

ORIGINAL

OPERATING AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO AND SOUTHEAST ECONOMIC DEVELOPMENT CORPORATION, INC. FOR CERTAIN SERVICES TO IMPLEMENT THE DEVELOPMENT AND REDEVELOPMENT OF THE AREA DEFINED IN THE ARTICLES OF INCORPORATION AND SHOWN ON EXHIBIT "A" ATTACHED AS SAID AREA MAY BE AMENDED FROM TIME TO TIME.

THIS AGREEMENT is made by the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a body corporate and politic, organized and existing under the constitution and laws of the State of California, herein called "Agency," and SOUTHEAST ECONOMIC DEVELOPMENT CORPORATION, INC., a California nonprofit corporation, herein called "Corporation."

RECITALS

A. The purpose of this agreement is to express the terms and conditions upon which Agency hires Corporation to provide certain staff services for the implementation of the project as defined herein.

B. Agency has determined that the best interests of the inhabitants of the City of San Diego will be served by an arrangement under which a corporation, the directors of which are responsible citizens of the San Diego area, assume responsibility for the development of and formulate the policy for the implementation of the project.

C. Corporation is a corporation formed under the California Nonprofit Corporation Law and The City of San Diego is the only entity with any interest in the assets of Corporation upon its winding up and dissolution. As of the date of this agreement, Corporation's Board of Directors consists of seven (7) persons of distinguished stature in the San Diego

DOCUMENT NO. 782

FILED FEB 27 1981

OFFICE OF THE REDEVELOPMENT AGENCY
SAN DIEGO CALIF

area, who through their effort and effective community leadership have expressed their interest in securing for said area the most efficient, useful and practical means of implementation of the project. The organic corporate documents of Corporation secure to City the power to continue to elect and to retain individuals of such dedication and effectiveness on Corporation's Board of Directors.

NOW, THEREFORE, in consideration of the recitals and the mutual obligations of the parties hereto as hereinafter expressed, Agency and Corporation agree as follows:

I

DEFINITIONS

Section 1.01. Agency

"Agency" means the Redevelopment Agency of The City of San Diego.

Section 1.02. Chairman

"Chairman" shall mean the Chairman of the Agency.

Section 1.03. Project

"Project shall mean a project or projects for economic development or redevelopment in the area defined in that certain exhibit attached hereto as Exhibit "A" and by this reference made a part hereof, which area may be amended from time to time without need for amendment to this agreement.

Section 1.04. Term

The term of this agreement shall commence upon execution and shall continue on a year to year basis until terminated pursuant to Section 4.08 hereinbelow.

Section 1.05. Proposed Budget

"Proposed Budget" means a statement prepared by Corporation of the estimated revenues and expenditures of the Corporation during any fiscal year. It shall be prepared in such form as the Agency may require.

In addition to anything else which Corporation may deem pertinent, the proposed budget shall contain:

(i) Corporation's recommendations regarding the steps which must be taken in order to provide for the maintenance, operation, expansion and improvement and general implementation of Project;

(ii) Corporation's estimate of the costs which may reasonably be expected to result from the adoption of any or all of Corporation's recommendations pursuant to clause (i) of this section; and

(iii) A statement of the means which Corporation suggests be used in paying for the cost of adopting any or all of Corporation's recommendations pursuant to clause (i) of this section.

Section 1.06. Proposed Transfer of Appropriations

"Proposed Transfer of Appropriations" means a statement prepared by Corporation of the estimated revenues and expenditures of the Corporation and of any Redevelopment Projects administered by the Corporation during any fiscal year of Corporation which, if deemed necessary by Corporation for the most efficient, practical and economic corporate operation, may from time to time be submitted to Agency.

SEDC

It shall be prepared and submitted, as aforesaid for the purpose, if necessary, of requesting the transfer of all or part of an unencumbered balance of an appropriation between personal, non-personal and/or contingency categories of the approved budget if one or more of those categories has proved insufficient for the fiscal year. Such Proposed Transfer of Appropriations shall not be necessary for the transfer of budgeted funds between items within any of the above mentioned categories; such transfers shall be made at the discretion of the Corporation as appropriate for the operation of the Corporation and the implementation of the Project.

within each category; not b/n. categories?

Section 1.07. Approved Budget

"Approved Budget" means that budget which, following submission by Corporation of the proposed budget, Agency, in its unlimited discretion, approves for the Corporation and those Redevelopment Projects administered by the Corporation, for the respective fiscal year.

Section 1.08. Approved Transfer of Appropriations

"Approved Transfer of Appropriations" means that budget which Agency, in its unlimited discretion, approves for Corporation, and the Redevelopment Projects administered by the Corporation, following the submission to it of any, proposed transfer of appropriations.

Section 1.09. Long Range Planning

"Long Range Planning" means the continuing study of the future redevelopment needs of the Project area and the development of plans, concepts and proposals to serve these needs.

II

COVENANTS OF CORPORATION

Section 2.01. Covenant to Perform Services

(a) Corporation covenants that it shall, without any charge or fee whatsoever to Agency for such service, provide general management and other staff services for Agency for Project in accordance with and limited by the then current approved budget and approved transfer of appropriations, and in accordance with the policies and practices set forth therein.

(b) In implementing the covenant expressed in subsection (a) of this section, and not as a limitation on its generality, Corporation covenants that it shall, subject to the budgeting of funds for such services:

(i) Provide overall executive direction for Project, and Corporation shall report and recommend directly to Agency through its Executive Vice President on these matters.

(ii) Employ necessary personnel;

(iii) Retain, when necessary, appropriate consultants and experts; and

(iv) Acquire or dispose of property by any lawful means.

(c) In the performance of its duties hereunder, Corporation shall be an independent contractor and not an agent of Agency. Subject to the provisions of State of

California laws regarding public records, all reports, studies, findings, data, and information obtained or prepared by or at the direction of Corporation shall be the property of Agency, shall be confidential, and shall not be made available to any individual or organization except in connection with performance of the services required by this agreement or in accordance with the prior written approval of Agency.

(d) Coordinate and utilize other services provided for the Project by Agency or The City of San Diego, or by consultants selected by and under separate contract with the City or Agency, and supervision of the work of such consultants, including but not limited to consultant reports, appraisals, engineering studies, marketability and feasibility studies, project improvements data, relocation studies, legal opinions and documentation, surveys of structural and environmental conditions, and architectural design advice.

(e) Coordinate activities and appearances before City bodies, agencies, departments and commissions, and Federal or State agencies and commissions, as may be necessary in obtaining approval of any Urban Renewal Plan or application for Federal or State financial assistance which would benefit Project.

(f) Coordinate, program and schedule all Project execution activities.

(g) With respect to Project, provide detailed planning services required for Project execution, including but not limited to day-by-day analysis of changing conditions, review and analysis of developers' proposals, staff services for the architectural design review process, preparation of graphics and other materials necessary to stimulate developer interest in Project.

(h) Coordinate the real estate acquisition process necessary to execute Project, including scheduling, supervision of the preparation of appraisals by consultants not parties hereto, selected by Agency or Corporation, and obtaining approvals of acquisition prices, if required, from Agency; provided, however, that Corporation shall not prepare appraisals, or conduct condemnation actions.

(i) Undertake any and all activity which may be necessary and helpful to the disposal of Project land, including but not limited to supervision of the preparation of reuse appraisals by appraisers selected by Agency or Corporation, prepare other documentation required by Agency, establish contact with and attract the interest and participation of developers and tenants; conduct negotiations with developers; prepare disposition agreements; supervise developers' performance under disposition and participation agreements; coordinating and expediting developers' design and construction activities.

(j) When required by Agency, conduct relocation and property and site management activities for Project, including processing of claims for losses of property and moving

expenses; provided, however, that all funds received as rental of acquired properties shall be paid over to Agency.

(k) Supervise, administer, and inspect (other than as such services are more properly performed by designing architects or engineers) the design and construction of site improvements and supporting facilities provided for by Redevelopment Plans or their supporting documentation to the extent that Agency is responsible for such supervision, administration and inspection; provided, however, that such supervision, administration and inspection shall be required only to the extent agreed to in writing by the Agency and Corporation.

(l) Coordinate, program, schedule and inspect (to the extent that Agency is responsible for such inspection) all work required by any redevelopment plan to be performed by Agency or City departments.

(m) Supervise and administer the architectural review process with respect to private construction and, to the extent applicable, public construction within Project area.

(n) Provide staff services and appropriate materials as required for the information and education of the public with respect to Project activities, such services to be coordinated with the public information staff services of Agency and City.

(o) Provide information respecting Project activities in contacts with the public and private civic, business and similar organizations and speak to such groups.

(p) Prepare recommendations for Agency with respect to policies pertaining to Project and determinations to be made by Agency, including but not limited to the following: disposition policies and methods of disposition for each disposition parcel or group of parcels; methods of selection of developers, and selections of such developers; provisions of owner participation and development agreements, including prices and standards and controls; staging and timing of Project; descriptions of services to be performed by consultants employed by Agency with respect to Project and selection of such consultants; approval of architectural plans and specifications submitted by developers; approval of plans and specifications for demolition of existing structures and construction of site improvements and facilities; awards of contracts with respect to such demolition and construction; requests for approvals by appropriate agencies; Project budgets.

(q) Perform such other services, either within adopted project areas or pertaining to other portions of the City as may be assigned to Corporation by Agency, providing that the costs which are reimbursable to Corporation for providing such services, together with the other services contemplated herein, will not exceed the maximum amounts of reimbursement allowable to Corporation for the fiscal period in which such services are to be performed.

Section 2.02. Covenant to Prepare and Submit a Proposed Budget.

(a) Corporation covenants that it shall prepare and submit a proposed budget for Corporation's next succeeding fiscal year to Agency by the first Agency meeting in March of each year.

Section 2.03. Covenant to Adopt a Fiscal Year Accounting Period.

Corporation covenants that it shall adopt a fiscal year accounting period as prescribed by Agency in consultation with Corporation and with a view toward the facilitation of this agreement.

Section 2.04. Covenant to Avoid Unauthorized Costs.

Corporation covenants that, subject to the provisions of Section 2.05 hereinbelow, it shall not incur any cost or expense which exceeds the approved budget or approved transfer of appropriations.

Section 2.05. Covenants Concerning Contracts.

Corporation covenants that it will not, subject to the exception below, enter into any contract or agreement whatsoever for the expenditure of funds in excess of the funds provided in Corporation's approved budget. Corporation shall have the right to enter into agreements and contracts which are not inconsistent with the Budget restrictions without prior approval of Agency. However, Corporation will obtain a certification of the availability of funds from the City Auditor prior to entering into contracts to be funded through Redevelopment project budgets. Anything to the contrary herein notwithstanding, Agency agrees that Corporation may enter into a contract of employment for the services of an Executive

Vice President which contract(s) may be for periods of not to exceed three years. Any such contract, however, shall be the Corporation's obligation and shall not create an obligation on the part of the Agency.

Section 2.06. Covenant to Render an Accounting and Furnish Financial Reports.

(a) Corporation covenants that it shall maintain full and complete accounting records and systems utilizing the standard classification of accounts prescribed by recognized authorities for use by redevelopment agencies.

On or before the 15th day of each month, Corporation shall prepare and shall file with Agency an income and expense statement showing results of operations for the preceding month. All books and records shall be open to inspection to Agency or its representatives.

(b) Corporation covenants that within one hundred twenty (120) days after the close of each fiscal year of Corporation, it shall submit to Agency a Statement of Revenues and Expenses of such fiscal year and shall furnish to Agency detailed certified reports of an audit based on an examination in accordance with generally accepted auditing standards, prepared by an independent certified public accountant, covering the operations of Corporation for such fiscal year and showing the revenues and expenses for such period.

(c) If at the end of any fiscal year of Corporation, amounts actually received by Corporation during such year

exceed expenditures, including authorized reserves or contingency items, Corporation shall, no later than ninety (90) days after the close of such fiscal year, pay over such excess to Agency's treasurer or otherwise dispose thereof as Agency may direct.

Section 2.07. Covenant to Submit Proposed Transfer of Appropriations

Corporation covenants that if deemed necessary by Corporation for the most efficient, practical and economic exercise of its duties as specified herein, it shall submit a Proposed Transfer of Appropriations during any fiscal year.

Section 2.08. Covenant to Obtain Public Liability Insurance.

Corporation covenants that it will obtain and at all times during the term, maintain in force, policies of insurance issued by an underwriter acceptable to Agency, providing protection against public liability arising from operations and activities conducted pursuant to this agreement, which insurance shall be in the following amounts:

(a) For death or personal injuries sustained by any and all persons involved in any one mishap, an aggregate amount of at least \$500,000.

(b) For death or personal injuries sustained by any one person involved in any one mishap, the amount of at least \$500,000.

(c) For damage to property, whether real or personal and by whomever owned, resulting from any one mishap, in the aggregate amount of at least \$500,000.

Corporation covenants that it will name Agency and The City of San Diego as additional insureds under such policies of public liability insurance "as its interest may appear."

Corporation covenants that it will contract with the underwriter that no policy of public liability insurance obtained by Corporation pursuant to the terms of this section shall be terminated or amended without thirty (30) days' prior written notice to Agency.

Corporation covenants that it will provide Agency with copies of all policies of public liability insurance obtained pursuant to the terms of this section, and that such copies shall be certified by the underwriter as true and correct copies of Corporation's policies with such underwriter.

It is the intent of the parties to this agreement that Corporation at all times maintain in force public liability insurance sufficient to protect the parties from any foreseeable liability for injury to persons or damage to property growing out of Corporation's activities and operations.

Section 2.09. Covenant to Abide by Terms and Conditions of the Community Redevelopment Law of the State of California.

Corporation covenants that in performing its obligations under this agreement it will assume and perform and assist Agency in the performance of all applicable terms and conditions concerning which Agency has heretofore agreed or may hereafter agree in connection with the Project and in connection with the Community Redevelopment Law of the

State of California as set forth in Section 33000 et seq. of the California Health and Safety Code, including but not limited to Sections 33126, 33130 and 33130.5 of said Code.

Section 2.10. Long Range Planning.

Corporation covenants that it will, at Agency's request and subject to the budgeting of funds, carry out a long range redevelopment planning program and will provide to Agency advice and recommendations to serve future redevelopment needs. Corporation further covenants that in the discharge of this responsibility it will consult regularly with members of the Agency and City staff engaged in the more comprehensive planning effort involving all phases of redevelopment.

Section 2.11. Covenant Regarding Conflicts of Interest.

During the term of this agreement, no officer, director or employee of Corporation shall acquire any financial interest, direct or indirect, in any land or property which may be acquired by Agency in the Project area, nor shall any such officer, director, or employee acquire any interest, direct or indirect, in any legal entity which shall contract to develop, redevelop, renovate or rehabilitate any land or property acquired by Agency in the Project area or acquire any other interest which would conflict with the performance of his services hereunder; nor shall any such officer, director, or employee derive any financial gain, other than salaries and employee benefits payable pursuant to this

agreement, from the expenditures authorized by this agreement. If any officer, director, or employee of Corporation shall at the time of the execution hereof own or control a financial interest in such land, property or legal entity, or thereafter involuntarily acquire the same, he shall immediately disclose such interest in writing to Agency, and the time when such interest was acquired.

Section 2.12. Affirmative Action Programs.

Corporation covenants that it will develop and implement affirmative action programs for Corporation employment which from time to time may be required by Redevelopment Agency or other agencies having jurisdiction.

III

COVENANTS OF AGENCY

Section 3.01. Covenant to Consider Proposed Budget.

Agency covenants that it shall act promptly in considering the proposed budget and shall take action it deems appropriate with regard thereto. Any action taken as aforesaid shall be the approved budget for the respective fiscal year of the Corporation.

Section 3.02. Covenant to Consider Proposed Transfer of Appropriations.

Agency covenants that it shall act within sixty (60) days in considering any proposed transfer of appropriations and any action taken shall constitute the approved transfer of appropriations.

Section 3.03. Covenant to Reimburse Corporation.

Agency covenants to reimburse Corporation for all Eligible Expenses (hereinafter defined) incurred in connection with services to be rendered hereunder. The total of such reimbursements shall not in any event exceed the approved budget amounts.

(a) Eligible Expenses for which reimbursement shall be made to the Corporation include any and all costs reasonable and appropriate to the performance of Corporation's duties hereunder, including, but not limited to, the following:

(i) Salaries (including fees and other forms of compensation, paid or payable by Corporation for the services of its officers, agents and employees, together with all customary employer contributions in connection therewith, such as those for social security and unemployment compensation);

(ii) Employee Benefits (including contributions to a pension plan and payments for hospitalization insurance);

(iii) Office Expenses and Overhead (including rent, taxes, furnishings, office supplies and equipment, repairs, duplicating services, postage, telephone, telegraph and other utility services, liability, casualty and fidelity insurance, moving expenses and the like); all supplies and equipment so purchased shall be and remain the property of Agency;

(iv) Printing and Graphics (including publications, photography, advertising, and graphic displays prepared for presentation purposes);

(v) General Business Expenses (including travel, entertainment, membership dues, attendance at meetings and conferences, subscriptions, technical books and materials, garage expenses, transportation, including taxi fares, mileage and automobile rental, and the like).

(b) Reimbursement shall be effected in the following manner: Contemporaneously with the execution of this agreement, subject to the prior establishment of an Approved Budget, the Agency shall cause a six week working capital advance to be deposited to the order of Corporation with a commercial bank designated by Corporation as its depository. Corporation may thereafter from time to time draw against this account for payment of Eligible Expenses. As soon as practicable after the end of each calendar month, Corporation shall deliver to Agency a voucher for the total of Eligible Expenses paid out of the account by Corporation during the previous calendar month, such statement to be certified as true, correct, and paid by a corporate officer of Corporation. Thereafter, upon approval by Agency as to receipt of services and availability of funds, Agency shall cause to be deposited in the aforesaid account the amount of the approved voucher for the preceding calendar month.

(c) Upon the termination of this agreement all unexpended funds deposited to the credit of Corporation by Agency shall become the sole property of Agency.

Section 3.04. Covenant to Consult with Corporation.

Agency covenants that it shall refer to Corporation all matters involving Agency's participation in providing for redevelopment in the Project area and that the advice and recommendations of Corporation will be considered by Agency in formulating its policies concerning such matters.

IV

PROCEDURAL MATTERS

Section 4.01 Law Governing this Agreement.

This agreement is entered into in California and is to be governed by the laws of this State.

Section 4.02. Headings.

Article and section headings contained in this agreement are included for convenience and ease in understanding this document. The parties hereto intend that the terms of this agreement, exclusive of such headings, be liberally construed to effect its purpose. Except insofar as they indicate an entirely contradictory construction not intended by the parties, article and section headings are not to be considered in construing the terms of this agreement.

Section 4.03. Counterparts.

This agreement may be executed in any number of copies all of which, whether taken severally or collectively, shall be treated as a single original of this agreement.

Section 4.04. Waivers.

Failure of either party to object to any default or to any other act or omission of the other which is in violation of the terms of this agreement shall not be deemed to be a waiver of the right to object to any subsequent default, act or omission, whether similar or dissimilar.

Section 4.05. Notice.

(a) Any notice or request for approval to be served under the terms of this agreement must be deposited in the United States mail, postage prepaid, addressed to Agency, at City Administration Building, 202 "C" Street, San Diego, California 92101, or at any other reasonable place designated by Agency; addressed to Corporation at the principal office, San Diego, California, or at any other reasonable place designated by Corporation.

(b) Notice or request for approval served pursuant to the terms of subsection (a) of this section shall be deemed received forty-eight (48) hours after the time such notice is deposited in the United States mail.

Section 4.06. Existence of Collateral Agreements.

Unless amended by the parties in a document executed with equal formality as this agreement, this agreement states the entire understanding of the parties, and they have entered into no collateral contracts, agreements, warranties or understandings.

Section 4.07. Assignment.

Corporation shall not assign this agreement or any rights accruing to Corporation thereunder without the written consent of Agency. A consent to any one assignment shall not be considered to be a waiver of Agency's right to consent to any subsequent assignment.

Section 4.08. Termination.

(a) Any breach by Corporation of the terms, conditions or covenants of Corporation herein contained shall be grounds for immediate termination of this agreement by Agency provided that Agency may, in its sole discretion, waive any breach and demand performance by Corporation in accordance with the terms of this agreement.

(b) The foregoing remedy of Agency is in addition to and not exclusive of any other remedy recognized by law.

(c) Notwithstanding any other provision of this agreement, either party hereto may terminate this agreement at any time after giving ninety (90) days' prior written notice.

IN WITNESS WHEREOF, this agreement is executed by the Redevelopment Agency of The City of San Diego, acting by and through its Chairman, pursuant to Resolution No. 346, authorizing such execution, and the President and Secretary of Corporation are executing this agreement pursuant to a duly adopted resolution of its Board of Directors.

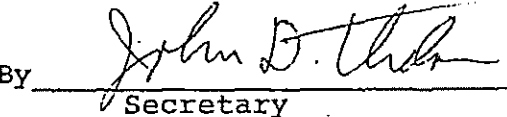
Dated this 25 day of FEB., 1981.

REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

By 
Deputy Executive Director

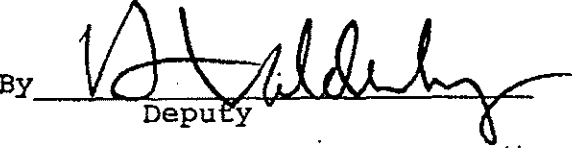
SOUTHEAST ECONOMIC DEVELOPMENT
CORPORATION, INC.

By 
President

By 
Secretary

Approved as to form and legality this 27 day of
February, 1981

JOHN W. WITT, City Attorney

By 
Deputy