

**MEMORANDUM OF UNDERSTANDING
BETWEEN
DOWNTOWN BRENTWOOD COALITION
AND THE CITY OF BRENTWOOD**

This Memorandum of Understanding (“MOU”) is entered this ____ day of _____ 2024, and effective on July 1, 2024 (“Effective Date”), by and between the City of Brentwood, a municipal corporation of the State of California (“City”), and Downtown Brentwood Coalition, a 501(c)(6) non-profit corporation in the State of California (“Coalition” or “DBC”) (each a Party, and collectively, the “Parties”) for delivery and administration of services including but not limited to the downtown area and downtown events promotion, destination tourism, and Coalition membership management.

RECITALS

A. The Parties have been partnering together since at least 2021, when they entered into their first MOU, to boost essential services that foster the City’s downtown vitality and growth. And, the Parties are entering into this MOU to memorialize each of their rights and obligations, as more specifically identified in the Scope of Services, attached as Exhibit “A.”

B. Downtown Brentwood is the historical commercial and entertainment-focused heart of Brentwood, comprising of the areas generally defined by the City of Brentwood Downtown Specific Plan, and incorporating surrounding commercial development areas and residential neighborhoods that support the economic and cultural vibrancy of the community. (See Downtown Specific Plan Area attached as Exhibit “B,” referred to throughout as “Downtown Brentwood” or “Downtown”).

C. Since 2008, the Coalition, representing a group of Downtown business owners, began the process of advancing Downtown Brentwood as a destination, including promoting the identity and brand of the Downtown area, promoting Downtown’s key attributes, and its members. The Coalition’s membership boundaries are outlined in red on the map attached and incorporated, as Exhibit “C.”

D. On July 09, 2013, the Coalition became a mutual benefit corporation with the State of California for the purpose of enhancing economic growth of the Downtown area by focusing on education, promotion, and development of the business community, and those areas of the community affecting businesses.

E. In March 2024, Downtown Brentwood was designated as a Main Street America Accredited Member, which includes meeting rigorous national program performance standards and achieving meaningful revitalization for Downtown.

NOW, THEREFORE, IT IS HEREBY AGREED by the Parties as follows:

1. Responsibilities of the Coalition. Along with the terms and conditions of this MOU, the Coalition agrees to be responsible for and complete those items set forth in the attached Exhibit “A,” Scope of Services, which is incorporated into the MOU by this reference.

2. Relationship of the Parties. The Coalition is free from the control and direction of the City, in pursuit of the Coalition's independent calling, and not as an employee of the City. It is understood that this is a MOU by and between independent contractors and is not intended to, and will not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of independent contractor. Any persons used or hired by the Coalition to provide services under this MOU will not be considered employees of City for any purposes whatsoever.

3. Term. This MOU will commence on the Effective Date and, unless terminated earlier pursuant to this MOU, will terminate June 30, 2026.

4. Payment. For the term of this MOU, the City Council will provide payments as more explicitly outlined in Exhibit "A" in an amount not to exceed \$140,000. The Coalition will be responsible for any additional programs, activities, and services not identified in this MOU, or as provided for in Exhibit "A". The Coalition will invoice City quarterly for the services identified in Exhibit "A".

5. Indemnity. Coalition will hold harmless, defend and indemnify City, its officers, agents, volunteers and employees from and against any and all claims, demands, costs or liability including attorney fees arising out of or in any way connected with the performance of this MOU, caused in whole or in part by any act or omission of the Coalition, any of its subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except to the extent caused by the active negligence, sole negligence, or willful misconduct of City.

6. Insurance. Coalition will obtain and maintain, at its cost and expense, for the duration of the MOU and any and all amendments, insurance against claims for injuries to persons or damage to property which may arise out of or in connection with performance of the Services by Coalition or Coalition's agents, representatives, employees or subcontractors. The insurance will be obtained from an insurance carrier admitted and authorized to do business in the State of California. The insurance carrier is required to have a current Best's Key Rating of not less than "A:VII." This Section 6 will survive the expiration of this MOU.

6.1 Coverages and Limits. Coalition will maintain the types of coverages and minimum limits indicated below, unless Risk Manager or City Manager, in consultation with the City Attorney approves a lower amount. These minimum amounts of coverage will not constitute any limitations or cap on Coalition's indemnification obligations under this MOU. City, its officers, agents, volunteers and employees make no representation that the limits of the insurance specified to be carried by Coalition pursuant to this MOU are adequate to protect Coalition. The coverage will contain no special limitations on the scope of its protection to the above-designated insureds except for Workers Compensation and errors and omissions insurance. Coalition will obtain occurrence coverage, excluding Professional Liability, which will be written as claims-made coverage. If Coalition believes that any required insurance coverage is inadequate, Coalition will obtain such additional insurance coverage, as Coalition deems adequate, at Coalition's sole expense.

6.1.1 Commercial General Liability Insurance. \$1,000,000 combined single-limit per occurrence for bodily injury, personal injury and property damage. If the submitted policies contain aggregate limits, general aggregate limits will apply separately to the work under this MOU or the general aggregate will be twice the required per occurrence limit.

6.1.2 Automobile Liability. \$1,000,000 combined single-limit per accident for bodily injury and property damage.

6.1.3 Workers' Compensation and Employer's Liability. Workers' Compensation limits as required by the California Labor Code and Employer's Liability limits of \$1,000,000 per accident for bodily injury. Workers' Compensation and Employer's Liability insurance will not be required if Coalition has no employees and provides, to City's satisfaction, a declaration stating this.

6.2 Endorsements. For Commercial General Liability Insurance, Coalition will ensure that the policies are endorsed to name the City, its officers, agents, volunteers and employees as additional insureds. Prior to City's execution of this MOU, Coalition will furnish, to the satisfaction of the City, certificates of insurance and endorsements.

6.3 Cancellation. Insurance will be in force during the life of the MOU and any extensions of it and will not be canceled without thirty (30) days prior written notice to City sent pursuant to the notice provisions of this MOU.

6.4 Failure to Maintain Coverage. If Coalition fails to maintain any of these insurance coverages, then City will have the option to declare Coalition in breach of this MOU, or may purchase replacement insurance or pay the premiums that are due on existing policies in order to maintain the required coverages. Coalition is responsible for any payments made by City to obtain or maintain insurance and City may collect these payments from Coalition or deduct the amount paid from any sums due Coalition under this MOU.

6.5 Submission of Insurance Policies. City reserves the right to require, at any time, complete and certified copies of any or all required insurance policies and endorsements.

6.6 Primary Coverage. For any claims related to the Services and this MOU, the Coalition's insurance coverage will be primary insurance with respect to City, its officers, agents, volunteers and employees. Any insurance or self-insurance maintained by City for itself, its officers, agents, volunteers and employees, will be in excess of Coalition's insurance and not contributory with it.

6.7 Reduction in Coverage/Material Changes. Coalition will notify City in writing pursuant to the notice provisions of this MOU thirty (30) days prior to any reduction in any of the insurance coverage required pursuant to this MOU or any material changes to the respective insurance policies.

6.8 Waiver of Subrogation. The policies shall contain a waiver of subrogation for the benefit of City.

7. Non-discrimination. The Parties will comply with all applicable local, state and federal laws and regulations prohibiting discrimination and harassment.

8. Entire Agreement. This MOU and its Exhibits "A," "B," and "C" contain the entire understanding and agreement of the Parties, and all oral or written representations, understandings or agreements are expressly stated in this MOU. In case of a conflict between the terms of this MOU and any Exhibit attached, the terms of this MOU will prevail. No testimony or evidence of any such representations, understandings, or covenants will be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this MOU.

9. Amendments. Changes to the terms and conditions of this MOU will be made only by written amendment signed by the Parties.

10. Notices. All notices with respect to this MOU will be given in writing by first class mail to the Parties, or to such other persons' addresses or telephone numbers as the Parties may designate in writing from time to time as follows:

City: City of Brentwood
Attention: Abraham Salinas, Senior Analyst
City Manager – Economic Development
150 City Park Way
Brentwood, CA 94513

Coalition: Downtown Brentwood Coalition
Attention: Peter Jacoway, Board President
629 First Street, #22
Brentwood, CA 94513

Notice will be deemed effective on the date personally delivered or, if mailed, 3 days after depositing it in the United States Mail. Coalition must notify City within 14 days of any change to its mailing address.

11. Termination. Either Party may terminate this MOU at any time after a discussion and delivery of written notice to the other Party, with such termination effective immediately. In the event of termination of this MOU, any unexpended funds will be returned to the Party that has contributed them. The Coalition shall relinquish all materials and files related to this MOU and Main Street America to the City upon termination.

12. Assignment. Neither Party will assign any right or obligation pursuant to this MOU without the written consent of the other Party. Any attempted or purported assignment without the written consent of the other Party will be void and of no effect.

13. Third Parties. This MOU does not confer any benefits to any third party.

14. Jurisdiction and Venue. Any action at law or in equity brought under this MOU for the purpose of enforcing a right or rights provided for by this MOU will be tried in a court of competent jurisdiction in the County of Contra Costa, State of California, and the Parties waive all provisions of law providing for a change of venue in these proceedings to any other county.

15. Paragraph Headings. Paragraph headings are used for convenience only and will not be deemed to be a part of such paragraphs and will not be construed to change the meaning of the paragraphs.

16. No Waiver. Waiver by either Party of any default, breach or condition precedent of this MOU will not be construed as a waiver of any other default, breach or condition precedent or of any other right under this MOU.

17. Severability. If any term, provision, covenant, or condition of this MOU is ruled invalid, void, or unenforceable by a court of competent jurisdiction, this MOU will nonetheless remain in full force and effect as to all remaining terms, provisions, covenants, and conditions.

18. Maintenance of Records. Coalition will maintain complete and accurate records with respect to costs incurred under this MOU for forty-two (42) months from the date of execution of the MOU. All records will be clearly identifiable.

19. Signatures.

19.1 Counterparts. This MOU may be executed in two or more counterparts, each of which together will be deemed an original, but all of which together will constitute the same instrument.

19.2 Digital/Electronic Signatures. Using a City-approved method, this MOU may be executed through the use of digital or electronic signatures in accordance with Government Code Section 16.5. The presence of an electronic signature on this MOU will be construed as the Parties' consent to do business electronically.

[Signatures on the following page.]

20. Authority. The individuals executing this MOU represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this MOU on behalf of the respective legal entities of the Parties.

Downtown Brentwood Coalition:

City of Brentwood:

By: _____
Peter Jacoway,
President

By: _____
Tim Y. Ogden, City Manager

By: _____
Jim Barnett,
Vice President

ATTEST:

By: _____
Margaret Wimberly, City Clerk

APPROVED AS TO FORM:

By: _____
Katherine Wisinski, Interim City Attorney

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Exhibit A
Scope of Services
Downtown Brentwood Coalition
July 1, 2024 – June 30, 2026

The Downtown Brentwood Coalition serves as a key partner of the City of Brentwood to boost essential services that foster downtown vitality and growth. Through this partnership, the DBC seeks to improve residents' quality of life, support local businesses, and enhance Downtown Brentwood's attractiveness to visitors. Its wide-ranging efforts focus on meeting the diverse needs of the Downtown community. These services include, but are not limited to, the following activities:

A. Administration of the DBC: DBC staff, Board of Directors, and appointed representatives, are responsible for overseeing all administrative aspects of the organization.

1. **Legal and Regulatory Compliance:** Maintain compliance with state and federal guidelines. This includes the annual submission of the DBC's Articles of Incorporation and Bylaws to the City.
2. **Financial Management:** Conduct monthly financial operations and reporting, effective budget tracking, and ensuring adherence to tax obligations and maintaining non-profit status. Non-compliance could result in MOU termination.
3. **Governance:** Oversee Board elections and conduct meetings in alignment with the DBC Bylaws. Additionally, the DBC will establish a non-voting ex officio board seat for a staff member from the City of Brentwood, to be included in all board meetings.
4. **Membership:** Determine and manage annual membership dues, including associated benefits and services, for those members within the DBC boundaries outlined in red in Exhibit "C".
5. **Quarterly and Annual Reporting:** Provide quarterly and annual reports to the City, summarizing the following:

A. Administration of the DBC

- (i) Financial Reporting – including but not limited to a current balance sheet.
- (ii) Membership Summary: A description and count of current members alongside the number of new memberships acquired within the reporting period.

B. Operations and Programming

- (i) Business Assistance Overview: Summary and list of businesses assisted, services provided, and cumulative time dedicated toward assistance efforts.
- (ii) Special Event Outcomes and Financial Summary: Summary of special events held during the reporting period describing outcomes, estimated number of attendees/participants and an individual Statement of Revenue and Expenses or similar financial report for each special event.
- (iii) Advocacy Efforts Overview: Provide a concise summary of advocacy activities undertaken for Downtown, detailing participation in meetings, presentations made, and letters of support authored to champion Downtown interests.

C. Fund Development

- (i) Overview of Fund Development Efforts: Summary of activities conducted towards fund development as described in section C.1-C.5 below.

D. Women's Club Lease

- (i) Summary of progress made towards renovation of the Women's Club Building.

B. Operations and Programming: Coordinate Downtown activities such as leading diverse projects, programs, and events while ensuring effective collaboration with the City, community groups, and other stakeholders.

1. **Small Business Support:** Offer services including business planning, marketing, permitting assistance, and guidance through City procedures.
2. **Special Events Coordination:** Strategically plan and execute special events and promotional activities to boost community engagement, tourism, and Downtown economic activity.
3. **Advocacy and Representation:** Represent Downtown interests in relevant forums, including City meetings and business associations, to ensure that the area's needs and potential are adequately recognized and supported.

C. Fund Development: Develop a sustainable funding strategy to bolster the DBC's operational plans, support staff capacity and retention, and enhance the quality and range of services and programming in the Downtown area. Fund Development includes, but is not limited to, the following activities:

1. **Ticketed Events:** Organize and host a range of ticketed events that not only generate funds but also attract visitors and locals alike. These events can vary from cultural festivals and concerts to educational workshops and networking events, providing valuable experiences that enrich the community.
2. **Sponsorships:** Build partnerships with local and regional businesses to secure sponsorships for events, programs, or specific projects.
3. **Grants:** Actively pursue grant opportunities from government entities, foundations, and private organizations. This will involve identifying grants that align with the DBC's objectives, preparing applications, and managing awarded funds to ensure compliance with grant requirements.
4. **Membership Program:** Develop the DBC's membership program to offer valuable benefits and services to individuals and businesses in return for their financial support. These programs can include exclusive access to events, discounts at local businesses/suppliers, and opportunities for networking and collaboration.
5. **Donations and Fundraising Campaigns:** Implement targeted fundraising campaigns to solicit donations from individuals, businesses, and philanthropic organizations. These campaigns can be conducted online, through direct mail, or at special fundraising events, highlighting the DBC's achievements and future projects to inspire community support.

D. Former Women's Club Renovations: Following the City Council's November 14, 2023 approval of a 54-month lease ("Lease"), the DBC has obtained the former Women's Club Building in Downtown to serve as its future headquarters, committing to necessary renovations for functionality and compliance. This includes ADA upgrades and securing City permits for all changes to align with Brentwood's standards.

The renovations, covering ADA compliance and other improvements, must be completed by December 14, 2025, as per the Lease terms, enabling full utilization of the space by the DBC.

E. Payment Schedule:

1. **Invoicing/Payment:** The DBC will submit invoices to the City on a quarterly basis, detailing the services rendered during the preceding quarter based upon the Scope of Work and included in a quarterly report as described in section A.5.(Quarterly and Annual Reporting). Upon receipt of each invoice with the required quarterly report, payment will be made within thirty (30) calendar days.

An initial payment of \$17,500 will be made within thirty (30) calendar days after the Effective Date (July 1, 2024) of this MOU. A quarterly report shall be submitted after the initial reporting period (July 1, 2024 – September 30, 2024) has concluded.

2. **Total Compensation:** The total compensation will not exceed \$70,000 (seventy thousand dollars) per fiscal year for the term of the two-year agreement, for a total not to exceed amount of \$140,000 (one hundred forty thousand dollars).
3. **Future Funding Considerations:** The DBC acknowledges that financial support from the City, as outlined in this MOU, is not guaranteed to extend beyond the expiration of the Term. This understanding necessitates proactive financial planning and exploration of additional funding sources by the DBC to sustain its operations and initiatives in the future.

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Exhibit B

Downtown Specific Plan Boundary



DOWNTOWN SPECIFIC PLAN AREA

Exhibit C

Downtown Brentwood Coalition Membership Boundary

