

**AGREEMENT BETWEEN CITY OF CHICO AND DOWNTOWN CHICO PROPERTY
BASED BUSINESS IMPROVEMENT DISTRICT FOR IMPLEMENTATION OF
MANAGEMENT DISTRICT PLAN**

This Agreement is entered on _____, 2022, between the CITY OF CHICO, a municipal corporation of the State of California ("City"), and the Downtown Chico PBID, Inc., a nonprofit corporation ("Organization").

WHEREAS, the Property and Business Improvement District Law of 1994, (California Streets and Highway Code Section 33600 et seq.) (the "PBID Law") authorizes the City of Chico to form a Property and Business Improvement District within the City of Chico;

WHEREAS, the original Downtown Chico Property and Business Improvement District was approved on July 5, 2017 for a term beginning January 1, 2018 through December 31, 2022. The PBID Owners Association, working with other businesses within the District, have taken the lead on the renewal process, requesting a renewal for a term of January 1, 2023 through December 31, 2027.

WHEREAS, on June 7, 2022, the City approved Resolution No. 34-22 Declaring the Intention to Form a Downtown Property and Business Improvement District;

WHEREAS, on August 2, 2022, the City Council held a public hearing regarding the establishment of the PBID and the levy of the assessment, and at the conclusion of the hearing determined that a majority protest against the proposed PBID assessment did not exist, whereupon the City Council adopted Resolution No. 34-22 incorporated herein, establishing the Downtown Property and Business Improvement District ("PBID") for a 5-year term expiring on December 31, 2027;

WHEREAS, the Downtown PBID Management District Plan and related Engineer's Report, (collectively "Management Plan") describes the properties within the boundaries of the PBID to be assessed and benefitted, the method and amount of assessment, and the activities and improvements to be funded by the assessment (attached hereto as Exhibit A); and

WHEREAS, the Management Plan includes a calculation of General Benefit in the amount of \$20,703 to reflect the benefit provided to the general public and parcels outside the PBID from the services and improvements performed by the PBID; and

WHEREAS, the City intends to annually fund this General Benefit to ensure that its cost is not borne by property owners assessed by the PBID; and

WHEREAS, on August 2, 2022, the Chico City Council approved funding the General Benefit in the amount specified in the Management Plan.

WHEREAS, the Management Plan indicates that the Organization, with a board of directors in full compliance with the Management Plan, will provide the activities and any improvements described in the Management Plan and otherwise be charged with managing the

PBID's day-to-day operations including determining budgets, assessment rates and monitoring service delivery;

WHEREAS, the City requires the Organization to maintain a Board of Directors consisting of property owners or their designees;

WHEREAS, the PBID Law requires that the City contract with the nonprofit corporation designated in the Management Plan, whereupon the Organization, as PBID owner's association will be subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), for all documents relating to activities of the PBID;

WHEREAS, the parties desire that the Organization act as Owner's Association' for the PBID, upon the terms and conditions herein;

WHEREAS, on _____, the Organization's Board of Directors considered and approved this Agreement;

WHEREAS, on _____, the Chico City Council considered and authorized this Agreement.

NOW, THEREFORE, in consideration of the above recitals and for other good and sufficient consideration, the City and Organization agree as follows:

ARTICLE I
RECITALS

1. All the foregoing recitals are true and correct and incorporated herein by this reference as fully set forth herein.

ARTICLE II
DOWNTOWN PBID MANAGEMENT ADMINISTRATION & RESERVE

1. **The Organization's Obligations:**

(a) **Management Plan.** Provide all the activities and any and all improvements described in the Management Plan and otherwise administer and implement the Management Plan.

(b) **Initial Report.** By July 1st of the first year of operation, submit to the City a written estimate of the PBID's budget for the next year. The estimate must include the amount of any anticipated increase in the assessment.

(c) **Annual Reports.** By February 1st of each year of operation after the first year, submit to the City a written report in accordance with Streets and Highways Code section 36650 describing the Organization's activities in the previous calendar year.

(d) **Subcontracts and Procurement.** Award and administer all subcontracts necessary for providing the activities and any and all improvements. To the extent consistent with controlling law and regulations, the Organization shall seek participation in subcontracting and procurement from within the PBID boundaries to the extent feasible.

(e) **Compliance with Laws.** Comply with all federal, state, and local laws, including the Ralph M. Brown Act (Government Code § 54950 et seq.) ("Brown Act") whenever matters within the subject matter of the PBID are heard, discussed, or deliberated, and the California Public Records Act (Government Code S 6250 et seq.) for all documents relating to activities of the PBID; the Organization shall ensure that its board members will undertake training on the Brown Act, which may consist of self-study materials, an online course, or in-person training; and secure all necessary permits and authorizations for work on public property or within public right-of-ways such as sidewalks, alleys, streets, pedestrian malls, public easements, public buildings, and public-parking areas.

(f) **Database.** Maintain a complete database of assessed properties within the PBID. Update the database at least once each year to reflect changed conditions and to reflect accurately the status of assessed parcels. Provide a copy of the database when submitting the annual reports described in these subsections 1(b) and 1(c). Organization shall maintain the original, approved database of assessed properties with the PBID as approved by the Chico City Council as well as all annual database listings with the detailed information on the assessment, ownership and other information as was provided during the establishment of the PBID.

(g) **Indemnity.** Organization shall indemnify, hold harmless and defend, with counsel of City's choosing, City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages, whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, incurred by City, Organization or any other person, and from any and all claims, demands and actions in law or equity, including attorney's fees and litigation expenses, arising or alleged to have arisen directly or indirectly out of performance of this Agreement. Organization's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City or any of its officers, officials, employees, agents or authorized volunteers. Organization shall reimburse City and its officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

If Organization should subcontract all or any portion of the work to be performed under this Agreement, Organization shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This subsection shall survive termination or expiration of this Agreement.

(h) **Insurance.** Throughout the life of this Agreement, Organization shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (ii) authorized by City's Risk Manager. The following policies of insurance are required:

(i) **COMMERCIAL GENERAL LIABILITY** insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and nonowner equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability of not less than the following:

\$1,000,000 per occurrence for bodily injury and property damage
\$1,000,000 per occurrence for personal and advertising injury
\$2,000,000 aggregate for products and completed operations
\$2,000,000 general aggregate

(ii) **WORKERS COMPENSATION** insurance as required under the California Labor Code should the Organization employ and employees

(iii) **EMPLOYERS' LIABILITY** insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee, if applicable and not included in any other level of coverage.

(iv) **COMMERCIAL AUTOMOBILE LIABILITY** insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and nonowner automobiles or other licensed vehicles (Code 1 Any Auto) with limits of liability of not less than \$500,000 per accident for bodily injury and property damage should the Organization provide, retain or utilize any vehicles.

Defense costs shall be provided as an additional benefit and not included within the above limits of liability. In the event Organization purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Organization shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Organization shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or (ii)

Organization shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Organization shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Organization shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Organization's insurance shall be primary and no contribution shall be required of City. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers.

Organization shall furnish City with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or his/her designee prior to City's execution of the Agreement and before work commences. Upon request of City, Organization shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

If at any time during the life of the Agreement or any extension, Organization or any of its contractors or subcontractors fail to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City hereunder shall in any way relieve Organization of its responsibilities under this Agreement. City shall have the option, at its sole discretion, to provide such insurance which the Organization or any of its contractors or subcontractors fails to provide, and the cost to City of such insurance shall be immediately repaid by Organization or any of its contractors or subcontractors as applicable.

The fact that insurance is obtained by Organization shall not be deemed to release or diminish the liability of Organization, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Organization. Approval or

purchase of any insurance Agreements or policies shall in no way relieve from liability nor limit the liability of Organization, its board, officers, employees, agents, volunteers, persons under the supervision of Organization, vendors, suppliers, invitees, consultants, sub-consultants, contractors, subcontractors, or anyone employed directly or indirectly by any of them.

If Organization should contract or subcontract all or any portion of the services to be performed under this Agreement, Organization shall require each contractor or subcontractor to provide insurance protection in favor of City, its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the contractor's or subcontractor's certificates and endorsements shall be on file with Organization and City prior to the commencement of any work by the contractor or subcontractor.

(i) **Independent Contractor Status.** The Organization will perform under this Agreement as an independent contractor and will be responsible for any federal, state, or local taxes or fees that apply to payments it receives from the City under this Agreement. The Organization's employees and subcontractors will not be employees of the City and will not be eligible for any benefits provided through the City, including but not limited to social security, health, workers' compensation, unemployment compensation, and retirement benefits. Neither the Organization nor any of its officers, employees, agents, volunteers, or subcontractors are or will be considered to be agents of the City in connection with the Organization's performance under this Agreement.

(j) **Records/Audit.** During the term of this Agreement, and for four years after the term expires or terminates, the Organization agrees to maintain detailed records pertaining to PBID administration sufficient to provide the basis for an unqualified opinion by an independent auditor, including but not limited to records concerning budgeting, revenue, expenditures, subcontracts (e.g., Bid Records), insurance, permits, administrative expenses, and overhead. The Organization agrees to make all such records available to the City at all reasonable times. If the City requests, the Organization will obtain and provide to the City, at the Organization's sole cost, an independent financial and/or compliance audit of the Organization's use of PBID funds for any or all years of the PBID's operation.

(k) **Reserve.** During the term of this Agreement the Organization shall establish and maintain a reasonable reserve to provide a contingency for unforeseen PBID program needs and to provide a cushion for assessment delinquencies. Reserve funds can also be utilized to repay PBID start-up loans, and to pay for costs associated with PBID renewal.

(l) **Fidelity Bond.** During the term of this Agreement the Organization shall furnish a fidelity bond to City, with a surety company licensed to lawfully able conduct such business in the State of California, said bond and surety acceptable to City, as the sole surety for Organization and each of its officers, employees, and other persons engaged in its performance hereunder whose duties will involve the charging or collecting of assessments, fees or charges or the handling or receipt of or access to any City and/or PBID monies or funds. City shall be named as obligee thereof, in an amount not less than half a million dollars (\$500,000) conditioned upon the honest and faithful performance of the duties of such persons.

(m) **Delinquent Assessments.** The Organization, unless otherwise instructed by the City in writing, shall be responsible for collection of all delinquent PBID assessments and related penalties, consistent with this Agreement, provided that litigation in the name of the City shall not be commenced without the express written consent of the City.

(n) **PBID Administration.** Organization, at their sole cost, shall engage professional expertise for the preparation of any annual or other required processes to continue, maintain, or adjust assessments for the PBID. Organization shall utilize such professional expertise, at their sole cost, to prepare the assessment spread, assessment roll, annual City Council reports, any noticing by Organization of property owners, and any changes to the PBID's organization or to the cost-spread formulas, or any other such actions necessary to facilitate operations of the PBID.

2. The City's Obligations:

(a) **PBID Administration.** Regarding annual PBID proceedings, the City shall coordinate with the Organization regarding their obligation under Article 2 Section 1(n), all subject to any/all required City Council approvals.

(b) **Billing and Collecting.** The City shall coordinate with Butte County or other professional expertise as required under Article 2 Section 1(n) on the annual levy and collection of PBID assessments. The City may pursue at its discretion but shall not be obligated under this Agreement to pursue, collection of delinquent PBID assessment payments and related penalties from property owners.

(c) **Payments to the Organization.** Upon each receipt of collected PBID assessments from the County of Butte, the City shall deduct reasonable and necessary administrative expenses, not to exceed the actual cost of administrative services provided, and pay the Organization in trust the balance of the funds within 30 days of receipt from the County of Butte. The City shall also transfer an additional \$20,703 to the Organization annually to fund the Management Plan's calculated General Benefit amount ("General Benefit Contribution"). For years in which the assessment is increased due to a CPI adjustment or increased costs in accordance with the Management District Plan, the Organization may request that the City enter into an amendment to this Agreement reflecting a proportionate adjustment to the General Benefit Contribution, and such request shall not be unreasonably denied.

(d) **Maintenance of Effort.** City agrees to provide the same services and level of services to the PBID area that were being provided prior to the establishment of the PBID. At the request of the Organization, the City and Organization can develop a more detailed agreement specifying the City activities representing the City's maintenance of effort.

3. General Provisions.

(a) **General Fund Not Liable.** Except as provided under Section 2, subdivision (c) above, regarding the City's obligation to fund the General Benefit, neither the taxing authority, nor the bonding capacity, nor the general fund, nor any other fund or monies of the City other than actual PBID revenues received from the County will be liable for payment of any obligations

arising from this Agreement. Those obligations are not a debt of the City, nor are they a legal or equitable pledge, charge, lien, or encumbrance upon any of the City's property, income, receipts, or revenues. This Agreement embodies all of the Organization's reimbursement rights, and the City is not required to execute any additional note or document.

(b) **Notices.** To be effective, any notice concerning this Agreement must be served by placing it in the U.S. Mail, addressed as set forth below, with postage prepaid (registered or certified mail, return receipt requested):

(1) If to the City:

City of Chico
Mark Sorensen, City Manager
411 Main Street
PO Box 3420
Chico, CA 95927

(2) If to the Organization:

Tom DiGiovanni, Chico PBID Board President
539 Flume Street, Suite 200
Chico, CA 95928

A notice will be considered delivered two business days after the date of deposit in the U.S. Mail. Any party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this subsection.

(c) **Effective Date, Term, and Early Termination.** This Agreement becomes effective on the date first above upon its complete execution by the parties. The term of this Agreement begins on the effective date and ends at 11:59 p.m. on December 31, 2027. The City may terminate this Agreement early if it determines that the Organization:

- (1) Has misappropriated funds, committed malfeasance, or violated any law in providing the activities and improvements described in the Management Plan or in otherwise administering and implementing the Management Plan; or
- (2) Has materially breached this Agreement and has failed to cure the breach within 30 days after receiving the City's written demand for cure. Following early termination, the Organization will do all of the following as expeditiously as is reasonably possible: terminate all of its activities on behalf of the PBID, pay all obligations and administration costs it incurred on behalf of the PBID, and return to the City all remaining PBID funds and all assets acquired with PBID funds. The City will hold all returned funds and assets on behalf of the PBID.

(d) **Attorneys' Fees.** The prevailing party in any litigation or arbitration brought to enforce this Agreement will be entitled to recover reasonable attorneys' fees and costs incurred in connection with the litigation or arbitration, through final resolution.

(e) **Interpretation and Venue.** Time is of the essence of this Agreement, which is to be interpreted and applied in accordance with California law. Any litigation concerning this Agreement must be brought and prosecuted in the Butte County Superior Court.

(f) **Waiver.** A party's failure to insist on strict performance of this Agreement or to exercise any right or remedy upon the other party's breach of this Agreement will not constitute a waiver of the performance, right, or remedy. A party's waiver of the other party's breach of any term or provision in this Agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other term or provision. A waiver is binding only if set forth in writing and signed by the waiving party.

(g) **Entire Agreement.** Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement sets forth the parties' entire understanding regarding the subjects covered. It supersedes all prior or contemporaneous agreements, representations, and negotiations regarding those subjects (whether written, oral, express, or implied) and may be modified only by another written agreement or written amendment signed by both parties.

(h) **Counterparts.** The parties may execute this Agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.

(i) **Authorized Agents.** Except as otherwise provided by law, all notices expressly required of City and not otherwise specifically provided for, shall be effective only if signed by the City Manager of the City, or his/her designee. Organization's contact person for purposes of this Agreement shall be its Executive Director. The City's contact person for purposes of this Agreement shall be its City Manager.

(j) **Precedence of Documents.** In the event of any conflict between the body of this Agreement and any exhibit or attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the exhibit or attachment.

(k) **Amendment.** This Agreement may be modified only by written instrument duly authorized and executed by all the parties.

(l) **Conflict of Interest.** Organization shall comply, and require any of its subcontractors to comply, with all laws and regulations including, without limitation, conflict of interest laws, such as Government Code 1090 et. seq., the California Political Reform Act (Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of City, Organization shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry,

Organization and the respective subcontractor(s) are in full compliance with all laws and regulations. Organization shall take, and require any subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, Organization shall immediately notify City of these facts in writing.

(m) **PBID Funds held in Trust.** All PBID assessments and funds in the possession/control of the Organization hereunder are the property of the PBID and shall be held in trust by the Organization solely for the benefit of the PBID.

IN WITNESS WHEREOF, the parties have executed this Agreement at Chico, California, the day and year first above written.

CITY OF CHICO

ORGANIZATION

Mark Sorensen,
City Manager

Tom DiGiovanni,
Chico PBID, Board President

Barbara Martin,
Administrative Services Director

ATTEST:

Debbie Presson,
City Clerk

APPROVED AS TO FORM:

Vincent C. Ewing,
City Attorney
**Pursuant to The Charter of the
City of Chico Section 906(E)*