

CONSENT TO SUBCONTRACT AGREEMENT

The City of San Diego (CITY), as the property owner and party to that certain Donation and Operating Agreement (Contract) entered into with:

FRIENDS OF BALBOA PARK

(CONTRACTOR), the Contract being filed in the Office of the City Clerk as Document RR-302426, dated March 20, 2007, hereby consents to that certain Outsourcing Agreement (Subcontract) dated July 10, 2007, attached hereto, between the above CONTRACTOR and

KIOSK ARTS, LLC.

(SUBCONTRACTOR). The Subcontract shall be subordinate to the Contract in all respects. CITY is merely approving SUBCONTRACTOR and the proposed use, and all terms and conditions of the Contract shall control and supersede any inconsistent or contrary provisions in the Subcontract. CITY is not bound by any term or condition in the Subcontract which in any way conflicts with or is additional to the provisions of the Contract.

In addition, this consent is subject to the following conditions:

1. **ASSIGNMENT AND SUBCONTRACTING**: SUBCONTRACTOR shall not assign the Subcontract or subcontract the kiosk locations or any part of the kiosk locations without the prior written consent of CITY. An assignment by operation of law shall automatically terminate the Subcontract.
2. **HOLD HARMLESS**: SUBCONTRACTOR shall assume the defense of, indemnify, and hold harmless CITY, its elected officials, officers, employees, agents, and representatives from all claims, expenses, and liability of every nature, directly or indirectly arising from or alleged to have arisen from the operations conducted on the kiosk locations, the condition of the kiosk locations, or from any act or omission of SUBCONTRACTOR, its agents and invitees; provided, however, SUBCONTRACTOR'S 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, employees, agents, and representatives.
3. **INSURANCE**: SUBCONTRACTOR shall be insured by an insurance carrier acceptable to CITY against loss from public liability arising from the use or condition of or operation conducted on the kiosk locations. Minimum coverage shall be one million dollars (\$1,000,000) combined single limit liability. A certificate of insurance shall be filed with CITY and shall, by separate endorsement, name "The City of San Diego, its elected officials, officers, employees, agents, and representatives" as additional insureds. The certificate shall specify that the policy may not be terminated, altered, or canceled without thirty (30) days prior written notice to CITY by the insurance company.

4. LEGAL PROCEEDINGS: Should it become necessary for CITY to commence legal proceedings to collect rent, recover possession, or enforce any other provision of this Consent Agreement, the Contract, or the Subcontract, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney fees.
5. ASSUMPTION: SUBCONTRACTOR agrees to assume the rights and obligations of the Contract and to keep and perform all covenants, conditions, and provisions of the Contract which are applicable to the rights acquired.

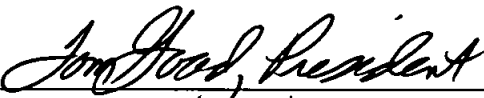
THE CITY OF SAN DIEGO, a municipal corporation

Date 12/3/07

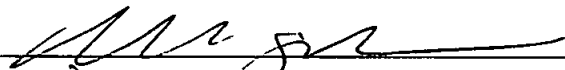
By 
James F. Barwick, Director
Real Estate Assets Department

FRIENDS OF BALBOA PARK, a California public benefit corporation

Date Nov. 8, 2007

By 
Betty L. Peabody, Chair
KIOSK ARTS, LLC., a California limited liability company

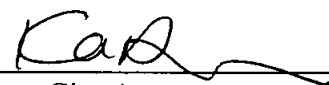
Date NOV. 15, 2007

By 
Rick SPACKHAWK

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. AGUIRRE, City Attorney

Date 12/11/07

By 
Deputy City Attorney

PC/nb
10/9/07

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