

COPY

OUTSOURCING AGREEMENT

This Outsourcing Agreement ("Agreement") is made and effective as of this 10th day of July, 2007, by and between FRIENDS OF BALBOA PARK, hereinafter referred to as FOBP; and KIOSK ARTS, LLC. The parties to this Agreement are hereinafter sometimes referred to individually as a "Party" or, collectively, as the "Parties," with reference to the following facts:

RECITALS

1. Whereas FOBP is a 501(c)3 public benefit corporation organized to enhance the public's awareness and enjoyment of San Diego's Balboa Park, and;
2. Whereas FOBP has envisioned and developed a collaborative project with the City of San Diego's Department of Parks and Recreation for the placement of information KIOSKS at selected sites throughout the Park, hereinafter referred to as the KIOSK Program, and has entered into a Donation and Operating Agreement ("D&O Agreement") with the City of San Diego ("City") for placement, maintenance and operations of a minimum of two and a maximum of five KIOSKS within the Park, and;
3. Whereas FOBP desires to outsource the development, maintenance and operations management responsibilities for the KIOSK Program to a qualified third party, and;
4. Whereas FOBP desires to outsource the marketing and advertising management responsibility for the KIOSK Program, and;
5. Whereas KIOSK ARTS, LLC, is a Limited Liability Corporation licensed to do business in the City of San Diego and represents that it has the qualifications and talent to manage the KIOSK Program and conduct business providing both content development, maintenance and operations management services; and provide

marketing and advertising management services related to the KIOSK Program's advertising opportunities (see attached Statement of Qualifications, Schedule "H"); NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I - PHASED DEVELOPMENT

A. PHASE ONE

Phase One shall consist of the design, development, installation, maintenance and operations management of three (3) KIOSKs in Balboa Park. Subject to the termination rights of the Parties as set forth in this Agreement, and the rights of the City and FOBP under the D&O Agreement, the Parties anticipate that the term of Phase One shall be one to two years.

B. PHASE TWO

Provided that Phase One is both an operational and financial success, Phase Two shall consist of the design, development, installation, maintenance and operations management of an additional two (2) KIOSKs for a total of five (5) KIOSKs in Balboa Park. The term of Phase Two shall be the term of this Agreement.

ARTICLE II - MAINTENANCE, MANAGEMENT AND MARKETING

A. SCOPE OF MAINTENANCE AND OPERATIONS MANAGEMENT SERVICES TO BE PROVIDED BY KIOSK ARTS, LLC:

KIOSK ARTS, LLC shall provide the following services for the maintenance and operations management of the KIOSK Program:

- 1. Systems Maintenance, Hardware and Software Asset Management**
shall include full software maintenance, upgrades, IT security, and remote problem resolution. KIOSK ARTS, LLC shall manage the acquisition and life-

cycle maintenance for the Operating System hardware and software, and all peripheral application software and equipment and licenses in a cost-effective manner.

2. **Network Management** shall include maintaining and tracking network assets, including wireless backhaul.
3. **Revenue Program Management** shall include pricing, accounting and management of all KIOSK Revenue Programs.
4. **Ongoing Programming Services** shall include at least weekly informational updates, reasonable content upgrades, and added peripheral interfaces as warranted. KIOSK ARTS, LLC shall perform these Programming Services in a prompt, timely manner such that the KIOSK Program shall operate at all times in accordance with the Design Specifications ("Design Specifications") set forth on the attached Schedule "I."
5. **Facilities Management** shall include providing comprehensive facilities management including oversight of power systems, cooling, and security systems; and dependable resolution of 'service disruption' issues such as jammed cards and cash or other materials like receipt rolls or vouchers. Facilities Management shall likewise be performed by the KIOSK ARTS, LLC in a prompt, timely manner and in accordance with the Design Specifications for the KIOSK Program. The City shall maintain the exterior of the KIOSKS as set forth in the D&O Agreement.
6. **Call Center Management** shall include responding to user and KIOSK related complaints.
7. **IT Backup** shall include at least weekly backup of KIOSK driven data.

8. **Any Additional Operations and Maintenance** identified in the attached Schedule "A" but not listed above in Paragraphs II.A.1 through 7. shall be the responsibility of KIOSK ARTS, LLC and shall likewise be performed in a prompt, timely manner in accordance with the Design Specifications.

**B. SCOPE OF MARKETING AND SPONSORSHIP MANAGEMENT SERVICES
RELATED TO KIOSK SPONSORS AND OPPORTUNITY PROGRAMS TO BE
PROVIDED BY KIOSK ARTS, LLC:**

KIOSK ARTS, LLC shall provide Marketing and Sponsorship Management services for the following: **KIOSK Sponsorship and Opportunities Programs:**

1. **External Billboard Sponsorship:** KIOSK ARTS, LLC shall coordinate and manage the allotted external billboard space on each KIOSK. Special effort will be made to keep this sponsorship medium relevant to Balboa Park by promoting the sponsorship opportunities to the cultural institutions and Park destination event promoters. Fees will be established in a media kit produced by KIOSK ARTS, LLC and approved by FOBP.
2. **Touch Screen Sponsorship:** KIOSK ARTS, LLC shall coordinate and manage the sponsorship messages relative to the touch screen content. Fees will be established in a media kit produced by KIOSK ARTS, LLC and approved by FOBP. Multi-tiered digital sponsorship opportunities will be outlined in the media kit with prices of each opportunity. The attract loop (top level screen) will provide banner sponsorship opportunities and video playback and/or video camera imaging as sponsorship mediums. Subsequent level screens will provide banner sponsorship messages and/or pop-up sponsorship messages as provided for in the FOBP approved Graphical User Interface.

3. **Sponsor and Promotional Programming:** KIOSK ARTS, LLC shall work with key Sponsors to provide Sponsor acknowledgement opportunities. Fees will be established in a media kit produced by KIOSK ARTS, LLC and approved by FOBP.
4. **Splash Page Sponsorship:** KIOSK ARTS, LLC shall solicit and coordinate with Sponsors for splash page sponsorship opportunities relative to WiFi usage. Fees will be established in a media kit produced by KIOSK ARTS, LLC and approved by FOBP.
5. **Program Expansion:** KIOSK ARTS, LLC shall seek to expand sponsorship revenues and opportunities as warranted and as approved by FOBP.
6. **Best Efforts:** KIOSK ARTS, LLC shall use its best efforts to assure that the KIOSK Project generates sufficient revenues from the services described in this Paragraph II.B. to offset the Maintenance and Operational Management fees being paid pursuant to this Agreement.
7. **Sponsorship Message Content:** All sponsorship message content shall be approved by FOBP and the City of San Diego pursuant to the D&O Agreement.

C. REVENUE GENERATION:

1. **Phase One:** Attached as Schedule "B" to this Agreement is a summary of annual revenue projections for Phase One of the KIOSK Project less Operations Overhead.
2. **Phase Two:** Attached as Schedule "C" to this Agreement is a summary of annual revenue projections for Phase Two of the KIOSK Project less Operations Overhead.

- 3. Best Efforts:** KIOSK ARTS, LLC will use its best efforts to attain the revenue projections set forth on Schedules "B" and "C."

D. MAINTENANCE AND OPERATIONS MANAGEMENT EXPENSES:

Attached to this Agreement as Schedule "D" is a summary of the Maintenance and Operations Management Expenses projected on an annual basis for Phase One ("Phase One O&M"). Attached to this Agreement as Schedule "E" is a summary of the Maintenance and Operations Management Expenses on an annual basis for Phase Two ("Phase Two O&M").

E. ANNUAL OPERATING OVERHEAD

Attached to this Agreement as Schedule "F" is a summary of the Annual Operations Overhead projected for Phase One ("Phase One Overhead"). Attached to this Agreement as Schedule "G" is a summary of the Annual Operations Overhead projected for Phase Two ("Phase Two Overhead").

F. SHARING OF RISK AND LIABILITY:

- 1. Phase One:** FOBP shall have the financial responsibility for Phase One Overhead including Phase One O&M.
- 2. Phase Two:** In Phase Two KIOSK ARTS, LLC shall share the risk of the success of the KIOSK Program. If insufficient revenues are generated to pay for some or all of Phase Two O&M (See Schedule "E" and Item 5 on Schedule "G") then KIOSK ARTS, LLC's Maintenance and Operations Management Expenses (\$15,900) shall be at risk and only paid if sufficient revenues are generated from the KIOSK Program.

G. KIOSK REVENUE PROGRAMS:

The KIOSK Program shall include the following revenue features and services:

1. **Sponsorship and Opportunities Program** shall include both external billboard sponsorship messages and digital touch screen mediums.
2. **Digital Postcards Feature** shall be priced to maximize revenues. Market entry will be \$5.00 to send a video postcard with up to 4 recipients. Any price adjustments recommended by KIOSK ARTS, LLC shall first be approved by FOBP.
3. **ATM:** KIOSK ARTS, LLC has contracted with a third party for managing these services and a user fee will be charged that will result in a payment to the KIOSK Project of \$1.25 per transaction based on a \$2.00 user transaction fee. KIOSK ARTS, LLC or its third party contractor shall provide ATM's, cash replenishment, insurance and systems maintenance and financial accounting to FOBP.
4. **WiFi:** KIOSK ARTS, LLC shall contract with a third party for managing these services at a fee to be negotiated and charged (to be determined) per logon. KIOSK ARTS, LLC or its third party contractor shall provide all customer billing and financial accounting. Tie-in arrangements may be integrated with other subscription-based Wireless Providers for revenue enhancement. WiFi services under this Agreement shall be limited to Balboa Park and shall produce net positive revenue.
5. **Future Revenue Programs:** KIOSK ARTS, LLC will use its best efforts to develop additional revenue sources subject to the approval of FOBP and replace any revenue sources that are underperforming pursuant to the Revenue Projections set forth on Schedules "B" and "C."

H. COMPENSATION PAYABLE TO KIOSK ARTS, LLC:

- 1. Compensation For O&M Services.** KIOSK ARTS, LLC shall be paid the Phase One O&M and the Phase Two O&M subject to the terms of this Agreement. Payment shall be made first from revenues generated by the KIOSK Program.
- 2. Compensation for Additional Services.** As additional compensation for the services for which KIOSK ARTS, LLC is responsible under this Agreement including, but not limited to, obtaining sponsorship revenues, KIOSK ARTS, LLC shall be compensated as follows:
 - 2.1** Fifty percent (50%) of net revenues generated by the KIOSK Project after payment of Phase One Overhead/Phase Two Overhead.
- 3. Application of KIOSK Generated Donations.** 100% of all kiosk generated donations shall be deposited into FOBP's account. At no time shall said donations be subject to the 50% compensation provisions of Paragraph H.2.1.

I. MANAGEMENT OF FUNDS

KIOSK ARTS, LLC shall establish and maintain a separate merchant account for purposes of collecting, managing and disbursing KIOSK Program revenues. All payables relative to the KIOSK Program shall be made from this account and accounted for by KIOSK ARTS, LLC. KIOSK ARTS, LLC shall provide FOBP on or before the tenth of each month with a financial statement showing all revenues, expenses and profits/losses for the preceding month and year to date. Net Profit and/or donations, if any, shall be directly deposited on a monthly basis into FOBP's designated bank account. Upon reasonable notice, KIOSK ARTS, LLC, shall

make all of its financial books and records available to FOBP and/or the City of San Diego for review and/or audit.

J. USE OF AGENTS, ASSISTANTS AND SUBCONTRACTORS

KIOSK ARTS, LLC, at its own cost and expense, is authorized to engage the services of any agents, assistants, persons, or corporations that it determines proper to aid or assist in the proper performance of the services to be provided hereunder.

K. INTELLECTUAL PROPERTY:

KIOSK ARTS, LLC expressly acknowledges and agrees that any and all intellectual property and proprietary materials created for FOBP by KIOSK ARTS, LLC and any of its agents, assistants, persons, or corporations engaged in the performance of the services provided hereunder shall be created as "works made for hire" by FOBP as defined in the United States Copyright Act and shall be the sole and exclusive property of FOBP. To the extent such intellectual property and/or proprietary materials are deemed not to be "works for hire," KIOSK ARTS, LLC hereby assigns all of its right, title and interest thereto to FOBP. Providing, however, KIOSK ARTS, LLC is not prohibited from expanding its independent business interests elsewhere.

L. TERMINATION:

- 1. Consequences of termination:** In the event FOBP winds down as a corporation, all "work made for hire" copyrights pertaining to the KIOSK Program shall be assigned to KIOSK ARTS, LLC to permit KIOSK ARTS, LLC's continued management of the KIOSK Program. Provided, however, said assignment shall be subject to the approval of the City.

2. **Performance:** Performance of KIOSK ARTS, LLC shall be based on objective standards of performance and measured against response time and problem processing.
3. **Good Faith:** It is the desire and intent of both Parties to maintain this Agreement for the long-term. KIOSK ARTS, LLC shall not be dismissed from this agreement by FOBP for reasons other than substantial non-performance or malfeasance. The assignment of risk and liability and willingness on the part of KIOSK ARTS, LLC to receive compensation for its services is predicated on the long term vision of mutual participation in the revenue sharing and future earning potential of the KIOSK Program. KIOSK ARTS, LLC acknowledges, however, that FOBP's willingness to participate on a long-term basis depends upon customer driven use of, and revenues generated by, the KIOSK Program sufficient to cover all expenses of the Program.
4. **Term:** This Agreement shall remain in effect consistent with the duration specified in the D&O Agreement between the City and FOBP, with option extensions.
5. **Termination for Cause:** Either Party may terminate this Agreement for cause upon delivering to the other Party a written sixty (60) day notice of termination.
6. **LIQUIDATED DAMAGES: IF FOBP BREACHES THIS AGREEMENT, THE PARTIES AGREE, BY PLACING THEIR INITIALS BELOW, THAT KIOSK ARTS, LLC'S DAMAGES WILL BE LIMITED TO AN AMOUNT EQUAL TO MAINTENANCE AND OPERATIONS MANAGEMENT EXPENSES FOR ONE YEAR (\$13,500 DURING PHASE ONE, \$15,900 DURING PHASE**

TWO). THIS SUM SHALL CONSTITUTE LIQUIDATED DAMAGES TO KIOSK ARTS, LLC FOR SUCH BREACH BY FOBP. THE PARTIES AGREE THAT KIOSK ARTS, LLC'S ACTUAL DAMAGES IN THE EVENT OF SUCH A BREACH BY FOBP WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE AND THAT SAID SUM IS A REASONABLE AMOUNT FOR LIQUIDATED DAMAGES FOR SUCH A BREACH UNDER THE CIRCUMSTANCES EXISTING AT THE TIME THIS AGREEMENT IS SIGNED BY THE PARTIES. IN CONSIDERATION OF THE PAYMENT OF LIQUIDATED DAMAGES, KIOSK ARTS, LLC SHALL BE DEEMED TO HAVE WAIVED ALL OTHER CLAIMS FOR DAMAGES OR RELIEF AT LAW OR IN EQUITY (INCLUDING, WITHOUT LIMITATION, ANY RIGHTS TO INJUNCTIVE RELIEF).

FOBP



KIOSK ARTS LLC



M. GOVERNANCE:

This Agreement shall be governed by the laws of the State of California and shall be consistent with the terms of the D&O Agreement between FOBP and the City. In the event of any inconsistency between the terms of this Agreement and said D&O Agreement, the terms of the D&O Agreement shall control.

N. DEVOTION OF TIME:

KIOSK ARTS, LLC shall use its best efforts in the performance of its duties under this Agreement.

O. SCOPE OF FOBP RESPONSIBILITIES:

- 1.** FOBP shall be responsible for raising the funds to pay for the installation of the KIOSKs.

2. FOBP shall be responsible for design, construction and installation of the KIOSKs in Balboa Park with the consent and approval of the City.
3. FOBP shall assist in sponsorship content procurement, as applicable.
4. FOBP has the right, but not the obligation, to provide sponsorship content oversight.

P. INSURANCE

KIOSK ARTS, LLC shall hold commercial general liability insurance, including contractual liability, at limits of not less than \$1,000,000 per occurrence, automobile liability insurance, at limits of not less than \$1,000,000 per occurrence, errors and omissions insurance at limits of \$1,000,000, and worker's compensation and employer's liability insurance covering all employees engaged in the performance of this order for claims arising under any applicable worker's compensation and occupational disease acts.

Q. COMPLIANCE WITH LAW

KIOSK ARTS, LLC agrees and warrants that KIOSK ARTS, LLC shall comply with all requirements of applicable laws, regulations and standards including but not limited to the provisions of: **(a)** Executive Order 11246, as amended, of the President of the United States and the Rules and Regulations pursuant thereto pertaining to Equal Employment Opportunity; **(b)** the Fair Labor Standards Act of 1938 of the United States, as amended, with respect to Wages and Hours; **(c)** the Occupational Safety and Health Act of 1970 (OSHA), as amended; **(d)** the Immigration Reform and Control Act of 1986 (IRCA); and the requirements of the City D & O Agreement.

R. COMPLIANCE WITH FOBP/CITY SUBCONTRACTOR PROVISIONS

1. DRUG-FREE WORKPLACE. KIOSK ARTS, LLC shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace.
2. KIOSK ARTS, LLC shall comply with City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), *EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM ("EEOOP")*, a copy of which is on file in the Office of the City Clerk and incorporated herein. KIOSK ARTS, LLC shall be individually responsible to abide by the EEOOP. KIOSK ARTS, LLC shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086, as well as the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. KIOSK ARTS, LLC shall not discriminate against any employee or applicant for employment on any basis prohibited by law.

S. GENERAL BUSINESS TERMS

This Agreement is not assignable by either Party without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempt to assign any of the rights, duties, or obligations of this Agreement without such consent is void. This Agreement can only be modified by a written agreement duly signed by persons authorized to sign agreements on behalf of FOBP and of KIOSK ARTS, LLC. In the event of an assignment to which the other Party has consented, the assignee shall agree in writing to personally assume, perform, and be bound by all the provisions of this Agreement.

If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Notices – Any requirements of reasonable notice by either Party shall be met if such notice is mailed, postage prepaid, to the other Party at the mailing address designated by the other Party.

Attorneys' Fees – In the event of any controversy, claim, dispute, arbitration or legal action between the Parties, arising out of or relating to this Agreement, its creation, interpretation, enforcement or breach, the prevailing Party shall be entitled to recover from the other Party all costs and expenses including, without limitation, reasonable attorneys' fees and costs, whether or not formal court proceedings are begun. This provision constitutes a separate covenant and shall survive the entry of a judgment in any action to enforce or interpret this Agreement; the judgment in any such action shall include a provision whereby the prevailing party will be entitled to recover attorneys' fees and costs incurred to enforce such judgment.

Arbitration – In the event of any controversy, claim or dispute between the Parties as to the construction, interpretation, operation or enforcement of this Agreement, then the same shall be submitted to binding arbitration before a single arbitrator in San Diego County pursuant to the Commercial Arbitration Rules of the American Arbitration Association.

T. INDEPENDENT CONTRACTOR

KIOSK ARTS, LLC acknowledges that its services hereunder are not subject to the discretion and control of FOBP as envisaged by the California Labor Code or the United States Fair Labor Standards Act, including rules, orders or regulations promulgated thereunder; and that

the relationship between the Parties shall be that of a non-profit organization and an independent contractor. KIOSK ARTS, LLC acknowledges that as between itself and FOBP, it is excluded from the operation of the California Labor Code, any California Wage Orders, or the United States Fair Labor Standards Act and it is not entitled to either minimum wages, overtime, vacation pay, medical, health or life insurance benefits or reimbursement for its expenses including the cost of supplies or equipment, and that no withholding, deduction or payment shall be made by FOBP for, or in respect of, any income tax, unemployment insurance or Social Security withholding, Unemployment or Workers' Compensation withholding or any other applicable Federal or State Income, Social Security, Unemployment or Sales Tax for, or in respect of the services rendered by KIOSK ARTS, LLC.

U. CONFIDENTIAL INFORMATION

Each Party shall treat, and shall cause its employees and agents to treat, any information and data concerning the other Party including, without limitation, information and data relating to their respective business, financial information, personal information and the like, which may come within the knowledge of a Party or its employees or agents in the performance of, or in connection with services provided under this Agreement as confidential information and data, and shall not use or disclose such confidential information and data to others during or subsequent to the performance of the services under this Agreement (except as necessary to perform such services) without the prior written approval of the other Party, which consent will not be unreasonably withheld. These obligations shall survive the termination or expiration of this Agreement. Provided, however, the Parties agree to provide the City with information required by the City under its D&O Agreement with FOBP.

V. ENTIRE AGREEMENT

This Agreement constitutes the sole and only agreement of the Parties and supersedes any prior understandings or written or oral agreements between the Parties respecting this subject matter. Provided, however, the Parties both acknowledge receipt of a copy of the D&O Agreement and by this reference incorporate the same into this Agreement. As set forth in Paragraph M, the Parties intend that, to the extent there is any inconsistency between the terms of this Agreement and the D&O Agreement, the D&O Agreement shall control.

W. SUCCESSORS AND ASSIGNS

Subject to the provisions regarding assignment, this Agreement is binding on, and inures to the benefit of, the parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

X. AMENDMENT

This Agreement may be amended by the mutual agreement of the Parties by way of a signed written agreement to be attached to and incorporated in this Agreement.

IN WITNESS WHEREOF, the Parties hereto by their duly authorized representatives have executed this Agreement effective as of the date first set forth herein.

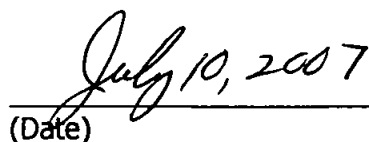
FRIENDS OF BALBOA PARK



(Signature)

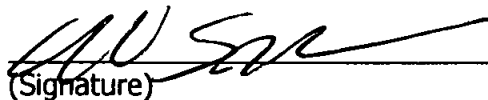
TOM GOAD

(Print Name)



(Date)

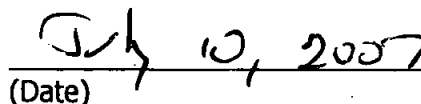
KIOSK ARTS LLC



(Signature)

RICK SPACHANK

(Print Name)



(Date)

SCHEDULE "A"

OPERATIONS AND MAINTENANCE

- 1.** Weekly site inspections: clean kiosk surfaces, check lighting, check motion sensors, and restock consumables.
- 2.** 7/24 On-Call programming support, w/ 4-hour response time. All system failures are monitored by NOC service and directed to KIOSK ARTS, LLC for follow-up. Hardware problems are re-directed to third party under contract for hardware maintenance / warranty services.
- 3.** Content Maintenance to include: Ongoing software support and upgrades; calendar updates; special notices; seasonal information and graphics, sponsor programming.
- 4.** Management reports will be generated on a monthly basis, including accounting and authored reports showing usage patterns, revenues generated, expenses paid out, funds set-aside, payables, etc.
- 5.** Overall program management, including Revenue Programs, and handling "Complaint Department" responsibilities.
- 6.** All operations, maintenance, service and management required for the proper operation of the equipment and facilities installed on the building located at 225 Broadway, San Diego, California.
- 7.** KIOSK ARTS, LLC shall provide FOBP with a monthly report identifying all sponsors and the rates charged those advertisers for the preceding month.

SCHEDULE "B"

REVENUE PROJECTIONS (3 KIOSKS)

<u>Revenue Generator</u>	<u>Unit Income</u>	<u>Annual Revenues</u>
WiFi	\$1.50	\$ 8,212.00
Video Postcard	\$5.00	\$ 10,950.00
Sponsorships PRINTED MEDIA: • External Billboard Sponsorship • Coupon Receipt Sponsorship DIGITAL TOUCHSCREEN MEDIA: • Sponsor Banner • Persistent Buttons • Rich Media / Streaming Video Attract Loop • MicroSite • Wireless (WiFi) Splash Screen Sponsorship UNIQUE SPONSORSHIP OPPORTUNITIES • Calendar Special Event Link • Video Postcard Link DATA MINING: • Statistical Reports • Opt-in Survey		\$ 7,200.00
ATM	\$ 1.25	\$ 6,843.00
Fundraising Pop-Up Donations	\$1.00	\$ 712.00
<u>TOTAL ANNUAL REVENUES</u>		\$ 33,917.00
<u>OPERATIONS OVERHEAD</u>		\$ 31,488.00
<u>Gross Profit/Loss</u>		\$ 2,429.00

REVENUE ASSUMPTIONS

- **WiFi:** 1 user / 1 hour average logon/ 6 hours per day per kiosk (2,190 annual transactions)
- **Video Postcard:** 2 users per day per kiosk (730 annual transactions per kiosk)
- **Sponsorships:** @ \$200.00 per kiosk per month.
- **ATM:** 5 transactions per day per kiosk (1,825 annual transactions per kiosk)
- **Fundraising Pop Ups:** 4,745 annual transactions @ 5% acceptance

SCHEDULE "C"

REVENUE PROJECTIONS (5 KIOSKS)

Revenue Generator	Unit Income	Annual Revenues
WiFi	\$1.50	\$ 16,425.00
Video Postcard	\$5.00	\$ 18,250.00
Sponsorships PRINTED MEDIA: • External Billboard Sponsorship • Coupon Receipt Sponsorship DIGITAL TOUCHSCREEN MEDIA: • Sponsor Banner • Persistent Buttons • Rich Media / Streaming Video Attract Loop • MicroSite • Wireless (WiFi) Splash Screen Sponsorship UNIQUE SPONSORSHIP OPPORTUNITIES • Calendar Special Event Link • Video Postcard Link DATA MINING: • Statistical Reports • Opt-in Survey		\$ 12,000.00
ATM	\$ 1.25	\$ 11,406.00
Fundraising Pop-Up Donations	\$1.00	\$ 1,186.00
<u>TOTAL ANNUAL REVENUES</u>		\$ 59,267.00
<u>OPERATIONS OVERHEAD</u>		\$ 37,030.00
<u>Gross Profit</u>		\$ 22,237.00

SCHEDULE "D"

MAINTENANCE AND OPERATIONS MANAGEMENT EXPENSES

Phase One (3 KIOSKS)

	TASK	Per UNIT	MONTH	YEAR
1	Weekly site inspection	\$25.00	\$300.00	\$3,600.00
2	7/24 On-Call support		\$100.00	\$1,200.00
3	Content Maintenance		\$100.00	\$1,200.00
4	Report Generation		\$400.00	\$4,800.00
5	Third Party software support		\$25.00	\$ 300.00
6	Program Management		\$200.00	\$2,400.00
			TOTAL	\$13,500.00

SCHEDULE "E"

MAINTENANCE AND OPERATIONS MANAGEMENT EXPENSES

Phase Two (5 KIOSKs)

	TASK	Per UNIT	MONTH	YEAR
1	Weekly site inspection	\$25.00	\$500.00	\$6,000.00
2	7/24 On-Call support		\$100.00	\$1,200.00
3	Content Maintenance		\$100.00	\$1,200.00
4	Report Generation		\$400.00	\$4,800.00
5	Third Party software support		\$25.00	\$ 300.00
6	Program Management		\$200.00	\$2,400.00
			TOTAL	\$15,900.00*

*Subject to agreed upon increase in the event the Parties proceed with additional Language Programming.

SCHEDULE "F"

ANNUAL OPERATIONS OVERHEAD

Phase One (3 KIOSKs)

ITEM	ANNUAL EXPENSE
1. Maintenance and Operations Management	\$ 13,500.00
2. NOC 7/24 & Bandwidth @ 1.54 Mps	\$ 4,200.00
3. Hardware/Wireless Maintenance	\$ 4,750.00
4. Other Direct Costs (consumables)	\$ 500.00
5. Miscellaneous Software Licensing Fees	\$ 1,000.00
6. Hardware Replacement Fund @15%	\$ 7,538.00
TOTAL	\$ 31,488.00

- **Item 6, hardware replacement fund, will only be funded when sufficient revenues are generated to pay for Items 1-5. Any deficits created will be "caught up" in subsequent years' revenues before any profit disbursements are made.**

SCHEDULE "G"

ANNUAL OPERATIONS OVERHEAD

Phase Two (5 KIOSKS)

ITEM	ANNUAL EXPENSE
1. NOC 7/24 & Bandwidth @ 1.54 Mps	\$ 4,200.00
2. Hardware/Wireless Maintenance	\$ 4,800.00
3. Other Direct Costs (consumables)	\$ 832.00
4. Miscellaneous Software Licensing Fees	\$ 1,000.00
5. Maintenance and Operations Management	\$ 15,900.00
6. Hardware Replacement Fund @15%	\$ 10,500.00
TOTAL	\$ 37,030.00

- In Phase Two FOBP would be at low risk for first four Items. First revenues collected pay down these expenses.
- In Phase Two LLC would be at high risk for fifth Item. Paid from revenues collected after first four items are paid.
- Item 6, hardware replacement fund, will only be funded when sufficient revenues are generated to pay for Items 1-5. Any deficits created will be "caught up" in subsequent years' revenues before any profit disbursements are made.

SCHEDULE "H"

STATEMENT OF QUALIFICATIONS

KIOSK ARTS, LLC

KIOSK ARTS, LLC is a newly formed company assembled to meet the needs of the Balboa Park Kiosk Project. Principal managers are experienced professionals in the areas of information technology and web-based graphical design.

Ken Miracle is owner of MiracleBrand design, a full-service visual communications firm based in San Diego, specializing in the branding and positioning of corporate identities, business services and product packaging. MiracleBrand's downtown locality has afforded this project the practical benefits of working closely with FOBP's Design Committee in the development of the kiosk touch screen interface and external graphics, as well as a local ability to collaborate with future advertising clientele as a principal in the newly formed company. Ken was contracted by FOBP as the primary content developer for the Kiosk Project based on MiracleBrand's expertise in digital media and ability to provide a customized graphical user interface (GUI) using database-centric cross-platform software.

Rick Sparhawk brings executive level management to the operations and maintenance requirements of the project. He was COO of an electronic patient charting and telecommunications venture in the home healthcare nursing industry and CEO in a statewide industrial medicine preferred provider network. He has served FOBP as project advisor in shaping this initiative. He has coordinated and collaborated in the marketing/communications efforts of the project. He has prepared all income and expense proformas; and has played a central role as FOBP's project liaison by researching, interviewing, selecting, negotiating and working with the project's primary suppliers.

Further, KIOSK ARTS, LLC, as an outsourcing solution, affords this project a consortium of best-of-breed subcontracted services specializing in the secure transmission of financial data; ATM cash replenishment services; WiFi managed services; NOC services; customer support call-center services; ISP services, and a centralized wireless communications co-location hub to house the project's main computer, gateway and firewall router. KIOSK ARTS, LLC is committed to designing, developing and operating quality end-to-end self-serve solutions that meet the evolving needs of its clients. The organizations with which KIOSK ARTS, LLC is aligned afford the complementary expertise to enhance its ability to tap into new technology ideas, plan ahead, and arrive at innovative solutions to sustain operations and protect the client's investment.

SCHEDULE "I"

DESIGN SPECIFICATIONS & DESIGN SPECIFICATION WARRANTY:

Whereas Friends of Balboa Park ("FOBP") is a 501(c)(3) public benefit organization formed for the purpose of preserving and promoting Balboa Park's resources and furthering the public's education and awareness of Balboa Park's artistic, cultural, recreational and educational museums and institutions. KIOSK ARTS, LLC, as a contractor to FOBP, shall carry forward the KIOSK Program in a phased approach to reliably deliver wayfinding and public information about the Park. KIOSK ARTS, LLC shall manage the sponsorship, donation and revenue generation programs and features that enable the continued deployment of the KIOSK Program.

KIOSK ARTS, LLC agrees to provide its services in accordance with the standards customarily adhered to by an experienced and competent professional information technology firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California.

KIOSK ARTS, LLC specifically warrants it shall timely respond to all reported kiosk operational interruptions by managing all maintenance issues, both hardware and software, and insuring all subcontracted services meet this stated warranty, and that these KIOSKS function to enhance the visitors' experience as a meaningful and reliable public service. Therefore it is the mutual goal of both parties that the reliability and functionality of the KIOSKS shall be sufficiently maintained at all times to brand the KIOSK Program as a valued asset of one of America's best parks and a highly regarded achievement of the FOBP.

PHYSICAL WARRANTY

External upkeep of the KIOSKS, although a responsibility of the City of San Diego, is essential to the user experience and public regard of the KIOSK Program. Therefore, it is the warranty of KIOSK ARTS, LLC to additionally oversee and attend to issues of external wear and/or vandalism. In the event the City is non-responsive to its obligation under the Donation and Operating Agreement with FOBP, KIOSK ARTS, LLC will exercise its best judgment to replace worn or vandalized external components. Such maintenance expenditures will be charged to the replacement fund for expediency of repair or replacement, but will be billed to the City for reimbursement.

KIOSK PROGRAMMING & FUNCTIONALITY SPECIFICATIONS:

PARK INFORMATION

- Directions – Wayfinding and Navigate Balboa Park
- Venues – Explore Specific Park Attractions
- Events Calendar – Discover Weekly and Monthly Events

Destination Resource

- ATM – Cash Disbursement Machine Available 7/24
- WiFi – Connect to the Internet via 802.11WiFi

Communications

- Video Postcard – Deliver Video Messages via Email
- Accept Donations – Support Park Institutions
- Sponsorship Medium – Promote Park Events and Institutions
- Multiple Languages – English, Spanish, and Others TBD

Park Management Asset

- Administrative Tool – Generate Reports
- Marketing/Communications Resource Platform
- Security Aide – Video Capture Upon Proximity Triggering
- Data Mining Resource

Future Possible Services

- Venue Ticketing – Purchase Using Credit Cards
- Discount Coupons – Generate Printed Voucher

CITY of SAN DIEGO

FOBP

KioskArts,LLC
Rick Sparhawk 619.460.3007

Global ATM
Isaac Lynde 858.735.8528

SingleDigits WiFi
Ian Scott 603.580.1539

KioskArts
Media Management Division
Ken Miracle 619.234.8233

**All Inserts Require Park & Rec
Approval**
Charlie Daniels 619.533.6597

QuickCrete
Scott Urich 951.737.6240

Western Metal
David Herbrandson 951.699.7710

Irvine Company
Courtney Ruiz 619.615.0947

SimpleNet
Frank Hopperton 888.243.3225

Day Wirelesss
Andy Grimm 858.537.0709

San Diego Electric Sign Co.
Greg Ballard 619.216.0213

MiracleBrand
Ken Miracle 619.234.8233



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CITY OF SAN DIEGO

DONATION AND OPERATING AGREEMENT

DONATION AND OPERATING AGREEMENT

FOR

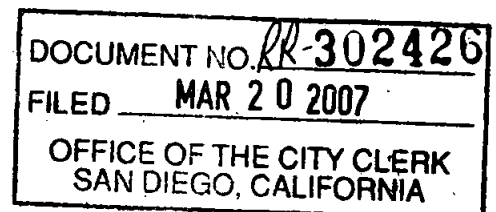
ELECTRONIC INFORMATION KIOSKS

BETWEEN

THE CITY OF SAN DIEGO

AND

FRIENDS OF BALBOA PARK



BALBOA PARK KIOSKS DONATION AND OPERATING AGREEMENT

THIS BALBOA PARK KIOSKS DONATION AND OPERATING AGREEMENT ("Agreement") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and FRIENDS OF BALBOA PARK, a California public benefit corporation ("FRIENDS"), to be effective upon execution by CITY (the "Effective Date") and approval by the San Diego City Attorney, as follows:

RECITALS

- A. Balboa Park is a CITY-owned park made up of more than 1000 acres and offers fifteen museums, various gardens, arts and international cultural associations, as well as the San Diego Zoo.
- B. FRIENDS' mission is to preserve Balboa Park's legacy for future generations through park-wide projects.
- C. FRIENDS wishes to serve the public by donating to CITY electronic information kiosks ("Kiosks," as described in EXHIBIT A: Kiosk Description, attached hereto); FRIENDS intends to install the physical structures and provide the continued operation of the Kiosks in Balboa Park.
- D. CITY wishes to receive the Kiosks and the public benefit of the continued operation of the Kiosks.
- E. CITY and FRIENDS intend that the donation and operation of the Kiosks will be governed by the terms and conditions of this Agreement.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

1. DONATION

- 1.1. **SCOPE OF DONATION AND OPERATION OF KIOSKS.** FRIENDS shall design, develop, install, maintain, and operate a minimum of two (2) and a maximum of five (5) electronic information Kiosks at locations within Balboa Park as determined by CITY, in its sole discretion. The Kiosks shall be developed in two (2) phases as more completely described in EXHIBIT B: Time Schedule, attached hereto and incorporated herein. The first phase shall not exceed two (2) years. Upon installation of the Kiosks, FRIENDS shall donate to CITY the physical structures for the Kiosks. The electronic components of the Kiosks, including hardware and software, shall remain the property of FRIENDS. FRIENDS shall provide, at its sole cost and expense, continuous operation of the Kiosks ("Kiosk Services") during the term of this Agreement. FRIENDS shall not subcontract or assign the performance of any of its obligations under this Agreement without CITY'S prior written consent thereto.

- 1.2. RIGHT OF ENTRY. Subject to the terms and conditions of this Agreement, CITY hereby grants permission to FRIENDS, its employees, agents, contractors, and subcontractors to enter upon Balboa Park and the Kiosks solely to perform its obligations hereunder. This Agreement is not a lease. It is a license to use CITY-owned property, and may be revoked by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by FRIENDS as a result of such revocation or the termination of this Agreement. FRIENDS expressly waives any claim for expense or loss which FRIENDS might incur as a result of CITY'S termination of the license granted hereby.
- 1.3. CONTRACT ADMINISTRATOR. CITY'S Park and Recreation Department ("Park & Rec") shall be the contract administrator for this Agreement. FRIENDS shall coordinate its performance of this Agreement through a designated Park & Rec representative ("P&R Rep"). FRIENDS shall communicate with the P&R Rep on all matters related to the administration of this Agreement. When this Agreement refers to communications to or with CITY, those communications shall be to or with the P&R Rep, unless otherwise provided herein.
- 1.4. CITY'S CONSENT, DISCRETION. Whenever required by this Agreement, CITY'S consent or approval shall mean the written consent or approval of CITY Manager of San Diego, or his or her designee ("City Manager"), unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the City Manager's discretion, unless otherwise expressly provided. No change in the scope or definition of FRIENDS' obligations under this Agreement shall be valid without CITY'S prior written consent thereto.
- 1.5. SAN DIEGO'S STRONG MAYOR FORM OF GOVERNANCE. All references to "City Manager" in this Agreement shall be deemed to refer to "the Mayor or his/her designee." This section shall remain in effect for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the San Diego City Charter.
- 1.6. CONFIDENTIALITY. All operations of the Kiosks performed by FRIENDS, including without limitation all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by FRIENDS pursuant to this Agreement, shall be for the sole use of CITY, its agents and employees. This provision shall not apply to information that: (a) was publicly known, or otherwise known to FRIENDS, at the time that it was disclosed to FRIENDS by CITY; (b) subsequently becomes publicly known through no act or omission of FRIENDS; or (c) otherwise becomes known to FRIENDS other than through disclosure by CITY. Except for FRIENDS' valid subcontractors, neither the documents nor their contents shall be released to any third party without CITY'S prior written consent, or as required by law.
- 1.7. RELATED COUNCIL ACTIONS. By entering into this Agreement, neither CITY nor the City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the design, development, installation, operation, and maintenance of the Kiosks. Discretionary

action includes, but is not limited to, re-zonings, variances, environmental clearances or any other governmental agency approvals that may be required for FRIENDS' design, development, installation, operation, and maintenance of the Kiosks. FRIENDS shall diligently seek and obtain, at its sole cost, all entitlements and actions from both CITY and other governmental agencies with jurisdiction over the Kiosks as may be necessary for FRIENDS to design, develop, install, operate, and maintain the Kiosks.

1.8. SUPERIOR INTERESTS. This Agreement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, agreements, licenses, easements, and rights of way pertaining to the Kiosk sites, whether or not of record. FRIENDS shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Kiosks, relative to any such superior interest. If FRIENDS' use of any such location is or becomes inconsistent or incompatible with a preexisting, superior interest, FRIENDS shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.

1.9. LIENS. FRIENDS shall at all times protect, defend, indemnify, and hold CITY free and harmless from and against all claims for labor or materials in connection with operations, improvements, alterations, or repairs of the Kiosks, and the costs of defending against such claims, including without limitation reasonable attorney fees. If improvements, alterations, or repairs are made to the Kiosks by FRIENDS or by any party other than CITY, and a lien or notice of lien is filed thereon, FRIENDS shall, within five (5) days after the filing, either: (a) take all actions necessary to record a valid release of lien; or (b) file with CITY a bond, cash or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

1.10. MANDATORY DISCLOSURE OF BUSINESS INTERESTS. Pursuant to San Diego City Charter Section 225, FRIENDS and each of its subcontractors shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in the transaction contemplated by this Agreement and the precise nature of all interests of all persons therein. FRIENDS' failure to fully disclose all of the information required by Charter Section 225, or FRIENDS failure to require each of its subcontractors to fully disclose such information, shall be a default of this Agreement.

1.11. NO NUISANCE. FRIENDS shall not use the Kiosks in any manner which, in CITY'S opinion, creates a nuisance or disturbs the quiet enjoyment of persons in and to the surrounding area.

2. TERM OF AGREEMENT

2.1. TERM OF AGREEMENT. The term of this Agreement ("Term") shall be three (3) years, commencing on the first day of the month following the Effective Date. In CITY'S sole discretion, upon FRIENDS' concurrence, the Term may be extended twice for a period of five (5) years each, for a potential cumulative term of thirteen (13) years. Either party may request such an extension in writing during the last year of the Term,

but no later than nine (9) months prior to the expiration of this Agreement. The parties acknowledge that the property comprising Balboa Park is CITY-owned and held in trust for the benefit of CITY'S citizens. As a condition to its approval of any extension of this Agreement, CITY may require that this Agreement be amended to include then-standard contract language and other changes deemed necessary by CITY to protect CITY'S interest in Balboa Park.

2.2. NOTIFICATION OF DELAY. FRIENDS shall immediately notify CITY in writing if FRIENDS encounters or anticipates a delay in performing any of its obligations under this Agreement.

2.3. CONSENT TO DELAY. FRIENDS shall not be excused from performing any of its obligations under this Agreement without CITY'S written waiver thereof or CITY'S written consent to an extension of time for such performance, either of which may be unreasonably withheld.

2.4. BREACH AND OPPORTUNITY TO CURE. If FRIENDS fails to fully perform any of its obligations under this Agreement, and such failure continues for fifteen (15) days past due, FRIENDS shall be in default of this Agreement.

2.5. WAIVER.

2.5.1. Strict Performance. CITY'S failure to insist upon the strict performance of any of FRIENDS' obligations under this Agreement, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect.

2.5.2. Failure to Discover. The property constituting Balboa Park is CITY-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover FRIENDS' default of this Agreement or its breach of any obligation of this Agreement, or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times exercise its rights hereunder pertaining to such a default, or require the cure of any such breach.

2.5.3. No Continuing Waiver. CITY'S waiver of a breach or default shall not be a waiver of any other breach or default. Any waiver must be in writing and executed by the City Manager to constitute a valid and binding waiver. CITY'S delay or failure to exercise a remedy or right under this Agreement shall not be a waiver of that or any other remedy or right. The use of one remedy or right shall not prohibit the use of any other remedy or right for the same default or for another or later default. CITY'S acceptance of any rents shall not be a waiver of any default preceding the rent payment.

2.6. TERMINATION. Upon any default of this Agreement, CITY may terminate this Agreement at will upon written notice to FRIENDS.

Surrender. Upon expiration or earlier termination of this Agreement, FRIENDS shall surrender possession of the Kiosks to CITY. If continued operation of the Kiosks is deemed desirable, in CITY'S sole discretion, FRIENDS shall cooperate with CITY in an orderly transition to ensure the continued operation of the Kiosks. FRIENDS shall not interfere with or impede in any manner the continued operation of the Kiosks, and CITY shall not interfere with or impede in any manner the protection and/or removal of FRIENDS' personal property, including electronic hardware and software, located in the Kiosks. If FRIENDS fails to remove such personal property within a timeframe reasonably determined by CITY, in its sole discretion, to ensure the continued operation of the Kiosks, CITY may cause the removal of such property and FRIENDS shall reimburse CITY for all costs and expenses occasioned thereby.

No Limitation of Rights. CITY'S rights and remedies under this section are cumulative and shall not limit, waive, or deny any of CITY'S rights or remedies under this Agreement, at law or in equity now existing or as hereafter enacted or established.

2.7. BANKRUPTCY OR ASSIGNMENT FOR THE BENEFIT OF CREDITORS.

FRIENDS shall be in default of this Agreement if it files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors.

2.8. FRIENDS' RIGHT TO TERMINATE. FRIENDS may terminate this Agreement without cause upon sixty (60) days prior written notice to CITY at any time following the installation of three (3) operational Kiosks in Balboa Park.

2.9. RETROFIT. Upon expiration or earlier termination of this Agreement and at CITY'S sole option, FRIENDS shall retrofit each Kiosk to serve as a "static" information kiosk, all at FRIENDS' sole cost and expense.

2.10. RESTORATION. Upon expiration or earlier termination of this Agreement and at CITY'S sole option, and in lieu of retrofitting the Kiosks, FRIENDS shall remove the Kiosks and restore, to CITY'S satisfaction, each Kiosk location to its original condition, all at FRIENDS' sole cost and expense.

COMPENSATION

2.11. NO COMPENSATION TO FRIENDS. FRIENDS' sole source of compensation hereunder shall be from Kiosk operating revenues. CITY shall not otherwise compensate FRIENDS for FRIENDS' performance of this Agreement.

2.12. COMPENSATION TO CITY. In exchange for the right to occupy and operate the Kiosks pursuant to this Agreement, in addition to FRIENDS' donation of the Kiosks to CITY, FRIENDS shall pay to CITY throughout the Term rent in the amount of fifty percent (50%) of the gross revenues generated by and through the Kiosks, net of (a) reasonable direct costs incurred to operate and maintain the Kiosks; and (b)

philanthropic donations. Such compensation shall be payable to CITY monthly within 10 days after the end of the month in which such funds are generated.

All compensation received by CITY under this Agreement shall be placed in a CITY fund designated to be applied to CITY'S performance of its Kiosk maintenance obligations hereunder; and if the fund exceeds such obligations, then to such other applications for the benefit of Balboa Park as CITY shall deem appropriate and prudent, in its sole discretion.

For the purposes of this Agreement, "gross revenues" means any and all monetary income generated directly or indirectly by, through or otherwise substantially related to the Kiosks, including without limitation service fees and advertising and sponsorship revenues.

For the purposes of this Agreement, "direct costs" means those costs that can be traced to the operation and maintenance of the Kiosks in an economically feasible manner, including without limitation subcontract costs and FRIENDS' reasonable direct overhead costs incurred to operate and maintain the Kiosks.

Upon CITY'S request from time to time during the Term, FRIENDS shall deliver to CITY a report of all philanthropic donations generated by and through the Kiosks. Upon reasonable cause to believe that gross revenues have been mischaracterized as philanthropic donations, CITY may audit the financial records of FRIENDS and its subcontractors to reconcile the accounting. The parties shall cooperate in good faith to resolve any dispute regarding such accounting practices.

2.13. Payments. Payments to CITY shall be made payable to the City Treasurer and mailed to:

Office of the City Treasurer
City of San Diego
P.O. Box 122289
San Diego, California 92112-4165

Or hand delivered to:

Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

The place of payment may be changed at any time by CITY upon thirty (30) days prior written notice to FRIENDS. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If a postmark is illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. FRIENDS assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

FRIENDS shall include CITY'S customer account number for FRIENDS on the rent payment so CITY can apply the rent to the appropriate account.

2.13.1. Delinquent Payments. If FRIENDS fails to pay rent when due, FRIENDS shall pay, in addition to the unpaid rent, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days past due, FRIENDS shall pay an additional five percent (5%) [being a total of ten percent (10%)], which is mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payments of rent be less than One Hundred Dollars (\$100). Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of FRIENDS' breach of this Agreement with respect to such late payment, nor prevent CITY from exercising any right under this Agreement or seeking and obtaining any remedy at law or in equity.

2.13.2. Inspection of Records. FRIENDS shall make any and all records and accounts related to the Kiosks available to CITY for inspection at all reasonable times so that CITY can determine FRIENDS' compliance with this Agreement. Such records and accounts shall be complete and accurate, showing all income and receipts from use of the Kiosks in accordance with generally accepted accounting practices. FRIENDS shall maintain and retain all such records and accounts for at least five (5) years after the expiration or earlier termination of this Agreement.

3. FRIENDS' OBLIGATIONS

3.1. INDUSTRY STANDARDS. FRIENDS shall perform its obligations under this Agreement in accordance with the standards customarily adhered to by an experienced and competent professional information technology firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California.

3.1.1. Website. FRIENDS shall be solely responsible for its website and all content thereof.

3.1.2. CITY'S WiFi Program. FRIENDS shall not operate a "WiFi" services (i.e., a local area network that uses high frequency radio signals to transmit and receive data) without the prior written approval of CITY'S Information Technology & Communications ("IT&C") Division. If CITY'S IT&C Division determines at any time, in its sole discretion, that any "WiFi" services provided by or through FRIENDS pursuant to this Agreement will interfere with any other telecommunications or WiFi services provided by or through CITY, then upon ninety (90) days prior written notice from CITY, FRIENDS shall modify or terminate its provision of WiFi services at the direction of CITY'S IT&C Division. CITY shall not be liable for any costs, loss of income, profits or any other damages, including consequential damages or attorney fees, resulting from such modification or termination of such WiFi services.

3.1.3. Sign Regulations. FRIENDS shall ensure that each sponsorship of a Kiosk, in whole or in part, and each Kiosk screen and/or system, in whole or in part, complies with CITY'S sign regulations [San Diego Municipal Code Article 2, Division 12 (Section 142.1201 *et. seq.*), as amended from time to time.

3.1.4. Sponsorships. FRIENDS shall not accept any Kiosk sponsor, or the content of any display acknowledging a sponsor, without CITY'S prior written approval thereof.

3.2. FINANCIAL RECORDS; AUDIT. FRIENDS shall maintain, in accordance with generally accepted accounting practices, complete and accurate financial records related to the operation of the Kiosks. FRIENDS shall make available to CITY for review and audit, all such records. Upon CITY'S request, FRIENDS shall produce and deliver to CITY exact duplicates of originals of all such records requested by CITY. CITY may review and audit FRIENDS' financial records related to the operation of the Kiosks at all reasonable times. CITY may inspect, photocopy, and retain copies of any such records as CITY may reasonably deem necessary. CITY shall keep such information in the strictest confidence allowed by law.

3.2.1. Records. CITY'S review and audit of financial records hereunder shall include examination of any and all books, records, documents and other evidence of procedures and practices related to the operation of the Kiosks as CITY deems necessary to verify FRIENDS' compliance with this Agreement.

3.2.2. Subcontractors' Records. FRIENDS warrants that it will require each of its subcontractors, if any, to maintain, in accordance with generally accepted accounting practices, complete and accurate financial records related to the operation of the Kiosks. FRIENDS further warrants that CITY'S rights and FRIENDS' obligations hereunder related to financial records will apply to each of FRIENDS' subcontractors under this Agreement.

INSURANCE. On or before the Effective Date, FRIENDS shall deliver to CITY a current certificate of insurance for a Commercial General Liability policy providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of Four Million Dollars (\$4,000,000).

3.2.3. All-Risk Property Insurance. FRIENDS shall obtain and maintain, at its sole cost, All-Risk Property insurance on all insurable property on the Kiosks in an amount to cover 100 percent (100%) of the replacement cost. FRIENDS shall deliver to CITY a certificate of such insurance.

3.2.4. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.

3.2.5. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended

use. The certificate(s) of insurance shall be filed with CITY'S Park & Recreation Department.

3.2.6. Qualified Insurer(s). All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.

3.2.7. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of FRIENDS and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.

3.2.8. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. FRIENDS shall maintain all insurance required by this Agreement throughout the Term, without lapse. When a new insurance policy is obtained, or when an insurance policy is renewed or extended, FRIENDS shall deliver to CITY, within ten (10) days thereafter, a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Agreement.

3.2.9. Modification. To assure protection from and against the kind and extent of risk existing on the Kiosks, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving FRIENDS thirty (30) days prior written notice. FRIENDS shall also obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Agreement.

3.2.10. Accident Reports. FRIENDS shall report to CITY any accident causing property damage or injury to persons related to the Kiosks. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

3.2.11. Failure to Comply. If FRIENDS fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, CITY may obtain the insurance. FRIENDS shall reimburse CITY for the premiums paid, with interest at the maximum allowable legal rate then in effect in California. CITY shall notify FRIENDS of such payment of premiums stating the amount paid, the name(s) of the insurer(s), and the rate of interest. FRIENDS shall pay such reimbursement and interest on the first (1st) day of the month following CITY'S notice. **Notwithstanding any other provision of this Agreement, if FRIENDS fails or refuses to obtain or maintain insurance as required by this Agreement, or fails to provide proof of insurance, CITY may terminate this Agreement immediately upon such breach.**

3.2.12. Subcontractors' Insurance. FRIENDS warrants that it will require each of its subcontractors, if any, to comply with each provision of this Agreement relating to obtaining and maintaining insurance.

SUBCONTRACTS. Only with CITY'S prior written consent, FRIENDS may subcontract any part of its performance of this Agreement. Each subcontract so allowed shall be subject to and subordinate to the terms and conditions of this Agreement, and shall so state in the subcontract. If any provision of a subcontract conflicts with this Agreement, this Agreement shall control.

Balboa Park is a CITY-owned historic resource held in trust for CITY'S citizens. If FRIENDS enters into a subcontract substantially in the form attached hereto as EXHIBIT C: Form of Outsourcing Agreement, attached hereto for reference only and not incorporated herein, the subcontractor's performance of each subcontract obligation shall conform to San Diego City Council Policies and Administrative Regulations, and shall be subject to CITY'S consent or approval, which may not be unreasonably withheld.

In any dispute between FRIENDS and a subcontractor, CITY shall not be made a party to any judicial or administrative proceeding to resolve the dispute. FRIENDS shall protect, defend, indemnify and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established which arise out of or are in any manner directly or indirectly connected with any such subcontract dispute, and all costs and expenses of investigating and defending against same, including without limitation reasonable attorney fees and costs.

3.3. COMPLIANCE WITH LAW. FRIENDS shall at all times in the design, development, installation, occupancy, operation, and maintenance of the Kiosks comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments, at FRIENDS' sole expense. FRIENDS shall comply with any and all notices issued by CITY under the authority of all current or future laws, statutes, ordinances, or regulations.

3.4. HAZARDOUS SUBSTANCES. FRIENDS shall not allow the installation or release of hazardous substances in, on, under, or from the Kiosks. FRIENDS and FRIENDS' agents, contractors, and subcontractors shall not store, utilize, or sell any hazardous substance on the Kiosks without CITY'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Agreement.

Remediation. If FRIENDS' development, installation, occupancy, operation, or maintenance of a Kiosk results in a release of a hazardous substance, FRIENDS shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws, rules and regulations of governmental authorities.

Indemnity. FRIENDS shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from FRIENDS' design, development, installation, occupancy, use, maintenance, or operation of the Kiosks, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

Notice of Release. If FRIENDS knows or has reasonable cause to believe that a hazardous substance has been released on or beneath a Kiosk, FRIENDS shall immediately notify CITY and deliver a written report thereof to CITY within three (3) days of receipt of the knowledge or cause for belief. If FRIENDS knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, FRIENDS shall take all actions necessary to alleviate the danger. FRIENDS shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Kiosks.

Environmental Assessment. Upon reasonable cause to believe that FRIENDS' design, development, installation, occupancy, use, maintenance, or operation of the Kiosks ("FRIENDS' Operations"), resulted in any hazardous substance being released on or beneath a Kiosk, CITY may cause an environmental assessment of that Kiosk site to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at FRIENDS' sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by FRIENDS' Operations on, in, or under the Kiosk, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. FRIENDS shall cause, or if FRIENDS fails to do so within a reasonable period of time, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and FRIENDS shall pay all costs and expenses therefor.

- 3.5. TAXES. FRIENDS shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon FRIENDS or the Kiosks, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by FRIENDS, levied by reason of the business or other FRIENDS activities related to the Kiosks, including without limitation any licenses or permits. FRIENDS acknowledges that this Agreement may create

possessory interests subject to property taxation, and that FRIENDS may be subject to the payment of taxes levied on such interests. FRIENDS' payment of taxes, fees and assessments shall not be a credit to any rent due CITY.

3.6. NONDISCRIMINATION. FRIENDS shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status or physical disability in FRIENDS' design, development, installation, occupancy, operation, or maintenance of the Kiosks, including without limitation the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment. FRIENDS warrants that it will require each of its subcontractors, if any, to comply with this provision.

3.7. EQUAL OPPORTUNITY CONTRACTING PROGRAM. FRIENDS shall comply with City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), *EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM* ("EEOOP"), a copy of which is on file in the Office of the City Clerk and incorporated herein. FRIENDS and all of its subcontractors shall be individually responsible to abide by the EEOOP. FRIENDS shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086, as well as the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. FRIENDS shall not discriminate against any employee or applicant for employment on any basis prohibited by law. On or before the Effective Date, FRIENDS shall submit a current "Work Force Report" or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that FRIENDS will take to achieve CITY'S commitment to equal employment opportunities.

3.7.1. Contracts/Subcontracts. FRIENDS and its subcontractors shall insert the foregoing provisions in all contracts and subcontracts for any work covered by this Agreement so that the provisions will be binding upon each contractor and subcontractor.

3.7.2. EEO Compliance. Compliance with EEO provisions will be implemented, monitored, and reviewed by CITY'S Equal Opportunity Contracting Program staff. FRIENDS' failure to comply with the above requirements and/or submitting false information in response to such requirements may result in termination of this Agreement and debarment from participating in CITY agreements and/or contracts for a period of not less than one (1) year.

3.8. CITY EMPLOYEE PARTICIPATION POLICY. CITY may, at its sole option, terminate this Agreement immediately if FRIENDS employs an individual who, within the twelve (12) months immediately preceding employment, did in their capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of FRIENDS. These provisions shall not apply to members of the City Council.

3.9. DRUG-FREE WORKPLACE. FRIENDS shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

3.9.1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Kiosks and specifying the actions that will be taken against employees for violations of the prohibition;

3.9.2. Establish a drug-free awareness program to inform employees about all of the following:

3.9.2.1.1. The dangers of drug abuse in the workplace;

3.9.2.1.2. FRIENDS' policy of maintaining a drug-free workplace;

3.9.2.1.3. Any available drug counseling, rehabilitation, and employees assistance programs; and

3.9.2.1.4. The penalties that may be imposed upon employees for drug abuse violations; and

3.9.3. FRIENDS shall include in each subcontract language which indicates the subcontractor's agreement to abide by these provisions of a drug-free workplace. FRIENDS and its subcontractors shall be individually responsible for their own drug-free workplace.

3.10. DISABLED ACCESS COMPLIANCE. FRIENDS shall at all times in the design, development, installation, occupancy, operation, and maintenance of the Kiosks comply with the 1990 Americans with Disabilities Act and Title 24 of the California Code of Regulations (i.e., building codes) as defined in Section 18910 of the California Health and Safety Code and any other applicable federal, state or local regulations hereafter enacted protecting the rights of persons with disabilities. In the case of conflicting provisions of any of such requirements, the most restrictive requirement shall control.

3.10.1. FRIENDS shall be solely responsible for designing, developing, installing, operating, and maintaining the Kiosks in compliance with the foregoing disabled access provisions. However, CITY may be exposed to liability for non-complying Kiosks. Therefore, CITY may evaluate the design of the Kiosks to ensure such compliance.

3.10.2. FRIENDS shall complete and submit to CITY an "ADA Compliance Review Checklist" designed to assist FRIENDS in meeting their disabled access obligations. Such checklist may not be comprehensive, but merely reflect the specific problematic areas of disabled access compliance commonly observed by CITY.

3.10.3. FRIENDS shall comply with all disabled access laws, whether or not represented on CITY'S ADA Compliance Review Checklist, and shall advise CITY if it feels any part of the checklist misrepresents the current state of the law. Compliance with CITY'S ADA Compliance Review Checklist shall not limit FRIENDS' disabled access obligations under this Agreement.

3.11. STANDARD OF CONDUCT. FRIENDS, its subcontractors and employees shall at all times conduct themselves and the operations on the Kiosks in a creditable manner and in accordance with industry standards.

3.12. PRODUCT ENDORSEMENTS. FRIENDS shall comply with CITY'S Administrative Regulation 95.65, concerning product endorsements. Any advertisement identifying or referring to CITY as the user of a product or service shall require CITY'S prior written approval. CITY may provide guidance to FRIENDS regarding the requirements of product endorsements.

3.13. CORPORATE PARTNERSHIP PROGRAM. FRIENDS shall comply with the "San Diego Corporate Partnership Program Guidelines," attached hereto as EXHIBIT D: San Diego Corporate Partnership Program Guidelines, and the provisions of San Diego City Council Policies No. 000-40: Marketing Partnership Policy, and No. 000-41: Product Endorsement.

3.14. CONFLICTS OF INTEREST. FRIENDS shall be subject to all federal, state and local conflict-of-interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, *et. seq.* and 81000, *et. seq.*, and CITY'S Ethics Ordinance, codified in the San Diego Municipal Code sections 27.3501 to 27.3595.

3.14.1. If, in performing this Agreement, FRIENDS makes, or participates in, a "governmental decision" as described in California Code of Regulations, Title 2, section 18701(a)(2), or performs the same or substantially the same duties for CITY that would otherwise be performed by a CITY employee holding a position specified in the department's conflict-of-interest code, FRIENDS shall complete one or more statements of economic interests disclosing FRIENDS' relevant financial interests.

3.14.2. Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the San Diego City Clerk. FRIENDS shall file a Form 700: Assuming Office Statement within thirty (30) calendar days after CITY'S determination that FRIENDS is required to file the form. FRIENDS shall also file a Form 700: Annual Statement, disclosing any financial interests held during the previous calendar year for which FRIENDS was subject to a conflict-of-interest code.

3.14.3. If CITY requires FRIENDS to file a statement of economic interests, FRIENDS shall be considered a "CITY Official" subject to the provisions of CITY'S Ethics Ordinance, including the prohibition against lobbying CITY for one (1) year following the termination of this Agreement.

3.14.4. FRIENDS shall establish and make known to its employees, agents, and subcontractors appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships.

3.14.5. FRIENDS' officers and employees shall not accept gratuities or any other favors from any actual or potential contractor or subcontractor. FRIENDS shall not recommend or specify any product, supplier, or contractor with whom FRIENDS has a direct or indirect financial or organizational interest or relationship that would violate conflict-of-interest laws, regulations, or policies.

3.14.6. FRIENDS' violation of any conflict-of-interest law or related provision of this Agreement shall be a default of this Agreement. FRIENDS shall protect, defend, indemnify and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established which arise out of or are in any manner directly or indirectly connected with any such violation, and all costs and expenses of investigating and defending against same, including without limitation reasonable attorney fees and costs.

3.15. ENERGY CONSERVATION SPECIFICATIONS. FRIENDS shall design the Kiosks to optimize energy conservation to CITY'S satisfaction. Prior to development of any Kiosk, FRIENDS shall deliver its Kiosk design to CITY for its approval, which approval may be conditioned on the design achieving energy savings in excess of those required by the State of California's Energy Efficiency Standards (California Code of Regulations Title 24, Part 6).

3.16. REVENUE APPLIED TO BALBOA PARK PROGRAMS. FRIENDS shall expend all revenue generated through the operation of the Kiosks, net of subcontract costs and rent payable to CITY hereunder, on FRIENDS' programs and operations benefiting Balboa Park. FRIENDS shall annually deliver a written report to CITY specifying the amount of such net revenues and the programs benefited, or to be benefited, therewith.

3.17. DOCUMENTS. FRIENDS shall deliver to CITY copies of all documents related to the design, development, installation, and operation of the Kiosks, including but not limited to, plans, studies, sketches, drawings, specifications, and computer disk files and printouts. If CITY changes any plan or specification related to the Kiosks without FRIENDS' approval, FRIENDS shall not be responsible for damage caused solely by the unapproved change, provided FRIENDS, its officers, employees, agents, and subcontractors did not contribute in any way to the cause of the damage.

CITY'S OBLIGATIONS

3.18. CITY'S Consultants or Contractors. CITY may employ, at its own expense, such additional consultants or contractors as CITY deems necessary to perform work or to provide services relating to the Kiosks.

3.19. MAINTENANCE OF KIOSK EXTERIORS. CITY shall be responsible for the ordinary maintenance and repair of the external Kiosk structures and utilities serving the structures, as set forth in EXHIBIT E: Kiosk Maintenance, attached hereto and incorporated herein.

3.20. UTILITIES. CITY shall provide reasonable amounts of electrical power to the Kiosks.

INDEMNIFICATION. FRIENDS shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established which arise out of or are in any manner directly or indirectly connected with this Agreement or FRIENDS' design, development, installation, occupancy, use, maintenance, or operation of the Kiosks, and all costs and expenses of investigating and defending against same, including without limitation reasonable attorney fees and costs; provided, however, that FRIENDS' duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents, and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, FRIENDS shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

GENERAL PROVISIONS

3.21. PARTIAL INVALIDITY. If any term, covenant, condition or provision of this Agreement is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

3.22. LEGAL FEES. If there is any litigation regarding this Agreement, the prevailing party shall be entitled to an award of reasonable legal costs, including without limitation court costs and attorney fees.

3.23. NUMBER AND GENDER. Words of any gender used in this Agreement shall include any other gender and words in the singular number shall include the plural, and *vice versa*, as appropriate to the context.

3.24. CAPTIONS. The section headings and captions used in this Agreement shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Agreement. The numbers of the paragraphs and pages of this Agreement may not be consecutive. The lack of consecutive numbers shall have no effect on the enforceability of this Agreement.

3.25. UNAVOIDABLE DELAY. If the performance of any act required of CITY or FRIENDS is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes or

other causes beyond the reasonable control of the party required to perform an act, the party shall be excused from performing that act for the period equal to the period of the prevention or delay. If FRIENDS or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of that fact within ten (10) days after the beginning of any such claimed delay. This provision shall not apply to obligations to pay rent under this Agreement.

- 3.26. NOTICES. Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to the parties as follows, or to any mortgagee, trustee, or beneficiary, as applicable, at the appropriate address designated in writing by the respective party:

If to FRIENDS:

FRIENDS OF BALBOA PARK
c/o Balboa Park Administration Building
2125 Park Boulevard
San Diego, CA 92101

If to CITY:

CITY OF SAN DIEGO PARK AND RECREATION DEPARTMENT
Balboa Park Administration Building
Attention: Deputy Director, Developed Regional Parks Division
2125 Park Boulevard
San Diego, CA 92101

With a copy to:

CITY OF SAN DIEGO REAL ESTATE ASSETS DEPARTMENT
Attention: Real Estate Assets Director
1200 Third Avenue, Suite 1700, MS 51A
San Diego, CA 92101-4155

3.26.1. Address Changes. Any party entitled or required to receive notice under this Agreement may by like notice designate a different address to which notices shall be sent.

3.26.2. When Effective. Notice shall be effective on personal service or five (5) days after deposit in U.S. Mail.

- 3.27. NO ASSIGNMENT. FRIENDS shall not assign its rights or obligations under this Agreement without CITY'S prior written approval. Any attempted assignment in violation of this section shall be a default of this Agreement. Any attempted

assignment in violation of this section shall be void *ab initio* and incapable of creating any contractual relationship between CITY and a putative assignee.

- 3.28. INDEPENDENT CONTRACTORS. FRIENDS, its employees, agents and subcontractors shall not be employees or agents of CITY. Any provision of this Agreement that may appear to give CITY any right to direct FRIENDS concerning the details of performing the services, or to exercise any control over such performance, shall mean only that FRIENDS shall follow the direction of CITY concerning the end results of the performance.
- 3.29. TIME OF THE ESSENCE; BINDING EFFECT. Time is of the essence for each and every term, covenant, and condition of this Agreement. Except as otherwise provided in this Agreement, all of the terms, covenants, and conditions of this Agreement shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 3.30. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 3.31. CONSENTS. Unless otherwise expressly provided herein, no consent to be granted by either party pursuant to this Agreement may be unreasonably withheld or delayed.
- 3.32. SURVIVAL. Any obligation that accrues under this Agreement prior to its expiration or termination shall survive such expiration or termination.
- 3.33. GOVERNING LAW. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California.
- 3.34. COST RECOVERY. CITY maintains a schedule of fees to offset administrative costs incurred for CITY staff services that are of benefit to FRIENDS. CITY shall process each of FRIENDS' service requests upon receipt of FRIENDS' payment of the applicable fee. The fee schedule, which is maintained by the City Clerk's Office, may be updated from time to time at CITY'S sole discretion.
- 3.35. ENTIRE UNDERSTANDING. This Agreement contains the entire understanding of the parties. CITY and FRIENDS agree that there is no other written or oral understanding between them with respect to FRIENDS' design, development, installation, occupancy, use, maintenance, or operation of the Kiosks. Each party shall rely on its own examination of the Kiosks sites, advice from its own attorneys, and the warranties, representations, and covenants within the Agreement itself. Each party agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Agreement. The failure or refusal of any party to read this Agreement or other documents, inspect the Kiosk sites, and obtain legal or other advice relevant to this

transaction shall constitute a waiver of any objection, contention, or claim that might have been based on such actions.

- 3.36. **AUTHORITY.** Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to the City Manager, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

Date: 4/30/07

THE CITY OF SAN DIEGO, a California municipal corporation

By: [Signature]
Name: James F. Barwick, CCIM
Title: Director, Real Estate Assets

Date: Feb. 21, 2007

FRIENDS OF BALBOA PARK, a California public benefit corporation

By: [Signature]
Name: Tom Good
Title: President

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM AND LEGALITY:

Date: 5/3/07

MICHAEL J. AGUIRRE, City Attorney

By: [Signature]
Name: BRUCE LADWIG
Title: CHIEF DEPUTY CITY ATTORNEY

Director, New York State
Department of Social Services

Apr 27 2 02 PM '07

(CITY ATTORNEY)

305450

EXHIBIT A: Kiosk Description

EXHIBIT B: Time Schedule

EXHIBIT C: Form of Outsourcing Agreement

EXHIBIT D: City Of San Diego Corporate Partnership Program Guidelines

EXHIBIT E: Kiosk Maintenance

EXHIBIT A: Kiosk Description

General Physical Description

Information kiosks shall be approximately five feet by five feet by twelve feet tall. The kiosks shall be constructed of pre-cast concrete with a glazed dome roof consistent with the Balboa Park Central Mesa Precise Plan, as approved by the Park and Recreation Department and Historical Resources Board. The structure shall have a painted finish consistent with the colors approved by the Historical Resources Board.

Kiosk Programming & Functionality Specifications

Park Information

- Directions – Wayfinding and Navigate Balboa Park
- Venues – Explore Specific Park Attractions
- Events Calendar – Discover Weekly and Monthly Events

Destination Resource

- ATM – Cash Disbursement Machine
- WiFi – Connect to the Internet via 802.11WiFi

Communications

- Video Postcard – Deliver Video Messages via Email
- Accept Donations – Support Park Institutions
- Advertising Medium – Promote Park Events and Institutions
- Multiple Languages – English, Spanish, and Others TBD

Park Management Asset

- Administrative Tool – Generate Reports
- Marketing/Communications Resource Platform
- Security Aide – Video Capture Upon Proximity Triggering
- Data Mining Resource

Future Possible Services

- Venue Ticketing – Purchase Using Credit Cards
- Discount Coupons – Generate Printed Voucher

EXHIBIT B: Time Schedule

WEEK-by-WEEK PROJECT TIMELINE																	
WEEK	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
GUI																	
Panel Graphics																	
QuickCrete																	
001 Stealth																	
002 Televideo																	
003 DecoPlastics																	
004 SAIC																	
005 GE LEXAN																	
007 Metal Shop																	
Compass Rose																	
SignTech																	
WAV Files																	
Voice Integration																	
006 Vents																	
Co-Lo Setup																	
RF Antennas																	
Prepare Pad																	
Install Kiosks																	
Touchpads																	
Install Hardware																	
Beta Test																	

PURCHASE ORDER #	DESCRIPTION	DONE
P.O. 10001 Stealth Computers	Hardware	
P.O. 10002 TeleVideo	Misc. Equipment	
P.O. 10003 Deco Plastics	Raydomes	✓
P.O. 10004 SAIC	SmartSite Wireless Bridge	
P.O. 10005 GE	Lexan Panels	
P.O. 10006 Sunvent	Aluminum Vents	
P.O. 10007 Cal Sheet Metal	User Interface Housing Inserts	
P.O. 10008 Newark-in-One	EZ Access Touch Pads	
P.O. 10009 Monroe Hinges	Custom Door Hinges	✓
P.O. 10010 SouthCo	Door Locking Mechanisms	✓
P.O. 10011 Keyence Sensors	Motion Sensors	

EXHIBIT C: Form of Outsourcing Agreement

OUTSOURCING AGREEMENT

DRAFT
8/05

This Outsourcing Agreement ("Agreement") is made and effective as of this _____ day of _____, 2007, by and between FRIENDS OF BALBOA PARK, hereinafter referred to as FOBP; and KIOSK ARTS, LLC. The parties to this Agreement are hereinafter sometimes referred to individually as a "Party" or, collectively, as the "Parties," with reference to the following facts:

RECITALS

1. Whereas FOBP is a 501(c)3 public benefit corporation organized to enhance the public's awareness and enjoyment of San Diego's Balboa Park, and;
2. Whereas FOBP has envisioned and developed a collaborative project with the City of San Diego's Department of Parks and Recreation for the placement of information KIOSKS at selected sites throughout the Park, hereinafter referred to as the KIOSK Program, and has entered into a Donation and Operating Agreement ("D&O Agreement") with the City of San Diego ("City") for placement, maintenance and operations of these KIOSKS within the Park, and;
3. Whereas FOBP desires to outsource the development, maintenance and operations management responsibilities for the KIOSK Program to a qualified third party, and;
4. Whereas FOBP desires to outsource the marketing and advertising management responsibility for the KIOSK Program, and;
5. Whereas KIOSK ARTS, LLC, is a Limited Liability Corporation licensed to do business in the City of San Diego and represents that it has the qualifications and talent to manage the KIOSK Program and conduct business providing both content development, maintenance and operations management services; and provide

marketing and advertising management services related to the KIOSK Program's advertising opportunities (see attached Statement of Qualifications, Schedule "H"); NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I - PHASED DEVELOPMENT

A. PHASE ONE

Phase One shall consist of the design, development, installation, maintenance and operations management of two (2) KIOSKs in Balboa Park. Subject to the termination rights of the Parties as set forth in this Agreement, and the rights of the City and FOBP under the D&O Agreement, the Parties anticipate that the term of Phase One shall be one to two years.

B. PHASE TWO

Provided that Phase One is both an operational and financial success, Phase Two shall consist of the design, development, installation, maintenance and operations management of an additional three (3) KIOSKs for a total of five (5) KIOSKs in Balboa Park. The term of Phase Two shall be the term of this Agreement.

ARTICLE II - MAINTENANCE, MANAGEMENT AND MARKETING

A. SCOPE OF MAINTENANCE AND OPERATIONS MANAGEMENT SERVICES TO BE PROVIDED BY KIOSK ARTS, LLC:

KIOSK ARTS, LLC shall provide the following services for the maintenance and operations management of the KIOSK Program:

1. Systems Maintenance, Hardware and Software Asset Management

shall include full software maintenance, upgrades, IT security, and remote problem resolution. KIOSK ARTS, LLC shall manage the acquisition and life-

cycle maintenance for the Operating System hardware and software, and all peripheral application software and equipment and licenses in a cost-effective manner.

2. **Network Management** shall include maintaining and tracking network assets, including wireless backhaul.
3. **Revenue Program Management** shall include pricing, accounting and management of all KIOSK Revenue Programs.
4. **Ongoing Programming Services** shall include at least weekly informational updates, reasonable content upgrades, and added peripheral interfaces as warranted. KIOSK ARTS, LLC shall perform these Programming Services in a prompt, timely manner such that the KIOSK Program shall operate at all times in accordance with the Design Specifications ("Design Specifications") set forth on the attached Schedule "I."
5. **Facilities Management** shall include providing comprehensive facilities management including oversight of power systems, cooling, and security systems; and dependable resolution of 'service disruption' issues such as jammed cards and cash or other materials like receipt rolls or vouchers. Facilities Management shall likewise be performed by the KIOSK ARTS, LLC in a prompt, timely manner and in accordance with the Design Specifications for the KIOSK Program. The City shall maintain the exterior of the KIOSKS.
6. **Call Center Management** shall include responding to user and KIOSK related complaints.
7. **IT Backup** shall include at least weekly backup of KIOSK driven data.

8. **Any Additional Operations and Maintenance** identified in the attached Schedule "A" but not listed above in Paragraphs II.A.1 through 7. shall be the responsibility of KIOSK ARTS, LLC and shall likewise be performed in a prompt, timely manner in accordance with the Design Specifications.

**B. SCOPE OF MARKETING AND ADVERTISING MANAGEMENT SERVICES
RELATED TO KIOSK ADVERTISING AND OPPORTUNITY PROGRAMS TO BE
PROVIDED BY KIOSK ARTS, LLC:**

KIOSK ARTS, LLC shall provide Marketing and Advertising Management services for the following: **KIOSK Advertising and Opportunities Programs:**

1. **External Billboard Advertising:** KIOSK ARTS, LLC shall coordinate and manage the allotted external billboard space on each KIOSK. Special effort will be made to keep this advertising medium relevant to Balboa Park by promoting the advertising opportunities to the cultural institutions and Park destination event promoters. Fees will be established in a media kit produced by KIOSK ARTS, LLC and approved by FOBP.
2. **Touch Screen Advertising:** KIOSK ARTS, LLC shall coordinate and manage the advertising relative to the touch screen content. Fees will be established in a media kit produced by KIOSK ARTS, LLC and approved by FOBP. Multi-tiered digital advertising opportunities will be outlined in the media kit with prices of each opportunity. The attract loop (top level screen) will provide both banner advertising opportunities and video playback and/or video camera imaging as advertising mediums. Subsequent level screens will provide banner advertising and/or pop-up advertising.

3. **Sponsor and Promotional Programming:** KIOSK ARTS, LLC shall work with key Sponsors to provide Sponsor acknowledgement and advertising opportunities. Fees will be established in a media kit produced by KIOSK ARTS, LLC and approved by FOBP.
4. **Splash Page Advertising:** KIOSK ARTS, LLC shall solicit and coordinate with advertisers for splash page advertising opportunities relative to WiFi usage. Fees will be established in a media kit produced by KIOSK ARTS, LLC and approved by FOBP.
5. **Program Expansion:** KIOSK ARTS, LLC shall seek to expand advertising revenues and opportunities as warranted and as approved by FOBP.
6. **Best Efforts:** KIOSK ARTS, LLC shall use its best efforts to assure that the KIOSK Project generates sufficient revenues from the services described in this Paragraph II.B. to offset the Maintenance and Operational Management fees being paid pursuant to this Agreement.
7. **Advertising Content:** All advertising content shall be approved by FOBP.

C. REVENUE GENERATION:

1. **Phase One:** Attached as Schedule "B" to this Agreement is a summary of annual revenue projections for Phase One of the KIOSK Project less Operations Overhead.
2. **Phase Two:** Attached as Schedule "C" to this Agreement is a summary of annual revenue projections for Phase Two of the KIOSK Project less Operations Overhead.
3. **Best Efforts:** KIOSK ARTS, LLC will use its best efforts to attain the revenue projections set forth on Schedules "B" and "C."

D. MAINTENANCE AND OPERATIONS MANAGEMENT EXPENSES:

Attached to this Agreement as Schedule "D" is a summary of the Maintenance and Operations Management Expenses projected on an annual basis for Phase One ("Phase One O&M"). Attached to this Agreement as Schedule "E" is a summary of the Maintenance and Operations Management Expenses on an annual basis for Phase Two ("Phase Two O&M").

E. ANNUAL OPERATING OVERHEAD

Attached to this Agreement as Schedule "F" is a summary of the Annual Operations Overhead projected for Phase One ("Phase One Overhead"). Attached to this Agreement as Schedule "G" is a summary of the Annual Operations Overhead projected for Phase Two ("Phase Two Overhead").

F. SHARING OF RISK AND LIABILITY:

- 1. Phase One:** FOBP shall have the financial responsibility for Phase One Overhead including Phase One O&M.
- 2. Phase Two:** In Phase Two KIOSK ARTS, LLC shall share the risk of the success of the KIOSK Program. If insufficient revenues are generated to pay for some or all of Phase Two O&M (See Schedule "E" and Item 5 on Schedule "G") then KIOSK ARTS, LLC's Maintenance and Operations Management Expenses (\$15,900) shall be at risk and only paid if sufficient revenues are generated from the KIOSK Program.

G. KIOSK REVENUE PROGRAMS:

The KIOSK Program shall include the following revenue features and services:

- 1. Advertising and Opportunities Program** shall include both external billboard advertising and digital touch screen mediums.

2. **Digital Postcards Feature** shall be priced to maximize revenues. Market entry will be \$5.00 to send a video postcard with up to 4 recipients. Any price adjustments recommended by KIOSK ARTS, LLC shall first be approved by FOBP.
3. **ATM:** KIOSK ARTS, LLC has contracted with a third party for managing these services and a user fee will be charged that will result in a payment to the KIOSK Project of \$1.25 per transaction based on a \$2.00 user transaction fee. KIOSK ARTS, LLC or its third party contractor shall provide ATM's, cash replenishment, insurance and systems maintenance and financial accounting to FOBP.
4. **WiFi:** KIOSK ARTS, LLC shall contract with a third party for managing these services at a fee to be negotiated and charged (to be determined) per logon. KIOSK ARTS, LLC or its third party contractor shall provide all customer billing and financial accounting. Tie-in arrangements may be integrated with other subscription-based Wireless Providers for revenue enhancement. WiFi services under this Agreement shall be limited to Balboa Park and shall produce net positive revenue.
5. **Future Revenue Programs:** KIOSK ARTS, LLC will use its best efforts to develop additional revenue sources subject to the approval of FOBP and replace any revenue sources that are underperforming pursuant to the Revenue Projections set forth on Schedules "B" and "C."

H. COMPENSATION PAYABLE TO KIOSK ARTS, LLC:

1. **Compensation For O&M Services.** KIOSK ARTS, LLC shall be paid the Phase One O&M and the Phase Two O&M subject to the terms of this

Agreement. Payment shall be made first from revenues generated by the KIOSK Program.

- 2. Compensation For Additional Services.** As additional compensation for the services for which KIOSK ARTS, LLC is responsible under this Agreement including, but not limited to, obtaining advertising revenues, KIOSK ARTS, LLC shall be compensated as follows:

2.1 Fifty percent (50%) of net revenues generated by the KIOSK Project after payment of Phase One Overhead/Phase Two Overhead.

- 3. Application of KIOSK Generated Donations.** FOBP agrees that if Phase One Overhead/Phase Two Overhead cannot be met with revenues generated by the KIOSK Program, then any electronic donations generated at the KIOSKs shall first be applied to pay such overhead shortfall. Once said overhead expenses are met, 100% of said donations shall be deposited into FOBP's account. At no time shall said donations be subject to the 50% compensation provisions of Paragraph H.,2.1.

I. MANAGEMENT OF FUNDS

KIOSK ARTS, LLC shall establish and maintain a separate merchant account for purposes of collecting, managing and disbursing KIOSK Program revenues. All payables relative to the KIOSK Program shall be made from this account and accounted for by KIOSK ARTS, LLC. KIOSK ARTS, LLC shall provide FOBP on or before the tenth of each month with a financial statement showing all revenues, expenses and profits/losses for the preceding month and year to date. Net Profit and/or donations, if any, shall be directly deposited on a monthly basis into FOBP's designated bank account. Upon reasonable notice, KIOSK ARTS, LLC, shall make all of its financial books and records available to FOBP for review and/or audit.

J. USE OF AGENTS, ASSISTANTS AND SUBCONTRACTORS

KIOSK ARTS, LLC, at its own cost and expense, is authorized to engage the services of any agents, assistants, persons, or corporations that it determines proper to aid or assist in the proper performance of the services to be provided hereunder.

K. INTELLECTUAL PROPERTY:

KIOSK ARTS, LLC expressly acknowledges and agrees that any and all intellectual property and proprietary materials created by KIOSK ARTS, LLC and any of its agents, assistants, persons, or corporations engaged in the performance of the services provided hereunder shall be created as "works made for hire" by FOBP as defined in the United States Copyright Act and shall be the sole and exclusive property of FOBP. To the extent such intellectual property and/or proprietary materials are deemed not to be "works for hire," KIOSK ARTS, LLC hereby assigns all of its right, title and interest thereto to FOBP.

L. TERMINATION:

- 1. Consequences of termination:** In the event FOBP winds down as a corporation, all "work made for hire" copyrights pertaining to the KIOSK Program shall be assigned to KIOSK ARTS, LLC to permit KIOSK ARTS, LLC's continued management of the KIOSK Program. Provided, however, said assignment shall be subject to the approval of the City.
- 2. Performance:** Performance of KIOSK ARTS, LLC shall be based on objective standards of performance and measured against response time and problem processing.
- 3. Good Faith:** It is the desire and intent of both Parties to maintain this Agreement for the long-term. KIOSK ARTS, LLC shall not be dismissed from this agreement by FOBP for reasons other than substantial mal-performance

or malfeasance. The assignment of risk and liability and willingness on the part of KIOSK ARTS, LLC to receive compensation for its services is predicated on the long term vision of mutual participation in the revenue sharing and future earning potential of the KIOSK Program. KIOSK ARTS, LLC acknowledges, however, that FOBP's willingness to participate on a long-term basis depends upon customer driven use of, and revenues generated by, the KIOSK Program sufficient to cover all expenses of the Program.

4. **Term:** This Agreement shall remain in effect consistent with the duration specified in the D&O Agreement between the City and FOBP, with option extensions.
5. **Termination For Cause:** Either Party may terminate this Agreement for cause upon delivering to the other Party a written sixty (60) day notice of termination.
6. **LIQUIDATED DAMAGES: IF FOBP BREACHES THIS AGREEMENT, THE PARTIES AGREE, BY PLACING THEIR INITIALS BELOW, THAT KIOSK ARTS, LLC'S DAMAGES WILL BE LIMITED TO AN AMOUNT EQUAL TO MAINTENANCE AND OPERATIONS MANAGEMENT EXPENSES FOR ONE YEAR (\$12,300 DURING PHASE ONE, \$15,900 DURING PHASE TWO). THIS SUM SHALL CONSTITUTE LIQUIDATED DAMAGES TO KIOSK ARTS, LLC FOR SUCH BREACH BY FOBP. THE PARTIES AGREE THAT KIOSK ARTS, LLC'S ACTUAL DAMAGES IN THE EVENT OF SUCH A BREACH BY FOBP WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE AND THAT SAID SUM IS A REASONABLE AMOUNT FOR LIQUIDATED DAMAGES FOR SUCH A**

BREACH UNDER THE CIRCUMSTANCES EXISTING AT THE TIME THIS AGREEMENT IS SIGNED BY THE PARTIES. IN CONSIDERATION OF THE PAYMENT OF LIQUIDATED DAMAGES, KIOSK ARTS, LLC SHALL BE DEEMED TO HAVE WAIVED ALL OTHER CLAIMS FOR DAMAGES OR RELIEF AT LAW OR IN EQUITY (INCLUDING, WITHOUT LIMITATION, ANY RIGHTS TO INJUNCTIVE RELIEF).

FOBP _____ KIOSK ARTS LLC _____

M. GOVERNANCE:

This Agreement shall be governed by the laws of the State of California and shall be consistent with the terms of the D&O Agreement between FOBP and the City. In the event of any inconsistency between the terms of this Agreement and said D&O Agreement, the terms of the D&O Agreement shall control.

N. DEVOTION OF TIME:

KIOSK ARTS, LLC shall use its best efforts in the performance of its duties under this Agreement.

O. SCOPE OF FOBP RESPONSIBILITIES:

1. FOBP shall be responsible for raising the funds to pay for the installation of the KIOSKs.
2. FOBP shall be responsible for design, construction and installation of the KIOSKs in Balboa Park with the consent and approval of the City.
3. FOBP shall assist in content procurement, as applicable.
4. FOBP has the right, but not the obligation, to provide content oversight.

P. INSURANCE

KIOSK ARTS, LLC shall hold commercial general liability insurance, including contractual liability, at limits of not less than \$1,000,000 per occurrence, automobile liability insurance, at limits of not less than \$1,000,000 per occurrence, errors and omissions insurance at limits of \$1,000,000, and worker's compensation and employer's liability insurance covering all employees engaged in the performance of this order for claims arising under any applicable worker's compensation and occupational disease acts.

Q. COMPLIANCE WITH LAW

KIOSK ARTS, LLC agrees and warrants that KIOSK ARTS, LLC shall comply with all requirements of applicable laws, regulations and standards including but not limited to the provisions of: **(a)** Executive Order 11246, as amended, of the President of the United States and the Rules and Regulations pursuant thereto pertaining to Equal Employment Opportunity; **(b)** the Fair Labor Standards Act of 1938 of the United States, as amended, with respect to Wages and Hours; **(c)** the Occupational Safety and Health Act of 1970 (OSHA), as amended; **(d)** the Immigration Reform and Control Act of 1986 (IRCA).

R. GENERAL BUSINESS TERMS

This Agreement is not assignable by either Party without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempt to assign any of the rights, duties, or obligations of this Agreement without such consent is void. This Agreement can only be modified by a written agreement duly signed by persons authorized to sign agreements on behalf of FCBP and of KIOSK ARTS, LLC. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Notices – Any requirements of reasonable notice by either Party shall be met if such notice is mailed, postage prepaid, to the other Party at the mailing address designated by the other Party.

Attorneys' Fees – In the event of any controversy, claim, dispute, arbitration or legal action between the Parties, arising out of or relating to this Agreement, its creation, interpretation, enforcement or breach, the prevailing Party shall be entitled to recover from the other Party all costs and expenses including, without limitation, reasonable attorneys' fees and costs, whether or not formal court proceedings are begun. This provision constitutes a separate covenant and shall survive the entry of a judgment in any action to enforce or interpret this Agreement; the judgment in any such action shall include a provision whereby the prevailing party will be entitled to recover attorneys' fees and costs incurred to enforce such judgment.

Arbitration – In the event of any controversy, claim or dispute between the Parties as to the construction, interpretation, operation or enforcement of this Agreement, then the same shall be submitted to binding arbitration before a single arbitrator in San Diego County pursuant to the Commercial Arbitration Rules of the American Arbitration Association.

S. INDEPENDENT CONTRACTOR

KIOSK ARTS, LLC acknowledges that its services hereunder are not subject to the discretion and control of FOBP as envisaged by the California Labor Code or the United States Fair Labor Standards Act, including rules, orders or regulations promulgated thereunder; and that the relationship between the Parties shall be that of a non-profit organization and an independent contractor. KIOSK ARTS, LLC acknowledges that as between itself and FOBP, it is excluded from the operation of the California Labor Code, any California Wage Orders, or

the United States Fair Labor Standards Act and it is not entitled to either minimum wages, overtime, vacation pay, medical, health or life insurance benefits or reimbursement for its expenses including the cost of supplies or equipment, and that no withholding, deduction or payment shall be made by FOBP for, or in respect of, any income tax, unemployment insurance or Social Security withholding, Unemployment or Workers' Compensation withholding or any other applicable Federal or State Income, Social Security, Unemployment or Sales Tax for, or in respect of the services rendered by KIOSK ARTS, LLC.

T. CONFIDENTIAL INFORMATION

Each Party shall treat, and shall cause its employees and agents to treat, any information and data concerning the other Party including, without limitation, information and data relating to their respective business, financial information, personal information and the like, which may come within the knowledge of a Party or its employees or agents in the performance of, or in connection with services provided under this Agreement as confidential information and data, and shall not use or disclose such confidential information and data to others during or subsequent to the performance of the services under this Agreement (except as necessary to perform such services) without the prior written approval of the other Party, which consent will not be unreasonably withheld. These obligations shall survive the termination or expiration of this Agreement. Provided, however, the Parties agree to provide the City with information required by the City under its D&O Agreement with FOBP.

U. ENTIRE AGREEMENT

This Agreement constitutes the sole and only agreement of the Parties and supersedes any prior understandings or written or oral agreements between the Parties respecting this subject matter. Provided, however, the Parties both acknowledge receipt of a copy of the

D&O Agreement and by this reference incorporate the same into this Agreement. The Parties intend that, to the extent there is any inconsistency between the terms of this Agreement and the D&O Agreement, the D&O Agreement shall control.

V. ASSIGNMENT

Neither this Agreement nor any duties or obligations under this Agreement may be assigned by either Party without the prior written consent of the other Party, which consent will not be unreasonably withheld. In the event of an assignment to which the other Party has consented, the assignee shall agree in writing to personally assume, perform, and be bound by all the provisions of this Agreement.

W. SUCCESSORS AND ASSIGNS

Subject to the provisions regarding assignment, this Agreement is binding on, and inures to the benefit of, the parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

X. AMENDMENT

This Agreement may be amended by the mutual agreement of the Parties by way of a signed written agreement to be attached to and incorporated in this Agreement.

Y. MULTI LANGUAGES

Initially, deployment of the KIOSK Program shall include English and Spanish language functionality as part of the content development. The Parties desire to add additional languages to the Touch Screen functionality up to an estimated maximum of six (6) total languages. The costs of adding such additional languages to the KIOSK Program will be negotiated by the Parties and, if agreed to, will be the subject of an amendment to this Agreement.

IN WITNESS WHEREOF, the Parties hereto by their duly authorized representatives have executed this Agreement effective as of the date first set forth herein.

FRIENDS OF BALBOA PARK

KIOSK ARTS LLC

(Signature)

(Signature)

(Print Name)

(Print Name)

(Date)

(Date)

SCHEDULE "A"

OPERATIONS AND MAINTENANCE

- 1.** Weekly site inspections: clean kiosk surfaces, check lighting, check motion sensors, and restock consumables.
- 2.** 7/24 On-Call programming support, w/ 4-hour response time. All system failures are monitored by NOC service and directed to KIOSK ARTS, LLC for follow-up. Hardware problems are re-directed to third party under contract for hardware maintenance / warranty services.
- 3.** Content Maintenance to include: Ongoing software support and upgrades; calendar updates; special notices; seasonal information and graphics, sponsor and advertisement programming.
- 4.** Management reports will be generated on a monthly basis, including accounting and authored reports showing usage patterns, revenues generated, expenses paid out, funds set-aside, payables, etc.
- 5.** Overall program management, including Revenue Programs, and handling "Complaint Department" responsibilities.
- 6.** All operations, maintenance, service and management required for the proper operation of the equipment and facilities installed on the building located at 225 Broadway, San Diego, California.
- 7.** KIOSK ARTS, LLC shall provide FOBP with a monthly report identifying all advertisers and the rates charged those advertisers for the preceding month.

SCHEDULE "B"

REVENUE PROJECTIONS (3 KIOSKS)

<u>Revenue Generator</u>	<u>Unit Income</u>	<u>Annual Revenues</u>
WiFi	\$1.50	\$ 8,212.00
Video Postcard	\$5.00	\$ 10,950.00
Advertising PRINTED MEDIA: • External Billboard Advertising • Coupon Receipt Advertising DIGITAL TOUCHSCREEN MEDIA: • Sponsor Banner • Persistent Buttons • Rich Media / Streaming Video Attract Loop • MicroSite • Wireless (WiFi) Splash Screen Advertising UNIQUE ADVERTISING OPPORTUNITIES • Calendar Special Event Link • Video Postcard Link DATA MINING: • Statistical Reports • Opt-in Survey		\$ 7,200.00
ATM	\$ 1.25	\$ 6,843.00
Fundraising Pop-Up Donations	\$1.00	\$ 712.00
<u>TOTAL ANNUAL REVENUES</u>		\$ 33,917.00
<u>OPERATIONS OVERHEAD</u>		\$ 31,488.00
<u>Gross Profit/Loss</u>		\$ 2,429.00

REVENUE ASSUMPTIONS

- **WiFi:** 1 user / 1 hour average login/ 5 hours per day per kiosk (2,190 annual transactions)
- **Video Postcard:** 2 users per day per kiosk (730 annual transactions per kiosk)
- **Advertising:** @ \$200.00 per kiosk per month.
- **ATM:** 5 transactions per day per kiosk (1,825 annual transactions per kiosk)
- **Fundraising Pop Ups:** 4,745 annual transactions @ 5% acceptance

SCHEDULE "C"

REVENUE PROJECTIONS (5 KIOSKS)

Revenue Generator	Unit Income	Annual Revenues
WiFi	\$1.50	\$ 16,425.00
Video Postcard	\$5.00	\$ 18,250.00
Advertising PRINTED MEDIA: • External Billboard Advertising • Coupon Receipt Advertising DIGITAL TOUCHSCREEN MEDIA: • Sponsor Banner • Persistent Buttons • Rich Media / Streaming Video Attract Loop • MicroSite • Wireless (WiFi) Splash Screen Advertising UNIQUE ADVERTISING OPPORTUNITIES • Calendar Special Event Link • Video Postcard Link DATA MINING: • Statistical Reports • Opt-in Survey		\$ 12,000.00
ATM	\$ 1.25	\$ 11,406.00
Fundraising Pop-Up Donations	\$1.00	\$ 1,186.00
<u>TOTAL ANNUAL REVENUES</u>		\$ 59,267.00
<u>OPERATIONS OVERHEAD</u>		\$ 37,030.00
<u>Gross Profit</u>		\$ 22,237.00

SCHEDULE "D"

MAINTENANCE AND OPERATIONS MANAGEMENT EXPENSES

Phase One (3 KIOSKS)

	TASK	Per UNIT	MONTH	YEAR
1	Weekly site inspection	\$25.00	\$300.00	\$3,600.00
2	7/24 On-Call support		\$100.00	\$1,200.00
3	Content Maintenance		\$100.00	\$1,200.00
4	Report Generation		\$400.00	\$4,800.00
5	Third Party software support		\$25.00	\$ 300.00
6	Program Management		\$200.00	\$2,400.00
			TOTAL	\$13,500.00

SCHEDULE "E"

MAINTENANCE AND OPERATIONS MANAGEMENT EXPENSES

Phase Two (5 KIOSKs)

	TASK	Per UNIT	MONTH	YEAR
1	Weekly site inspection	\$25.00	\$500.00	\$6,000.00
2	7/24 On-Call support		\$100.00	\$1,200.00
3	Content Maintenance		\$100.00	\$1,200.00
4	Report Generation		\$400.00	\$4,800.00
5	Third Party software support		\$25.00	\$ 300.00
6	Program Management		\$200.00	\$2,400.00
			TOTAL	\$15,900.00*

*Subject to agreed upon increase in the event the Parties proceed with additional Language Programming.

SCHEDULE "F"

ANNUAL OPERATIONS OVERHEAD

Phase One (3 KIOSKS)

ITEM	ANNUAL EXPENSE
1. Maintenance and Operations Management	\$ 13,500.00
2. NOC 7/24 & Bandwidth @ 1.54 Mps	\$ 4,200.00
3. Hardware/Wireless Maintenance	\$ 4,750.00
4. Other Direct Costs (consumables)	\$ 500.00
5. Miscellaneous Software Licensing Fees	\$ 1,000.00
6. Hardware Replacement Fund @15%	\$ 7,538.00
TOTAL	\$ 31,488.00

- **Auto donations to FOBP (pursuant to KIOSK Program) pay shortages IF/WHEN revenues collected fall short of Operations Overhead. Otherwise 100% of donations are paid to FOBP once Overhead is met.**
- **Item 6, hardware replacement fund, will only be funded when sufficient revenues are generated to pay for Items 1-5. Any deficits created will be "caught up" in subsequent years' revenues before any profit disbursements are made.**
- **Includes Merchant Account Fees, Licensing Fees and Hardware Maintenance/Warranty Fees.**

SCHEDULE "G"

ANNUAL OPERATIONS OVERHEAD

Phase Two (5 KIOSKs)

ITEM	ANNUAL EXPENSE
1. NOC 7/24 & Bandwidth @ 1.54 Mps.	\$ 4,200.00
2. Hardware/Wireless Maintenance	\$ 4,800.00
3. Other Direct Costs (consumables)	\$ 832.00
4. Miscellaneous Software Licensing Fees	\$ 1,000.00
5. Maintenance and Operations Management	\$ 15,900.00
6. Hardware Replacement Fund @15%	\$ 10,500.00
TOTAL	\$ 37,030.00

- **In Phase Two FOBP would be at low risk for first four Items. First revenues collected pay down these expenses.**
- **In Phase Two LLC would be at high risk for fifth Item. Paid from revenues collected after first four items are paid.**
- **Auto donations to FOBP (pursuant to KIOSK Program) pay shortages IF/WHEN revenues collected fall short of Operations Overhead. Otherwise 100% of donations are paid to FOBP once Overhead is met.**
- **Item 6, hardware replacement fund, will only be funded when sufficient revenues are generated to pay for Items 1-5. Any deficits created will be "caught up" in subsequent years' revenues before any profit disbursements are made.**
- **Includes Merchant Account Fees, Licensing Fees and Hardware Maintenance/Warranty Fees.**

SCHEDULE "H"

STATEMENT OF QUALIFICATIONS

KIOSK ARTS, LLC

KIOSK ARTS, LLC is a newly formed company assembled to meet the needs of the Balboa Park Kiosk Project. Principal managers are experienced professionals in the areas of information technology and web-based graphical design.

Ken Miracle is owner of MiracleBrand design, a full-service visual communications firm based in San Diego, specializing in the branding and positioning of corporate identities, business services and product packaging. MiracleBrand's downtown locality has afforded this project the practical benefits of working closely with FOBP's Design Committee in the development of the kiosk touch screen interface and external graphics, as well as a local ability to collaborate with future advertising clientele as a principal in the newly formed company. Ken was contracted by FOBP as the primary content developer for the Kiosk Project based on MiracleBrand's expertise in digital media and ability to provide a customized graphical user interface (GUI) using database-centric cross-platform software.

Rick Sparhawk brings executive level management to the operations and maintenance requirements of the project. He was COO of an electronic patient charting and telecommunications venture in the home healthcare nursing industry and CEO in a statewide industrial medicine preferred provider network. He has served FOBP as project advisor in shaping this initiative. He has coordinated and collaborated in the marketing/communications efforts of the project. He has prepared all income and expense proformas; and has played a central role as FOBP's project liaison by researching, interviewing, selecting, negotiating and working with the project's primary suppliers.

Further, KIOSK ARTS, LLC, as an outsourcing solution, affords this project a consortium of best-of-breed subcontracted services specializing in the secure transmission of financial data; ATM cash replenishment services; WiFi managed services; NOC services; customer support call-center services; ISP services, and a centralized wireless communications co-location hub to house the project's main computer, gateway and firewall router. KIOSK ARTS, LLC is committed to designing, developing and operating quality end-to-end self-serve solutions that meet the evolving needs of its clients. The organizations with which KIOSK ARTS, LLC is aligned afford the complementary expertise to enhance its ability to tap into new technology ideas, plan ahead, and arrive at innovative solutions to sustain operations and protect the client's investment.

SCHEDULE "I"

DESIGN SPECIFICATIONS

DESIGN SPECIFICATION WARRANTY:

Whereas Friends of Balboa Park ("FOBP") is a 501(c)(3) public benefit organization formed for the purpose of preserving and promoting Balboa Park's resources and furthering the public's education and awareness of Balboa Park's artistic, cultural, recreational and educational museums and institutions. KIOSK ARTS, LLC, as a contractor to FOBP, shall carry forward the KIOSK Program in a phased approach to reliably deliver wayfinding and public information about the Park. KIOSK ARTS, LLC shall manage the sponsorship, donation and revenue generation programs and features that enable the continued deployment of the KIOSK Program.

KIOSK ARTS, LLC agrees to provide its services in accordance with the standards customarily adhered to by an experienced and competent professional information technology firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California.

KIOSK ARTS, LLC specifically warrants it shall timely respond to all reported kiosk operational interruptions by managing all maintenance issues, both hardware and software, and insuring all subcontracted services meet this stated warranty, and that these KIOSKS function to enhance the visitors' experience as a meaningful and reliable public service. Therefore it is the mutual goal of both parties that the reliability and functionality of the KIOSKS shall be sufficiently maintained at all times to brand the KIOSK Program as a valued asset of one of America's best parks and a highly regarded achievement of the FOBP.

PHYSICAL WARRANTY

External upkeep of the KIOSKS, although a responsibility of the City of San Diego, is essential to the user experience and public regard of the KIOSK Program. Therefore, it is the warranty of KIOSK ARTS, LLC to additionally oversee and attend to issues of external wear and/or vandalism. In the event the City is non-responsive to its obligation under the Donation and Operating Agreement with FOBP, KIOSK ARTS, LLC will exercise its best judgment to replace worn or vandalized external components. Such maintenance expenditures will be charged to the replacement fund for expediency of repair or replacement, but will be billed to the City for reimbursement.

KIOSK PROGRAMMING & FUNCTIONALITY SPECIFICATIONS:

PARK INFORMATION

- Directions -- Wayfinding and Navigate Balboa Park
- Venues -- Explore Specific Park Attractions
- Events Calendar -- Discover Weekly and Monthly Events

Destination Resource

- ATM – Cash Disbursement Machine Available 7/24
- WiFi – Connect to the Internet via 802.11WiFi

Communications

- Video Postcard – Deliver Video Messages via Email
- Accept Donations – Support Park Institutions
- Advertising Medium – Promote Park Events and Institutions
- Multiple Languages – English, Spanish, and Others TBD

Park Management Asset

- Administrative Tool – Generate Reports
- Marketing/Communications Resource Platform
- Security Aide – Video Capture Upon Proximity Triggering
- Data Mining Resource

Future Possible Services

- Venue Ticketing – Purchase Using Credit Cards
- Discount Coupons – Generate Printed Voucher

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EXHIBIT D: City of San Diego Corporate Partnership Program Guidelines

I. Background on the Corporate Partnership Program and Definitions

- In 1999, the San Diego City Council approved a strategic marketing plan for corporate partnerships with The City of San Diego known as the Corporate Partnership Program. The Corporate Partnership Program seeks opportunities for CITY to generate revenue from marketing partnerships with the corporate community to enhance municipal services and facilities. Marketing partnerships (synonymous with “sponsorships”) are mutually beneficial business arrangements between CITY and a company, where the company provides cash or in-kind services to CITY in return for a marketing association.
- CITY sponsorships should not be confused with philanthropy. Philanthropy is the support of a cause through cash or in-kind support without any commercial incentive. Sponsorship is undertaken for the purpose of achieving commercial objectives.
- Even though certain sponsorships may include promotional activity through media, sponsorship is not advertising. Advertising is the direct promotion of a company through space or airtime obtained for that specific purpose. Advertising is a quantitative medium, sold and evaluated in terms of cost per thousand. Sponsorship, on the other hand, is a qualitative medium; it promotes a company in association with CITY.

II. Purpose for Corporate Partnership Program Guidelines

- The purpose for the Corporate Partnership Program Guidelines (“Partnership Guidelines”) is to provide direction, facilitation and coordination on corporate sponsorship, to ensure that sponsorship opportunities are maximized, and to promote the welfare of CITY.

III. Existing Policies

- CITY currently has two City Council Policies that provide direction for CITY’S relationship with corporate sponsors. Council Policy 000-41 – Product Endorsement, provides direction to CITY employees and agencies or organizations funded by CITY regarding endorsements of commercial products or services. Council Policy 000-40 – Marketing Partnership Policy, provides guidelines for developing and managing municipal marketing partnerships. The Partnership Guidelines have been established as an extension of those policies to address CITY’S expanding activities related to corporate sponsorship.

IV. General Principles

- CITY accepts the principle that third persons may become marketing partners with CITY in the sponsorship of CITY-approved programs, projects, events, facilities or

activities, where such partnerships are mutually beneficial to both parties in a manner consistent with all applicable CITY policies and ordinances.

- The Corporate Partnership Program acts as the primary point of contact for corporate sponsorships to CITY in support of CITY programs.
- Marketing partnerships developed under the Corporate Partnership Program provide category exclusivity to the corporate sponsors. Therefore, departments and programs cannot offer corporate sponsorships in the defined business categories of existing marketing partners. The City Council ultimately determines the definition of the business categories.

V. Responsibilities

- Per Council Policy 000-40, Marketing Partnership Policy, all marketing partnership activities will be coordinated by the Corporate Partnership Program, or its successive office, under the direction of the City Council.
- In the area of corporate sponsorship activities, the Corporate Partnership Program will be responsible for:
 - Ensuring that contractual obligations as defined in the marketing partnership agreements are adhered to;
 - Providing consultation to CITY departments and programs in developing a strategy aligned with the corporate sponsorship goals and objectives;
 - Reviewing and approving potential corporate sponsors for CITY-approved facilities, programs, services and special events;
 - Reviewing and approving the size and placement of corporate logos used to recognize sponsors in various marketing media including but not limited to websites, publications, signage and television; and
 - Providing guidance as to the fair market value of sponsorships.

VI. Process

- The following steps will be followed prior to engaging in a corporate sponsorship endeavor for a CITY department, program or special event:
 - Determine the fair market value of sponsorship.
 - Submit a list of potential sponsors to the Corporate Partnership Program for review to determine if conflicts exist with CITY policy or existing relationships.
 - Contractual obligations afford existing marketing partners the first right of refusal to sponsor CITY-produced programs and special events. The Corporate Partnership

Program will first present existing marketing partners with the sponsorship opportunity. If an existing marketing partner declines the opportunity, the Corporate Partnership Program will produce a standard letter stating the existing marketing partner has declined to participate.

- Before signing a sponsorship commitment, review Council Policy 000-40, Marketing Partnership Policy, to ensure all contractual and fulfillment obligations are consistent with CITY-approved policies and procedures.

EXHIBIT E: Kiosk Maintenance

System/Area	CITY Responsibilities	FRIENDS' Responsibilities
Alarms	None.	All sensors, alarms, wiring, etc., for security and alarm systems, including heat, smoke, motion, etc.
Security	None.	All security including locks, emergency boarding up of access doors and panels and repairs of doors and panels.
Displays and sponsorship messages	Approval of copy and content.	All installation, removal and maintenance.
Windows and transparent coverings.	None.	All windows and other transparent coverings.
Walls, ceilings, roof	All permanent exterior items.	All interior items and additions or modifications to existing equipment, structures, and systems.
Electrical/HVAC	Electrical conduit and connections exterior to the structure.	Electrical conduit and connections interior to the structure and any heating/cooling systems installed.
Vandalism	Graffiti and other damage to roof, walls, and permanent exterior signs, excluding sponsorship signs.	Damage to installed equipment including ATMs, video displays, video cameras, sponsorship messages, acknowledgements, and promotional materials, and other functional equipment installed by FRIENDS.
Paint	All exterior painting.	All interior painting.
Monuments, memorials, donor recognition plaques, etc.	None.	All monuments, memorials, donor recognition plaques and other fundraising and recognition materials.
Kiosk system computer software	None.	All computer software related to the operation of the kiosk.
Kiosk system hardware, computers, monitors, antennae, transmitters and other system components.	None.	All system hardware, computers, monitors, antennae, transmitters and other system components installed by FRIENDS, whether located at the kiosk or another site within the system.

RESOLUTION NUMBER R- 302426

DATE OF FINAL PASSAGE MAR 27 2007

AUTHORIZING THE MAYOR TO EXECUTE A
DONATION AND OPERATING AGREEMENT
BETWEEN THE CITY AND FRIENDS OF
BALBOA PARK PURSUANT TO WHICH THE
CITY WILL RECEIVE A DONATION OF UP TO
FIVE INTERACTIVE INFORMATIONAL
KIOSKS FOR BALBOA PARK

WHEREAS, the Balboa Park Master Plan provides for directories/kiosks as a benefit to residents and visitors; and

WHEREAS, Friends of Balboa Park, a California public benefit corporation, has offered to donate up to five interactive informational kiosks for Balboa Park under a Donation and Operating Agreement [Agreement]; and

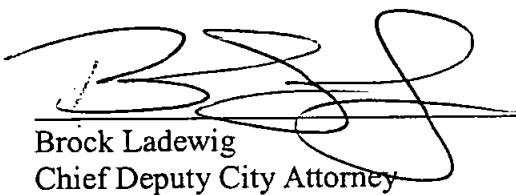
WHEREAS, the donation and Agreement will benefit the public health, safety or general welfare; NOW, THEREFORE,

BE IT RESOLVED, the Council of the City of San Diego authorizes the Mayor or his designee to execute a Donation and Operating Agreement [Agreement] between the City and Friends of Balboa Park, a California public benefit corporation [Friends], filed in the Office of the City Clerk as Document No. RR-302426, for a three-year pilot program, after which the Mayor or his designee shall report to the Council on the results of the pilot program and recommend further action; and

BE IT FURTHER RESOLVED, the Council authorizes the Mayor or his designee to accept on behalf of the City a donation from Friends of up to five interactive informational kiosks in Balboa Park pursuant to the Agreement; and

BE IT FURTHER RESOLVED, the Council authorizes the Auditor and Comptroller to accept, appropriate, and expend funds generated under the Agreement on Balboa Park projects, within the following accounting: Fund # 10365, Park and Recreation Community Matching Funds, Department # 10365, Organization # 2443, Job Order # 244345, Balboa Park Kiosks.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Brock Ladewig
Chief Deputy City Attorney

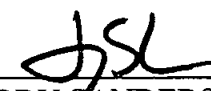
b:
02/23/07
Or. Dept: Park and Recreation
R-2007-235

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAR 20 2007.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 3.27.07
(Date)


JERRY SANDERS, Mayor

Vetoed: _____
(Date)

JERRY SANDERS, Mayor

Passed by the Council of The City of San Diego on March 20, 2007, by the following vote:

YEAS: PETERS, FAULCONER, ATKINS, YOUNG, MAIENSCHIN,
FRYE, MADAFFER & HUESO.

NAYS: NONE.

NOT PRESENT: NONE.

RECUSED: NONE.

AUTHENTICATED BY:

JERRY SANDERS

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

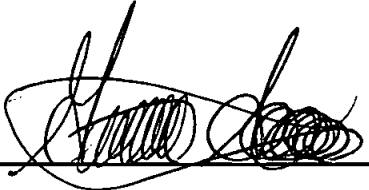
By: GIL SANCHEZ, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-302426, approved by the Mayor of The City of San Diego,
California on March 27, 2007.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By:  Deputy