shall be in accordance with the laws of the State of California. Venue for any court action shall be in the City and County of San Diego.

8.7 Successor in Interest. This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.

8.8 Integration. This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the parties concerning the matters covered in this Agreement. No change, alteration, amendment, or modification of the terms or conditions of this Agreement, and no verbal understanding of the parties, their officers, agents, or employees shall be valid unless made in the form of a written change and agreed to in writing by both Parties.

8.9 Further Assurances. The Parties agree that they shall prepare and deliver all further documents and do all further acts necessary and desirable to accomplish the purposes of this Agreement.

8.10 Waiver. No failure of either the City or Civic to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

8.11 Severability. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

8.12 Municipal Powers. Nothing contained in this Operating Agreement shall be construed as a limitation upon the powers of City as a chartered city of the State of California.

8.13 Drafting Ambiguities. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Operating Agreement, and the decision of whether or not to seek advice of counsel with respect to this Operating Agreement is a decision which is the sole responsibility of each Party. This Operating Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in its drafting.

8.14 Survival of Obligations. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with this Operating Agreement, as well as all continuing obligations indicated in this Operating Agreement, shall survive completion of the performance or termination of this Operating Agreement.

(Signatures on following page)

IN WITNESS WHEREOF, this Operating Agreement is executed by the City of San Diego, acting by and through its Mayor or designee, and by the legally authorized representative for Civic San Diego.

Dated: _____

CIVIC SAN DIEGO

By: _____
_____, President

Dated: _____

CITY OF SAN DIEGO

By: _____

Name: _____

Title: _____

Approved as to form this _____ day of
_____, 2019

MARA W. ELLIOTT, City Attorney

By: _____

Name: _____

Title: _____

00-21082⁻³

CLERK'S FILE COPY

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment") is made and entered into as of _____, 2019 (the "Effective Date"), by and between Civic San Diego, a California nonprofit public benefit corporation ("Civic" or "Assignor") and the City of San Diego, a municipal corporation ("City" or "Assignee").

RECITALS

A. Civic has certain rights and obligations (the "Rights" and the "Obligations," respectively) regarding the demand-response downtown circulator shuttle (commonly known as "FRED").

B. Such Rights and Obligations are described in that certain Agreement by and between Civic, San Diego Free Ride, LLC and Tag-A-Long San Diego, LLC for Demand-Response Downtown Circulator Shuttle dated April 20, 2016, as amended by that certain First Amendment dated November, 2017 (collectively "Agreement"), attached to this Assignment as Exhibit A. The Agreement is incorporated herein by this reference as though fully set forth herein. Any capitalized term not otherwise defined herein shall have the meaning ascribed to it in the Agreement.

C. Civic entered into the Agreement in its capacity as the agent of the City for the Downtown Community Parking District ("DCPD") Advisory Board pursuant to the Operating Agreement between the City and Civic dated December 2016 (the "Operating Agreement") on file in the Office of the City Clerk as Document No. RR-310809.

D. Civic desires to assign its rights and obligations under the Agreement to the City, and the City desires to accept such assignment and assume such obligations under the terms and conditions set forth below.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Civic and the City hereby agree as follows

1. Assignment. Effective as of the date of this Assignment, which shall occur concurrently with the full execution of this Assignment by Civic and City, Civic hereby assigns all of the Rights to the City.

2. Acceptance and Assumption. City hereby accepts the assignment of the Rights from Civic and assumes all of the Obligations arising from and after the date of this Assignment. City agrees to perform all of the Obligations in accordance with the Agreement.

3. Miscellaneous.

(a) This Assignment shall be determined in accordance with and governed by the laws of the State of California.

(b) This Assignment may be executed in counterparts, each of which shall be deemed an original and which, when taken together, shall constitute a complete instrument.


(c) Each party agrees to perform any further acts, and to execute and deliver any further documents that may be reasonably necessary or required to carry out the intent and provisions of this Assignment and the transactions contemplated hereby.

(d) This Assignment shall bind and inure to the benefit of the respective heirs, personal representatives, grantees, successors and assigns of the parties hereto.


IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be signed by their duly authorized officers and is executed on the Effective Date.

ASSIGNOR:

Civic San Diego, acting in its capacity as the agent of the City of San Diego for the Downtown Community Parking District

By: 
Andrew Phillips
Interim President

Best Best & Krieger LLP
Corporate Counsel for
Civic San Diego

By: 
Shawn Hagerty
Corporate Counsel

ASSIGNEE:

The City of San Diego,
a municipal corporation

By: _____
Erik Caldwell
Deputy Chief Operating Officer
Smart & Sustainable Communities

APPROVED AS TO FORM:

Mara W. Elliott
City Attorney

By: _____
Katherine A. Malcolm
Deputy City Attorney

00-21082-4

DUPLICATE

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment") is made and entered into as of JUN 18, 2019 (the "Effective Date"), by and between Civic San Diego, a California nonprofit public benefit corporation ("Civic" or "Assignor") and the City of San Diego, a municipal corporation ("City" or "Assignee").

RECITALS

A. Civic has certain rights and obligations (the "Rights" and the "Obligations," respectively) regarding the demand-response downtown circulator shuttle (commonly known as "FRED").

B. Such Rights and Obligations are described in that certain Agreement by and between Civic, San Diego Free Ride, LLC and Tag-A-Long San Diego, LLC for Demand-Response Downtown Circulator Shuttle dated April 20, 2016, as amended by that certain First Amendment dated November, 2017 (collectively "Agreement"), attached to this Assignment as Exhibit A. The Agreement is incorporated herein by this reference as though fully set forth herein. Any capitalized term not otherwise defined herein shall have the meaning ascribed to it in the Agreement.

C. Civic entered into the Agreement in its capacity as the agent of the City for the Downtown Community Parking District ("DCPD") Advisory Board pursuant to the Operating Agreement between the City and Civic dated December 2016 (the "Operating Agreement") on file in the Office of the City Clerk as Document No. RR-310809.

D. Civic desires to assign its rights and obligations under the Agreement to the City, and the City desires to accept such assignment and assume such obligations under the terms and conditions set forth below.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Civic and the City hereby agree as follows

1. Assignment. Effective as of the date of this Assignment, which shall occur concurrently with the full execution of this Assignment by Civic and City, Civic hereby assigns all of the Rights to the City.

2. Acceptance and Assumption. City hereby accepts the assignment of the Rights from Civic and assumes all of the Obligations arising from and after the date of this Assignment. City agrees to perform all of the Obligations in accordance with the Agreement.

3. Miscellaneous.

(a) This Assignment shall be determined in accordance with and governed by the laws of the State of California.

(b) This Assignment may be executed in counterparts, each of which shall be deemed an original and which, when taken together, shall constitute a complete instrument.

(c) Each party agrees to perform any further acts, and to execute and deliver any further documents that may be reasonably necessary or required to carry out the intent and provisions of this Assignment and the transactions contemplated hereby.

(d) This Assignment shall bind and inure to the benefit of the respective heirs, personal representatives, grantees, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be signed by their duly authorized officers and is executed on the Effective Date.

ASSIGNOR:

Civic San Diego, acting in its capacity as the agent of the City of San Diego for the Downtown Community Parking District

By: 

Andrew Phillips
Interim President

ASSIGNEE:


The City of San Diego,
a municipal corporation

By: 

Erik Caldwell
Deputy Chief Operating Officer
Smart & Sustainable Communities

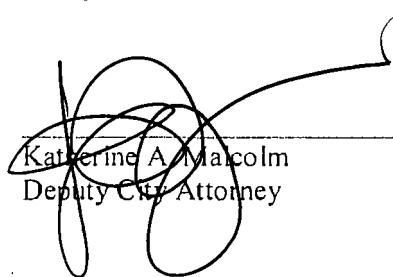
APPROVED AS TO FORM:

Best Best & Krieger LLP
Corporate Counsel for
Civic San Diego

By: 

Shawn Hagerty
Corporate Counsel

Mara W. Elliott
City Attorney

By: 

Katherine A. Malcolm
Deputy City Attorney

ORDINANCE NUMBER O- 21082 (NEW SERIES)

DATE OF FINAL PASSAGE JUN 21 2019

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO (I) APPROVING THE FORMS AND AUTHORIZING THE EXECUTION AND DELIVERY OF (A) THE RESTATED ARTICLES OF INCORPORATION OF CIVIC SAN DIEGO, (B) THE AMENDED AND RESTATED BYLAWS OF CIVIC SAN DIEGO, AND (C) A NEW OPERATING AGREEMENT WITH CIVIC SAN DIEGO; (II) APPROVING AND AUTHORIZING THE TERMINATION OF (A) THE AGENCY AGREEMENT WITH CIVIC SAN DIEGO AND (B) THE CURRENT OPERATING AGREEMENT WITH CIVIC SAN DIEGO; AND (III) APPROVING CERTAIN OTHER AGREEMENTS AND ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City of San Diego (City) is the sole member of Civic San Diego, a nonprofit public benefit corporation (Civic); and

WHEREAS, Civic performs City-wide special projects and economic development, certain functions related to the wind-down of redevelopment, permitting, planning and public works for downtown, and management of the downtown parking district; and

WHEREAS, both the City and Civic desire that Civic restate its Articles of Incorporation and amend and restate its Bylaws such that the City is no longer the sole member of Civic, thereby rendering Civic completely independent and separate from the City; and

WHEREAS, the City and Civic also desire to enter into a new agreement (New Operating Agreement) under which Civic, as an independent, separate entity, will continue to provide services to the City for certain wind-down and reporting activities (Wind-Down Services) required by the State Legislature following its adoption of legislation dissolving redevelopment agencies across the state; and

WHEREAS, because the Wind-Down Services do not include management of the downtown parking district, Civic desires to assign its rights and obligations under that certain Agreement by and between Civic, San Diego Free Ride, LLC and Tag-A-Long San Diego, LLC for Demand-Response Downtown Circulator Shuttle dated April 20, 2016 to the City (Assignment); and

WHEREAS, the City and Civic further desire to terminate as of July 1, 2019, that certain “Agency Agreement” between them dated as of December 2, 2016 (Agency Agreement) pursuant to section 3.2, which provides that the City may terminate the Agency Agreement for convenience by giving Civic at least 180 days prior written notice, which written notice was given on August 30, 2018; provided however, that the Agency Agreement shall remain in effect for projects which Civic must continue to process as a matter of law until such processing is completed; and

WHEREAS, the City and Civic further desire to terminate as of July 1, 2019, that certain “Operating Agreement” between them dated April 6, 2017 (Current Operating Agreement) pursuant to section 1.2.1, which provides that the City may terminate the Current Operating Agreement for convenience by giving Civic at least 180 days prior written notice, which written notice was given on August 30, 2018; provided however, that the Current Operating Agreement shall remain in effect (i) for projects which Civic must continue to process as a matter of law and (ii) until the New Operating Agreement is in full force and effect; and

WHEREAS, it is anticipated that six positions currently filled by Civic employees will be terminated, and that the City will create six new positions to be filled by City employees whose workspace will continue to be in Civic’s offices, requiring that the City enter into a sublease with Civic for space in Civic’s offices (Sublease) for the six new City employees; and

WHEREAS, the Council has held a meeting to consider the following documents (collectively, the Transaction Documents), forms of which relate to Civic's separation from, and delivery of ongoing services thereafter to, the City:

- a. A proposed form of Restated Articles of Incorporation of Civic San Diego (Articles), a copy of which Articles are on file in the Office of the City Clerk as Document No. O- 21082⁻¹; and
- b. A proposed form of Amended and Restated Bylaws of Civic San Diego (Bylaws), a copy of which Bylaws are on file in the Office of the City Clerk as Document No. O- 21082⁻²; and
- c. A proposed form of the New Operating Agreement, a copy of which New Operating Agreement is on file in the Office of the City Clerk as Document No. O- 21082⁻³; and

WHEREAS, the City is authorized to undertake the actions described in this Ordinance pursuant to its Charter and applicable laws of the State of California; NOW, THEREFORE,

BE IT ORDAINED by the City Council of the City of San Diego, as follows:

Section 1. The City Council hereby finds and determines that the statements set forth above in the recitals to this Ordinance are true and correct.

Section 2. The City Council hereby approves both the City's removal of itself as the sole member of Civic such that Civic will become and operate as a fully independent public benefit corporation, completely separate from the City.

Section 3. The form and content of the form of the Articles submitted for the Council's consideration, a copy of which Articles are on file in the Office of the City Clerk as Document No. O- 21082⁻¹, and the execution, delivery and filing thereof by Civic with the

California Secretary of State and California Attorney General are hereby approved. Any of the Chief Operating Officer or the Chief Financial Officer of the City and each of them or any of their respective designees (each, an Authorized City Signatory), are each hereby authorized, and any one of the Authorized Signatory is hereby directed, for and in the name and on behalf of the City, to execute and deliver any requested certificate or instrument evidencing the City's approval of the Articles, and each of the board of directors and officers of Civic or any respective designee (each, an Authorized Civic Signatory) is hereby authorized to execute, deliver and file the Articles with the California Secretary of State and California Attorney General, substantially in the form presented for the Council's consideration, with such additions and changes therein as any Authorized City Signatory shall determine are necessary or desirable and approve as being in the best interests of the City, and as approved as to form by the City Attorney or her specified designee, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 4. The form and content of the form of the Bylaws submitted for the Council's consideration, a copy of which Bylaws are on file in the Office of the City Clerk as Document No. O- 21082⁻², and the execution and delivery thereof by Civic are hereby approved. The Authorized City Signatories are each hereby authorized, and any one of the Authorized City Signatories is hereby directed, for and in the name and on behalf of the City, to execute and deliver any requested certificate or instrument evidencing the City's approval of the Bylaws, and each of the Authorized Civic Signatories is hereby authorized to execute and deliver the Bylaws, substantially in the form presented for the Council's consideration, with such additions and changes therein as any Authorized City Signatory shall determine are necessary or desirable and approve as being in the best interests of the City, and as approved as to form by the

City Attorney or her specified designee, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. The form and content of the form of the New Operating Agreement submitted for the Council's consideration, a copy of which New Operating Agreement is on file in the Office of the City Clerk as Document No. O- 21082⁻³, and the execution and delivery thereof by the City is hereby approved. The Authorized City Signatories are each hereby authorized, and any one of the Authorized City Signatories is hereby directed, for and in the name and on behalf of the City, to execute and deliver the New Operating Agreement, substantially in the form presented for the Council's consideration, with such additions and changes therein as any Authorized City Signatory shall determine are necessary or desirable and approve as being in the best interests of the City, and as approved as to form by the City Attorney or her specified designee, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 6. The City Council agrees and hereby gives notice to Civic, that each of the Agency Agreement and Current Operating Agreement shall be terminated as of the dates and in the manner presented above in this Ordinance.

Section 7. The Assignment is approved. The Mayor or designee is authorized and directed, on behalf of the City, to sign and enter into the Assignment, a copy of which is on file in the Office of the City Clerk as Document No. O- 21082⁻⁴.

Section 8. All actions heretofore taken by any officers, employees, or agents of the City with respect to the agreements and documents related to Civic presented above are hereby approved, confirmed and ratified; and the Chief Operating Officer, the Chief Financial Officer, the City Attorney and any such other officers, employees, or agents of the City as may be

authorized by the Mayor of the City, the Chief Operating Officer or the Chief Financial Officer are hereby authorized and directed, for and in the name of and on behalf of the City, to do any and all things and take any and all actions, including, without limitation, pay necessary and appropriate fees and expenses, execute and deliver any and all certificates, additional agreements and other documents which they, or any of them, may deem necessary or desirable to consummate and/or assist in the transition of Civic from an agent of the City to a separate and independent service provider to the City with regard to Wind-Down Services (the Transition) in accordance with this Ordinance. In addition, any Authorized City Signatory is hereby specifically authorized to approve additions, changes and amendments to the Transaction Documents authorized by this Ordinance as any Authorized City Signatory shall determine are necessary or desirable and shall require or approve and that such Authorized City Signatory believes to be in the best interests of the City, such determination being conclusively evidenced by the execution and delivery of such Transaction Documents by the City. Such other officials, employees, and agents of the City as may be authorized by any Authorized City Signatory are hereby are each authorized, and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions and execute and deliver any and all certificates, additional agreements, and other documents which they, or any of them, may deem necessary or advisable in order to consummate the Transition in accordance with this Ordinance.

Section 9. The Mayor, or his designee, is authorized to execute and deliver the Sublease for a term not to exceed one year with total rent not to exceed \$125,000, on terms and conditions that the Mayor, or his designee, determine to be reasonable and in the public interest.

Section 10. The Chief Financial Officer is authorized to appropriate and expend an amount not to exceed \$125,000 to pay the base rent, utilities and all other charges and fees

incurred in connection with the Sublease, contingent upon the Chief Financial Officer furnishing one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit in the City Treasury.

Section 11. This Ordinance is subject to the provisions of the San Diego Municipal Code and the San Diego Charter. Subject to those provisions, this Ordinance shall take effect and be in force on the thirtieth (30th) day from and after the date of its final passage and, prior to the expiration of fifteen (15) days from the final passage hereof, the City Clerk or her specified designee shall cause this Ordinance to be published at least once in a newspaper of general circulation, published and circulated in the City.

Section 12. A full reading of this Ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the Council and the public prior to the day of its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By



Bret A. Bartolotta
Deputy City Attorney

BAB:jdf
05/17/19
06/04/19 REV.
Or.Dept: Civic San Diego
Doc. No.: 1888330_2

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JUN 18 2019.

ELIZABETH S. MALAND
City Clerk

By Connie Patterson
Deputy City Clerk

Approved: 6/21/19
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on 18 2019, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUN 21 2019.

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By My Ready for, Deputy
Connie Patterson

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

JUN 04 2019

, and on JUN 21 2019.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By My Ready for, Deputy
Connie Patterson

Office of the City Clerk, San Diego, California

Ordinance Number O- 21082

Passed by the Council of The City of San Diego on June 18, 2019, by the following vote:

YEAS: **BRY, CAMPBELL, WARD, MONTGOMERY, KERSEY, MORENO, & GÓMEZ.**

NAYS: **CATE, SHERMAN.**

NOT PRESENT: **NONE.**

RECUSED: **NONE.**

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: **Connie Patterson**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of ORDINANCE NO. **O-21082** (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on **June 4, 2019**, and on **June 21, 2019**.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By: *Connie Patterson*, Deputy