# STAFF REPORT

ITEM NO. 15

CITY OF OCEANSIDE

DATE: June 25, 2014

TO: Honorable Mayor and City Councilmembers

FROM: Economic Development

SUBJECT: **APPROVAL OF A MEMORANDIAM OF UNDERSTANDING TO FUND SAN DIEGO ECONOMIC DEVELOPMENT CORPORATION**

## SYNOPSIS

Staff recommends that City Council approves a Memorandum of Understanding (MOU) by and among the Cities of Carlsbad, Escondido, Oceanside, San Marcos and Vista for funding of a North County Economic Development Collaborative Model and authorization for the City Manager to execute the MOU.

## BACKGROUND

For almost two years the Economic Development staff and City Managers from Oceanside, Carlsbad, Vista, San Marcos and Escondido have been meeting to discuss a regional economic development initiative to work collaboratively on certain economic development efforts.

On October 3, 2012, City Council approved funding for a regional economic development collaboration effort which was to begin with a regional branding program to promote economic development within the North County Region. North Star Destinations Strategies was hired on August 12, 2013, with a Memorandum of Understanding between the five cities, 13-D0414-4, to develop a North County Branding Program (Attachment 1).

On February 13, 2014, City Council approved a Business Retention and Business Attraction Cooperation Memorandum of Understanding, 14-D0076-1, (Attachment 2) between the five cities and approved funding in Fiscal Year 2014-15 for $35,000 to hire San Diego Economic Development Corporation, SDEDC, to roll out the branding program.

## ANALYSIS

The cities of Carlsbad, Escondido, Oceanside, San Marcos and Vista (North County Cities) are interested in developing and executing an economic development collaborative model that can be used in promoting economic development opportunities within the North County Region.

To commission the North County Economic Development Collaborative Model, the North County Cities have designated the City of Carlsbad to contract with San Diego Regional Economic Development Corporation (SDEDC) for the required services, as set forth in the Scope of Work (Exhibit A to Attachment 3). In turn, each City will contribute an equal financial share for the EDC work effort, based on the terms outlined in the attached MOU (Attachment 4). Per the MOU, the length of the proposed contract is two years and each City agrees to contribute a total of $46,000 ($23,000 annually). The City of Carlsbad will collect the funds and make the required payments to SDEDC as outlined in the attached services agreement (Exhibit B to Attachment 3).

The total cost for the two-year service agreement is $230,000 for which the EDC agrees to:

1. Plan, develop, coordinate and execute the North County 78 Corridor Economic Development Strategy and Programs.
2. Make recommendations associated with implementation of the new North County economic development brand, material development, target audience selection and advertising placement.
3. Lead and assist in business retention and recruitment in the North County area.

## FISCAL IMPACT

The total cost for the North County Economic Development Collaborative Model agreement is $230,000 ($115,000 annually) or $23,000 from each City annually. Funding was approved on February 13, 2014, from the General Fund Balance, and the $35,000 has been included in the Economic Development Budget, 310332101 for the Fiscal Year 2014-15. The additional funding of $12,000 allocated may be used for marketing and collateral materials once a specific plan is established. The funding for the second year will be requested as a part of the budget for Fiscal Year 2015-16.

## INSURANCE REQUIREMENTS

Does not apply.

## COMMISSION OR COMMITTEE REPORT

The Economic Development Commission recommended approval of the agreement with SDEDC and the Economic Development Collaborative model.

## CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

## RECOMMENDATION

Staff recommends that City Council approves a Memorandum of Understanding (MOU) by and among the Cities of Carlsbad, Escondido, Oceanside, San Marcos and Vista for funding of a North County Economic Development Collaborative Model and authorization for the City Manager to execute the MOU.

PREPARED BY:

Tracey Bohlen
Economic Development Manager

SUBMITTED BY:

Steve Jepsen
City Manager

REVIEWED BY:
Michelle Skaggs-Lawrence, Deputy City Manager
James Riley, Financial Services Director

Attachments:

1. North County Branding Program MOU, 13-D0414-4
2. Business Retention and Business Attraction Cooperation MOU, 14-D0076-1
3. San Diego Regional EDC Agreement
    a. Scope of Work
    b. Payment for Services
4. North County Economic Development Collaborative Model MOU

# City Clerk Annotation Certification

***As provided by Oceanside City Code Section 2.1.52, I, Zack Beck, duly elected City Clerk for the City of Oceanside, do hereby certify that the following annotations are made:***

| | |
|---|---|
| Document Title: | Memorandum of Understanding by and Among the Cities of Carlsbad, Escondido, Oceanside, San Marcos and Vista for Funding of a North County Branding Program |
| Parties: | North County Cities: Carlsbad, Escondido, Oceanside, San Marcos & Vista |
| City Document No.: | 13-D0414-4 |
| Comment: | The original Memorandum of Understanding is with North Star Destination Strategies, Inc. This copy to be considered the City of Oceanside original. |

August 12, 2013
Date

Holly Trobaugh, ASST.
Holly Trobaugh
Assistant City Clerk

# MEMORANDUM OF UNDERSTANDING BY AND AMONG THE CITIES OF CARLSBAD, ESCONDIDO, OCEANSIDE, SAN MARCOS AND VISTA FOR FUNDING OF A NORTH COUNTY BRANDING PROGRAM

This Memorandum of Understanding ("MOU") is made and entered into on May 14, 2013 by and among the cities of Carlsbad, Escondido, Oceanside, San Marcos and Vista (individually "City" and collectively, "North County Cities" or "Cities").

## RECITALS

A. The North County Cities are interested in collectively developing a branding program that can be used by the North County Cities in promoting economic development opportunities within the north county region ("North County Branding Program"). To facilitate that goal, the North County Cities: (1) developed a Request for Proposals for Branding Consultant, (2) reviewed the responses to those proposals, and (3) selected North Star Destination Strategies, Inc., ("North Star") as the company best suited to provide the required services.

B. To commission the North County Branding Program, the North County Cities want the City of Vista to contract with North Star for the required services. In turn, each City will contribute an equal financial share to compensate North Star based on the terms set forth in this MOU.

C. The City of Vista has engaged North Star for the North County Branding Program pursuant to a services agreement ("North Star Services Agreement"), which is attached hereto as Exhibit 1 and incorporated herein by this reference. The work to be provided by North Star is set forth in a Scope of Work which is attached as Exhibit A to the North Star Services Agreement ("Scope of Work").

**NOW, THEREFORE,** in consideration of these recitals and the mutual covenants contained herein, the five Cities agree as follows:

### 1. North Star Services Agreement

(A) The Cities acknowledge that North Star and the City of Vista have executed the North Star Services Agreement, dated as of May 14, 2013, which will become effective upon the complete execution of this MOU by each of the five Cities. Performance of the North Star Services Agreement is intended to result in the production of a North County Branding Program as more particularly described in the North Star Services Agreement and its attachments. For that work, North Star will

receive One Hundred Five Thousand Five Hundred Dollars ($105,500.00), assuming the full expense allotment is used ("Contract Price").

(B) The City of Vista makes no representation regarding the completeness, or quality of the work that North Star will produce under the North Star Services Agreement. In directing North Star pursuant to the North Star Services Agreement, the City of Vista will, when reasonably possible, provide direction based on the consensus of all Cities. If consensus is not present after a consultation period of Thirty Days (30) days has elapsed, and the Cities have not acted collectively to amend or terminate this MOU or the North Star Services Agreement, the City of Vista reserves the right to provide direction to North Star to assure that its efforts are not stopped, stalled or otherwise delayed.

**2. Cooperative Efforts**

(A) For North Star to successfully complete the North County Branding Program, each North County City must: (1) provide North Star with information about the city, its community, its businesses, and its other attributes; (2) make available to North Star representatives from city government, civic groups, business groups and others comprising the city; (3) identify venues within the city for meetings, (4) participate in meetings with North Star and other North County Cities for the development and refinement of elements of the North County Branding Program; and (5) otherwise participate in the development of the North County Branding Program in the manner described in the Scope of Work ("City Participation Obligations").

(B) Each City agrees that it will take all actions required to fulfill its City Participation Obligations in order to facilitate the North County Branding Program. To this end, each City will identify to the City of Vista at least one employee of that City to work with North Star to facilitate satisfaction of the City Participation Obligations. If a City fails to timely satisfy a City Participation Obligation and that failure will delay the ability of North Star to timely satisfy its obligations under the North Star Services Agreement, North Star may proceed without receipt of that component of the City Participation Obligations.

**3. Payments for Funding the North Star Services Agreement**

(A) To fund the North Star Services Agreement, each City will provide to the City of Vista one-fifth of the Contract Price within ten (10) days of the full execution of this MOU ("City Contribution"), which equals Twenty-One Thousand One Hundred Dollars ($21,100.00). The City of Vista will hold the City Contribution for each City,

including the City of Vista, and collectively use those City Contributions to make payments due to North Star under the North Star Services Agreement.

(B) Should it be determined that a change in the Scope of Work is advisable which will require additional funds beyond the Contract Price or that additional funds be needed to complete the Scope of Work to the standards originally envisioned, the City of Vista shall notify the North County Cities of the additional services which are available ("Additional Services") and the price for those services ("Supplemental Cost"). With that notice, the City of Vista will provide the North County Cities with a proposed Addendum to the North Star Services Agreement ("Services Agreement Addendum") describing the Additional Services to be provided at the Supplemental Cost. Based on those materials, each North County City will be asked to execute an addendum to this MOU ("MOU Addendum") to enable the City of Vista to fund the Additional Services. Should each North County City execute the MOU Addendum, then within ten (10) days thereafter: (1) each North County City shall transfer to the City of Vista a sum equal to one-fifth of the Supplemental Cost; and (2) the City of Vista will execute the Services Agreement Addendum, or cause the Addendum to become effective. The share of the Supplemental Cost contributed by each North County City shall be treated as an augmentation of the each City's City Contribution.

(C) Following the completion or termination of the North Star Services Agreement, the City of Vista shall determine what amount, if any, is left unexpended from the collective City Contributions and shall return to each North County City a sum equal to one-fifth of that amount.

## 4. TRADEMARK AND COPYRIGHT OF WORKS

The North County Cities recognize that North Star will generate graphics, taglines and other materials ("Works") which may require a trademark, copyright, or similar registry to be protected under Federal or State law, which shall be obtained by North Star, or its subcontractor, for the benefit of Vista and the North County Cities. The North County Cities acknowledge that each, as an owner of a trademark, will responsible to police infringing uses of its trademark. If the North County Cities do not enforce its trademark rights or otherwise fail to maintain quality control over the trademark (i.e. a naked license), trademark rights may be lost. This is also true regarding the responsibility to police infringing uses of their copyrights. The North County Cities agree that they will reasonably police their intellectual property rights and promptly take reasonable steps to prevent infringing and unauthorized use of their trademarks and copyrights. Upon learning of a potential infringement or unauthorized use, the North County Cities shall meet, discuss and select an appropriate course of

action to reasonably prevent infringement or unauthorized use of their intellectual property rights.

**5. MISCELLANEOUS**

(A) The terms of this MOU are intended by the parties as a final expression of their agreement with respect to such terms as are included in this MOU and may not be contradicted by evidence of any prior or contemporaneous agreement. This MOU specifically supersedes any prior written or oral agreement between the parties.

(B) This MOU may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment on the date first above written.

**CITY OF CARLSBAD**

By: _____
JOHN COATES, City Manager

ATTEST:
Barbara Engleson, City Clerk

By: _____

APPROVED AS TO FORM:
Celia A. Brewer, City Attorney

By: _____

**CITY OF ESCONDIDO**

By: _____
CLAY PHILLIPS, City Manager

ATTEST:
Diane Halverson, City Clerk

By: _____

APPROVED AS TO FORM:
Jeffrey R. Epp, City Attorney

By: _____

[Signatures continued on next page]

**CITY OF OCEANSIDE**

By: _____
PETER WEISS, City Manager

ATTEST:
~~Catherine Jerry~~, City Clerk, Zack Beck

By: _____, ASST.

APPROVED AS TO FORM:
John Mullen, City Attorney

By: _____

**CITY OF VISTA,**

By: _____
PATRICK JOHNSON, City Manager

ATTEST:
Marci Killian, City Clerk

By: _____

APPROVED AS TO FORM:
Darold Pieper, City Attorney

By: _____

**CITY OF SAN MARCOS**

By: _____
JACK GRIFFIN, City Manager

ATTEST:
Donna French, Interim City Clerk

By: _____

APPROVED AS TO FORM:
Helen Holmes Peak, City Attorney

By: _____

ATTACHMENT 2

Document No. 14-D0076-1
2/19/14 (29)

# The Five Cities
**(*Brand to be inserted here when finalized)**
# Economic Development Collaborative

# Business Retention and Business Attraction Cooperation Memorandum of Understanding

## Thinking regionally along the SR78 corridor

With the global economic environment as ambiguous and uncertain as ever, proactive regionalism is a powerful economic development tool in business retention and attraction. Acting as a region first and individual communities second is one of the best incentives that can be offered to businesses to keep them within the corridor. Cooperation among the Five Cities—working together—will convey to businesses that the SR78 corridor is the best place to do business in San Diego County.

### 1. Introduction

The Cities of Carlsbad, Oceanside, Vista, San Marcos, and Escondido (Five Cities) along SR78 corridor in North San Diego County, California, wish to enter a new era of regional collaboration to promote and support local economic development. These Cities recognize that collaborating on economic development activities will showcase the SR78 corridor's positive attributes and offer significant benefits to the Five Cities and their residents. Furthermore, the Cities also acknowledge that intraregional competition may be counterproductive to regional economic development. While individual Cities want to encourage businesses to locate within their boundaries, they prefer not to do so at the expense of their neighbors.

### 2. Principles and Protocols

Each City should attempt to conform its economic development efforts to the following principles and protocols:

- The regional economy will be stronger if Cities work together. Collaborative efforts should focus on retaining and expanding existing businesses, attracting of new businesses, and the showcasing the region's business-conducive environment. These efforts should emphasize attracting new business along the SR78 corridor to enhance the regional economy, rather than encouraging companies to move from one community to another.
- By thinking and acting regionally, Cities will (1) eliminate duplicative efforts, (2) achieve greater economies of scale, (3) better leverage resources, and (4) create a business environment which is more attractive for private investment.
- Cities shall be committed to locating prospects along the SR78 corridor. In the event that a City cannot meet the needs of a particular prospect, that City should communicate with the other Cities in an effort to meet the company's needs elsewhere along the corridor.
- Transactions are to be driven by the business's needs. If a company chooses to relocate from one community to another, every effort will be made to contact the affected City to inform them of the potential move. When one City cannot accommodate business relocation or a prospect, that City will share information, as allowed by the client, with other Cities in the region to maximize the prospect for regional business development.

- All Cities will avoid soliciting another partner City's businesses, schools or prospects. For the purposes of this item, the term "solicit" shall not be construed to prevent a City or its authorized agent from engaging in typical real estate business practices regarding commercial real estate that a City owns, manages or otherwise controls. A City or its authorized agent may list available commercial space in normal real estate brokerage marketing devices and may discuss or negotiate with any business or commercial operation that inquires into the availability of said City owner, managed or controlled commercial real estate.
- Cities should be committed to sharing with each other as much information as is necessary and prudent on any activity undertaken by or in the name of this regional cooperation. The guiding principle shall be that "more information is better than less."
- "Selling against" another City in the region or direct solicitation of intrastate relocations is strongly discouraged.

**3. Confidentiality of Prospects**

Cities within the region shall honor the confidentiality of individual businesses/prospects to the extent permitted by law. Whenever possible, specific information on particular transactions should be shared. In those instances where businesses/prospects are dealing with individual cities, information will only be shared with the affected City's economic development representatives.

In instances where a prospect wishes to remain completely confidential with an individual city, the remaining Cities shall honor that confidentiality and should not attempt to intervene in the relationship. The prospect will remain confidential until the prospect chooses to announce.

**4. Financial Commitment; Nature of MOU**

This MOU encompasses guidelines for the conduct of the Five Cities, not obligatory standards to be followed. As such, it is not a contract and the failure to implement a guideline or to follow a guideline will not represent a contractual breach nor create any liability to a City or a third party based on this MOU.

This MOU does not represent a financial arrangement among the Five Cities.

**5. Term of the MOU**

For a period of five years, each City will endeavor to reasonably pursue the guidelines contained in this MOU, unless a City notifies the other Cities of its intention to withdraw from the MOU, which notification shall take effect immediately.

**6. Regional Economic Development Strategy**

It is acknowledged that to fully implement an effective economic development effort for the region, an economic development strategy is necessary. That strategy will take the ongoing involvement and investment of each of the Five Cities. Although this document does not address the specifics of that Economic Development Strategy, all parties agree to work together to create, support, and maintain the strategy. The Economic Development Strategy

will be created by and updated by the Cities each fiscal year so as to continue our mutual economic development efforts in an uninterrupted manner.

**7. Conclusion**

Therefore, it is recommended that the Five Cities promote this agreement with existing and prospective local businesses. Pervasive knowledge of this agreement amongst the business community within and outside the region is an essential step towards achieving the objectives of this economic development collaborative.

Date: April 8, 2014

We hereby agree:

City of Carlsbad – Mayor Matt Hall

City of Escondido – Mayor Sam Abed

City of Oceanside – Mayor Jim Wood

City of Vista – Mayor Judy Ritter

City of San Marcos – Mayor Jim Desmond

# AGREEMENT BETWEEN CITY OF CARLSBAD AND SAN DIEGO REGIONAL ECONOMIC DEVELOPMENT CORPORATION FOR NORTH COUNTY ECONOMIC DEVELOPMENT COLLABORATIVE MODEL

**THIS AGREEMENT** is made and entered into on _____, 2014 by and between the **City of Carlsbad, California**, a chartered municipal corporation ("City of Carlsbad"), and **San Diego Regional Economic Development Corporation,** a non-profit from San Diego, CA ("EDC").

## RECITALS

(A) The cities of Carlsbad, Escondido, Oceanside, San Marcos, and Vista (individually, "City" and collectively "North County Cities") are interested in developing, and executing a collaborative economic development model that can be used by the North County Cities in promoting economic development opportunities within the north county region ("North County Branding Program").

(B) To commission the North County Economic Development Collaborative, the North County Cities want the City of Carlsbad to contract with EDC for the required services ("Services") pursuant to this Agreement which are set forth in the Scope of Work ("Scope of Work"), which is attached hereto as Exhibit A and incorporated herein by this reference. The total compensation payable to EDC under this Agreement for the Required Services is One Hundred Fifteen Thousand Dollars ($115,000.00) each year for a total of Two Hundred Thirty Thousand Dollars ($230,000) for two years.

(C) In turn, pursuant to a Memorandum of Understanding, dated as of ___, 2014, among the North County Cities: (1) the City of Carlsbad has agreed to engage EDC to provide the services required for a North County Economic Development Collaborative Model pursuant to this Agreement; and (2) each City will pay to the City of Carlsbad a sum of Twenty-Three Thousand ($23,000), representing one-fifth of the Contract Price ("City Contract Share") each year over the two year contract term.

(E) The City of Carlsbad requires the services of EDC to develop and execute a North County Economic Development Collaborative Model for the City of Carlsbad and the other North County Cities.

(F) EDC represents that it is specially trained and possesses special skills, education, experience, and competency to perform the services and provide the advice needed to execute the scope of services.

**NOW, THEREFORE,** in consideration of these recitals and the mutual covenants contained herein, City of Carlsbad and EDC agree as follows:

1. **SERVICES TO BE PROVIDED BY EDC; TIMELINE**

EDC shall act in a professional capacity to provide the City of Carlsbad with the services described in the Scope of Work. All services described in the Scope of Work shall be provided in substantial compliance with the Proposed Timeline included within the Scope of Work, except to the extent that a delay is caused by a material failure of the City of Carlsbad or another City to take timely actions described in the Scope of Work which are predicates to EDC's performance. EDC's work shall conform to all applicable statutes, laws, regulations, and professional standards for such work.

2. **COMPENSATION**

(a) Compensation for Services: The City of Carlsbad shall pay EDC a fixed fee not to exceed One Hundred Fifteen Thousand Dollars ($115,000) annually for a total of Two Hundred Thirty Thousand Dollars ($230,000) for performing all of the Services in the manner set forth in Payment for Services, attached hereto as Exhibit B and incorporated herein by this reference.

(b) Additional Services: In procuring this contract, EDC has made a good faith estimate, based on extensive experience in performing similar services for other entities, that EDC can complete the Services as outlined in Exhibit A. If in the course of the services EDC determines that additional services are necessary it shall notify the City of Carlsbad and upon receiving that notice, the City of Carlsbad will consult with the remaining North County Cities to determine if the Cities unanimously wish to have the City of Carlsbad engage EDC to perform that additional work, or other supplemental work ("Additional Work"). If the North County Cities determine that the City of Carlsbad should engage EDC to perform the Additional Work, the City of Carlsbad and EDC will prepare an amendment to this Agreement for the Additional Work describing the scope of the Additional Work and the compensation therefore to EDC, which additional cost shall be prorated among the North County Cities.

(c) Designated Employees: Designated Employees of EDC for purposes of naming the positions working on services as outlined in Exhibit A shall consist of:

1. President & Chief Executive Officer
2. Chief Operating Officer
3. Vice President, Economic Development

4. Manager, Economic Development
5. Manager, Economic Development
6. Coordinator, Economic Development

(d) Billing; Expenses:
EDC shall bill the City of Carlsbad for services rendered under this Agreement.

(e) Ceiling: In no event shall the City of Carlsbad be liable for more than the amounts set forth in paragraphs (a). Any Additional Work or greater expenses must be authorized in a written Amendment to this Agreement, executed by the City of Carlsbad City Manager and an authorized representative of EDC.

## 3. TERM OF AGREEMENT

(a) This Agreement shall take effect on the date when the agreement is fully executed and shall be in force for the amount of time necessary to complete the Services, not to exceed two years unless terminated as described in subparagraph (b) below.

(b) The City of Carlsbad may terminate this Agreement by tendering written notice to EDC no less than thirty (30) days prior to the termination date as clearly identified in the written notice. In such event, or upon request of the City of Carlsbad, EDC shall assemble all City documents in EDC's possession and put them in order for proper filing and closing, and deliver said documents to the City of Carlsbad by the termination date. In the event of termination, EDC shall be paid for completed work performed prior to the termination date. The City of Carlsbad shall make the final determination as to the portion of tasks completed and the proportionate compensation to be made.

## 4. ASSIGNMENT AND SUBCONSULTING

(a) EDC shall not assign this contract, any part thereof, or any compensation due thereunder without the prior written consent of the City of Carlsbad.

(b) EDC shall be fully responsible to the City of Carlsbad for any acts and omissions of EDC's sub-consultants, including persons either directly or indirectly employed by sub-consultants, in the event EDC subcontracts any of the work to be performed under this contract. EDC's responsibility under this paragraph shall be identical to EDC's liability for acts and omissions of EDC and employees of EDC. Nothing contained in this Agreement shall create any

contractual relationship between the City of Carlsbad and any sub-consultant of EDC, but EDC shall bind every sub-consultant and every sub-consultant of a sub-consultant by the terms of this contract applicable to EDC's work, unless such change, omission, or addition is approved in advance in writing by the City of Carlsbad. All sub-consultants are subject to the prior written review and approval of the City of Carlsbad.

(c) All terms, conditions, and provisions hereof shall inure to and bind each of the parties hereto, and each of their respective heirs, executors, administrators, successors, and assigns.

## 5. COOPERATION OF CITY

With respect to the City of Carlsbad and its territory, the City of Carlsbad agrees to cooperate with EDC so it can satisfactorily perform the Services. Such cooperation shall include meeting with EDC, assisting in arranging meetings with others, and providing EDC with such non-confidential information that the City may have that may be relevant and helpful to EDC's performance of the Services ("Individual City Support"). For each North County City other than the City of Carlsbad, the City of Carlsbad shall provide EDC with a contact person at that other North County City which EDC can contact to receive Individual City Support from that City. After that contact person is identified to EDC, the City of Carlsbad shall have no further responsibility in providing Individual City Support for that North County City. It may be necessary for the City of Carlsbad or a North County City to share certain confidential and/or proprietary information or matter with EDC. The parties agree that such information and the results and developments therefrom are confidential and/or proprietary information belonging to the respective city. EDC agrees not to disclose to any third party any confidential or proprietary information. EDC will be responsible for its employees or agents complying with the provisions of this Agreement.

## 6. OWNERSHIP OF DOCUMENTS AND PRODUCTS, INDEMNIFICATION

(a) In accordance with subsection (b) below, Works developed for the City of Carlsbad and North County Cities in connection with this Agreement are the exclusive and joint property of the City of Carlsbad and North County Cities. EDC agrees to deliver all Works to the City of Carlsbad upon completion of the Agreement. "Works" include but are not limited to editorial drafts, original copy, photographs, proofs, corrected proofs, camera-ready boards and similar editorial materials and all negatives, flats, engravings, photostats, drawings and other production materials. For procurements that are digital or information technology based, "Works" also include but are not limited to executable code, source

code, fixes, patches, updates, upgrades, documentation embedded or otherwise, original copy, and other production materials. EDC shall be responsible for delivering all Works to the City of Carlsbad no later than fifteen (15) working days from the date of final Agreement deliverables.

(b) Work for Hire. EDC understands and agrees that any and all materials and deliverables that are subject to copyright protection that are developed in connection with the performance of this Agreement (Works) shall constitute a work for hire as that term is defined in the Copyright Act of 1976 (Act), as amended. As a result, all right, title and interest in and to all such Works shall belong exclusively, jointly and equally to the City of Carlsbad and North County Cities, including without limitation all copyrights and other intellectual property rights therein. If for any reason a Work is not deemed to be a work for hire, EDC hereby grants, transfers, sells and assigns, free of charge, exclusively to the City of Carlsbad and North County Cities, all title, rights and interest in and to said Work, including all copyrights and other intellectual property rights. EDC further agrees to execute and deliver to the City of Carlsbad and all North County Cities a confirmatory grant and assignment of all rights in and to Works and to execute any other proper document the City of Carlsbad and North County Cities deems necessary to ensure the complete and effective transfer of all rights in Works to the City of Carlsbad. EDC shall register all copyrightable Works (including Logo(s) developed) with the United States Copyright Office. The Certificate of Registration shall vest equally in the names of all North County Cities.

## 7. INDEMNIFICATION AND INSURANCE

(a) During all phases of this Agreement, EDC agrees to defend, indemnify and save harmless City of Carlsbad, each North County City, and each of their officials, employees (collectively, "Indemnitees") from and against any and all claims, demands, losses, defense costs (including attorneys' fees), or liability of any kind or nature which the Indemnitees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property as a result of, arising out of, or in any manner connected with EDC's performance of this Agreement, excepting only claims resulting from the sole negligence, gross negligence, or willful misconduct of City of Carlsbad or a North County City.

(b) Without limiting, EDC's indemnification, it is agreed that EDC shall maintain in force at all times during the performance of this

Agreement the following policy or policies of insurance covering its operations:

(i) Comprehensive General Liability, including contractual liability, business automobile liability, and products and completed operations, all of which shall include coverage for both bodily injury and property damage, with a combined single limit of one million dollars ($1,000,000).

(ii) Workers' Compensation coverage at statutory limits.

(iii) Professional Liability in the amount of one million dollars ($1,000,000).

(c) EDC's liability insurance policy shall contain the following clauses:

(i) "City of Carlsbad, City of Escondido, City of Oceanside, City of San Marcos, and City of Vista are named as an additional insureds as respects the operations of the named insured performed under contract with the City of Carlsbad".

(ii) "It is agreed that any insurance maintained by the City of Carlsbad (or any North County City) shall apply in excess of, and not contribute with insurance provided by this policy".

All insurance policies required by this Section shall contain the following clause:

"This insurance shall not be canceled, limited or non-renewed until after thirty days written notice has been given to the City of Carlsbad".

(d) Certificates of insurance evidencing the coverage's required by the clauses set forth above shall be filed with the City of Carlsbad prior to the effective date of this Agreement. This is a condition precedent to the formation of any obligation by the City of Carlsbad to compensate EDC under this Agreement.

## 8. CONFLICT OF INTEREST REQUIREMENT

EDC agrees that it shall comply with and be bound by all laws and regulations deriving from the relationship of EDC to the City of Carlsbad, and in particular with the Conflict of Interest laws, being Chapter 7 of Title 9 of the California Government Code, otherwise known as the Political Reform Act. As a condition precedent to the formation of this Agreement, EDC warrants and covenants that it is adequately informed regarding the obligations and duties imposed by the Political Reform Act and that to the

best of EDC's knowledge and belief, there exists no conflict of interest (within the meaning of the Political Reform Act) that would disqualify EDC from participation in influencing any decisions arising out of the performance of this Agreement. Prior to commencement of any work in the performance of this Agreement, EDC shall comply with the Conflict of Interest Code requirements of the City of Carlsbad.

## 9. NOTICES

Any notice, which either party may desire to give to the other party, must be in writing and may be given by personal delivery or by mailing the same by registered or certified mail, return receipt requested, to the party to whom the notice is directed at the address of such party set forth below or such address as the parties may hereinafter designate by giving notice in the manner provided for herein. Any notice given by mail will be deemed given forty-eight (48) hours after such notice is deposited in the United States mail, addressed as provided, with postage fully prepaid.

To EDC:

Lauree Sahba
Chief Operating Officer
San Diego Regional Economic Development Corporation
530 B Street, 7th Floor
San Diego, CA

To City:

Christina Vincent
Economic Development Manager
City of Carlsbad
1635 Faraday Avenue
Carlsbad, CA 92008

## 10. MISCELLANEOUS

(a) The terms of this Agreement are intended by the parties as a final expression of their agreement with respect to such terms as are included in this Agreement and may not be contradicted by evidence of any prior or contemporaneous agreement. This Agreement specifically supersedes any prior written or oral agreement between the parties.

(b) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(c) EDC shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

(d) The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California.

(e) No failure of either the City or EDC to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach or of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

(f) EDC and any Subcontractor(s) employed by EDC shall be independent contractors and not agents of City. Any provisions of this Agreement that may appear to give City any right to direct EDC concerning the details of performing the Scope of Work services, or to exercise any control over such performance, shall mean only that EDC shall follow the direction of City concerning the end results of the performance.

(g) The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

**IN WITNESS WHEREOF,** the parties have executed this Agreement as of the date first written above.

City of Carlsbad, California **, a chartered municipal corporation**

By: _____
Steve Sarkozy, City Manager

ATTEST:
Barbara Engleson, City Clerk

By: _____

APPROVED AS TO FORM:
Celia Brewer, City Attorney

By: _____

RISK MANAGEMENT REVIEW:
_____, Risk Manager

By: _____

**San Diego Regional Economic Development Corporation, a non-profit from San Diego, CA**

By: _____
Signature

_____
Title

By: _____
Signature

_____
Title

# EXHIBIT A
# SCOPE OF WORK

The five North County cities of Carlsbad, Escondido, Oceanside, San Marcos and Vista have requested input from the San Diego Regional Economic Development Corporation (EDC) relative to the execution, coordination and implementation of the "North County Economic Development Collaborative".

Looking to gain greater economies of scale and better leverage existing resources, the North County collaborative would have access to the full resources of the 18 person staff of the EDC. To oversee delivery of the program the five North County Cities would be provided with the leadership of EDC's Executive Management Team, including the President & CEO, Chief Operating Officer and Vice President of Economic Development. In addition, the five North County cities would have the full engagement of the core economic development team of EDC to execute the program.

To further support coordination and implementation of the program, EDC will commit a full-time employee and dedicated economic development professional to carry out the day to day activities of the North County Economic Development Collaborative. EDC will also provide two representatives from the North County Cities to serve on the EDC Board.

To help facilitate this work, the dedicated economic development professional, EDC Executive Management Team and EDC Economic Development Team will focus on these functions:

1. Plan, Develop, Coordinate & Execute the North County 78 Corridor Economic Development Strategy and Programs.
    a. Coordinate the North County Cities economic development staff in the development and execution of the region wide economic development plan; known as an "Annual Program of Work". Annual Program of Work will address issues of significant concern and opportunity to North County businesses.
    b. EDC will complete a regional assessment of North County's economic drivers, needs of businesses, the region's talent retention and attraction issues, global competitiveness priorities, base realignment and/or closure concerns, and desired outcomes from each of the North County cities so as to develop the Annual Program of Work. The EDC will present its Annual Program of Work and past year's successes to each City Council annually.
    c. Quarterly communication by a representative of the EDC Executive Management Team with the five North County Mayors and respective city economic development staff.
    d. Approximately three (3) months after the signing of the agreement, EDC will present a proposed Annual Program of Work for approval and implementation.

e. After the approach for implementation is established, EDC will provide report on their performance related to the Annual Program of Work metrics to the North County partners on a monthly basis and/or as requested.

2. EDC will make recommendations associated with implementation of the new North County economic development brand, material development, target audience selection and advertising placement.
   a. The economic development brand product created by Northstar Destination Strategies will provide recommendations and tactics which EDC will prioritize by short, medium, long term actions and no action. EDC will advise highest and best value to execute worthwhile recommendations provided by the economic development brand's product.
   b. Any costs related to the creation of printed materials, websites and other necessary materials recommended by Northstar Destination Strategies will be outside of the scope of the contract and it is expected that each city will contribute to costs in an equal share once reviewed and approved and become an amendment to this agreement (reference Section 2(b): Additional Work).

3. EDC will lead and assist in business retention and recruitment in the North County area.
   a. EDC's full economic development team will work to identify qualified businesses for recruitment to the North County area in coordination with the North County Cities.
   b. The dedicated position will work to maintain collaborative relationships with local trade associations, sub-regional economic development agencies and municipal departments across San Diego County to garner sector-specific information and support.
   c. EDC will target delivery of comprehensive services to retain companies in the North County who may be threatening to leave the region, or expand in the region. The dedicated position and EDC economic development team will identify key corporate decision makers and steward delivery of timely, comprehensive proposals to companies at risk of leaving the region, relocating or expanding locally. The EDC will organize "red teams" with the North County Cities, industry associations, sub-regional economic development organizations and other service providers to leverage resources where necessary to retain, expand or attract the company.
   d. EDC will provide monthly updates of companies threatening to leave, looking to expand and / or looking to relocate into the region for elected officials and community leaders to better understand the perspective and decision making process of corporate interests.
   e. EDC will provide a quarterly economic snapshot electronically of the region's strengths to elected officials, community leaders and media as requested by the North County Cities.

# EXHIBIT B
# PAYMENT FOR SERVICES

EDC will invoice the City of Carlsbad on a monthly basis for $9,583.33 per month for a total of 24 months and a maximum total amount not to exceed $230,000.

Payments will be made within 30 days of receipt.

# MEMORANDUM OF UNDERSTANDING BY AND AMONG THE CITIES OF CARLSBAD, ESCONDIDO, OCEANSIDE, SAN MARCOS AND VISTA FOR FUNDING OF A NORTH COUNTY ECONOMIC DEVELOPMENT COLLABORATIVE MODEL

This Memorandum of Understanding ("MOU") is made and entered into on June ___, 2014 by and among the cities of Carlsbad, Escondido, Oceanside, San Marcos and Vista (individually "City" and collectively, "North County Cities" or "Cities").

## RECITALS

A. The North County Cities are interested in collectively developing a economic development collaborative that can be used by the North County Cities in promoting economic development opportunities within the north county region ("North County Economic Development Collaborative Model"). To facilitate that goal, the North County Cities selected the San Diego Regional Economic Development Corporation ("EDC") as the organization best suited to provide the required services.

B. To commission the North County Economic Development Collaborative Model, the North County Cities want the City of Carlsbad to contract with EDC for the required services. In turn, each City will contribute an equal financial share to compensate EDC based on the terms set forth in this MOU.

C. The City of Carlsbad has engaged EDC for the North County Economic Development Collaborative Model pursuant to a services agreement ("EDC Services Agreement"), which is attached hereto as Exhibit 1 and incorporated herein by this reference. The work to be provided by EDC is set forth in a Scope of Work which is attached as Exhibit A to the EDC Services Agreement ("Scope of Work").

**NOW, THEREFORE,** in consideration of these recitals and the mutual covenants contained herein, the five Cities agree as follows:

### 1. EDC Services Agreement

(A) The Cities acknowledge that EDC and the City of Carlsbad have executed the EDC Services Agreement on behalf of the North County Cities, dated as of June ___, 2014, which will become effective upon the complete execution of this MOU by each of the five Cities. Performance of the EDC Services Agreement is intended to result in the production of a North County Economic Development Collaborative Model as more particularly described in the EDC Services Agreement and its attachments. For that work, EDC will receive Two Hundred Thirty Thousand ($230,000.00) over the two

year contract length or One Hundred Fifteen Thousand ($115,000) annually, assuming the full expense allotment is used ("Contract Price").

(B) The City of Carlsbad makes no representation regarding the completeness, or quality of the work that EDC will produce under the EDC Services Agreement. In directing EDC pursuant to the EDC Services Agreement, the City of Carlsbad will, when reasonably possible, provide direction based on the consensus of all Cities. If consensus is not obtained after a consultation period with all North County Cities of Thirty Days (30) days has elapsed, and if the Cities have not acted collectively to amend or terminate this MOU or the EDC Services Agreement, the City of Carlsbad reserves the right to provide direction to EDC to assure that its efforts are not stopped, stalled or otherwise delayed.

**2. Cooperative Efforts**

For EDC to successfully complete the North County Economic Development Collaborative Model, each North County City must: (1) provide EDC with information about the city, its community, its businesses, and its other attributes; (2) make available to EDC representatives from city government, civic groups, business groups and others comprising the city; (3) identify venues within the city for meetings, (4) participate in meetings with EDC and other North County Cities for the development and refinement of elements of the North County Economic Development Collaborative Model; and (5) otherwise participate in the development of the North County Economic Development Collaborative Model in the manner described in the Scope of Work.

**3. Payments for Funding the EDC Services Agreement**

(A) To fund the EDC Services Agreement, each City will allocate and pay on July 1 to the City of Carlsbad a sum of Twenty-Three Thousand ($23,000), representing one-fifth of the Contract Price ("City Contract Share") each year over the two year contract length. The City of Carlsbad will hold the City Contribution for each City, including the City of Carlsbad, and collectively use those City Contributions to make payments due to EDC under the EDC Services Agreement.

(B) Should it be determined that a change in the Scope of Work is advisable which will require additional funds beyond the Contract Price or that additional funds be needed to complete the Scope of Work to the standards originally envisioned, the City of Carlsbad shall notify the North County Cities of the additional services which are available ("Additional Services") and the price for those services ("Supplemental Cost"). With that notice, the City of Carlsbad will provide the North County Cities with a

proposed Addendum to the EDC Services Agreement ("Services Agreement Addendum") describing the Additional Services to be provided at the Supplemental Cost. Based on those materials, each North County City will be asked to execute an addendum to this MOU ("MOU Addendum") to enable the City of Carlsbad to fund the Additional Services. Should each North County City execute the MOU Addendum, then within ten (10) days thereafter: (1) each North County City shall transfer to the City of Carlsbad a sum equal to one-fifth of the Supplemental Cost; and (2) the City of Carlsbad will execute the Services Agreement Addendum.

(C) Following the completion or termination of the EDC Services Agreement, the City of Carlsbad shall determine if any amount is left unexpended from the collective City Contributions and shall return to each North County City a sum equal to one-fifth of that amount.

## 4. TRADEMARK AND COPYRIGHT OF WORKS

The North County Cities recognize that EDC will generate graphics, taglines and other materials ("Works") which may require a trademark, copyright, or similar registry to be protected under Federal or State law, which shall be obtained by EDC, or its subcontractor, for the benefit of Carlsbad and the North County Cities. The North County Cities acknowledge that each, as an owner of a trademark, will responsible to police infringing uses of its trademark. If the North County Cities do not enforce its trademark rights or otherwise fail to maintain quality control over the trademark (i.e. a naked license), trademark rights may be lost. This is also true regarding the responsibility to police infringing uses of their copyrights. The North County Cities agree that they will reasonably police their intellectual property rights and promptly take reasonable steps to prevent infringing and unauthorized use of their trademarks and copyrights. Upon learning of a potential infringement or unauthorized use, the North County Cities shall meet, discuss and select an appropriate course of action to reasonably prevent infringement or unauthorized use of their intellectual property rights.

## 5. MISCELLANEOUS

(A) The terms of this MOU are intended by the parties as a final expression of their agreement with respect to such terms as are included in this MOU and may not be contradicted by evidence of any prior or contemporaneous agreement. This MOU specifically supersedes any prior written or oral agreement between the parties.

(B) This MOU may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment on the date first above written.

**CITY OF VISTA**

By:_____
PATRICK JOHNSON, City Manager

ATTEST:
Marci Killian, City Clerk

By:_____

APPROVED AS TO FORM:
Darold Pieper, City Attorney

By:_____

**CITY OF ESCONDIDO**

By:_____
CLAY PHILLIPS, City Manager

ATTEST:
Diane Halverson, City Clerk

By:_____

APPROVED AS TO FORM:
Jeffrey R. Epp, City Attorney

By:_____

(Signatures continued on next page.)

**CITY OF OCEANSIDE**

By:_____
STEVE JEPSEN, City Manager

ATTEST:
Zach Beck, City Clerk

By:_____

APPROVED AS TO FORM:
John Mullen, City Attorney

By:_____

**CITY OF SAN MARCOS**

By:_____
JACK GRIFFIN, City Manager

ATTEST:
Phillip Scollick, City Clerk

By:_____

APPROVED AS TO FORM:
Helen Holmes Peak, City Attorney

By:_____

**CITY OF CARLSBAD**

By:_____
STEVE SARKOZY, City Manager

ATTEST:
Barbara Engleson, City Clerk

By:_____

APPROVED AS TO FORM:
Celia A. Brewer, City Attorney

By:_____