REQUEST FOR COUNCIL ACTION

CITY COUNCIL MEETING DATE:
DECEMBER 18, 2018

TITLE:
APPROVE FIRST AMENDMENTS TO THE DOWNTOWN MERCHANTS FUND OPERATING AGREEMENTS WITH DOWNTOWN INC. AND SANTA ANA BUSINESS COUNCIL {STRATEGIC PLAN NO. 3, 4F}

RECOMMENDED ACTION

Authorize the City Manager and the Clerk of the Council to execute First Amendments to the Downtown Merchants Fund Operating Agreements with Downtown Inc. and Santa Ana Business Council in the amount of $200,000 ($100,000 per organization) for the period of January 1, 2019 through December 31, 2019, subject to non-substantive changes approved by the City Manager and City Attorney.

DISCUSSION

On August 4, 2015, the City Council adopted the Downtown Enhancements and Parking Modernization Plan to address the need to modernize parking structures, enhance public amenities, and address deferred maintenance in the downtown. As part of the Plan, downtown business associations and stakeholders agreed to an increase in parking rates and the implementation of new smart meters in the downtown area with the understanding that increased revenue from these new rates and smart meters would be reinvested back into the downtown.

As part of the Plan, it was proposed that a Downtown Merchants/Validation Fund be created to fund a validation program for participating business and merchants to reward their customers for using the parking structures. Before implementation, both merchant groups and the City staff determined that a validation program was not feasible due to the administrative burden of such a program. It was recommended that the funds be used by Downtown Inc. and Santa Ana Business Council for continued promotion and marketing of the downtown to complement the annual Business Improvement District funds.

On December 5, 2017, the City Council approved agreements with Downtown Inc. and Santa Ana Business Council in the amount of $200,000 ($100,000 per organization) for the 2018 Downtown Merchants Fund (DMF) in lieu of the validation program. The intent of this agreement is for both organizations to receive $100,000 from the DMF each calendar year that such funding is approved by City Council.
The proposed 2019 Merchants Fund budgets of in the amount of $200,000 ($100,000 per organization) have been submitted for City Council consideration (Exhibit 1). With approval, this funding will continue to support marketing efforts and will allow for successful year-round administration of events for the Downtown. This additional $100,000 per organization will complement the existing funds each association receives from the City’s Business Improvement District (BID).

In FY 2017-18, the Merchants Fund enhanced the Business Improvement District funding and brought successful events and promotions that drew thousands of visitors to Downtown Santa Ana. These events and promotions included: First Saturday Artwalk, Savor Santa Ana, Boca De Oro Literary Festival, Santa Ana Media Summit, Outdoor Cinema Series, Santa Ana Sidewalk Sales (monthly), and the Downtown Santa Ana newsletter. Additionally, the Downtown Bridal Association, Restaurant Association, Arts Association, and other downtown stakeholder meetings also receive support.

**STRATEGIC PLAN ALIGNMENT**

Approval of this item allows the City to meet Goal #3 (Economic Development), Objective 4 (Continue to pursue objectives that shape downtown Santa Ana into a thriving, culturally diverse, shopping, dining, and entertainment destination), Strategy F (Partner with downtown business and merchant associations to program events that showcase restaurants, shopping and entertainment venues).

**FISCAL IMPACT**

Funds in the amount of $100,000 are available in the Downtown Enhancements and Parking Modernization Plan account (no. 02710133-62300) for expenditure in FY 18-19. Funds in the amount of $100,000 for the second half of the agreement term will be included and budgeted in the FY 19-20 budget.

**APPROVED AS TO FUNDS AND ACCOUNTS:**

Steven A. Mendoza  
Executive Director  
Community Development Agency  

Kathryn Downs, CPA  
Executive Director  
Finance and Management Services Agency

**Exhibits:**
1. Proposed 2019 Merchants Fund Budget  
2. Downtown Inc. - First Amendment to the Downtown Merchants Fund Operating Agreement  
3. Downtown Inc. - Downtown Merchants Fund Operating Agreement  
4. Santa Ana Business Council - First Amendment to the Downtown Merchants Fund Operating Agreement  
5. Santa Ana Business Council – Downtown Merchants Fund Operating Agreement
### Proposed 2019 Merchants Fund (Parking Revenue) Budget

**Downtown Inc. Budget**

<table>
<thead>
<tr>
<th>Category</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personnel Costs</td>
<td>$42,500</td>
</tr>
<tr>
<td>Contractors/Professional Services</td>
<td>$15,000</td>
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<tr>
<td>-- Event Producers, Program Coordinators, Production Staff</td>
<td></td>
</tr>
<tr>
<td>Meetings/Stakeholder Groups/Training</td>
<td>$12,500</td>
</tr>
<tr>
<td>-- Restaurant Assoc., Arts Meetings, Staff &amp; Stakeholder Development</td>
<td></td>
</tr>
<tr>
<td>Marketing/Promotions/Events</td>
<td>$12,500</td>
</tr>
<tr>
<td>-- Maps, Guides, Savor Santa Ana, Artwalk</td>
<td></td>
</tr>
<tr>
<td>Communication</td>
<td>$10,000</td>
</tr>
<tr>
<td>-- Newsletter, Social Media, Translation, Design, Videos, Photos</td>
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</tr>
<tr>
<td>Office/Operations/Technology</td>
<td>$7,500</td>
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<tr>
<td>--- Office Supplies, Web hosting, Subscription Technology/Software</td>
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</table>

**Downtown Inc. TOTAL:** $100,000

**Santa Ana Business Council Budget**

<table>
<thead>
<tr>
<th>Category</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative/Personnel Costs</td>
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<tr>
<td>-- Consulting Services</td>
<td></td>
</tr>
<tr>
<td>Contractors/Professional Services</td>
<td>$23,300</td>
</tr>
<tr>
<td>-- Grant Writer, Specialized Nonprofit Accountant</td>
<td></td>
</tr>
<tr>
<td>Meetings/Stakeholder Groups/Training</td>
<td>$20,000</td>
</tr>
<tr>
<td>-- Entrepreneurship and Small Business Education Development</td>
<td></td>
</tr>
<tr>
<td>Marketing/Promotions</td>
<td>$9,700</td>
</tr>
<tr>
<td>-- Building Downtown Business &amp;Community Engagement Team, Internship Program</td>
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</tr>
<tr>
<td>Events/Entertainment/Sponsorships</td>
<td>$14,000</td>
</tr>
<tr>
<td>-- Downtown Activation, Circulation, Flows, Urban Tacticalism, Pilot Projects</td>
<td></td>
</tr>
<tr>
<td>Communication</td>
<td>$15,000</td>
</tr>
<tr>
<td>-- News, Print Media, Photography, Videography, Social Media Support Services</td>
<td></td>
</tr>
</tbody>
</table>

**Santa Ana Business Council TOTAL:** $100,000

**Proposed 2019 Merchants Fund Budget TOTAL:** $200,000

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25Q-3
EXHIBIT 2
FIRST AMENDMENT TO
THE DOWNTOWN MERCHANTS FUND
OPERATING AGREEMENT

THIS FIRST AMENDMENT TO THE DOWNTOWN MERCHANTS FUND OPERATING AGREEMENT is entered into this 18th day of December, 2018, by and between the City of Santa Ana, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California ("City"), and Downtown Incorporated, Inc., a California non-profit corporation ("DTI").

RECITALS

A. On January 10, 2018, the City entered into the Downtown Merchants Fund Operating Agreement #A-2017-326 with DTI to create the Downtown Merchants Fund ("DMF") from a portion of downtown parking revenues for continued promotion of the downtown ("said Agreement"). The intent of said Agreement is for DTI to receive $100,000 from the DMF each calendar year that such funding is approved by City Council.

B. The City hereby approves an additional $100,000 in DMF funds for use by DTI in 2019 pursuant to the terms and conditions of said Agreement. Additionally, the City hereby approves DTI's 2019 DMF Annual Budget.

C. In accordance with the terms and conditions of said Agreement, the parties desire to amend said Agreement to extend the term of said Agreement, add an additional $100,000 in DMF funding for the extended term of said Agreement, and incorporate DTI's 2019 DMF Annual Budget into said Agreement.

NOW THEREFORE, in consideration of the mutual and respective promises, and subject to the terms and conditions of said Agreement, except as herein modified, the parties agree as follows:

1. Pursuant to the terms of said Agreement, the City Council approved an additional $100,000 in DMF funding for the 2019 calendar year to be utilized by DTI pursuant to DTI's 2019 DMF Annual Budget and the terms of said Agreement.

2. Section 1.02, Term, shall be amended to read as follows:

"This Agreement shall commence on the date first written above and terminate on December 31, 2019, unless terminated earlier in accordance with sections 4.02 or 4.05 below."

3. Section 2.01, Annual Budget and Program Report, subsection (a), shall be amended to reflect the City's approval of DTI's 2019 DMF Annual Budget, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by reference.
4. Section 2.02, Bi-Annual Financial Statement and Audit, shall be amended to read as follows:

"Annual Financial Statement and Audit

No later than November 1 of each year, DTI shall submit to the City Manager a complete statement of DTI's revenues and expenditures and a financial audit for the preceding year prepared by an independent certified public accountant."

5. Except as hereinabove modified, the terms and conditions of said Agreement remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Approval and Amendment to said Agreement the date and year first above written.

ATTEST:

CITY OF SANTA ANA

MARIA D. HUIZAR
Clerk of the Council

RAUL GODINEZ II
City Manager

APPROVED AS TO FORM:

DOWNTOWN INCORPORATED, INC.:  

Sonia R. Carvalho
City Attorney

Ryan O. Hodge
Assistant City Attorney

Ryan Chase
President
Tax ID# 26-4051161

RECOMMENDED FOR APPROVAL:

STEVEN A. MENDOZA
Executive Director
Community Development Agency

25Q-6
**EXHIBIT A**
**DOWNTOWN MERCHANTS FUND**
**ANNUAL BUDGET**

**Proposed 2019 Merchants Fund (Parking Revenue) Budget**

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<tr>
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**Downtown Inc. TOTAL:** $100,000
DOWNTOWN MERCHANTS FUND
OPERATING AGREEMENT

This OPERATING AGREEMENT made and entered into this 10 day of Jan., 2018, by and between the City of Santa Ana, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California ("City"), and Downtown Incorporated, Inc., a California non-profit corporation ("DTI").

RECITALS

A. On August 4, 2015, the City Council adopted the Downtown Enhancements and Parking Modernization Plan to address the need to modernize parking structures, enhance public amenities, and address deferred maintenance in the downtown (Santa Ana Ordinance No. NS-2880).

B. Downtown business associations and stakeholders agreed to an increase in parking rates and the implementation of new smart meters in the downtown area with the understanding that increased revenue from these new rates and smart meters would be reinvested back into the downtown.

C. As part of the Plan, it was proposed that a Downtown Merchants Fund ("DMF") be created for continued promotion of the downtown. This funding will continue to support strong marketing efforts and will allow for successful year-round administration of events for the downtown.

D. Both DTI and the Santa Ana Business Council have provided budgets for the administration of the DMF. This additional $100,000 per organization will complement the existing funds each association receives from the City’s Business Improvement District ("BID").

E. The City and DTI under this Operating Agreement propose to: (1) confirm that DTI will receive $100,000 from the DMF each calendar year that such funding is approved by City Council; (2) to provide that DTI’s use of said DMF funds will be consistent with its approved DMF Annual Budget; and, (3) to provide for auditing of DTI’s DMF funds.

WHEREFORE, and in consideration of the mutual and respective covenants and promises hereinafter set forth, and subject to the terms and conditions of this Operating Agreement, the parties hereto do hereby agree as follows:

ARTICLE 1
PRELIMINARY MATTERS

§ 1.01 Definitions

As used in this Operating Agreement, the following terms shall have the following
meanings:
(a) "City" means the City of Santa Ana, California.
(b) "City Council" means the City Council of the City.
(c) "City Manager" means the City Manager of the City or his/her designated representative(s).
(d) "DMF" means Downtown Merchants Fund, a fund created from downtown parking revenues to support marketing of the downtown.
(e) "DTI’ means Downtown Incorporated, Inc., a California nonprofit corporation.
(f) "Board" means the Board of DTI.

§ 1.02 Term

This Agreement shall commence on the date first written above and terminate on ________, 20__, unless terminated earlier in accordance with sections 4.02 or 4.05, below. The Term of this Agreement shall be automatically renewed in one (1) year Renewal Terms, unless terminated earlier in accordance with sections 4.02 or 4.05, below.

§ 1.03 Status of DTI

(a) By its execution of this Agreement, DTI warrants that it is duly incorporated under the laws of the State of California and that true and correct copies of its Articles of Incorporation and Bylaws and a true and correct listing of DTI’s officers and their terms of office, certified as such by DTI’s Secretary, have been filed with the Clerk of the Council.

(b) By its execution of this Agreement, City accepts and agrees to the organization of DTI as set forth in the above said Articles of Incorporation and Bylaws.

§ 1.04 Compensation of DTI Board Members and Meetings

(a) Meetings shall be held on a quarterly basis with more meetings called at the discretion of the DTI Board. When conducting meetings related to the DMF, members of the Board shall serve without compensation other than reimbursement for expenses incurred by them in the course of the performance of services for DTI when authorized by the DTI Board.

§ 1.05 Changes in Officers, Articles and Bylaws

DTI shall notify the Clerk of the Council of any change in the membership of the Board and any change in the officers of DTI. Any amendment of DTI’s Articles or Bylaws shall be filed with the Clerk of the Council.
§1.06 City Representation at Meetings of DTI

The City Manager shall be entitled to attend all meetings of DTI related to the DMF and to participate in the discussions of the Board to the same extent as the members of the Board, and DTI shall assure that the City Manager is provided with reasonable advance notice of all meetings of DTI. Nothing herein shall be construed to provide the City Manager with any authority to make, second, or vote on motions, or to cause him/her to be counted for purposes of determining whether a quorum exists at meetings of DTI.

§1.07 City Residents, Downtown Property Owners and Business Operators on the Board

A majority of the Board shall be City residents, downtown property owners, or business operators. If the number of members who are City residents, downtown property owners, or business operators becomes less than a majority due to the death, resignation, or change of residence or business location, DTI shall not be in default under this section, provided, however, that the next member appointed to the Board shall be a City resident, downtown property owner, or business operator.

ARTICLE 2
REPORTS AND RECORDS
AND DMF FUND TRANSFERS

§ 2.01 Annual Budget and Program Report

(a) No later than November 1 of each year, DTI shall provide the City Manager with a copy of a detailed calendar year operating budget showing expected sources of revenue and the nature of all expected or proposed expenditures for the forthcoming calendar year and a report on the proposed programs to be undertaken by DTI in said calendar year. A true and correct copy of DTI's 2018 DMF Annual Budget is attached hereto as Exhibit A and incorporated herein by reference.

(b) If the proposed budget is accepted by the City Manager, it shall be submitted to the City Council for approval, in whole or in part. If the proposed budget is rejected by the City Manager, the City Manager and DTI shall meet in good faith in an attempt to reach agreement on a budget. If they are unable to do so, the City Manager shall submit DTI's proposed budget to the City Council for approval, in whole or in part.

(c) DTI acknowledges that its proposed budget in any given calendar year will consist of $100,000, or any such amount as previously approved by the City Council.

(d) DTI further acknowledges that expenditures of DMF funds will be for the purposes identified in the Downtown Enhancements and Parking Modernization Plan.

(e) The City shall provide DTI with $25,000 of DMF funds each quarter (January 1,
April 1, July 1, and October 1) for a total of $100,000 of DMF per year. If the first day of the quarter falls on a weekend, holiday, or other day in which City Hall is closed, then said deposit shall be made the next day City Hall is open.

(f) The City upon depositing DMF monies shall notify DTI by electronic mail of the net amount of funds deposited to DTI. Failure by DTI to receive or acknowledge electronic mail notification shall not constitute a breach of this Agreement.

(g) All DMF expenditures must be for the purposes identified in the Downtown Enhancements and Parking Modernization Plan, and must be sufficiently documented by accompanying receipts, purchase invoices, or other permanent evidences of expenditure as may be prudenty required by the City in accordance with Generally Accepted Accounting Principles and established City accounting procedures. If DTI expends any DMF money for unauthorized purposes, the City may, at its sole option, deduct the disputed amount from any future DMF payments to DTI, or may terminate the Agreement pursuant to the terms of section 4.05.

(h) In the event questions arise relating to the payment of funds to DTI, DTI may within 15 days of notification request an accounting by the City of the amount of net funds disbursed to DTI. Thereupon the City shall re-evaluate the amount of such disbursement and give written notification of its decision to DTI which shall be final and conclusive.

§ 2.02 Bi-Annual Financial Statement and Audit

Every six (6) months (June 30 and December 31), DTI shall submit to the City Manager a complete statement of DTI's revenues and expenditures and a financial audit for the preceding half-year prepared by an independent certified public accountant.

§ 2.03 Financial Records

DTI shall keep, or cause to be kept, true, accurate and complete records, including double-entry books, a profit and loss statement, and a balance sheet, such that if possible at all times to determine the amount and nature of all revenues and expenditures. All expenditures and transactions shall be supported by documents of original entry such as sales slips, cash register tapes, and purchase invoice and receipts. All such account books, statements, balance sheets and supporting documents shall be retained by DTI for a period of three (3) years after the end of the accounting year to which they pertain.

§ 2.04 Accounting Procedures

DTI shall maintain a system of accounting according to Generally Accepted Accounting Practices.

25Q-12
§ 2.05      Inspection and Audit

City shall be entitled, during the term of this Agreement and for a period of one year following the termination, to:

(a) inspect and examine all of DTI's books, statements, records, and supporting documents to ascertain the correctness of DTI's financial statements. Any such inspection and/or examination shall be conducted during normal business hours with prior 15 days written notice to DTI; and

(b) inspect and examine each expense made by DTI to ascertain that all expenses are for the purposes identified in the Downtown Enhancements and Parking Modernization Plan, and that all expenses are sufficiently documented by receipts, purchase invoices, or other permanent evidences of expenditure in accordance with Generally Accepted Accounting Principles and established City accounting procedures. Any such inspection and/or examination shall be conducted during normal business hours with prior 15 days written notice to DTI.

ARTICLE 3
INDEMNITY AND INSURANCE

§ 3.01      Indemnification

DTI shall indemnify and save harmless City and its officers, agents and employees from and against any and all claims, demands, loss or liability of any kind or nature which City or its officers, agents, or employees may sustain or incur, or which may be imposed upon them, or any of them, as a result of, arising out of, or in any manner connected with DTI's management and/or administration of the DMF funds.

§ 3.02      Insurance Requirement Generally

Prior to the Commencement Date (except as hereinafter otherwise provided), DTI shall obtain at its sole cost and file with the Clerk of the Council, and maintain throughout the Term, policies of insurance as required by this section and sections 3.03 through 3.05, or a certificate of such insurance, satisfactory in form to the City Attorney. Each such policy (except policies of Workers' Compensation Insurance) shall name City as an insured or additional insured and each liability insurance policy shall also name the officers, agents and employees of City as insureds or additional insureds. Each such policy shall also contain a provision that no termination, cancellation or change of coverage or (where applicable) of insured or additional insured shall be effective until after thirty (30) day notice thereof has been given in writing to City.

§ 3.03      Liability Insurance

DTI shall provide a policy or policies of insurance which provides coverage not less than that provided in the form of a comprehensive general liability insurance policy against liability for
any and all claims and suits for damages or injuries to persons or property resulting from or arising out of the operations of DTI, its officers, employees, agents or assigns. Said policy or policies of insurance shall provide coverage for both bodily injury and property damage in not less than One Million Dollars ($1,000,000.00) combined single limit, or its equivalent.

§ 3.04 Fidelity Bonding

DTI shall provide a policy or policies of insurance insuring DTI against loss due to dishonesty of DTI's officers, agents and employees. Said policy or policies shall provide coverage in not less than $500,000.

§ 3.05 Workers' Compensation Insurance

DTI shall provide a policy or policies of workers' compensation insurance as required by law.

§ 3.06 Modification of Insurance Requirements

The City Manager may modify or suspend the requirements imposed on DTI by this Article if in his/her reasonable determination strict compliance is impossible or excessively costly due to insurance market conditions.

ARTICLE 4
DEFAULTS, REMEDIES AND TERMINATION

§ 4.01 Defaults

(a) Failure or delay by either party to perform any term or provision of this Agreement shall constitute a default under this Agreement. The injured party shall not initiate the remedies hereinafter provided until the defaulting party has been given written notice of the default, specifying the nature thereof, and a period of sixty (60) days to cure or correct such default.

(b) Any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

§ 4.02 Remedies of City

In the event of any default and failure to cure, correct or remedy the same by DTI, City may, at City's sole discretion, in addition to or in lieu of any other remedies, exercise either of the following remedies:

(a) Delay of any or all transfers of DMF funds to DTI pursuant to §2.01 of this
Agreement until such default is cured, corrected or remedied; provided such delay is approved by the City Council.

(b) Terminate this Agreement, provided such termination is approved by the City Council.

§ 4.03 Legal Actions

In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal action must be instituted in the Superior Court of the County of Orange, State of California, or in any other appropriate court in that county.

§ 4.04 Cumulative Rights and Remedies

The rights and remedies of the parties are cumulative and the exercise by either party of one or more such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

§ 4.05 Termination

This Agreement may be terminated by the City for any reason upon thirty (30) days written notice of termination. Upon any termination, or expiration of the Term, the City shall have no further obligation to provide funding or other assistance to DTI pursuant to this Agreement for any period following such expiration or early termination.

ARTICLE 5
GENERAL PROVISIONS

§ 5.01 Representatives

(a) All actions authorized to be taken by City pursuant to this Agreement, without specification in this Agreement as to the body or office so authorized, shall be deemed exercisable on behalf of City by the City Manager, unless otherwise stated. The City Manager may designate any officer of the City as his/her representative with respect to any specified authority given to the City Manager by this Agreement, and in such event the actions of such officer within the scope of such authority shall have the same effect as if taken by the City Manager.

(b) All actions authorized to be taken by DTI pursuant to this Agreement, without specification in this Agreement as to the body or office so authorized, shall be deemed exercisable on behalf of DTI by DTI's governing board or by such officer of DTI as may be designated by resolution of said governing board.

§ 5.02 Notices
Notice and written communications sent by one party to the other shall be either personally delivered or sent by U.S. Mail, postage prepaid, to the following addresses:

(a) If sent by DTI to City:

Clerk of the Council
City of Santa Ana
20 Civic Center Plaza
P.O. Box 1988
Santa Ana, CA 92702

With Copies to:

City Manager
City of Santa Ana
20 Civic Center Plaza
P.O. Box 1988
Santa Ana, CA 92702

And:

City Attorney
City of Santa Ana
20 Civic Center Plaza
P.O. Box 1988
Santa Ana, CA 92702

(b) If sent by City to DTI:

Downtown Inc.
200 North Main St. 2nd Floor
Santa Ana, CA 92701
Attention: Chairman of the Board

§ 5.03 Non-assignability

The rights and obligations of DTI under this Agreement may not be assigned or delegated without the prior approval of the City Council.

§ 5.04 Partial Invalidity

If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.

25Q-16
§5.05 Exclusivity

Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement or amendment hereto shall be effective unless executed in writing and signed by both City and DTI.

§5.06 Conflict of Interest Clause

DTI covenants that it presently has no interests and shall not have interests, direct or indirect, which would conflict in any manner with performance under this Agreement.

§5.07 OC Streetcar Project

DTI, and its members, officers, employees, and representatives, agree not to commence, participate in, or assist with any action, legal proceeding, cause of action or suits in law or equity, of whatever kind or nature, in any way, directly or indirectly, against the City, or any party, on any issue related to the OC Streetcar Project, and knowingly, voluntarily, unconditionally, irrevocably, and expressly forever discharge and release any damages and/or claims, now known or arising in the future, against the City, or any party, on any issue related to the OC Streetcar Project. Any violation of this provision shall be considered a breach of the Agreement subject to immediate termination and cancellation of all funding at the sole and absolute discretion of the City.

{signature page follows}
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

ATTEST:

CITY OF SANTA ANA

MARIA D. HUIZAR
Clerk of the Council

RAUL GODINEZ II
City Manager

APPROVED AS TO FORM:

SONIA R. CARVALHO
City Attorney

By: Ryan O. Hodge
Assistant City Attorney

RECOMMENDED FOR APPROVAL:

DOWNTOWN, INC.

ROBERT ZUR SCHMIDT
Executive Director – CDA

(Name) Ryan Chase
(Title) President

Tax ID# 26-4051161
EXHIBIT A

DOWNTOWN MERCHANTS FUND

ANNUAL BUDGET
Santa Ana Business Council Proposed "Merchant Fund" Revenue FY 2017-2018 Budget

PARKING Revenue
Merchant Fund (Parking Revenue TOTAL) $100,000

PARKING Expenses
Administrative/Personnel Costs $18,000
Consulting Services, Contractors/Professional Services $23,300
Grant Writer, Specialized Nonprofit Accountant $20,000
Meetings/StakeholderGroups/Training $9,700
Entrepreneurship and Small Business Education Development $14,000
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Communications $10,000
News, Print Media, Photography, Videography, Social Media Support Services $7,500

TOTAL $100,000

Downtown Inc. Proposed "Merchant Fund" Revenue FY 2017-2018 Budget

PARKING Revenue
Merchant Fund (Parking Revenue TOTAL) $100,000

PARKING Expenses
Personnel Costs $42,500
Director, Administrative Support $15,000
Contractors/Professional Services $12,500
Event Producers, Program Coordinators, Production Staff $12,500
Meetings/StakeholderGroups/Training $12,500
Restaurant Assoc., Arts Meetings, Staff & Stakeholder Development $12,500
Marketing/Promotions/Events $10,000
Maps, Guides, Savor Santa Ana, Artwalk $7,500
Communication $10,000
Newsletter, Social Media, Translation, Design, Videos, Photos $7,500
Office/Operations/Technology $7,500
Office Supplies, Web hosting, Subscription Technology Software $7,500

TOTAL $100,000
CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFER NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Michael Rodgick(971832A)
196 Technology Dr Ste B
Irvine CA 92618-2433

CONTACT NAME: Mike
PHONE (FAX): 949-769-6555
FAX: 949-769-6555
EMAIL: mrodkick@farmersagent.com

INSURER(S): Averting Coverage
NAIC#: 21709

INSURED
SANTA ANA BUSINESS COUNCIL,
400 E. 4TH STREET
SANTA ANA CA 92701

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule. If more space is required)

400 E. 4TH STREET, SANTA ANA, CA 92701

CITY OF SANTA ANA, ITS OFFICERS, AGENTS, EMPLOYEES AND VOLUNTEERS ARE NAMED AS ADDITIONAL INSURED FOR GENERAL LIABILITY PURPOSES. COVERAGE IS PRIMARY AND NON-CONTRIBUTORY, WITH THIRTY (30) DAYS NOTICE OF CANCELLATION, EXCEPT 10 DAYS FOR NONPAYMENT OF PREMIUMS

CERTIFICATE HOLDER CANCELLATION

CITY OF SANTA ANA 20 CIVIC CENTER PLZ
SANTA ANA CA 92701

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ACORD 25 (10/6/05)

The ACORD name and logo are registered marks of ACORD

25Q-21
This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY

SCHEDULE

State or Political Subdivision: CITY OF SANTA ANA, ITS OFFICERS, AGENTS, EMPLOYEES AND VOLUNTEERS

The following is added to Paragraph C, WHO IS AN INSURED in the Businessowners Liability Coverage Form:

4. Any state or political subdivision shown in the Schedule is also an insured, subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent, or control and to which this insurance applies:

a. The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hot-taway openings, sidewalk vaults, street banners, or decoration and similar exposures;

b. The construction, erection, or removal of elevators;

c. The ownership, maintenance, or use of any elevators covered by this insurance.

* Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.
EXHIBIT 4

FIRST AMENDMENT TO
THE DOWNTOWN MERCHANTS FUND
OPERATING AGREEMENT

THIS FIRST AMENDMENT TO THE DOWNTOWN MERCHANTS FUND OPERATING AGREEMENT is entered into this 18th day of December, 2018, by and between the City of Santa Ana, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California ("City"), and the Santa Ana Business Council ("SABC").

RECITALS

A. On January 11, 2018, the City entered into the Downtown Merchants Fund Operating Agreement #A-2017-327 with SABC to create the Downtown Merchants Fund ("DMF") from a portion of downtown parking revenues for continued promotion of the downtown ("said Agreement"). The intent of said Agreement is for SABC to receive $100,000 from the DMF each calendar year that such funding is approved by City Council.

B. The City hereby approves an additional $100,000 in DMF funds for use by SABC in 2019 pursuant to the terms and conditions of said Agreement. Additionally, the City hereby approves SABC's 2019 DMF Annual Budget.

C. In accordance with the terms and conditions of said Agreement, the parties desire to amend said Agreement to extend the term of said Agreement, add an additional $100,000 in DMF funding for the extended term of said Agreement, and incorporate SABC's 2019 DMF Annual Budget into said Agreement.

NOW THEREFORE, in consideration of the mutual and respective promises, and subject to the terms and conditions of said Agreement, except as herein modified, the parties agree as follows:

1. Pursuant to the terms of said Agreement, the City Council approved an additional $100,000 in DMF funding for the 2019 calendar year to be utilized by SABC pursuant to SABC's 2019 DMF Annual Budget and the terms of said Agreement.

2. Section 1.02, Term, shall be amended to read as follows:

   "This Agreement shall commence on the date first written above and terminate on December 31, 2019, unless terminated earlier in accordance with sections 4.02 or 4.05 below."

3. Section 2.01, Annual Budget and Program Report, subsection (a), shall be amended to reflect the City's approval of SABC's 2019 DMF Annual Budget, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by reference.
4. Section 2.02, Bi-Annual Financial Statement and Audit, shall be amended to read as follows:

   "Annual Financial Statement and Audit

   No later than November 1 of each year, SABC shall submit to the City Manager a complete statement of SABC's revenues and expenditures and a financial audit for the preceding year prepared by an independent certified public accountant."

5. Except as hereinafore modified, the terms and conditions of said Agreement remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Approval and Amendment to said Agreement the date and year first above written.

ATTEST:  

__________________________  ____________________________
MARIA D. HUIZAR  
Clerk of the Council  

__________________________  ____________________________
RAUL GODINEZ II  
City Manager  

APPROVED AS TO FORM:  

__________________________  ____________________________
Sonia R. Carvalho  
City Attorney  

__________________________  ____________________________
Ryan O. Hodge  
Assistant City Attorney  

RECOMMENDED FOR APPROVAL:  

__________________________
STEVEN A. MENDOZA  
Executive Director  
Community Development Agency  

CITY OF SANTA ANA  

SANTA ANA BUSINESS COUNCIL:

__________________________
Raul Yanez  
President  
Tax ID# 90-0975204
EXHIBIT A
DOWNTOWN MERCHANTS FUND
ANNUAL BUDGET

Santa Ana Business Council Budget
Administrative/Personnel Costs $18,000
-- Consulting Services

Contractors/Professional Services $23,300
-- Grant Writer, Specialized Nonprofit Accountant

Meetings/Stakeholder Groups/Training $20,000
-- Entrepreneurship and Small Business Education Development

Marketing/Promotions $9,700
-- Building Downtown Business & Community Engagement Team, Internship Program

Events/Entertainment/Sponsorships $14,000
-- Downtown Activation, Circulation, Flows, Urban Tacticalism, Pilot Projects

Communication $15,000
-- News, Print Media, Photography, Videography, Social Media Support Services

Santa Ana Business Council TOTAL: $100,000
This OPERATING AGREEMENT made and entered into this 11th day of Jan., 2018, by and between the City of Santa Ana, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California ("City"), and the Santa Ana Business Council, a California non-profit corporation ("SABC").

RECITALS

A. On August 4, 2015, the City Council adopted the Downtown Enhancements and Parking Modernization Plan to address the need to modernize parking structures, enhance public amenities, and address deferred maintenance in the downtown (Santa Ana Ordinance No. NS-2880).

B. Downtown business associations and stakeholders agreed to an increase in parking rates and the implementation of new smart meters in the downtown area with the understanding that increased revenue from these new rates and smart meters would be reinvested back into the downtown.

C. As part of the Plan, it was proposed that a Downtown Merchants Fund ("DMF") be created for continued promotion of the downtown. This funding will continue to support strong marketing efforts and will allow for successful year-round administration of events for the downtown.

D. Both SABC and Downtown, Inc. have provided budgets for the administration of the DMF. This additional $100,000 per organization will complement the existing funds each association receives from the City’s Business Improvement District ("BID").

E. The City and SABC under this Operating Agreement propose to: (1) confirm that SABC will receive $100,000 from the DMF each calendar year that such funding is approved by City Council; (2) to provide that SABC’s use of said DMF funds will be consistent with its approved DMF Annual Budget; and, (3) to provide for auditing of SABC’s DMF funds.

WHEREFORE, and in consideration of the mutual and respective covenants and promises hereinafter set forth, and subject to the terms and conditions of this Operating Agreement, the parties hereto do hereby agree as follows:

ARTICLE 1
PRELIMINARY MATTERS

§ 1.01 Definitions

As used in this Operating Agreement, the following terms shall have the following meanings:
(a) "City" means the City of Santa Ana, California.

(b) "City Council" means the City Council of the City.

(c) "City Manager" means the City Manager of the City or his/her designated representative(s).

(d) "DMF" means Downtown Merchants Fund, a fund created from downtown parking revenues to support marketing of the downtown.

(e) "SABC" means Santa Ana Business Council, a California nonprofit corporation.

(f) "Board" means the Board of SABC.

§ 1.02 Term

This Agreement shall commence on the date first written above and terminate on ______________________, 20__, unless terminated earlier in accordance with sections 4.02 or 4.05, below. The Term of this Agreement shall be automatically renewed in one (1) year Renewal Terms, unless terminated earlier in accordance with sections 4.02 or 4.05, below.

§ 1.03 Status of SABC

(a) By its execution of this Agreement, SABC warrants that it is duly incorporated under the laws of the State of California and that true and correct copies of its Articles of Incorporation and Bylaws and a true and correct listing of SABC’s officers and their terms of office, certified as such by SABC’s Secretary, have been filed with the Clerk of the Council.

(b) By its execution of this Agreement, City accepts and agrees to the organization of SABC as set forth in the above said Articles of Incorporation and Bylaws.

§ 1.04 Compensation of SABC Board Members and Meetings

(a) Meetings shall be held on a quarterly basis with more meetings called at the discretion of the SABC Board. When conducting meetings related to the DMF, members of the Board shall serve without compensation other than reimbursement for expenses incurred by them in the course of the performance of services for SABC when authorized by the SABC Board.

§ 1.05 Changes in Officers, Articles and Bylaws

SABC shall notify the Clerk of the Council of any change in the membership of the Board and any change in the officers of SABC. Any amendment of SABC’s Articles or Bylaws shall be filed with the Clerk of the Council.
§1.06 City Representation at Meetings of SABC

The City Manager shall be entitled to attend all meetings of SABC related to the DMF and to participate in the discussions of the Board to the same extent as the members of the Board, and SABC shall assure that the City Manager is provided with reasonable advance notice of all meetings of SABC. Nothing herein shall be construed to provide the City Manager with any authority to make, second, or vote on motions, or to cause him/her to be counted for purposes of determining whether a quorum exists at meetings of SABC.

§1.07 City Residents, Downtown Property Owners and Business Operators on the Board

A majority of the Board shall be City residents, downtown property owners, or business operators. If the number of members who are City residents, downtown property owners, or business operators becomes less than a majority due to the death, resignation, or change of residence or business location, SABC shall not be in default under this section, provided, however, that the next member appointed to the Board shall be a City resident, downtown property owner, or business operator.

ARTICLE 2
REPORTS AND RECORDS
AND DMF FUND TRANSFERS

§ 2.01 Annual Budget and Program Report

(a) No later than November 1 of each year, SABC shall provide the City Manager with a copy of a detailed calendar year operating budget showing expected sources of revenue and the nature of all expected or proposed expenditures for the forthcoming calendar year and a report on the proposed programs to be undertaken by SABC in said calendar year. A true and correct copy of SABC’s 2018 DMF Annual Budget is attached hereto as Exhibit A and incorporated herein by reference.

(b) If the proposed budget is accepted by the City Manager, it shall be submitted to the City Council for approval, in whole or in part. If the proposed budget is rejected by the City Manager, the City Manager and SABC shall meet in good faith in an attempt to reach agreement on a budget. If they are unable to do so, the City Manager shall submit SABC’s proposed budget to the City Council for approval, in whole or in part.

(c) SABC acknowledges that its proposed budget in any given calendar year will consist of $100,000, or any such amount as previously approved by the City Council.

(d) SABC further acknowledges that expenditures of DMF funds will be for the purposes identified in the Downtown Enhancements and Parking Modernization Plan.

(e) The City shall provide SABC with $25,000 of DMF funds each quarter (January 1, April 1, July 1, and October 1) for a total of $100,000 of DMF per year. If the first day of the
quarter falls on a weekend, holiday, or other day in which City Hall is closed, then said deposit shall be made the next day City Hall is open.

(f) The City upon depositing DMF monies shall notify SABC by electronic mail of the net amount of funds deposited to SABC. Failure by SABC to receive or acknowledge electronic mail notification shall not constitute a breach of this Agreement.

(g) All DMF expenditures must be for the purposes identified in the Downtown Enhancements and Parking Modernization Plan, and must be sufficiently documented by accompanying receipts, purchase invoices, or other permanent evidences of expenditure as may be prudently required by the City in accordance with Generally Accepted Accounting Principles and established City accounting procedures. If SABC expends any DMF money for unauthorized purposes, the City may, at its sole option, deduct the disputed amount from any future DMF payments to SABC, or may terminate the Agreement pursuant to the terms of section 4.05.

(h) In the event questions arise relating to the payment of funds to SABC, SABC may within 15 days of notification request an accounting by the City of the amount of net funds disbursed to SABC. Thereupon the City shall re-evaluate the amount of such disbursement and give written notification of its decision to SABC which shall be final and conclusive.

§ 2.02 Bi-Annual Financial Statement and Audit

Every six (6) months (June 30 and December 31), SABC shall submit to the City Manager a complete statement of SABC's revenues and expenditures and a financial audit for the preceding half-year prepared by an independent certified public accountant.

§ 2.03 Financial Records

SABC shall keep, or cause to be kept, true, accurate and complete records, including double-entry books, a profit and loss statement, and a balance sheet, such that if possible at all times to determine the amount and nature of all revenues and expenditures. All expenditures and transactions shall be supported by documents of original entry such as sales slips, cash register tapes, and purchase invoice and receipts. All such account books, statements, balance sheets and supporting documents shall be retained by SABC for a period of three (3) years after the end of the accounting year to which they pertain.

§ 2.04 Accounting Procedures

SABC shall maintain a system of accounting according to Generally Accepted Accounting Practices.
§ 2.05 Inspection and Audit

City shall be entitled, during the term of this Agreement and for a period of one year following the termination, to:

(a) inspect and examine all of SABC's books, statements, records, and supporting documents to ascertain the correctness of SABC's financial statements. Any such inspection and/or examination shall be conducted during normal business hours with prior 15 days written notice to SABC; and

(b) inspect and examine each expense made by SABC to ascertain that all expenses are for the purposes identified in the Downtown Enhancements and Parking Modernization Plan, and that all expenses are sufficiently documented by receipts, purchase invoices, or other permanent evidences of expenditure in accordance with Generally Accepted Accounting Principles and established City accounting procedures. Any such inspection and/or examination shall be conducted during normal business hours with prior 15 days written notice to SABC.

ARTICLE 3
INDEMNITY AND INSURANCE

§ 3.01 Indemnification

SABC shall indemnify and save harmless City and its officers, agents and employees from and against any and all claims, demands, loss or liability of any kind or nature which City or its officers, agents, or employees may sustain or incur, or which may be imposed upon them, or any of them, as a result of, arising out of, or in any manner connected with SABC's management and/or administration of the DMF funds.

§ 3.02 Insurance Requirement Generally

Prior to the Commencement Date (except as hereinafter otherwise provided), SABC shall obtain at its sole cost and file with the Clerk of the Council, and maintain throughout the Term, policies of insurance as required by this section and sections 3.03 through 3.05, or a certificate of such insurance, satisfactory in form to the City Attorney. Each such policy (except policies of Workers' Compensation Insurance) shall name City as an insured or additional insured and each liability insurance policy shall also name the officers, agents and employees of City as insureds or additional insureds. Each such policy shall also contain a provision that no termination, cancellation or change of coverage or (where applicable) of insured or additional insured shall be effective until after thirty (30) day notice thereof has been given in writing to City.

§ 3.03 Liability Insurance

SABC shall provide a policy or policies of insurance which provides coverage not less than that provided in the form of a comprehensive general liability insurance policy against liability for any and all claims and suits for damages or injuries to persons or property resulting from or arising

25Q-31
out of the operations of SABC, its officers, employees, agents or assigns. Said policy or policies of insurance shall provide coverage for both bodily injury and property damage in not less than One Million Dollars ($1,000,000.00) combined single limit, or its equivalent.

§ 3.04 Fidelity Bonding

SABC shall provide a policy or policies of insurance insuring SABC against loss due to dishonesty of SABC's officers, agents and employees. Said policy or policies shall provide coverage in not less than $500,000.

§ 3.05 Workers' Compensation Insurance

SABC shall provide a policy or policies of workers' compensation insurance as required by law.

§ 3.06 Modification of Insurance Requirements

The City Manager may modify or suspend the requirements imposed on SABC by this Article if in his/her reasonable determination strict compliance is impossible or excessively costly due to insurance market conditions.

ARTICLE 4
DEFAULTS, REMEDIES AND TERMINATION

§ 4.01 Defaults

(a) Failure or delay by either party to perform any term or provision of this Agreement shall constitute a default under this Agreement. The injured party shall not initiate the remedies hereinafter provided until the defaulting party has been given written notice of the default, specifying the nature thereof, and a period of sixty (60) days to cure or correct such default.

(b) Any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

§ 4.02 Remedies of City

In the event of any default and failure to cure, correct or remedy the same by SABC, City may, at City's sole discretion, in addition to or in lieu of any other remedies, exercise either of the following remedies:
(a) Delay of any or all transfers of DMF funds to SABC pursuant to §2.01 of this Agreement until such default is cured, corrected or remedied; provided such delay is approved by the City Council.

(b) Terminate this Agreement, provided such termination is approved by the City Council.

§ 4.03 Legal Actions

In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal action must be instituted in the Superior Court of the County of Orange, State of California, or in any other appropriate court in that county.

§ 4.04 Cumulative Rights and Remedies

The rights and remedies of the parties are cumulative and the exercise by either party of one or more such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

§ 4.05 Termination

This Agreement may be terminated by the City for any reason upon thirty (30) days written notice of termination. Upon any termination, or expiration of the Term, the City shall have no further obligation to provide funding or other assistance to SABC pursuant to this Agreement for any period following such expiration or early termination.

ARTICLE 5
GENERAL PROVISIONS

§ 5.01 Representatives

(a) All actions authorized to be taken by City pursuant to this Agreement, without specification in this Agreement as to the body or office so authorized, shall be deemed exercisable on behalf of City by the City Manager, unless otherwise stated. The City Manager may designate any officer of the City as his/her representative with respect to any specified authority given to the City Manager by this Agreement, and in such event the actions of such officer within the scope of such authority shall have the same effect as if taken by the City Manager.

(b) All actions authorized to be taken by SABC pursuant to this Agreement, without specification in this Agreement as to the body or office so authorized, shall be deemed exercisable on behalf of SABC by SABC’s governing board or by such officer of SABC as may be designated by resolution of said governing board.
§ 5.02 Notices

Notices and written communications sent by one party to the other shall be either personally delivered or sent by U.S. Mail, postage prepaid, to the following addresses:

(a) If sent by SABC to City:

   Clerk of the Council
   City of Santa Ana
   20 Civic Center Plaza
   P.O. Box 1988
   Santa Ana, CA 92702

   With Copies to:
   City Manager
   City of Santa Ana
   20 Civic Center Plaza
   P.O. Box 1988
   Santa Ana, CA 92702

   And:
   City Attorney
   City of Santa Ana
   20 Civic Center Plaza
   P.O. Box 1988
   Santa Ana, CA 92702

(b) If sent by City to SABC:

   Santa Ana Business Council

§ 5.03 Non-assignability

The rights and obligations of SABC under this Agreement may not be assigned or delegated without the prior approval of the City Council.

§ 5.04 Partial Invalidity

If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof
shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.

§5.05 Exclusivity

Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement or amendment hereto shall be effective unless executed in writing and signed by both City and SABC.

§5.06 Conflict of Interest Clause

SABC covenants that it presently has no interests and shall not have interests, direct or indirect, which would conflict in any manner with performance under this Agreement.

§5.07 OC Streetcar Project

SABC, and its members, officers, employees, and representatives, agree not to commence, participate in, or assist with any action, legal proceeding, cause of action or suits in law or equity, of whatever kind or nature, in any way, directly or indirectly, against the City, or any party, on any issue related to the OC Streetcar Project, and knowingly, voluntarily, unconditionally, irrevocably, and expressly forever discharge and release any damages and/or claims, now known or arising in the future, against the City, or any party, on any issue related to the OC Streetcar Project. Any violation of this provision shall be considered a breach of the Agreement subject to immediate termination and cancellation of all funding at the sole and absolute discretion of the City.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

ATTEST:

MARIA D. HUIZAR
Clerk of the Council

CITY OF SANTA ANA

RAUL GODINEZ II
City Manager

APPROVED AS TO FORM:

SONIA R. CARVALHO
City Attorney

By:
Ryan O. Hodge
Assistant City Attorney

RECOMMENDED FOR APPROVAL:

ROBERT ZUR SCHMIEDE
Executive Director — CDA

SANTA ANA BUSINESS COUNCIL

Tax ID# 90-0976204

25Q-36
EXHIBIT A

DOWNTOWN MERCHANTS FUND

ANNUAL BUDGET
Santa Ana Business Council Proposed "Merchant Fund" Revenue FY 2017-2018 Budget

PARKING Revenue
Merchant Fund (Parking Revenue TOTAL) $100,000

PARKING Expenses
Administrative/Personal Costs $18,000
Consulting Services
Contractors/Professional Services $23,300
Grant Writer, Specialized Nonprofit Accountant
Meetings/Stakeholder Groups/Training $20,000
Entrepreneurship and Small Business Education Development
Marketing/Promotions $9,700
Building Downtown Business & Community Engagement Team, Internship Program
Events/Entertainment/Sponsorships $14,000
Downtown Activation, Circulation, Flows, Urban Tacticalism, Pilot Projects
Communications $15,000
News, Print Media, Photography, Videography, Social Media Support Services

TOTAL $100,000

Downtown Inc. Proposed "Merchant Fund" Revenue FY 2017-2018 Budget

PARKING Revenue
Merchant Fund (Parking Revenue TOTAL) $100,000

PARKING Expenses
Personnel Costs $42,500
Director, Administrative Support
Contractors/Professional Services $15,000
Event Producers, Program Coordinators, Production Staff
Meetings/Stakeholder Groups/Training $12,500
Restaurant Assoc., Arts Meetings, Staff & Stakeholder Development
Marketing/Promotions/Events $12,500
Maps, Guides, Savor Santa Ana, Artwalk
Communication $10,000
Newsletter, Social Media, Translation, Design, Videos, Photos
Office/Operations/Technology $7,500
Office Supplies, Web hosting, Subscription Technology Software

TOTAL $100,000
CERTIFICATE OF LIABILITY INSURANCE

PRODUCER
Michael Rodglick
195 Technology Dr Ste B
Irvine, CA 92618-2433

INSURED
SANTA ANA BUSINESS COUNCIL,
400 E. 4TH STREET
SANTA ANA, CA 92701

COVERAGES
CERTIFICATE NUMBER: 21729

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

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| SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

CERTIFICATE HOLDER
CITY OF SANTA ANA
20 CIVIC CENTER PLZ

CANCELLATION

AUTHORIZED REPRESENTATIVE

MICHAEL RODGLICK

ACORD 25 (2010/05)
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25Q-39
POLICY NUMBER: 605503396

BUSINESSOWNERS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – STATE OR POLITICAL SUBDIVISIONS – PERMITS RELATING TO PREMISES

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY

SCHEDULE

State or Political Subdivision: CITY OF SANTA ANA, ITS OFFICERS, AGENTS, EMPLOYEES AND VOLUNTEERS

The following is added to Paragraph C. WHO IS AN INSURED in the Businessowners Liability Coverage Form:

4. Any state or political subdivision shown in the Schedule is also an insured, subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent, or control and to which this insurance applies:

a. The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, holstaway openings, sidewalk vaults, street barriers, or decoration and similar exposures;

b. The construction, erection, or removal of elevators; or

c. The ownership, maintenance, or use of any elevators covered by this insurance.

* Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

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