



MEMORANDUM OF UNDERSTANDING
BETWEEN THE
CALIFORNIA ENTERPRISE ZONE PROGRAM
AND THE
SAN BERNARDINO VALLEY ENTERPRISE ZONE

An agreement establishing the San Bernardino Valley Enterprise Zone pursuant to the California Enterprise Zone Program.

1. PURPOSE OF AGREEMENT

This Memorandum of Understanding (hereinafter "Agreement") constitutes official notification of the designation of the San Bernardino Valley Enterprise Zone (the "Contractor") under the California Enterprise Zone Program (the "Program") administered by the State of California's Department of Housing and Community Development

The Program is authorized and governed by California Government Code Section 7070, et seq. (the "Program Statutes"), and the California Code of Regulations, Title 25, Section 8430, et seq. (the "Program Regulations"), all as amended from time to time. In accepting this designation, the Contractor agrees to comply with: (a) the Program Statutes; (b) the Program Regulations; (c) the representations contained in the Contractor's Application made in response to the Request For Proposal (the "Application"), which is hereby incorporated into this Agreement; and (d) the terms and conditions of this Agreement and its Supplement.

2. DEFINITION OF TERMS

Capitalized terms as used in this Agreement have the following definitions:

- A. "Act" means the Enterprise Zone Act, as defined in Government Code Section 7070.
- B. "Department" means the State of California's Department of Housing and Community Development (HCD) or its successor. HCD has legislative authority and responsibility for the Enterprise Zone Program.
- C. "Agreement" means this Memorandum of Understanding.

- D. "Application" means San Bernardino Valley Enterprise Zone's Application submitted to the Department.
- E. "Audit" means any program performance audits of the San Bernardino Valley Enterprise Zone conducted by the Department, including an audit as described in Government Code Section 7076.1.
- F. "Contractor" means the County of San Bernardino, City of San Bernardino, City of Colton and the Inland Valley Development Agency obligated and committed to providing goods and/or services, as referenced in the Application.
- G. "Dedesignation" or "Dedesignate," means the Department's action terminating this Agreement, and/or rescinding the Enterprise Zone designation in the event of non-performance as described in Government Code Sections 7076.1 and 7076.2.
- H. "Enterprise Zone" means the San Bernardino Valley Enterprise Zone.
- I. "Plan" means the Economic Development Plan prepared and adopted for the San Bernardino Valley Enterprise Zone and the California Enterprise Zone designation.
- J. "Program" means the State of California's State Enterprise and Economic Development Section (SEEDS).
- K. "Program Income" means income earned from the evaluation of forms and supporting documentation submitted in application for a voucher, whether or not such application is approved.
- L. "Program Manager" means the primary contact as defined in the Application.
- M. "Voucher" or "Certificate" shall mean the certification described in subdivision (c)(1) of Revenue and Taxation Code Sections 17053.74 and 23622.7 and which contains all the information required by Section 8450.3 in a format provided by the Department.
- N. "Work" means the Enterprise Zone's program of activities contained within the Plan for the Marketing, Job Development, Program Management, Financing, Planning, Local Incentives and Vouchering of the San Bernardino Valley Enterprise Zone.

3. SCOPE OF WORK

- A. Contractor shall perform the Work as described in the Application, which is on file at the Department and which is incorporated herein by this reference. All written materials or alterations submitted during the Enterprise Zone designation period and which are approved in writing by the Program Manager are included in the Work. In the event of a conflict between the descriptions of the Work in the Application and as described in this Agreement, the description in this Agreement shall prevail. The State reserves the right to require the Contractor to modify any or all parts of this Agreement in order to comply with the Program Statutes or Program Regulations.
- B. Contractor shall provide all necessary administrative activities in support of the San Bernardino Valley Enterprise Zone.

4. AGREEMENT PERIOD

This Agreement shall be in effect from October 15, 2006, through October 14, 2021, unless otherwise amended or terminated in writing by either party. After April 15, 2007, the Department shall Audit the Contractor to assure it has made satisfactory and reasonable progress in implementing the obligations set forth in the Application.

5. COUNTY AND DEPARTMENT PROGRAM COMMUNICATIONS

The contact for this Agreement will be the Enterprise Zone Manager. The Enterprise Zone Manager, the primary contact, as stated in the San Bernardino Valley Enterprise Zone Final Application, is Wendy Clements at (909) 387-9846.

- A. The State Enterprise and Economic Development Section's Representative for this Agreement is Frank Luera, Section Chief. His telephone number is (916) 327-2864.
- B. All official communications from the Program to the Enterprise Zone shall be directed to the Division within which the Enterprise Zone Program operates at the following address:

County of San Bernardino
Department of Economic Development
215 North D Street, Suite 201
San Bernardino, CA 92415-0043
Contact: Wendy Clements

- D. All official communications from the Enterprise Zone to the Program shall be directed to:

Frank Luera, Section Chief
State Enterprise and Economic Development Section
Department of Housing and Community Development
Post Office Box 952054
Sacramento, CA 94252-2054
(916) 327-2862

6. PROGRAM ADMINISTRATIVE BUDGET:

The San Bernardino Valley Enterprise Zone's Operational Budget for Year One provided under this Application shall be \$428,500.

7. DEPARTMENT PROGRAM RESPONSIBILITIES:

The Department shall have the following responsibilities:

- A. **Inspections of Enterprise Zone Activity:** Monitor, inspect and/or audit any San Bernardino Valley Enterprise Zone plans and activities performed hereunder to ensure compliance with the Enterprise Zone's responsibilities as defined in the Application, this Agreement and its Supplement, and applicable laws, regulations, and guidelines, and to take corrective actions as provided by law.
- B. **Review and Approval of Plans, Agreements, and Products:** Review and approve Vouchering, Marketing, Incentive, Financing, Management and other Plans, agreements, documents and products required by the Application or by law.
- C. **Assistance:** Provide technical assistance, consultation, research and analytical services to the San Bernardino Valley Enterprise Zone, if requested, as permitted by Program resources.

8. ENTERPRISE ZONE RESPONSIBILITIES:

The Enterprise Zone shall have the following responsibilities:

- A. **Performance:** Generally, to make substantial and sustained efforts to revitalize the San Bernardino Valley Enterprise Zone areas through marketing, incentives and financing programs, job development and independent verification and issuance of vouchers. Specifically, to fulfill the terms, conditions, and level of effort (staffing, budget, marketing, contracting) set forth in this Agreement, including its Supplement, the Application and/or the

Plan, as may be supplemented or superseded by regulations, guidelines, and other Program requirements during the designation period.

- B. **Performance Obligations - Third Party Relationships:** Notwithstanding its designation of any third party for the undertaking of all or any part of the activities enumerated under this Agreement, the San Bernardino Valley Enterprise Zone shall remain fully obligated under the provisions of this Agreement. The San Bernardino Valley Enterprise Zone shall execute written agreements with third parties identified in the Application, if any, and/or the Plan for the performance of the San Bernardino Valley Enterprise Zone's related activities to ensure that the activities being provided under this designation are carried out in accordance with the Program requirements.
- C. **Enterprise Zone Manager:** To hire and fund an Enterprise Zone Manager, who shall be responsible for the San Bernardino Valley Enterprise Zone's budget, Plan, vouchering and implementation of this Agreement.
- D. **Enterprise Zone Budget/Maintenance of Effort:** To establish, fund and maintain the Enterprise Zone budget, under the direction of the Enterprise Zone Manger, to implement the Economic Development Plan and Scope of Work. Without prior Department approval, the Enterprise Zone shall not reduce the budget, staff allocation, or modify subcontracts to agencies or community organizations identified in the Application as providing San Bernardino Valley Enterprise Zone services.
- E. **Vouchering:**
1. Vouchering Administration - Contractor agrees to execute and maintain the vouchering plan and vouchering procedures outlined in the Application. The Vouchering Plan will assure that vouchers are properly issued in a timely manner, adequately controlled and accounted for in the vouchering system. Contractor is responsible for keeping records which fully disclose the vouchering system. Procedures must provide for the accurate and timely recordation of the receipt of the application fee, supporting documentation, independent verification and approval or denial of the voucher. Adequate documentation of each approved voucher application shall be maintained for a minimum of five (5) years to permit the determination, through an audit if requested by the State, of the accuracy of the records and the eligibility of voucher applications. If the eligibility of a voucher cannot be determined because supporting documentation is inadequate, the voucher shall be disallowed.

2. Enterprise Zone Voucher – As of October 15, 2006, the Contractor or their agent shall begin accepting voucher applications and fees. The San Bernardino Valley Enterprise Zone must begin using the Department of Housing and Community Development's Enterprise Zone Voucher form to certify a business's participation with the Program.

3. Signatory Control - Unless the Department is notified otherwise in writing by the Contractor, the Enterprise Zone Manager, as listed in Section 5, shall have final signatory approval or denial of all voucher applications.

F. Voucher Application Fee:

1. Contractor agrees to establish a Voucher Application Fee ("Fee") and Bill Remittance Form ("Form") and maintain fiscal control and accounting procedures, which assure that the Fee received for the voucher application is properly disbursed, adequately controlled and accounted for in a Program account. Contractor is responsible for keeping records, which fully disclose the amount and disposition of the proceeds of the Fees. The procedure developed by Contractor must provide for the accurate and timely recordation of the receipt of Fees and unexpended balances. Adequate documentation of each transaction shall be maintained to permit the determination, through an audit if requested by the State, of the accuracy of the records. For each voucher application accepted for processing, the Contractor shall disburse \$10.00 to the Department in accordance with the Program Regulations.

2. Any Fees remaining at the end of the designation period or dedesignation date must be forwarded to the State. Checks must be made out to the Department of Housing and Community Development and shall be mailed within 180 days after the end of the designation period or de-designation date.

G. Public-Private Participation: The Enterprise Zone shall be the institutional venue for the regular participation of public and private stakeholders in decisions affecting the Enterprise Zone, its Plan, work programs and the implementation of this Agreement.

H. Network Participation: Ensure that the Enterprise Zone Manager and appropriate staff participate at meetings required by the Department and at conferences of the California Association of Enterprise Zones or similar professional development organizations.

I. Performance Reporting: Contractor agrees to establish a data collection system and maintain data collection procedures, which assure that all data are properly collected, adequately controlled and accounted for in the Annual Survey as required by Government Code Section 7085(b). Contractor is responsible for keeping records on all administrative and vouchering activities,

which fully disclose the effect of the Enterprise Zone on employment and investment.

The Contractor is required to collect data for the Annual Survey that the Department is required to provide annually to the Legislature. Unless specified otherwise in the Annual Survey, the Contractor will collect the data and submit it to the Department at the address noted in Section 5 of this Agreement.

If an Annual Survey is not completed to the satisfaction of the Department, it will be returned to Contractor for revision. If the Annual Survey is not amended within 60 days after the due date, the Contractor will receive a negative audit finding pursuant to Government Code Section 7076.1. The Enterprise Zone's performance under this Agreement will be based in part on whether it has submitted complete reports on a timely basis.

The Contractor shall prepare and submit report(s) of the Enterprise Zone's performance pursuant to a format, schedule and deadlines that the Department requires. The Annual Survey will review Enterprise Zone activity regarding business attraction, business retention, vouchering, and local success stories. The survey results from the San Bernardino Valley Enterprise Zone will be tabulated with all other enterprise zones to create the comprehensive report that is submitted to the Legislature.

- J. **Audit:** The Enterprise Zone shall maintain auditable voucher records at all times. California Government Code Section 7076.1 requires the Department to conduct an audit of each Enterprise Zone. The Department may schedule annual Audits. The Enterprise Zone agrees that the Department and their delegates have the right to receive, review, obtain, and copy all records pertaining to the Enterprise Zone and/or its vouchering activities. The Enterprise Zone further agrees to provide the Department or its delegates with any relevant information requested and shall permit the Department or its delegates access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with the designation, audit, or performance.

The Enterprise Zone agrees to maintain all Enterprise Zone records, including voucher applications, vouchers and supporting documentation for a minimum of five (5) years after expiration of the Enterprise Zone designation.

If so directed by the Department upon termination of this agreement, or dedesignation of the Enterprise Zone, the Enterprise Zone shall cause all records, accounts, documentation and other materials related to the Enterprise Zone activity to be delivered to the Department.

- K. **Conflict of Interest of Employees or other Public Officials:** No employee, member of the governing body or public official who exercise any functions or responsibilities with respect to the program during his/her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract, subcontract or voucher, or the proceeds thereof, for activities performed in connection with the Enterprise Zone, and all such persons shall comply with Government Code Section 10410, et seq., Public Contracts Code Section 10410, et seq., and Government Code Section 81000, et seq. (Political Reform Act of 1974), as applicable. Failure to comply with this requirement may trigger an Audit.

9. AMENDMENT

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, and approved and signed by the parties to this Agreement. This Agreement supersedes any oral promises, representations, or other agreements with respect to the subject matter of this Agreement.

10. DISPUTES

The Department shall monitor the Enterprise Zone for performance and compliance with this Agreement. Failure to meet the conditions of this Agreement may be grounds for de-designation.

11. DEDESIGNATION OF THE ENTERPRISE ZONE

The Department may terminate this Agreement if the Enterprise Zone fails to succeed in the Audit process as described in Government Code Sections 7076.1 and 7076.2. The Zone will have failed to demonstrate success in making substantial and sustained efforts in meeting the goals and commitments as presented in the Application. The effect of the notice specified in this section shall be to terminate this Agreement and end Program designation of the Enterprise Zone.

12. APPROVAL

This Agreement and the Program's designation of the Enterprise Zone, as applicable, is not valid until approved by the County of San Bernardino and signed by all parties.

IN WITNESS WHEREOF, the parties have read, understand and agree to the terms and conditions as set forth in this Agreement on the day, month and year noted.

APPROVED by the members of the Enterprise Zone:

County of San Bernardino

By: _____ Date: _____

Name: Paul Biane
Title: Chairman of the Board of Supervisors

Signed and certified that a copy of this document has been delivered to the Chairman of the Board

By: _____ Date: _____

Name: Dena M. Smith
Title: Clerk of the Board of Supervisors of the County of San Bernardino

Approved as to legal form:

By: _____ Date: _____

Name: Ruth E. Stringer
Title: Deputy County Counsel

City of San Bernardino

By: _____ Date: _____

Name: Patrick J. Morris
Title: Mayor

Approved as to legal form:

By: _____ Date: _____

Name: James F. Penman
Title: City Attorney

City of Colton

By: _____

Date: _____

Name: Kelly Chastain
Title: Mayor

Approved as to legal form:

By: _____

Date: _____

Title: BB&K, City Attorney

Inland Valley Development Agency

By: _____

Date: _____

Name: Dennis Hansberger
Title: Co-Chair

Inland Valley Development Agency

By: _____

Date: _____

Name: Patrick J. Morris
Title: Co-Chair

Seal Attest:

By: _____

Date: _____

Name: Kelly Berry
Title: Clerk of the Board

Approved as to legal form:

By: _____

Date: _____

Name: Timothy J. Sabo
Title: Agency Counsel

**State Enterprise and Economic Development Section
Department of Housing and Community Development**

By: _____

Date: _____

Name: Frank Luera
Title: Section Chief