

MEMORANDUM OF AGREEMENT BETWEEN
THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY
AND
NASHVILLE DISTRICT MANAGEMENT CORPORATION, INC.
FOR ADMINISTRATION OF
THE NASHVILLE CENTRAL BUSINESS IMPROVEMENT DISTRICT

This memorandum of agreement ("MOA") is entered into this 1st day of February, 200~~7~~⁵ by and between **THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY**, a municipal corporation of the State of Tennessee ("Metro") and **NASHVILLE DISTRICT MANAGEMENT CORPORATION, INC.** ("NDMC"), a Tennessee not-for-profit corporation.

WHEREAS, Ordinance No. 1998-1037 created, pursuant to Tennessee Code Annotated §§ 7-84-501, *et seq.* an initial **Central Business Improvement District ("CBID")** to operate until January 1, 2003, and authorized a district management corporation to act as an advisory board to the CBID with the necessary powers and authority to carry out the purposes and intent of the CBID; and

WHEREAS, Ordinance No. 2002-1064 extended the term of the CBID from January 1, 2003 to December 31, 2007; and

WHEREAS, Tenn. Code Ann. § 7-84-501, *et seq.* and Ordinance No. 1998-1037 authorize Metro to levy special assessments ("Special Assessments") on property within the CBID; and

WHEREAS, NDMC is a Tennessee not-for-profit corporation that is vested with the necessary powers and authority to effectuate the purposes and intent of the CBID; and

NOW, THEREFORE, for the mutual promises and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. **Agreement Documents**. The parties' MOA is comprised of the following documents:
 - (a) this document; and
 - (b) any written amendment hereto duly authorized and executed by the authorized representatives of the parties hereto and filed in the office of the Metropolitan Clerk.

2. Duties and Responsibilities of NDMC.

a. NDMC shall provide all program administration for the CBID of Nashville and Davidson County (the "Program") in accordance with Tenn. Code Ann. §§ 7-84-501, *et seq.*, which may include, without limitation, the following duties within the CBID:

(i) Acquiring, constructing or maintaining parking facilities;

(ii) Acquiring, constructing or maintaining public improvements;

(iii) Acquiring real property, or an interest therein, in connection with a public improvement;

(iv) Providing services for the improvement and operation of the District and supplementing those provided by Metro, as follows:

- A. Promoting and marketing the CBID;
- B. Advertising the CBID;
- C. Meeting the health and sanitation needs of the CBID;
- D. Maintaining public safety;
- E. Eliminating problems related to traffic and parking;
- F. Providing security services;
- G. Providing recreation;
- H. Providing cultural enhancements;
- I. Providing activities in support of business or residential recruitment, retention and management development;
- J. Enhancing aesthetic improvements, including the decoration, restoration or renovation of any public space or of building facades and exteriors in public view that confer a public benefit;
- K. Professional management, planning and promotion;
- L. Providing consultation with respect to planning, management, and development activities;
- M. Furnishing music in public places within the CBID;
- N. Providing design assistance; and
- O. Such other services as are authorized by Tennessee Code Annotated, § 7-84-520.

(v) Entering into contracts and agreements with other persons or entities;

(vi) Hiring employees or retaining agents, engineers, architects, planners, consultants, attorneys and accountants;

(vii) Acquiring, constructing, installing and operating public improvements contemplated by Ordinance No. 1998-1037 and all property rights or interests incidental or appurtenant thereto, and disposing of real and personal property and any interest therein including leases and easements in connection therewith;

(viii) Managing, controlling and supervising:

- A. All the business and affairs of the CBID.
- B. Acquiring, constructing, installing and operating all public improvements within the CBID.
- C. Operating CBID services not operated by Metro;

(ix) Constructing and installing improvements across and along any CBID public street, alley, highway, stream of water or water course in accordance with federal, state and local laws, rules or regulations;

(x) Constructing and operating childcare facilities;

(xi) Accepting, administering and complying with the conditions and requirements respecting any appropriation of funds or any gift, grant or donation of property or money to the CBID; and

(xii) Exercising all rights and powers necessary or incidental to or implied from the specific powers conferred by Tenn. Code Ann. § 7-84-501, *et seq.*

b. All CBID services set forth hereinabove shall be provided by NDMC as a service to and in support of Metro and such services shall be paid for by revenues from the Special Assessments that are collected by Metro. The Special Assessment revenues shall be used to supplement the level of services within the CBID above and beyond those provided throughout the urban services district by Metro. In carrying out these responsibilities, the NDMC must comply with all applicable provisions of law, including, without limitation, Tenn. Code Ann. § 7-84-501, *et seq.*, all Metro resolutions and ordinances, and all regulations lawfully imposed by the Comptroller of the State of Tennessee or by other state agencies.

c. NDMC will continue the following improvement programs within the CBID:

- (i) Security Enhancement – unarmed security patrols within the CBID;
- (ii) Downtown Marketing – business recruitment and retention materials, and promoting downtown Nashville to consumers through publications, programming, and expansion of current visitor marketing efforts; and
- (iii) Continuously Improving downtown beautification, sanitation and maintenance.

d. NDMC shall prepare a monthly financial report ("Monthly Report"), in a form satisfactory to Metro's Director of Finance, which will be sent in duplicate to the Mayor and to Metro's Director of Finance by the twentieth (20th) day of the month following the month to which such report relates. The Monthly Report shall include information relating to all expenditures made and activities undertaken during the preceding month.

e. NDMC agrees to reimburse Metro for any use of funds disbursed by Metro to NDMC that are not, as determined by Metro, used in accordance with this MOA. No later than three (3) months after the expiration of this MOA, NDMC shall submit to Metro's Director of Finance an audited financial statement performed by a certified public accounting firm with experience in governmental or not-for-profit auditing. Such audit shall be performed in accordance with generally accepted auditing standards. Such audit shall include and be combined with an audit of all financial activities of NDMC. The existence of more than one contract, agreement, or grant between NDMC and Metro shall only require one annual audit of NDMC.

3. **Duties and Responsibilities of Metro.** Metro agrees to provide the same level of service to property within the CBID that it provides to other property located within the urban services district. Metro also agrees that the level of urban services provided to the CBID will not be decreased as a result of the enhanced level of services provided through the Special Assessments collected by Metro and paid to NDMC.

4. **Term.**

- a) This MOA will expire on **December 31, 2005** (hereinafter "Expiration Date").
- b) This MOA may be extended for up to two additional terms of one year per term, **upon written notice received by each party from the other no later than the first day of November prior to any additional term.** Such notice from Metro must come from its **Director of Finance.** Such notice from NDMC must come from its **Executive Director.**
- c) *In no event will this MOA expire subsequent to December 31, 2007.*
- d) The NDMC shall not receive any monthly payments from Metro subsequent to the expiration of this MOA; however, NDMC shall receive any undistributed portion of its annual Budget amount within sixty (60) days of the expiration of this MOA.

5. **Preceding Relationship.** The parties acknowledge that their preceding Memorandum of Agreement expired on June 30, 2003, and was not renewed. The parties intend and agree that the terms of this MOA, and their respective rights and obligations hereunder, shall govern and extend to the intervening time between June 30, 2003, and the effective date of this MOA.

6. **Budget – Monthly Payments.**

- a) Pursuant to Tenn. Code Ann. § 7-84-501, *et seq.* and Ordinance No. 1998-1037, NDMC will receive funds from Metro from the Special Assessments that are collected by Metro. Funds having been collected the previous month will be paid to NDMC in each following month.
- b) Pursuant to Tenn. Code Ann. § 7-84-519, NDMC shall submit an annual budget for review and approval by the Metropolitan Council ("Budget"). Said Budget shall be submitted to the Metropolitan Department of Finance, Office of Management and Budget (OMB) by January 31st of each year as required by OMB in the form finally approved by the Metropolitan Council, and shall reflect all amounts necessary for NDMC to perform its duties and obligations as set forth in Section 2 herein.
- c) It is agreed and understood by NDMC that there are no other charges or fees for the performance of this MOA, and that the Budget is an accurate reflection of how the Special Assessment funds will be spent during the term of this MOA.
- d) NDMC shall not receive from Metro any amount in excess of the Budget, as described herein.

7. **Taxes.** It is specifically agreed and understood by the parties hereto that Metro shall not be responsible for any taxes that are imposed on NDMC. Furthermore, NDMC understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to Metro.

8. **Remedies for Default - - Termination.**

(a) **Remedies for Default.** Should NDMC fail to fulfill in a timely and proper manner its obligations under this MOA or if it should violate any of the terms of this MOA, Metro shall have the right to immediately terminate this MOA. Such termination shall not relieve NDMC of any liability to Metro for damages sustained by virtue of any breach by NDMC. Metro may, in its sole and absolute discretion, cure any NDMC default without terminating this MOA, whereby NDMC agrees to fully reimburse Metro within ten days of receiving written notice from Metro that itemizes the costs borne by Metro to cure such default.

(b) **Termination - - Funding.** Should Metro discontinue funding for this MOA, Metro shall have the right to terminate this MOA immediately upon written notice to NDMC.

(c) **Termination - - Notice.** Metro may terminate this MOA for convenience ("Termination for Convenience") on thirty (30) days' written notice to NDMC. Should Metro terminate for default and it is later determined that NDMC was not in default, then such termination shall be deemed to be a Termination for Convenience.

(d) **Effective Date of Termination.** This MOA shall terminate effective upon NDMC's actual receipt of written notice from Metro if the same is hand-delivered, or, if

sent via first class U.S. Mail or via a nationally recognized commercial delivery service, then upon the date when notice was actually sent.

9. **Compliance with laws.** NDMC agrees to comply with all applicable federal, state, and local laws and regulations.

10. **Notices.**

Notices to Metro shall be sent to:

Metropolitan Department of Finance
Attn: David Manning, Director
102 Metro Courthouse
Nashville, Tennessee 37201

Notices to NDMC shall be sent to:

c/o Nashville Downtown Partnership
Attn: Executive Director
150 4th Avenue North, Suite G-150
Nashville, TN 37219

11. **Maintenance of Records.** NDMC shall maintain documentation for all charges against Metro. The books, records, and documents of NDMC, insofar as they relate to work performed or money received under this MOA, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by Metro or its duly appointed representatives. The records shall be maintained in accordance with GAAP and GASB at all times during the term of this MOA.
12. **Metro Property.** Any Metro property, including but not limited to books, records and equipment, that is in NDMC's possession shall be maintained by NDMC in good condition and repair, and shall be returned to Metro by NDMC upon termination of this MOA. All goods, documents, records, and other work product and property produced during the performance of this MOA are deemed to be Metro property.
13. **Modification of MOA.** This MOA may be modified only by written amendment duly authorized and executed by the authorized representatives of the parties hereto and filed in the office of the Metropolitan Clerk.
14. **Partnership/Joint Venture.** Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act, or omission of any other party contrary to the provisions of this MOA. It is specifically agreed and understood

that Metro has no financial interest in the business of NDMC, and shall not be liable for any debts or obligations incurred by NDMC. The status of the parties is not that of agent and servant, but rather, an independent contractor relationship. NDMC shall not, at any time or times, use the name or credit of Metro in entering into contracts, applying for credit, or purchasing or attempting to purchase any equipment, supplies, or property of any type whatsoever.

15. **Waiver.** No waiver of any provision of this MOA shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of the other party's default.
16. **Employment and Nondiscrimination.** It is the policy of Metro not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this contract, NDMC certifies and warrants it will comply with this policy. No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in NDMC's programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee state constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with Metro or in the employment practices of NDMC. Accordingly, the NDMC shall, upon request, be required to show proof of such nondiscrimination to the extent required by law and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.
17. **Fidelity bond.** NDMC shall provide a fidelity bond to insure the good and faithful handling of money for the protection of Metro in the amount of One Hundred Thousand Dollars (\$100,000) by a company licensed to do business in the State of Tennessee with a financial rating of at least A/VIII as rated in the most recent edition of *Best's Insurance Reports*, and approved by Metro. The fidelity bond so provided shall cover all employees of NDMC who handle any funds received from Metro relating to this MOA.
18. **Contingent Fees.** NDMC hereby represents that NDMC has not been retained or retained any persons to solicit or secure a Metro contract or agreement upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of this paragraph is, in addition to a breach of this MOA, a breach of ethical standards that may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under Metro contracts.
19. **Gratuities and Kickbacks.** It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or

former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefor. It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract or the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of this paragraph is, in addition to a breach of this MOA, a breach of ethical standards that may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under Metro contracts.

20. **Indemnification and Hold Harmless.** NDMC shall indemnify and hold harmless Metro, its officers, agents and employees from:

- (a) Any claims, damages, penalties, costs, and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of NDMC, its officers, employees, and/or agents, including its sub or independent contractors, in connection with the performance of this MOA; and,
- (b) Any claims, damages, penalties, costs, and attorney fees arising from any failure of NDMC, its officers, employees, and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
- (c) Metro will not indemnify, defend or hold harmless in any fashion NDMC from any claims, whether arising from this MOA or any understanding between the parties, regardless of any language in any attachment or other document that NDMC may provide.
- (d) NDMC shall pay in full Metro for expenses incurred by Metro as a result of NDMC's failure to fulfill its obligations in a professional and timely manner under this MOA.

21. **Attorney Fees.** NDMC agrees that, in the event either party deems it necessary to take legal action to enforce any provision of this MOA, or to seek remedy for default hereunder, and in the event Metro prevails, NDMC shall pay all expenses of such action including Metro's attorney fees, costs, and expenses at all stages of the litigation.

22. **Assignment - - Consent Required.** The provisions of this MOA shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. However, neither this MOA nor any of the rights and obligations of NDMC hereunder shall be assigned or transferred in whole or in part without the prior written consent of Metro. Any such assignment or transfer shall not release NDMC from its obligations hereunder.
23. **Entire Agreement.** This MOA sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties. The parties warrant and represent that there are no prior or contemporaneous oral or written understandings that contradict, modify, or supplement this MOA, it being the intent of the parties hereto that this MOA comprises the entire intent of the parties hereto.
24. **Force Majeure.** No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.
25. **Governing Law.** The validity, construction and effect of this MOA and any extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that NDMC may provide.
26. **Venue.** Any action between the parties arising in connection with this MOA shall be maintained in Davidson County, Tennessee, exclusive of the federal courts.
27. **Severability.** Should any provision of this MOA be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this MOA.
28. **Effective Date.** This MOA shall not be binding upon the parties until it has been signed first by NDMC and then by the authorized Metro representatives and filed in the office of the Metropolitan Clerk. When it has been so signed and filed, this MOA shall be effective as of the date first written above.

IN WITNESS WHEREOF, The Metropolitan Government of Nashville and Davidson County, and Nashville District Management Corporation, Inc., have executed their signatures:

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

NASHVILLE DISTRICT MANAGEMENT CORPORATION, INC.

RECOMMENDED AND APPROVED:

David Manning
Director of Finance

APPROVED AS TO RISK AND INSURANCE:

Alejandra S. Hedger 12/7/04
Director of Insurance

APPROVED AS TO FORM AND LEGALITY:

Ashley M. Dayritz
Metropolitan Attorney

MAYOR:

Bill Purcell
Bill Purcell

ATTEST:

Merilyn B. Sworif
Metropolitan Clerk
Date: 2/3/05

By:

Douglas O. Kitchen
Signature

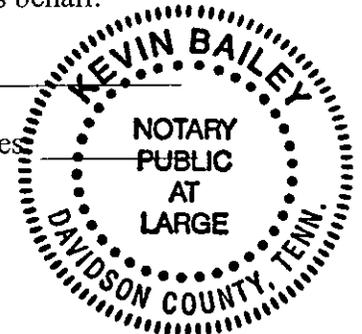
Douglas O. Kitchen
Printed Name

Its:

Chairman
Title

Sworn to and subscribed to before me, a Notary Public, this 30 day of Nov., 2004, by Douglas O. Kitchen, the Chairman of NDMC and duly authorized to execute this instrument on NDMC's behalf.

Kevin Bailey
Notary Public
My Commission Expires



My Commission Expires MAY 30, 2007