

Contracting Agreement

December 1, 2020

This agreement is executed by Hillcrest Business Association, a California not for profit corporation (hereinafter referred to as "HBA") whose address is 3737 Fifth Avenue #205, San Diego, CA 92103 and New City America, a California Corporation (hereinafter referred to as "NCA" or "Contractor"), whose address is 2011 West California St. San Diego, CA 92110.

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

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

Recitals

The HBA is seeking to create a special assessment district in the Hillcrest commercial area of San Diego. The contracting work shall generally include:

1. Outreach to the property owners in the Hillcrest commercial area and developing their leadership in the Greater Hillcrest Community toward guiding the formation of a new Community Benefit District (CBD).
2. Solicitation of the property owners and managers for contributions to pay contractor fee.
3. Creation of a sustainable revenue program funded by a property-based Community Benefit District (CBD), in the surrounding area.
4. Consulting services and the CBD/MAD plan through the approval of the CBD (Maintenance Assessment District) by the Mayor's office and San Diego City Council.

Though this agreement refers to the City, it should not be construed in any way as to bind or create obligations for the City or create any agreement between the parties and the City.

This agreement is divided into four parts:

1. *Statement of qualifications.*
2. *Assumptions made in the submittal of this proposal.*
3. *Timeline and Work Schedule*
4. *Monthly retainer fee*

The professional services to investigate and establish the Greater Hillcrest CBD by the Fall of 2021 is based upon a retainer fee of \$5,000 per month for professional services as described in part four of this agreement. Those services will be outlined in the scope

of services and this quote does not include reimbursable expenses (copies, postage, assessment engineer, etc.).

The timeline/consulting costs for the CBD investigation and formation is as follows:

Investigation of the CBD: Mid December - Mid April June, estimated costs, \$20,000.

Formation of the Greater Hillcrest CBD: Mid-April – Mid October, estimated costs \$30,000.00

Part 1 – Statement of qualifications

The HBA acknowledges that New City America (NCA) staff have extensive experience in similar CBD investigation and formation efforts locally and statewide and appreciates, but has not verified, the information included in Part 1.

General Approach:

New City America staff has perhaps worked with more stakeholder groups to form property-based Community Benefit Districts – than any firm in the state in the last twenty years. We have formed the majority of districts in San Diego, Los Angeles, San Francisco and Oakland.

Working with over 100 business and property groups throughout the country allows us to have the most successful strategy in explaining special benefits districts to property owner groups.

Firm and Staff Qualifications:

New City America excels in all aspects of CBD formation and management and is the one of the only firms that establishes and manages CBDs simultaneously. Our experience in managing districts in Little Italy/San Diego, Downtown Glendale, Downtown Downey, Downtown Redwood City, SOMA West in San Francisco, and Downtown Hayward, demonstrates the depth of knowledge of all aspects of the CBD world.

Name and contact information for the firm:

<u>Title:</u>	New City America, Inc. (a California, for-profit corp.), C Corporation
<u>Address:</u>	2011 W. California Street, San Diego, CA 92110
<u>Telephone:</u>	(619) 233-5009
<u>Fax:</u>	(619) 239-7105
<u>E-Mail:</u>	marco@newcityamerica.com
<u>Authorized Persons:</u>	Marco Li Mandri, President, Laura Li Mandri, CFO

Our experience includes:

- Being familiar with all aspects of organizing a drive to create Community Benefit Districts, as well as managing a dynamic business association including, but not limited to organizing, marketing, branding, special events planning and implementation, public space development and management, business promotion, community relations, organizational development, crime prevention programs, budget development and personnel relations.
- Having experience as a guest speaker (Marco Li Mandri), as a panelist or moderator for the following national organizations: Project for Public Spaces, Urban Land Institute, International Downtown Association, National Main Street Trust, the Destination Management Association International National Conference, Smart Growth Massachusetts, Presenter at George Washington University Business School, Illinois Main Street, Pennsylvania Downtown Center, National League of Cities, California League of Cities, California Main Street Center, California Downtown Association and has been a guest writer for the Downtown Idea Exchange.
- Having special skills in developing the significant arts and cultural district in the Little Italy district of Downtown San Diego.
- Having special skills in adapting to various business communities' needs through developing strategies *to organize in historic, ethnic, arts and culture, institutional, transit-oriented, blighted, rural or urban as well as exclusive commercial districts.*
- Being the only company in the country to have carried out assessment district campaigns in many languages. New City America literature has been translated into Spanish, Vietnamese, Japanese, Chinese and Korean, to facilitate the work of the contracts.
- Having excelled in the development of significant beautification strategies and developing, managing and activating public spaces within business districts and mix used communities.
- Having demonstrated knowledge in successfully branding business districts to create strong positive concepts associated with the business district name and image.

New City America/New City Public Spaces, Inc has around 11 employees, with 8 working out of the San Diego Office. We are also under contract to oversee and supervise over 35 maintenance employees and 18 valet employees in Little Italy.

All of our employees have been trained extensively in CBD formation and management and their skills and experience are unmatched on the West Coast. Our personnel have been trained in the company and the existing personnel listed below have been with the company as steady employees.

<i>NCA Personnel</i>	<i>Title and involvement in this investigation and formation of a CBD in Hillcrest Gateway</i>	<i>Years in this Field</i>	<i>Years with New City America</i>
Marco Li Mandri marco@newcityamerica.com	President, Project Manager, Key personnel of the effort	26	Since 1994
Shirley Zawadzki Shirley@newcityamerica.com	Assistant Project Manager	24	Since 1996
Rosie De Luca	Accounting, Clerical support	24	Since 1996
Chris Gomez chris@newcityamerica.com	District Management Officer, Graphics	19	Since 2001
Laura Li Mandri laura@newcityamerica.com	Controller of Corporation, Administration	15	Since 2005
Monica Montes monica@newcityamerica.com	Database work, meeting coordinator	17	Since 2003
Jerry Klink Jerry@newcityamerica.com	Mapping, graphics, public space design, assist in meeting coordination	4	Since 2016
John Li Mandri, John@newcityamerica.com	Ornamental landscaping, design	12	Since 2008
Joey Li Mandri, joey@newcityamerica.com	Social media, event planning	3	Since 2015
Dominic Li Mandri Dominic@newcityamerica.com	District Management, in the Bay Area	6	Since 2014
Ryan Huffman ryan@newcityamerica.com	Management of Downtown Glendale	4	Since 2016
Katharine Li Mandri Special events, social media	Event planning, special events	2	Since 2018

Part 2 - Assumptions and agreements concerning the Greater Hillcrest CBD (GHCB) formation proposal

This agreement assumes a number of items. If these assumptions prove to be incorrect at any point in the life of the agreement, the parties agree to come to a mutual agreement in writing on how to alter the plan and process. The parties make the following assumptions in proposing this CBD investigation and formation project:

- The Greater Hillcrest CBD would be formed under the local municipal enabling ordinance, the San Diego Maintenance Assessment District (MAD). The parties acknowledge that New City America (NCA) staff has extensive experience in similar CBD investigation and formation efforts locally and statewide.
- The proposed Greater Hillcrest CBD would be subject to the assessment ballot proceeding regulations found in Article XIII(d) in the California State constitution (Proposition 218).
- The HBA seeks to have the first assessments generated by December 2021. These assessments will be manually billed by the City of San Diego, unless the district is formed by July 2021, and at that point it would be placed on the 2021-22 San Diego County Tax Assessor's billing.
- The parties acknowledge that the CBD Stakeholders Group is currently a subcommittee of the HBA.
- The major weighted property owners, regardless of change in ownership, in the CBD study area, will remain supportive of the district throughout the formation process.
- The amount quoted for investigation and formation is based upon this contract commencing in December 2020 and concluding in October 2021.
- The Mayor's Office and relevant City offices will cooperate on all aspects of property owner identification, notification of changes in property ownership, database collection and mapping.
- City Councilman Whitburn's office or the Mayor's office will fully fund the City required Assessment Engineer. This will not be a cost borne by the HBA or New City America.
- The only parcels to be exempted from payment into the Greater Hillcrest CBD, according to state law, will be those which can demonstrate that they will not derive benefit from the formation of the district. All institutional, commercial, mixed use, non-profit, education related, city/county/state/federal government/school parcels, if located within the boundaries of the proposed district, will be required to pay into the CBD. This is a mandatory, not voluntary assessment district.

The parties make the following agreements in proposing this CBD investigation and formation project:

- All meetings and agreements between NCA and third parties including the City of San Diego concerning this contract shall be disclosed to HBA staff prior to the agreement or meeting occurring.
- All public communications by NCA, including social media, press releases, advertising, printed or digital mailers, or other broadly distributed communications concerning this agreement shall be disclosed and approved by HBA staff prior to distribution.
- The parties agree that the following elements will be included in the assessment model for the CBD: a mechanism for a contribution from the Uptown Community Parking District for the ongoing extraordinary maintenance related to the Normal Street Promenade, recommendations for the most efficient management structure of the organization, a budget allocation for maintenance of the Hillcrest Sign and Hillcrest Pride Plaza, and a mechanism to incorporate new development and related assessments into the assessment model.
- Any new elements requested to be included in the assessment model by third parties, including the City of San Diego, must be approved by the HBA prior to being included in the assessment model.
- This contract cannot be assigned or transferred without the express written consent of the HBA.

Part 3 - Timeline and Work Schedule

This is a professional services contract with investigation and formation costs of the Greater Hillcrest CBD estimated not to exceed \$ 50,000.00. (\$5,000 per month x 10 months). This is for New City America staff services only. Does not include the direct reimbursable expenses (postage, printing, assessment engineer, etc.)

Function and Task to be Completed Phase I – CBD Investigation	Estimated Time Period
<i>(HILLCREST GATEWAY CBD INVESTIGATIVE STAGE)</i>	
1. Consolidate a new Greater Hillcrest CBD Steering Committee and Invite area property owners to form the Steering Committee. Confirm the initial boundaries for the CBD study area with the Steering Committee; determine the scope of the investigation (early January). In December, create database and investigate contacts for property owners within study area. Meet with Councilman Whitburn’s office to get his support up front for this campaign and effort. Keep the Mayor’s office informed of the progress of this effort.	December 15 th – January 14 th
2. Agree to study area boundaries with Greater Hillcrest CBD Steering Committee, prepare a parcel map.	January 2021
3. If authorized by HBA, create and distribute a Greater Hillcrest CBD mailed written survey to property owners ascertaining <u>conceptual</u> support for special benefits district and priority of services within the designated study area, (may exclude the property owners that might have already been surveyed in the previous MAD effort).	January - February
4. Plot survey results on parcel map, identifying support and opposition by color	February – March
5. Present survey results to the Greater Hillcrest CBD Steering Committee, brief City Councilman Whitburn’s and Mayor’s office as needed. If support exists for the district formation, work with the Steering Committee and the Councilman’s office on preparing documents related to the CBD formation process.	March – April

If the Phase I investigation results in the desire to move forward to the formation stage, as expressed in writing by the HBA, New City America would begin working with the City Councilman’s office and Mayor’s office to initiate the process for district formation. Part of this process would be to ensure that the City Attorney’s office is supportive with the formation process and the City Councilman or Mayor’s office will allocate the funds for the assessment engineer. This step is required by the City of San Diego to certify the CBD plan. NCA will comply with all of the requirements for notification of the public and property owners as outlined in the MAD (CBD) ordinance in San Diego.

GREATER HILLCREST CBD PHASE II - FORMATION STAGE	Estimated Time Period
1. If instructed by HBA, write a newsletter summarizing the CBD survey results. Send out property verification forms to all affected property owners. Submit property database to the City for verification of database.	April - May
2. Write the first draft preliminary Greater Hillcrest CBD Management District Plan, submit it to the CBD Steering Committee, meet frequently with Steering Committee until the plan has been fully supported. The Management District Plan is a legal document which will include the costs per property owner; list of special benefit services to be funded; benefit zones, (if any); frequency of services; boundaries; and management.	May
3. Finalize the CBD Management District Plan; get approval from the Greater Hillcrest CBD Steering Committee and HBA. Communicate with property owners on status of the district formation process.	May - June
4. Have the plan approved by an independent, city certified assessment engineer, (assumed to be paid for by the City Councilman's office) Once certified, have the plan submitted to the Mayor's office for review. Once City Attorney's office has reviewed and approved the plan, initiate a petition drive to trigger the ballot, mail out plan summary to all property owners (need recommended minimum of 30% weighted support of property owners to endorse plan, based upon standard operating procedure for CBD ordinance)	June - August
5. Complete petition drive; submit petitions to the Mayor's office. Brief Mayor's office and Councilman Ward's office as necessary or instructed	August
6. Work with the City on ballot preparation, if necessary	September
7. Follow up with Greater Hillcrest CBD Steering Committee to ensure weighted majority property owners vote and return ballots. Attend public hearing, review the ballot counting	October

PROJECT COMMENCEMENT DATE:

DECEMBER 15TH, 2020

PROJECT COMPLETION DATE:

OCTOBER 15TH, 2021

TOTAL CONSULTING SERVICES FOR THIS PERIOD:\$50,000

**Part 4 – Monthly Retainer Rate for New City America, Inc.
Personnel and Staff, December 2020 – October 2021**

The parties agree that:

- New City America, Inc. is an independent, private corporation established in the state of California, which specializes in business community assessment district formation, consulting and administration and will bear all payroll and personnel related costs.
- The fee for the consultant services for the investigation and formation of the Greater Hillcrest CBD shall be \$5,000 per month. The fee will commence on December 15th, 2020, with billings due by the 25th of each month.
- Early termination shall be effective only when written notice to discontinue is sent to either party by certified United States mail, with return receipt, postage prepaid and addressed to the other party hereto shown on this Agreement, at least thirty (30) days prior to the expiration of the term.
- Total estimated cost of the GHCBD formation, *not including direct reimbursable expenses*, shall be \$50,000 for the period of December 2020 through October 2021. If it is necessary to extend the formation process beyond October 2021, the monthly retainer of \$5,000 per month will continue beyond the timeline outlined herein, *based upon written mutual consent of the parties*, until the mail ballot proceeding, and public hearing has been held.
- HBA agrees to provide the initial funding for this agreement and will pay up to \$10,000 in the manner described below. The HBA will assist NCA in fundraising subsequent funds from the Hillcrest property owner and business community by providing introductions and attending meetings with funding prospects. Funds raised in this effort will be paid to HBA and used exclusively for payments to NCA in the manner described below.
- Providing adequate funds have been raised from the community to cover NCA's billing, invoices will be submitted on the 15th of each month and shall be due by the 25th of that billed month, commencing on December 15th, 2020. Billings shall be based upon the stated monthly retainer plus reimbursement of direct expenses, (postage, copies, layout, production, etc.). Expenses will be billed at a direct rate. In the event that there are funds available, failure to make payment for direct expense reimbursements within 20 days of receipt of the billing may result in cessation of professional services by New City America personnel.
- Within seven days of the commencement of the contract the HBA agrees to turn over all documents and work product from previous efforts to create assessment districts including survey results, engineers reports, and management plans.

- In receiving work product from HBA, NCA acknowledges this work product has value and in the case of a contract dispute that this value shall be accounted for in any settlement negotiation.
- The parties acknowledge that Hillcrest Taste 'n Tinis, Hillcrest CityFest, the Taste of Hillcrest, the Hillcrest Sign logo, The Fabulous Hillcrest logo, Mural Alley, Pride of Hillcrest Block Party, Hillcrest Farmers Market, and the related marks are, and always have been, the property of the HBA. HBA retains the exclusive rights to sell any HBA related merchandise and tickets and to conduct promotions for any business relating to Hillcrest and the HBA.
- Contractor shall provide the Services for the period commencing on December 15th, 2020 and this Agreement shall remain in effect until and unless either party gives the other, for any reason or no reason, at least thirty (30) days' notice of the party's intent to terminate this Agreement, at which point this Agreement shall terminate immediately upon the expiration of the 30 day or greater notice period provided. Also, any time during the term of this Agreement, the HBA or the Contractor may provide to the other written notice of termination of this Agreement for cause, based on a material breach of the terms of the Agreement, and unless the breach is cured within 30 days of such notice of termination for cause, this Agreement will terminate immediately upon the expiration of the 30 day cure period.
- Notwithstanding the foregoing, either party may terminate this Agreement at any time upon thirty (30) days' prior written notice to the other. In the event of such termination, Contractor shall be paid for any portion of the Services performed prior to the date of termination.
- This is a performance-based contract, and the agreement can be terminated by either party with the 30-day written notice. If such termination occurs the parties acknowledge that all work product gained through the conclusion of the notice period becomes the property of the HBA and must be transferred to the HBA prior to final payment. NCA agrees that in such a case, NCA will not work on any assessment district that includes the neighborhood of Hillcrest for a period of one year.
- Due to unforeseen circumstances, a 10% contingency is allowable in this agreement. This contingency is based upon issues that both New City America, the HBA and the Greater Hillcrest CBD Steering Committee cannot control.
- Checks are to be made payable to New City America, Inc. and shall be mailed to: New City America, Inc., 2011W. California Street, San Diego, CA 92110.

Insurance.

Contractor shall obtain and maintain throughout the term of this Agreement a policy of general liability and worker's compensation insurance with coverage and limits as required by the HBA. Prior to commencing the Services, Contractor shall provide a certificate of insurance with appropriate endorsements to the HBA evidencing such required coverage and naming the HBA as additional insured. Contractor shall provide annually proof of insurance to the HBA and New City America as well as the HBA shall

mutually list each party as additionally insured in policies related (if applicable) to general liability, errors and omissions, auto, and workers compensation.

Arbitration.

Any dispute or claim arising out of or in connection with any provision of this Agreement shall be finally settled by binding arbitration in San Diego County, California, in accordance with the rules of the Judicial Arbitration and Mediation Services (JAMS) by one arbitrator appointed in accordance with said rules. The arbitrator shall apply California law, without reference to rules of conflicts of law or rules of statutory arbitration, to the resolution of any dispute. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, the parties may apply to any court of competent jurisdiction for preliminary or interim equitable relief, or to compel arbitration in accordance with this paragraph, without breach of this arbitration provision. The prevailing party shall be entitled to recover reasonable attorney's fees and other costs and expenses incurred in the enforcement, or breach, of the terms of this Agreement.

The parties, hereby signed below, have executed this agreement:

Marco Li Mandri, President,
New City America, Inc.

Date Signed

Paul Smith, President

Hillcrest Business Association

Date Signed