



Hillcrest Business Association  
Board of Directors Meeting  
Public Meeting  
February 12, 2013, 5pm  
Joyce Beers Center, 1230 Cleveland Ave., San Diego CA 92103

Agenda

<b>Call to order and introductions</b>	G. Younger	2 minutes
<b>Public comment</b> (1 minute per speaker)		5 minutes
<b>Reports:</b>		
1. President's report	G. Younger	5 minutes
2. Executive Director's report	B. Nicholls	5 minutes
<b>Consent items</b> (action):	G. Younger	5 minutes
1. Approval of minutes <sup>1</sup>		
2. Approval of organizational financials <sup>2</sup>		
<b>Executive Committee items:</b>		
1. Rock and Roll marathon presentation	B. Nicholls	10 minutes
2. Request for letter of support for CicloSDias	M. Brennan	5 minutes
3. Discussion concerning National Main Street membership	B. Nicholls	10 minutes
4. Appointment to Uptown Community Parking District Board of Directors	G. Younger	5 minutes
<b>Ad Hoc Flag Committee items</b>		
1. Approval of pride flag monument contractor (action) <sup>3</sup>	J. Hale	5 minutes
<b>Beautification Committee items</b>		
1. Fifth Ave. tree light replacement contractor (action) <sup>4</sup>	C. Moreno	5 minutes
2. Approval of light canopy contractor (action) <sup>5</sup>	M. Brennan	5 minutes
<b>Marketing Committee items</b>		
1. Approval of changes to Taste of Hillcrest (action)	A. Capano	5 minutes

Attachments:

- |   |   |
|---|---|
| 1. January 2013 minutes                         | 4. Contract to repair and install lights in trees on Fifth Ave. |
| 2. December 2012 financials                     | 5. Contract to create light canopy                              |
| 3. Fabrication contract for pride flag monument |   |



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BOARD OF DIRECTORS MEETING MINUTES

Tuesday, January 8, 2013  
Joyce Beers Community Center  
1220 Cleveland Ave., San Diego, CA 92103

**Board members in attendance:** Michael Brennan, Amy Capano, Jillian DiCola, Jonathan Hale, Pete Katz, Robert Lane, Alonzo Ortiz, Nicholas Papantonakis, Edie Reynoso and Glenn Younger

**Board members absent:** Ron Baranov, Sean Cute, Cecelia Moreno, and Dalour Younan

**Others in attendance:** Walter Chambers, Jason Wietz

**Staff in attendance:** Mary Joseph, Benjamin Nicholls, Lisa Weir

**Public comment**

- W. Chambers of the Citizens Advisory Committee for SANDAG's Bike Task Force asked the group to take a survey on bike use. J. Wietz from Toni Atkins office reported that there is a new assembly bill protecting employee rights.

**President's report**

- G. Younger reported on what the HBA has done in 2012 and stated opportunities for additional projects in 2013. He reviewed what each committee at the HBA does and examples of projects they worked on in 2012.

**Executive Directors report**

- B. Nicholls reported that staff are currently conducting a review of projects for 2013 and examining how staff time will be spent. He stated that staff are conducting a StrengthsFinder exercise and will be building a proposed work plan over the next few weeks and that a staff retreat will occur on January 25. The results will be presented at the next Executive Committee meeting. He stated that the next HBA Member Open House will occur on Wednesday, January 30 at 5:30 PM at D Bar.

**Beautification Committee report**

- B. Nicholls stated that the Beautification Committee has been working on creating an RFQ for way finding signs, along with investigating the idea of pocket parks in Hillcrest.

**Marketing Committee report**

- A. Capano reported that the Marketing Committee completed the second edition of Your Guide to Fabulous and over 25,000 copies of the neighborhood guide are currently being distributed. She stated that the committee is launching radio promotions with JACK FM in two weeks to promote the Hillcrest business district. She also stated that the committee is exploring adding a micro brew tasting at retailers to the Taste of Hillcrest.



### Action items

- G. Younger presented the consent agenda, which included the December 2012 Board of Directors' meeting minutes and the November 2012.
  - Motion to approve December 2012 Board of Directors' meeting minutes and the November 2012 financials. J. Hale / E. Reynoso. 10/0/0. The motion passed unanimously.
- M. Brennan reported on the Hillcrest 2.0 Policy Memorandum.
  - Motion to approve of the Hillcrest 2.0 Policy Memorandum. M. Brennan / J. Hale. 10/0/0. The motion passed unanimously.
- B. Nicholls presented the FY2014 Business Improvement District (BID) budget.
  - Motion to approve the FY2014 BID budget and to enter into a contract with the City of San Diego to manage the Hillcrest BID. J. DiCola / E. Reynoso. 10/0/0. The motion passed unanimously.
- B. Nicholls stated that the Standard Operating Policy (SOP 8) regarding purchasing agreements has been modified to incorporate the suggested changes by City staff. He noted all expenditures should go through this policy unless waived by the board.
  - Motion to approve the changes to SOP 8 Purchasing Agreements. J. DiCola / P. Katz. 9/0/1. A. Ortiz abstained.
- J. Hale presented the Pride Flag agreement with San Diego LGBT Pride to replace the LGBT rainbow flag every four months and to manage the retired flags.
  - Motion to approve the Pride Flag agreement with San Diego LGBT Pride. J. Hale / M. Brennan. 10/0/0. The motion passed unanimously.

The meeting adjourned at 5:57 p.m.

**HBIA**  
**Profit & Loss Budget vs. Actual**  
 July through December 2012

				<b>TOTAL</b>		
	<b>Dec 12</b>	<b>Budget</b>	<b>Variance</b>	<b>Jul - Dec 12</b>	<b>Budget</b>	<b>Variance</b>
<b>Income</b>						
40010 - City Fest Income	0.00	0.00	0.00	144,181.20	130,000.00	14,181.20
40020 - Farmers Market	16,509.64	13,334.00	3,175.64	96,131.53	80,004.00	16,127.53
40030 - SBEP	2,501.51	2,380.00	121.51	7,556.77	7,140.00	416.77
40040 - MAD	7,214.71	7,515.00	-300.29	45,353.43	48,526.00	-3,172.57
40045 - MAD Reserve	0.00	2,146.00	-2,146.00	0.00	12,815.00	-12,815.00
40050 - BID	13,014.69	10,385.00	2,629.69	61,205.22	75,098.00	-13,892.78
40080 - Newsletter/Advertising	0.00	85.00	-85.00	0.00	510.00	-510.00
40090 - Mardi Gras	0.00	10,000.00	-10,000.00	4,500.00	15,000.00	-10,500.00
40115 - Taste 'N Tinis	18,664.67	7,000.00	11,664.67	18,864.67	17,000.00	1,864.67
40120 - Interest	3.40	100.00	-96.60	84.04	600.00	-515.96
40135 - Hillcrest Hoedown	21.00	0.00	21.00	35,829.92	38,700.00	-2,870.08
40140 - Banner Space	0.00	667.00	-667.00	600.00	4,002.00	-3,402.00
40145 - Pride Flag	0.00			7,750.00		
40155 - Pride of Hillcrest	5,393.00			128,783.14		
40160 - Hillcrest Map.	0.00	700.00	-700.00	600.00	4,300.00	-3,700.00
40180 - Other Income	53.00	167.00	-114.00	105.00	1,002.00	-897.00
<b>Total Income</b>	<b>63,375.62</b>	<b>54,479.00</b>	<b>8,896.62</b>	<b>551,544.92</b>	<b>434,697.00</b>	<b>116,847.92</b>
<b>Expense</b>						
<b>50000 - Personnel</b>						
50005 - Salaries	13,825.01	13,490.00	335.01	81,580.46	76,370.00	5,210.46
50025 - Employer Taxes - Federal	1,183.63	1,587.00	-403.37	6,366.91	9,018.00	-2,651.09
50035 - Health Insurance	-549.00	788.00	-1,337.00	2,034.72	4,728.00	-2,693.28
50040 - Workers Comp Insurance	0.00	193.00	-193.00	698.18	1,158.00	-459.82
<b>Total 50000 - Personnel</b>	<b>14,459.64</b>	<b>16,058.00</b>	<b>-1,598.36</b>	<b>90,680.27</b>	<b>91,274.00</b>	<b>-593.73</b>
<b>50045 - Operating</b>						
50050 - Rent Office Space	723.00	726.00	-3.00	5,061.00	4,356.00	705.00
50055 - Storage	235.00	150.00	85.00	1,410.00	900.00	510.00
50060 - Accounting	8.70	1,834.00	-1,825.30	9,191.10	11,004.00	-1,812.90
50065 - Audit	0.00	0.00	0.00	4,500.00	7,500.00	-3,000.00
50070 - Equipment Purchase	0.00	0.00	0.00	2,701.08	2,700.00	1.08
50075 - Intern/Consultant	385.00	417.00	-32.00	3,930.00	2,502.00	1,428.00
50080 - Bank & Credit Card Charges	-64.31	50.00	-114.31	129.86	300.00	-170.14

**HBIA**  
**Profit & Loss Budget vs. Actual**  
 July through December 2012

				<b>TOTAL</b>		
	<b>Dec 12</b>	<b>Budget</b>	<b>Variance</b>	<b>Jul - Dec 12</b>	<b>Budget</b>	<b>Variance</b>
<b>50085 - Repair and Maintenance</b>	0.00	100.00	-100.00	600.00	600.00	0.00
<b>50090 - Office Supplies</b>	2,013.60	268.00	1,745.60	3,328.73	1,608.00	1,720.73
<b>50095 - Postage and Delivery</b>	0.00	42.00	-42.00	338.72	252.00	86.72
<b>50100 - Printing/Photocopy</b>	19.57	340.00	-320.43	391.03	2,040.00	-1,648.97
<b>50120 - Meetings</b>	136.88	252.00	-115.12	1,807.45	1,512.00	295.45
<b>50125 - Legal</b>	0.00	167.00	-167.00	331.00	1,002.00	-671.00
<b>50130 - Telephone &amp; Internet</b>	659.56	447.00	212.56	3,297.29	2,682.00	615.29
<b>50135 - Parking/Mileage</b>	200.00	200.00	0.00	1,200.00	1,200.00	0.00
<b>50140 - Depreciation</b>	0.00	100.00	-100.00	173.30	600.00	-426.70
<b>50330 - D &amp; O / Liability Insurance</b>	0.00	589.00	-589.00	7,823.17	3,734.00	4,089.17
<b>Total 50045 - Operating</b>	<b>4,317.00</b>	<b>5,682.00</b>	<b>-1,365.00</b>	<b>46,213.73</b>	<b>44,492.00</b>	<b>1,721.73</b>
<b>51000 - Neighborhood/Promotion</b>						
<b>51515 - CityFest</b>	0.00	0.00	0.00	102,441.69	85,000.00	17,441.69
<b>51525 - Promotion/Marketing</b>	5,994.05	2,033.00	3,961.05	16,706.80	12,198.00	4,508.80
<b>51527 - Taste 'N Tinis</b>	5,613.82	7,000.00	-1,386.18	6,441.82	15,000.00	-8,558.18
<b>51530 - Banners</b>	960.00	300.00	660.00	4,949.95	2,300.00	2,649.95
<b>51535 - Web Site Communications</b>	0.00	67.00	-67.00	935.85	602.00	333.85
<b>51540 - Business Mixers/Open House</b>	0.00	116.00	-116.00	1,775.63	696.00	1,079.63
<b>51545 - Newsletter</b>	1,267.20	225.00	1,042.20	1,267.20	1,350.00	-82.80
<b>51555 - Farmer's Market</b>	856.01	1,234.00	-377.99	12,620.15	7,404.00	5,216.15
<b>51565 - Hillcrest Map</b>	0.00	0.00	0.00	1,962.00	4,300.00	-2,338.00
<b>51570 - Hillcrest Hoedown.</b>	2,226.48	0.00	2,226.48	47,020.74	36,500.00	10,520.74
<b>51575 - Pride Flag Project</b>	0.00			34,530.67		34,530.67
<b>51800 - Pride of Hillcrest</b>	0.00			104,927.69		104,927.69
<b>51870 - Mardi Gras</b>	6,552.04	10,000.00	-3,447.96	6,888.14	15,000.00	-8,111.86
<b>Total 51000 - Neighborhood/Promotion</b>	<b>23,469.60</b>	<b>20,975.00</b>	<b>2,494.60</b>	<b>342,468.33</b>	<b>180,350.00</b>	<b>162,118.33</b>
<b>53000 - Physical Improvements</b>						
<b>53125 - Hillcrest Sign Utilities/Maint.</b>	60.42	67.00	-6.58	320.53	402.00	-81.47
<b>53130 - Security</b>	3,165.40	3,000.00	165.40	18,992.40	18,000.00	992.40
<b>53135 - Street Cleaning</b>	3,908.00	4,167.00	-259.00	22,280.29	25,002.00	-2,721.71
<b>53137 - Pressure Washing</b>	1,999.00	1,321.00	678.00	11,696.00	13,892.00	-2,196.00
<b>53150 - Dumpsters</b>	309.28	301.00	8.28	2,224.68	1,806.00	418.68
<b>53152 - Flower Baskets (Purchase)</b>	0.00	10,452.00	-10,452.00	12,896.00	24,726.00	-11,830.00

**HBIA**  
**Profit & Loss Budget vs. Actual**  
 July through December 2012

				<b>TOTAL</b>		
	<b>Dec 12</b>	<b>Budget</b>	<b>Variance</b>	<b>Jul - Dec 12</b>	<b>Budget</b>	<b>Variance</b>
53155 - Tree Trimming & Maintenance	3,223.00	1,880.00	1,343.00	15,953.00	12,086.00	3,867.00
53160 - Capital Projects	0.00	2,085.00	-2,085.00	0.00	12,510.00	-12,510.00
53161 - Special Projects	0.00	7,100.00	-7,100.00	5,357.39	42,600.00	-37,242.61
53165 - Contingency	0.00	4,314.00	-4,314.00	1,298.00	25,884.00	-24,586.00
<b>Total 53000 - Physical Improvements</b>	<b>12,665.10</b>	<b>34,687.00</b>	<b>-22,021.90</b>	<b>91,018.29</b>	<b>176,908.00</b>	<b>-85,889.71</b>
<b>Total Expense</b>	<b>54,911.34</b>	<b>77,402.00</b>	<b>-22,490.66</b>	<b>570,380.62</b>	<b>493,024.00</b>	<b>77,356.62</b>
	<b>8,464.28</b>	<b>-22,923.00</b>	<b>31,387.28</b>	<b>-18,835.70</b>	<b>-58,327.00</b>	<b>39,491.30</b>

**HBIA**  
**Balance Sheet**  
As of December 31, 2012

	<b>Dec 31, 12</b>
<b>ASSETS</b>	
<b>Current Assets</b>	
<b>Checking/Savings</b>	
10020 · CHASE - Checking	3.16
10025 · CA. Bank & Trust	34,445.16
10035 · Comerica - Checking	168,734.34
10040 · CHASE - Money Market	
General	80,677.67
<b>Total 10040 · CHASE - Money Market</b>	<b>80,677.67</b>
<b>Total Checking/Savings</b>	283,860.33
<b>Accounts Receivable</b>	
12000 · Accounts Receivable	34,477.41
<b>Total Accounts Receivable</b>	<b>34,477.41</b>
<b>Other Current Assets</b>	
10115 · SBEP City Services	4,620.00
10120 · BID Receivable	10,564.64
10125 · MAD Receivable	21,032.02
10145 · Farmers Market Receivable	2,584.44
10155 · Prepaid Expense	4,439.43
10165 · Workers Compensation Deposit	842.00
10175 · Commission for Arts Grant Rcvbl	14,959.00
<b>Total Other Current Assets</b>	<b>59,041.53</b>
<b>Total Current Assets</b>	377,379.27
<b>Fixed Assets</b>	
10200 · Office Furniture & Equipment	13,139.00
10220 · Accumulated Depreciation	-12,792.40
<b>Total Fixed Assets</b>	<b>346.60</b>
<b>TOTAL ASSETS</b>	<b>377,725.87</b>
 <b>LIABILITIES &amp; EQUITY</b>	

**HBIA**  
**Balance Sheet**  
As of December 31, 2012

	<u>Dec 31, 12</u>
<b>Liabilities</b>	
<b>Current Liabilities</b>	
<b>Other Current Liabilities</b>	
20210 - Accrued Expenses	434.74
20225 - SBEP Advance	14,992.23
20230 - Sales Tax Payable	734.00
<b>21000 - Payroll Liabilities</b>	
Vacation Payable	<u>3,681.33</u>
<b>Total 21000 - Payroll Liabilities</b>	<u>3,681.33</u>
<b>Total Other Current Liabilities</b>	<u>19,842.30</u>
<b>Total Current Liabilities</b>	<u>19,842.30</u>
<b>Total Liabilities</b>	19,842.30
<b>Equity</b>	
31100 - Unrestricted Net Assets	376,719.27
Net Income	<u>-18,835.70</u>
<b>Total Equity</b>	<u>357,883.57</u>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<u><u>377,725.87</u></u>



**HBIA**  
**Profit & Loss by Class**  
 July through December 2012

	<u>110 GENERAL</u>	<u>220 SPECIAL EVENTS</u>	<u>410 BID CONTRACT</u>	<u>510 MAD</u>	<u>610 SBEP</u>	<u>TOTAL</u>
<b>Income</b>						
<b>40010 - City Fest Income</b>						
Beer & Wine	0.00	28,023.90	0.00	0.00	0.00	28,023.90
Booth	0.00	77,087.70	0.00	0.00	0.00	77,087.70
<b>Grants</b>						
Commission for Arts & Culture	0.00	12,459.00	0.00	0.00	0.00	12,459.00
SBEP City Services	0.00	1,435.10	0.00	0.00	0.00	1,435.10
TOT City & County	0.00	10,000.00	0.00	0.00	0.00	10,000.00
<b>Total Grants</b>	<b>0.00</b>	<b>23,894.10</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>23,894.10</b>
<b>Sponsorship</b>						
ATM	0.00	175.50	0.00	0.00	0.00	175.50
Coors	0.00	7,000.00	0.00	0.00	0.00	7,000.00
Starbucks	0.00	3,000.00	0.00	0.00	0.00	3,000.00
William Grant & Sons	0.00	5,000.00	0.00	0.00	0.00	5,000.00
<b>Total Sponsorship</b>	<b>0.00</b>	<b>15,175.50</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>15,175.50</b>
<b>Total 40010 - City Fest Income</b>	<b>0.00</b>	<b>144,181.20</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>144,181.20</b>
<b>40020 - Farmers Market</b>	<b>96,131.53</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>96,131.53</b>
<b>40030 - SBEP</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>7,556.77</b>	<b>7,556.77</b>
<b>40040 - MAD</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>45,353.43</b>	<b>0.00</b>	<b>45,353.43</b>
<b>40050 - BID</b>	<b>0.00</b>	<b>0.00</b>	<b>61,205.22</b>	<b>0.00</b>	<b>0.00</b>	<b>61,205.22</b>
<b>40090 - Mardi Gras</b>	<b>0.00</b>	<b>4,500.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>4,500.00</b>
<b>40115 - Taste 'N Tinis</b>	<b>0.00</b>	<b>18,864.67</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>18,864.67</b>
<b>40120 - Interest</b>	<b>84.04</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>84.04</b>
<b>40135 - Hillcrest Hoedown</b>	<b>275.00</b>	<b>35,554.92</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>35,829.92</b>
<b>40140 - Banner Space</b>	<b>600.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>600.00</b>
<b>40145 - Pride Flag</b>	<b>7,750.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>7,750.00</b>
<b>40155 - Pride of Hillcrest</b>	<b>0.00</b>	<b>128,783.14</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>128,783.14</b>
<b>40160 - Hillcrest Map.</b>	<b>600.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>600.00</b>
<b>40180 - Other Income</b>	<b>105.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>105.00</b>
<b>Total Income</b>	<b>105,545.57</b>	<b>331,883.93</b>	<b>61,205.22</b>	<b>45,353.43</b>	<b>7,556.77</b>	<b>551,544.92</b>
<b>Expense</b>						
<b>50000 - Personnel</b>						

**HBIA**  
**Profit & Loss by Class**  
 July through December 2012

	<b>110 GENERAL</b>	<b>220 SPECIAL EVENTS</b>	<b>410 BID CONTRACT</b>	<b>510 MAD</b>	<b>610 SBEP</b>	<b>TOTAL</b>
<b>50005 - Salaries</b>	36,688.96	20,636.00	17,235.68	0.00	7,019.82	81,580.46
<b>50025 - Employer Taxes - Federal</b>	2,932.63	1,578.77	1,318.56	0.00	536.95	6,366.91
<b>50035 - Health Insurance</b>	1,304.79	729.93	0.00	0.00	0.00	2,034.72
<b>50040 - Workers Comp Insurance</b>	389.08	0.00	309.10	0.00	0.00	698.18
<b>Total 50000 - Personnel</b>	<u>41,315.46</u>	<u>22,944.70</u>	<u>18,863.34</u>	<u>0.00</u>	<u>7,556.77</u>	<u>90,680.27</u>
<b>50045 - Operating</b>						
<b>50050 - Rent Office Space</b>	3,041.00	0.00	2,020.00	0.00	0.00	5,061.00
<b>50055 - Storage</b>	1,410.00	0.00	0.00	0.00	0.00	1,410.00
<b>50060 - Accounting</b>	5,066.85	1,649.74	2,474.51	0.00	0.00	9,191.10
<b>50065 - Audit</b>	0.00	0.00	1,125.00	3,375.00	0.00	4,500.00
<b>50070 - Equipment Purchase</b>	2,701.08	0.00	0.00	0.00	0.00	2,701.08
<b>50075 - Intern/Consultant</b>	3,930.00	0.00	0.00	0.00	0.00	3,930.00
<b>50080 - Bank &amp; Credit Card Charges</b>	129.86	0.00	0.00	0.00	0.00	129.86
<b>50085 - Repair and Maintenance</b>	600.00	0.00	0.00	0.00	0.00	600.00
<b>50090 - Office Supplies</b>	2,532.55	0.00	796.18	0.00	0.00	3,328.73
<b>50095 - Postage and Delivery</b>	338.72	0.00	0.00	0.00	0.00	338.72
<b>50100 - Printing/Photocopy</b>	391.03	0.00	0.00	0.00	0.00	391.03
<b>50120 - Meetings</b>	1,807.45	0.00	0.00	0.00	0.00	1,807.45
<b>50125 - Legal</b>	331.00	0.00	0.00	0.00	0.00	331.00
<b>50130 - Telephone &amp; Internet</b>	2,315.29	0.00	982.00	0.00	0.00	3,297.29
<b>50135 - Parking/Mileage</b>	1,200.00	0.00	0.00	0.00	0.00	1,200.00
<b>50140 - Depreciation</b>	173.30	0.00	0.00	0.00	0.00	173.30
<b>50330 - D &amp; O / Liability Insurance</b>	5,906.97	0.00	1,916.20	0.00	0.00	7,823.17
<b>Total 50045 - Operating</b>	<u>31,875.10</u>	<u>1,649.74</u>	<u>9,313.89</u>	<u>3,375.00</u>	<u>0.00</u>	<u>46,213.73</u>
<b>51000 - Neighborhood/Promotion</b>						
<b>51525 - Promotion/Marketing</b>	4,397.15	6,000.00	6,309.65	0.00	0.00	16,706.80
<b>51527 - Taste 'N Tinis</b>	0.00	6,441.82	0.00	0.00	0.00	6,441.82
<b>51530 - Banners</b>	4,949.95	0.00	0.00	0.00	0.00	4,949.95
<b>51535 - Web Site Communications</b>	935.85	0.00	0.00	0.00	0.00	935.85
<b>51540 - Business Mixers/Open House</b>	886.52	0.00	889.11	0.00	0.00	1,775.63
<b>51545 - Newsletter</b>	0.00	0.00	1,267.20	0.00	0.00	1,267.20
<b>51555 - Farmer's Market</b>	12,620.15	0.00	0.00	0.00	0.00	12,620.15
<b>51565 - Hillcrest Map</b>	1,962.00	0.00	0.00	0.00	0.00	1,962.00
<b>51570 - Hillcrest Hoedown.</b>	0.00	47,020.74	0.00	0.00	0.00	47,020.74

**HBIA**  
**Profit & Loss by Class**  
 July through December 2012

	<u>110 GENERAL</u>	<u>220 SPECIAL EVENTS</u>	<u>410 BID CONTRACT</u>	<u>510 MAD</u>	<u>610 SBEP</u>	<u>TOTAL</u>
51575 - Pride Flag Project	34,530.67	0.00	0.00	0.00	0.00	34,530.67
51800 - Pride of Hillcrest	0.00	104,927.69	0.00	0.00	0.00	104,927.69
51870 - Mardi Gras	0.00	6,888.14	0.00	0.00	0.00	6,888.14
<b>Total 51000 - Neighborhood/Promotion</b>	<b>60,282.29</b>	<b>171,278.39</b>	<b>8,465.96</b>	<b>0.00</b>	<b>0.00</b>	<b>240,026.64</b>
<b>51520 - City Fest</b>						
Advertising	0.00	6,206.02	0.00	0.00	0.00	6,206.02
Ambulance	0.00	800.00	0.00	0.00	0.00	800.00
BID Crew & Equipment	0.00	3,055.18	0.00	0.00	0.00	3,055.18
City Fees (SDPD/Fire)	0.00	16,027.10	0.00	0.00	0.00	16,027.10
Cleaning Fees	0.00	658.57	0.00	0.00	0.00	658.57
Concessions	0.00	6,156.09	0.00	0.00	0.00	6,156.09
Entertainment	0.00	10,049.00	0.00	0.00	0.00	10,049.00
Equipment Rental	0.00	506.43	0.00	0.00	0.00	506.43
Event Management	0.00	10,545.00	0.00	0.00	0.00	10,545.00
Ice Trailer	0.00	654.50	0.00	0.00	0.00	654.50
Power	0.00	8,035.96	0.00	0.00	0.00	8,035.96
Promotions	0.00	1,730.02	0.00	0.00	0.00	1,730.02
Radios	0.00	285.00	0.00	0.00	0.00	285.00
Rentals	0.00	150.00	0.00	0.00	0.00	150.00
Safety Equipment	0.00	3,591.30	0.00	0.00	0.00	3,591.30
Security	0.00	6,170.17	0.00	0.00	0.00	6,170.17
Shuttle Services	0.00	1,733.22	0.00	0.00	0.00	1,733.22
Sound & Lights	0.00	10,900.00	0.00	0.00	0.00	10,900.00
Staging	0.00	10,868.43	0.00	0.00	0.00	10,868.43
Supplies/Printing	0.00	806.98	0.00	0.00	0.00	806.98
Toilets/Sinks	0.00	3,512.72	0.00	0.00	0.00	3,512.72
<b>Total 51520 - City Fest</b>	<b>0.00</b>	<b>102,441.69</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>102,441.69</b>
<b>53000 - Physical Improvements</b>						
53125 - Hillcrest Sign Utilities/Maint.	0.00	0.00	0.00	320.53	0.00	320.53
53130 - Security	0.00	0.00	0.00	18,992.40	0.00	18,992.40
53135 - Street Cleaning	5,107.04	0.00	9,609.13	7,564.12	0.00	22,280.29
53137 - Pressure Washing	1,151.36	0.00	5,112.42	5,432.22	0.00	11,696.00
53150 - Dumpsters	324.00	0.00	939.24	961.44	0.00	2,224.68
53152 - Flower Baskets (Purchase)	10,748.00	0.00	2,148.00	0.00	0.00	12,896.00

**HBIA**  
**Profit & Loss by Class**  
 July through December 2012

	<u>110 GENERAL</u>	<u>220 SPECIAL EVENTS</u>	<u>410 BID CONTRACT</u>	<u>510 MAD</u>	<u>610 SBEP</u>	<u>TOTAL</u>
53155 - Tree Trimming & Maintenance	492.04	0.00	6,753.24	8,707.72	0.00	15,953.00
53161 - Special Projects	5,357.39	0.00	0.00	0.00	0.00	5,357.39
53165 - Contingency	1,298.00	0.00	0.00	0.00	0.00	1,298.00
<b>Total 53000 - Physical Improvements</b>	<u>24,477.83</u>	<u>0.00</u>	<u>24,562.03</u>	<u>41,978.43</u>	<u>0.00</u>	<u>91,018.29</u>
<b>Total Expense</b>	<u>157,950.68</u>	<u>298,314.52</u>	<u>61,205.22</u>	<u>45,353.43</u>	<u>7,556.77</u>	<u>570,380.62</u>
	<u><b>-52,405.11</b></u>	<u><b>33,569.41</b></u>	<u><b>0.00</b></u>	<u><b>0.00</b></u>	<u><b>0.00</b></u>	<u><b>-18,835.70</b></u>

## CONTRATING AGREEMENT

February 12, 2013

This agreement is executed by MakeFab Inc. a California corporation (hereinafter "Contractor") located at 701 Kettner Blvd. #112, San Diego, CA 92101, and Hillcrest Business Association (hereinafter "HBA"), whose address is 3737 Fifth Avenue, San Diego, CA 92103, with respect to the following facts:

### Recitals

- A. The City of San Diego, though not a party to this agreement is referred to in this agreement as "The City".
- B. HBA desires to have Contractor provide specified services as outlined in attachment A.
- C. HBA has engaged with the property owner, The City of San Diego, by contract to provide a variety of services as outlined by city ordinances and contracts.

The parties hereby enter into the following agreement:

### Agreement

Please refer to Attachment # A for Scope of Work.

### Fees and Payments

- A. HBA shall pay to Contractor the amount(s) for service rendered pursuant to this agreement, per Attachment #A.
- B. The total amount indicated in Attachment #A shall be paid by invoice. 50% of contracted fee shall be paid at the beginning of the project and the balance shall be paid by invoice at the completion of the project as defined by HBA.

### Other Considerations

#### Term

The term of this agreement shall commence at the date of signing and shall conclude on July 1, 2013. All tasks shall be completed within the period of the contract. The contract may be extended for increments of seven days by in writing by HBA.

The contract may be terminated for any reason by either party with 30 days written notice.

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

It is understood and agreed that by virtue of entering into this agreement, Contractor and/or its employees shall not become employees of HBA. Rather, Contractor shall have the status of an

independent Contractor. HBA shall make no deductions of any kind from any consideration paid Contractor, including but not limited to state, federal and local taxes, social security, etc. HBA shall not be required to secure workers compensation or any other insurance or benefit for Contractor except as may be expressly provided herein. Contractor shall maintain general discretion and control over the manner in which the services required hereunder are performed. Nothing herein shall be construed or interpreted to prohibit Contractor from entering into similar or dissimilar agreements with other parties or entities, provided that Contractor shall devote all time reasonably necessary to fully perform its obligations hereunder.

Materials, supplies and equipment. Contractor shall furnish all materials, supplies and equipment necessary to fully perform the services specified herein.

Authorization. HBA hereby represents and warrants that if not the owner of the Premises, or the HBA is fully authorized by the owner to enter into this agreement.

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

Inclement conditions, other disruptive factors. HBA hereby acknowledges that rain, strong winds and other inclement conditions may impair the ability of Contractor to provide required services at specific dates.

Assignment. HBA or Contractor may not assign any rights or obligations hereunder without the prior, express written consent of both parties. This agreement shall be binding on and inure to the benefit of the successors, assigns and personal representatives of the parties.

No joint venture or partnership. This agreement shall not be construed or interpreted to create or establish any joint venture or partnership between the parties.

Notices. Any notice to a party required or permitted hereunder shall be deemed given on the date of delivery if personally served, or on the third day after mailing if mailed. Any notice by mail shall be first class or airmail, postage prepaid, certified mail (return receipt requested) and sent to the address indicated by the signature of the party on this Agreement, or to the most recent address given the sender by written notice from that party.

Waivers. The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of such provision or of any other provision.

Entire agreement, amendment. This instrument contains the entire Agreement of the parties, and supersedes any and all prior representations, negotiations, agreements and understandings between them, whether oral or written. This Agreement may not be modified or amended except by written instrument, signed by each party hereto.

Governing law. Contractor shall at all times comply with all applicable laws, statutes, ordinances, and regulations of City, county, state, and federal governments. Contractor shall also comply with all notices issued by City under the authority of all current or future laws, statutes, ordinances, or regulations. The construction, interpretation and application of this Agreement shall be governed by the law of the State of California.

Force majeure. If performance by Contractor of any of its obligations hereunder is interrupted or delayed by any occurrence not occasioned by the conduct of either party to this agreement, e.g., whether that occurrence is an act of God or public enemy, or whether that occurrence is caused by war, riot, storm, earthquake or other natural forces, or by the acts of anyone not a party to this agreement, then Contractor shall be excused from any further performance for whatever period of time after the occurrence is reasonably necessary to remedy the effects of that occurrence.

Severability. Should any provision of this Agreement be rendered void, invalid or unenforceable by any court of competent jurisdiction, such invalidity, etc., shall not render void or unenforceable any other provision.

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

Agreements with third parties

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

Insurance. Contractor shall defend, indemnify, protect, and hold harmless the City and HBA, their elected officials, departments, officers, employees, representatives, and agents from and against any and all claims asserted, or liability established, for damages or injuries to any person or property resulting from Contractor work as set forth in this agreement. Contractor shall provide Commercial General Liability [CGL] Insurance, naming HBA and the "The City of San Diego, its elected officials, officers, employees, representatives, and agents" as additionally insured. Contractor shall provide Workers' Compensation Insurance, as required by the laws of the State of California for all of Contractor employees who are subject to this Agreement, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000). "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additionally insured in the CGL. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be delivered to HBA at the execution of this contract. All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements. If City is made a party to any judicial or administrative proceeding to resolve the dispute between HBA and Contractor, Contractor shall defend and indemnify the City as described herein.

Equal employment and nondiscriminatory provisions. Contractor shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in Contractor activities pursuant to this Agreement, including but not limited to the providing of

goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment. Contractor shall comply with City Council Ordinance No.18173 (San Diego Municipal Code sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated into this Agreement. Contractor is individually responsible to abide by its contents. Contractor shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor may be required to comply, and require each of its Sub Contractors to comply, with the provisions of the City's Living Wage Ordinance. It is the responsibility of the Contractor to determine if compliance is required. Contractor is required where applicable to comply with the Americans with Disabilities Act, the City of San Diego Drug Free Workplace requirements, and Storm Water Management and Discharge Control Ordinance.

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

In witness thereof, the parties have executed this agreement  
on \_\_\_\_\_, at \_\_\_\_\_, California.

**Hillcrest Business Association**

By:

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

**Contractor**

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



## Attachment # A Scope of Work

### Service Area :

This project will be conducted in the median on Normal St. at University Ave. in Hillcrest, San Diego.

### Scope of Work:

Contractor shall provide the work as described below:

- Install a round flag base that is 3' diameter x 2' tall with (4) aluminum panels and (4) tapered aluminum panels approximately 24" wide at base x 18" top x 36" height as described in attachment #C.
- Panels to include etched LGBT cultural information and donor recognition.
- Provide two rounds of donor artwork for approval including with one round of changes and one community meeting.
- Provide all labor and materials to complete project including fabrication, installation, powder-coat finish, metal, etching of artwork and recognition information.

### HBA will provide

HBA shall provide:

- A payment of \$12,000 for the services noted above on terms noted above.
- All permitting and engineering work as required.
- All artistic, historical or recognition information.
- Management of all community relations and outreach relating to the project.

## Attachment B: Conflict of Interest policy

No contract may be entered into by the HBA if one of its officers, members, directors, committee members, staff members or volunteers has a material financial interest in the contract or transaction, except in the following circumstances:

- (1) the material facts as to the contract or transaction and as to the party's interest are fully disclosed or known to the member, board or committee voting on the matter;
- (2) the contract or transaction is approved by the members, board or committee in good faith, by a vote sufficient without counting the vote of the interested party or parties;
- (3) the interested party or parties abstains from voting on the matter;
- (4) the contract or transaction is just and reasonable to the HBA at the time it was authorized, approved or ratified;
- (5) the interested party or parties shall not actively participate in the decision about the contract or transaction, except to answer questions or provide a broad explanation;
- (6) the action is recorded in meeting minutes, noting which members voted, how the members voted, and identifying any members who abstained from voting.

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

Attachment C: Preliminary monument design

## Contracting Agreement

February 12, 2013

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 #202, San Diego, CA 92103 and Light Style (hereinafter referred to as "Contractor"), whose address is 5725 Kearny Villa Rd. #M, San Diego, CA 92123.

### Recitals

- A. The City of San Diego, though not a party to this agreement is referred to in this agreement as "The City".
- B. HBA desires to have Contractor provide specified services as outlined in attachment A.
- C. HBA has engaged with the property owner, The City of San Diego, by contract to provide a variety of services as outlined by city ordinances and contracts.

### Agreement

Please refer to Attachment # A for Scope of Work.

### Fees and Payments

- A. HBA shall pay to Contractor the amount(s) for service rendered pursuant to this agreement, per Attachment #A.
- B. The total amount indicated in Attachment #A shall be paid by invoice. 50% of contracted fee shall be paid at the beginning of the project and the balance shall be paid by invoice at the completion of the project as defined by HBA.

### Other Considerations

#### Term

The term of this agreement shall commence at the date of signing and shall conclude after ninety days. All tasks shall be completed within the period of the contract. The contract may be extended for increments of 30 days by in writing by HBA.

The contract may be terminated for any reason by either party with 30 days written notice.

#### Independent contractor status

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

It is understood and agreed that by virtue of entering into this agreement, Contractor and/or its employees shall not become employees of HBA. Rather, Contractor shall have the status of an independent Contractor. HBA shall make no deductions of any kind from any consideration paid

Contractor, including but not limited to state, federal and local taxes, social security, etc. HBA shall not be required to secure workers compensation or any other insurance or benefit for Contractor except as may be expressly provided herein. Contractor shall maintain general discretion and control over the manner in which the services required hereunder are performed. Nothing herein shall be construed or interpreted to prohibit Contractor from entering into similar or dissimilar agreements with other parties or entities, provided that Contractor shall devote all time reasonably necessary to fully perform its obligations hereunder.

Materials, supplies and equipment. Contractor shall furnish all materials, supplies and equipment necessary to fully perform the services specified herein.

Authorization. HBA hereby represents and warrants that if not the owner of the Premises, or the HBA is fully authorized by the owner to enter into this agreement.

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

Inclement conditions, other disruptive factors. HBA hereby acknowledges that rain, strong winds and other inclement conditions may impair the ability of Contractor to provide required services at specific dates.

Assignment. HBA or Contractor may not assign any rights or obligations hereunder without the prior, express written consent of both parties. This agreement shall be binding on and inure to the benefit of the successors, assigns and personal representatives of the parties.

No joint venture or partnership. This agreement shall not be construed or interpreted to create or establish any joint venture or partnership between the parties.

Notices. Any notice to a party required or permitted hereunder shall be deemed given on the date of delivery if personally served, or on the third day after mailing if mailed. Any notice by mail shall be first class or airmail, postage prepaid, certified mail (return receipt requested) and sent to the address indicated by the signature of the party on this Agreement, or to the most recent address given the sender by written notice from that party.

Waivers. The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of such provision or of any other provision.

Entire agreement, amendment. This instrument contains the entire Agreement of the parties, and supersedes any and all prior representations, negotiations, agreements and understandings between them, whether oral or written. This Agreement may not be modified or amended except by written instrument, signed by each party hereto.

Governing law. Contractor shall at all times comply with all applicable laws, statutes, ordinances, and regulations of City, county, state, and federal governments. Contractor shall also comply with all notices issued by City under the authority of all current or future laws, statutes, ordinances, or regulations. The construction, interpretation and application of this Agreement shall be governed by the law of the State of California.

Force majeure. If performance by Contractor of any of its obligations hereunder is interrupted or delayed by any occurrence not occasioned by the conduct of either party to this agreement, e.g., whether that occurrence is an act of God or public enemy, or whether that occurrence is caused by war, riot, storm, earthquake or other natural forces, or by the acts of anyone not a party to this agreement, then Contractor shall be excused from any further performance for whatever period of time after the occurrence is reasonably necessary to remedy the effects of that occurrence.

Severability. Should any provision of this Agreement be rendered void, invalid or unenforceable by any court of competent jurisdiction, such invalidity, etc., shall not render void or unenforceable any other provision.

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

Agreements with third parties

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

Insurance. Contractor shall defend, indemnify, protect, and hold harmless the City and HBA, their elected officials, departments, officers, employees, representatives, and agents from and against any and all claims asserted, or liability established, for damages or injuries to any person or property resulting from Contractor work as set forth in this agreement. Contractor shall provide Commercial General Liability [CGL] Insurance, naming HBA and the "The City of San Diego, its elected officials, officers, employees, representatives, and agents" as additionally insured. Contractor shall provide Workers' Compensation Insurance, as required by the laws of the State of California for all of Contractor employees who are subject to this Agreement, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000). "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additionally insured in the CGL. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be delivered to HBA at the execution of this contract. All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements. If City is made a party to any judicial or administrative proceeding to resolve the dispute between HBA and Contractor, Contractor shall defend and indemnify the City as described herein.

Equal employment and nondiscriminatory provisions. Contractor shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in Contractor activities pursuant to this Agreement, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and

holding of employment. Contractor shall comply with City Council Ordinance No.18173 (San Diego Municipal Code sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated into this Agreement. Contractor is individually responsible to abide by its contents. Contractor shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor may be required to comply, and require each of its Sub Contractors to comply, with the provisions of the City's Living Wage Ordinance. It is the responsibility of the Contractor to determine if compliance is required. Contractor is required where applicable to comply with the Americans with Disabilities Act, the City of San Diego Drug Free Workplace requirements, and Storm Water Management and Discharge Control Ordinance.

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

In witness thereof, the parties have executed this agreement  
on \_\_\_\_\_, at \_\_\_\_\_, California.

**Hillcrest Business Association**

By:

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

**Contractor**

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

Attachment #A: scope of work

Contractor agrees to provide the following:

- Repair existing light strings on the 15 large “Heritage Trees” on Fifth Ave. at University Ave. and two trees on Robinson Ave. at Fifth Ave.
- Install up to four permanent “up-lights” in each of the trees so they are out of reach from the ground.
- Connect all new lights to existing power sources and review existing light string to ensure safety.
- Adjust the projection of the lights so as to illuminate the canopy of the tree and the significant braches.
- Provide all materials (including but not limited to: lights, light strings, cables, wiring) and labor required to complete the project.
- Conduct a quarterly review starting one year from the date of completion.

Any required permits and fees are not included and will be the responsibility of the HBA.

HBA shall provide:

- A payment not to exceed \$26,960.00 for the services noted above.
- All permitting and engineering work as required.

Attachment #B: conflict of interest policy

No contract may be entered into by the Hillcrest Business Association if one of its officers, members, directors, committee members, staff members or volunteers has a material financial interest in the contract or transaction, except in the following circumstances:

- (1) the material facts as to the contract or transaction and as to the party’s interest are fully disclosed or known to the member, board or committee voting on the matter;
- (2) the contract or transaction is approved by the members, board or committee in good faith, by a vote sufficient without counting the vote of the interested party or parties;
- (3) the interested party or parties abstains from voting on the matter;
- (4) the contract or transaction is just and reasonable to the Hillcrest Business Association at the time it was authorized, approved or ratified;
- (5) the interested party or parties shall not actively participate in the decision about the contract or transaction, except to answer questions or provide a broad explanation;
- (6) the action is recorded in meeting minutes, noting which members voted, how the members voted, and identifying any members who abstained from voting.

A violation of any provision of this policy shall be grounds for removal of the officers, directors, members, committee members, staff members or volunteers from their positions with the HBA.

A contract or transaction entered into in violation of this Conflict of Interest Policy shall be void and unenforceable.

## Contracting Agreement

February 12, 2013

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 #202, San Diego, CA 92103 and Berg Electric (hereinafter referred to as "Contractor"), whose address is 650 Opper St., Escondido, CA 92029.

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

### Recitals

The HBA is seeking to complete installation and construction of permanent festoon lighting in above the street on University Ave. between Fourth and Fifth Ave. This project will be referred to as the Hillcrest Light Canopy Project.

### Agreement

#### Services to be provided

Contractor shall provide construction services described in attachment #A.

#### Term and terminations

The term of this agreement shall be one year from the date of its execution. All work shall be completed within the term of this agreement. This agreement may be canceled by either party for any reason with thirty days notice. If this agreement is cancelled for any reason by either party, there will be no liability on the part of either party regarding this agreement.

#### Independent contractor status

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

#### Governing law

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

#### Conflict of interest

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



### Insurance

Contractor shall defend, indemnify, protect, and hold harmless the City and HBA, their elected officials, departments, officers, employees, representatives, and agents from and against any and all claims asserted, or liability established, for damages or injuries to any person or property. Contractor shall provide Commercial General Liability [CGL] Insurance, naming HBA and the "The City of San Diego, its elected officials, officers, employees, representatives, and agents" as additionally insured. Contractor shall provide Workers' Compensation Insurance, as required by the laws of the State of California for all of Contractor's employees who are subject to this agreement, with Employers' Liability coverage with a limit of at least one million dollars (\$1,000,000). "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additionally insured in the CGL. The policies shall be kept in force for the duration of the term and any extended use. The certificate(s) of insurance shall be delivered to HBA at the execution of this contract. All insurance required by the terms of this agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements. If the City is made a party to any judicial or administrative proceeding to resolve the dispute between HBA and Contractor, Contractor shall defend and indemnify the City as described herein.

### Payment

HBA agrees to pay an amount not to exceed (without written authorization) \$49,785.00. Billing shall be in the form of a monthly invoice which shall detail work completed for the period and shall clearly detail time spent as it relates to the items described in attachment #A.

### Agreements with third parties

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

### Equal employment and nondiscriminatory provisions

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

with Disabilities Act, the City of San Diego Drug Free Workplace requirements, and Storm Water Management and Discharge Control Ordinance.

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

Materials, supplies and equipment. Contractor shall furnish all materials, supplies and equipment necessary to fully perform the services specified herein. Contractor shall not rely on any third party contribution or donated materials unless disclosed and agreed upon by HBA.

Authorization. HBA hereby represents and warrants that while not the owner of the premises where services are to be provided the HBA is fully authorized by the owner to enter into this agreement.

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

No joint venture or partnership. This agreement shall not be construed or interpreted to create or establish any joint venture or partnership between the parties.

IN WITNESS WHEREOF, the parties have executed this agreement

on \_\_\_\_\_, at \_\_\_\_\_, California.

HILLCREST BUSINESS  
ASSOCIATION

Contractor

By:

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

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

## Attachment A: scope of work

### Contractor agrees to provide the following:

- Provide all design details and illustrations for the project in order to complete City of San Diego permitting process
- Provide and install 14 “strings” of RGB lights in the area described including all material, labor, and miscellaneous equipment needed to complete the project.
- The project shall include:
  - The installation of 1/8” galvanized aircraft cables attached to the buildings on either side of the street
  - RGB light strings shall be attached to the cable and shall be connected to an existing or new SDGE electrical meter
  - Appropriate technology will be installed at the site so as to be able to remotely change the colors and c of the lights or set the lights on a programmable schedule
- Installation will occur after hours
- Contractor will apply for construction permit and traffic control permit and agrees that the permits and related fees may cost up to \$1,500

### HBA agrees to provide the following:

- Payment based on the above schedule
- Any entitlements, site permits or related fees excluding construction permit fees as required

## Attachment B: conflict of interest policy

No contract may be entered into by the Hillcrest Business Association if one of its officers, members, directors, committee members, staff members or volunteers has a material financial interest in the contract or transaction, except in the following circumstances:

- (1) the material facts as to the contract or transaction and as to the party’s interest are fully disclosed or known to the member, board or committee voting on the matter;
- (2) the contract or transaction is approved by the members, board or committee in good faith, by a vote sufficient without counting the vote of the interested party or parties;
- (3) the interested party or parties abstains from voting on the matter;
- (4) the contract or transaction is just and reasonable to the Hillcrest Business Association at the time it was authorized, approved or ratified;
- (5) the interested party or parties shall not actively participate in the decision about the contract or transaction, except to answer questions or provide a broad explanation;
- (6) the action is recorded in meeting minutes, noting which members voted, how the members voted, and identifying any members who abstained from voting.

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