

**CONSULTING AGREEMENT BETWEEN  
THE CITY OF SAN DIEGO AND SAN DIEGO CONTINUING  
EDUCATION FOUNDATION  
FOR ARTWORK RESTORATION SERVICES  
40000048-25-F**

---

This Agreement is entered into by and between the City of San Diego, a municipal corporation (City), and San Diego Continuing Education Foundation (Contractor) (collectively, the Parties).

**RECITALS**

A. City needs artwork restoration services (Services) as further described in the Scope of Services (Services), attached hereto as Exhibit A.

B. Contractor has the expertise, experience, equipment, and personnel necessary to provide the Services and City forces are presently unable to adequately provide the required Services.

C. City and Contractor wish to enter into an agreement whereby City will retain Contractor to provide the Services as part of a partnership to ultimately restore the Black Family artwork in Mountain View Community Park.

D. Contractor is a Non-Profit Organization under Section 501(c)(3) of the U.S. Internal Revenue Code.

E. Pursuant to SDMC section 22.3210, the Purchasing Agent has certified that this Agreement is exempt from competitive bidding requirements because this Agreement furthers a specific public policy, is in the public interest, and does not exceed the threshold set forth in the SDMC.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged, City and Contractor agree as follows:

**ARTICLE 1  
CONTRACTOR SERVICES**

**1.1 Scope of Services.** Contractor shall provide the Services described in Exhibit A, which is incorporated herein by reference.

**1.2 Contract Administrator.** The City of San Diego Division of Cultural Affairs (DCA) is the Contract Administrator for this Agreement. The Contract Administrator's contact information is as follows:

Christine Jones, Chief of Civic Art Strategies  
1200 Third Avenue, Suite 924  
619) 246-2552  
[christinej@sandiego.gov](mailto:christinej@sandiego.gov)

**1.3 Additional Provisions.** This Agreement incorporates by reference City's Additional Provisions, attached hereto as Exhibit B.

**1.4 General Contract Terms and Provisions.** This Agreement incorporates by reference City's General Contract Terms and Provisions, attached hereto as Exhibit C.

**1.5 Submittals Required with the Agreement.** Contractor is required to submit all forms and information listed in Exhibit D before this Agreement is executed.

**1.6 Reserved.**

**1.7 Compensation and Fee Schedule.** This Agreement incorporates by reference the Compensation and Fee Schedule, attached hereto as Exhibit E.

**1.8 Schedule of Work.** This Agreement incorporates by reference the Schedule of Work, attached here to as Exhibit F.

## **ARTICLE 2 DURATION OF AGREEMENT**

**2.1 Effective Date.** This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40.

**2.2 Agreement Term.** Unless otherwise terminated, this Agreement shall be effective until completion of Services or December 31, 2025, whichever is the earliest. The term of this Agreement shall not exceed five years unless approved by the City Council by ordinance.

## **ARTICLE 3 COMPENSATION**

**3.1 Amount of Compensation.** The City shall pay the Contractor for performance of all Services rendered in accordance with this Agreement, including reasonably related expenses, in an amount not to exceed \$60,000.

**3.2 Annual Appropriation of Funds.** Contractor acknowledges that the Agreement Term may extend over multiple City fiscal years, and Contractor understands and agrees that work and compensation under this Agreement is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. City may terminate the

Agreement if sufficient funds are not duly appropriated and authorized for any given fiscal year, or if funds appropriated and authorized for this Contract are exhausted before the fiscal year concludes. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by the City Council.

#### **ARTICLE 4**

#### **CONTRACT DOCUMENTS**

**4.1 Contract Documents.** This Agreement, including its exhibits constitute the Contract Documents. The Contract Documents completely describes the Services to be provided. In the event of a conflict between the terms in the City's General Terms and Provisions (Exhibit C) and any other exhibit, the terms in the other exhibits shall control.

**4.2 Counterparts.** This Agreement may be executed in counterparts, which when taken together shall constitute the single signed original as though all Parties had executed the same page.

IN WITNESS WHEREOF, this Agreement is executed by City and Contractor acting by and through their authorized officers.

CONTRACTOR

San Diego Continuing Education  
Foundation

By: Tami Foy  
Tami Foy (May 12, 2025 13:52 PDT)

Name: Tami Foy

Title: CEO/Executive Director

Date: 05/12/2025

CITY OF SAN DIEGO

A Municipal Corporation

By: Claudia Abarca

Name: Claudia Abarca

Director, Purchasing & Contracting

Date: 08/14/2025

Approved as to form this 14th day of  
August, 2025.

HEATHER FERBERT, City Attorney

By: Kenneth So  
Kenneth So (Aug 14, 2025 14:37:36 PDT)

Senior Deputy City Attorney

Kenneth So

Print Name



## **EXHIBIT A**

### **SCOPE OF SERVICES**

**A.1 Notice to Proceed with the Services.** The Contractor must not proceed with work on the Scope of Services until City issues the Contractor a notice to proceed.

**A.2 Civic Art Collection Project Overview.** The late San Diego artist Rossie Wade created the artwork *The Black Family* in 1974 while an artist in residence at San Diego Community College Educational Cultural Complex. The wood sculpture was then placed in Mountain View Community Park (now called Neal Petties Mountain View Community Park). The artwork has now disintegrated, and only the base and plaque remain. The City in partnership with the Contractor, is implementing a restoration project to recreate a new version of the artwork that is faithful in likeness to the original in addition to a commemorative artwork plaque. Therefore, the Contractor is responsible for providing the Scope of Services, including design, fabrication and transportation of a recreated version of the artwork and creation of new commemorative artwork plaque as further described herein in a manner that meets the City's project objective.

**A.3 Reserved.**

**A.4 Public Process.** It is understood that the process of developing, reviewing, and approving this Restoration Project, for the City is an open and transparent process which may include public participation and scrutiny. The Contractor acknowledges and agrees that the City may require documents and other materials relating to the development of the Restoration Project to be made available to the public.

**A.5 Coordination.** The Contractor acknowledges and agrees that coordination with City staff and other persons designated by the City who may be involved with the project, is essential. The Contractor agrees to cooperate with the City's designees in the completion of the Scope of Services under the Consulting Agreement. To facilitate this essential coordination, the Contractor must be available with reasonable advance notice for meetings, as necessary. The City must provide the Contractor at no cost to the Contractor, copies of existing designs, drawings, reports, and other existing relevant data, if any, that the Contractor needs in order to perform the Scope of Services under the Consulting Agreement.

**A.6 Meetings.** As determined by Christine Jones, the City's Project Manager, or her successor, (Project Manager) in consultation with the Contractor, the Contractor must attend public information meetings and events with the general public, attend design and construction coordination meetings with City staff and other parties working on the design and construction of the Project, and attend presentations to approval authorities to communicate about the artwork and to ensure successful design, fabrication, transport, and consultation during installation of the restored artwork.

**A.7 Authorizations.** The Contractor must secure any and all required licenses, permits, and similar legal authorizations at the Contractor's expense as may be necessary for completion of the Scope of Services.

**A.8 City's Right to Inspect.** The Contractor acknowledges and agrees that the City has the right to inspect the Restoration Project at any time, and the City may issue the Contractor a notice of defects if the Project Manager identifies discrepancies between the Contractor's provision of the Scope of Services and the conditions in the Consulting Agreement.

**A.9 Remedy of Defects.** In the event that the City issues the Contractor a notice of defects, the Contractor must promptly provide the Project Manager with a plan for remedying the defects. Upon the Project Manager's approval of the Contractor's plan for remedying defects, the Contractor must promptly remedy the defects and issue the Project Manager a notice of completion for the defect remedy. The Contractor must not proceed with any work in this Scope of Services until the Project Manager issues the Contractor a notice of approval for the defect remedy.

**A.10 Reserved.**

**A.10.1 Reserved.**

**A.11 Final Restoration Proposal.** The Contractor must develop a Final Restoration Proposal in accordance with this section and its subsections.

**A.11.1 Reserved.**

**A.11.2 Reserved.**

**A.11.3 Elements of Final Restoration Proposal.** The Contractor's submission of the Final Restoration Proposal to the Project Manager for review and approval must be of a quality appropriate for release to the press. The Final Restoration Proposal must include, but is not limited to:

- a. A depiction of the proposed Restoration Project in the form of a to-scale drawing accompanied by either a three-dimensional rendering or a three-dimensional model; A written description of the proposed scale and relationship of the components in the proposed Restoration Project;
- b. Material samples;
- c. A fabrication plan, which includes a proposed list of materials, and methods of fabrication; and
- d. A transportation plan.

**A.11.4 Reviewing Bodies.** The reviewing bodies include, but are not limited to, the City of San Diego Division of Cultural Affairs (DCA), its Public Art Committee, the City's Development Services Department, and the City's Public Works Departments. (Reviewing Bodies) The Reviewing Bodies will be assembled by the Project Manager to review and approve the artwork proposal and its requirements at various stages of development.

**A.11.5 Proposal Review Process.** The Project Manager and other members of City staff may review the Restoration Proposal and require that the Contractor make modifications to it before permitting its submission to the Reviewing Bodies. The Contractor agrees to address the Project Manager's and City staff members' comments and modification requirements prior to submitting it to the Reviewing Bodies for approval. The Reviewing Bodies will review and make recommendations about the Restoration Proposal. The Reviewing Bodies may recommend approval, approval with conditions, or disapproval of the Restoration Proposal. In the event that the Reviewing Bodies recommend disapproval, or approval with conditions, the Contractor, upon written notification from the Project Manager, must respond to the Reviewing Bodies' comments in writing.

**A.11.5.1 Notice of Approval for Final Restoration Proposal.** The Contractor must not proceed with work on the Scope of Services further than the Final Restoration Proposal until the Project Manager has issued the Contractor a notice of approval for the Final Restoration Proposal.

**A.12 Reserved.**

**A.13 Shop Drawings.** If the Final Restoration Proposal is approved by the City it becomes the approved restoration proposal (Approved Restoration Proposal). The Contractor must create, or cause to be created, detailed Shop Drawings.

**A.13.1 Consultation with City Departments.** The Contractor and the Contractor's sub-consultants must work with the City and other City consultants and contractors, as directed by the Project Manager, in order to ensure that the Contractor's Shop Drawings meet the City's requirements for fabrication of the Restoration Project.

**A.13.2 Reserved.**

**A.13.3 Review Process for Shop Drawings.** The Project Manager and other members of City staff may review the Shop Drawings, and require that the Contractor make modifications before permitting their submission to the Reviewing Bodies. The Contractor agrees to address the Project Manager's and City staff members' comments and modification requirements prior to submitting it to the Reviewing Bodies for approval. The Reviewing Bodies will review and make recommendations about the Shop Drawings. The Reviewing Bodies may recommend approval, approval with

conditions, or disapproval of the Shop Drawings. In the event that the Reviewing Bodies recommend disapproval, or approval with conditions, the Contractor, upon written notification from the Project Manager, must respond to the Reviewing Bodies' comments Project Manager for review. The Reviewing Bodies will review the revised Shop Drawings and make additional recommendations until the Shop Drawings are approved by the Reviewing Bodies.

**A.13.3.1 Notice of Approval for Shop Drawings.** If Shop Drawings are necessary as described above for the Approved Restoration Proposal, then the Contractor must not proceed with work on the Scope of Services further than the Shop Drawings until the Project Manager has issued the Contractor a notice of approval for the Shop Drawings.

**A.14 Fabrication.** The Contractor must fabricate the Restoration Project in substantial conformity with the approved Final Restoration Proposal and the approved Shop Drawings.

**A.14.1 Unidentified Design Specifications.** The parties recognize and agree that certain specifications regarding the artwork, including, but not limited to, the size, color, material (including grade of the material), and other elements may not be identified in either the Approved Final Restoration Proposal or the approved Shop Drawings. To the extent that any specification for the Restoration Project is not identified in the Approved Final Restoration Proposal or the approved Shop Drawings, the Contractor must seek the Project Manager's prior approval of the specification before commencing or continuing with fabrication of the Restoration Project.

**A.14.1.1 Contractor's Right to Make Adjustments.** The parties recognize that the shift in scale from drawings and models to a full-scale realization may require adjustments. The Contractor reserves the right to make minor adjustments to the Restoration Project as the Contractor deems necessary, with prior written notice to Project Manager and City.

**A.14.1.1.1 Adjustments Requiring Approval.** In no event may an adjustment increase the total contract not to exceed amount specified in Article 3.1 of the Consulting Agreement, to which this exhibit is attached as Exhibit A, without prior written approval by the Project Manager. Nor may the Contractor make an adjustment, which requires a modification of the approved Shop Drawings without the prior written approval of the Project Manager.

**A.14.1.2 Material Deviation.** Any material deviation from the Approved Shop Drawings in the scope, design, color, size, material, utility, and support requirements, texture, or location of the Restoration Project, must be approved in writing and in advance by the Project Manager before the Contractor proceeds with completion of the Restoration Project.

**A.14.1.2.1 Material Deviation Further Defined.** Without limiting the generality of the foregoing, material deviation also includes any change from the Approved Artwork Shop Drawings, which affects the fabrication, delivery schedule, installation, maintenance, or operation of the Restoration Project.

**A.14.2 Fabrication Progress Report.** The Contractor must submit to the Project Manager a progress report related to the fabrication of Restoration Project, Schedule of Work (Fabrication Progress Report). The Fabrication Progress Report must include a description of the work completed, no fewer than 5 digital images of the fabrication progress and the work completed on the Restoration Project measuring at least 300 dpi in JPG or RAW format, the percentage of work completed, and the expected completion date for remaining work. Within 15 days of receipt of the Contractor's progress report, the Project Manager will issue a notice of defects, or a notice to proceed with completion of Restoration Project fabrication.

**A.14.3 Notice of Fabrication Completion.** Upon completion of the artwork fabrication and prior to transportation of the Restoration Project to the site for installation, the Contractor must issue the Project Manager a notice of fabrication completion. Within 15 days of receipt of the Contractor's notice of fabrication completion, the Project Manager will issue the Contractor either a notice of defects or a notice to proceed with transport.

**A.14.4 Notice to Proceed with Transport.** Upon receipt of the City's notice to proceed with transport, the Contractor must transport the Restoration Project to the site. The Contractor must coordinate with the Project Manager regarding the time and place for delivery of the Restoration Project. The Contractor must not proceed with work on the Scope of Services further than the notice of fabrication completion until the Project Manager has issued the Contractor a notice to proceed with transport.

**A.14.5 Notice of Restoration Project Delivery.** The Contractor must issue the Project Manager a notice of Restoration Project delivery when the Restoration Project arrives at the site. Within 15 days of receipt of the Contractor's notice of Restoration Project delivery, the Project Manager will issue the Contractor either a notice of defects or a notice to proceed with consultation during installation.

**A.15 Consult During Installation.** The Contractor must be responsible for consulting on the installation of the Restoration Project by City at the site, including without limitation, consulting with other City consultants and contractors, when applicable.

**A.15.1 Site Visits.** The Contractor must make site visits during installation of the Restoration Project as directed by the Project Manager.

**A.15.2 Personal Safety.** The Contractor must wear all required personal protective equipment, as specified by the City, including safety vest, OSHA-approved hardhat, and safety glasses.

**A.15.3 Public Safety.** If during the course of the Restoration Project installation, the City determines, in its sole discretion, that the Restoration Project must be modified in order to preserve public safety, the City will have the authority to require the Contractor to consult on such modifications to address the public safety issues.

**A.15.4 Notice of Restoration Project Completion.** Upon delivery of the Restoration Project to the, the Contractor must issue the Project Manager a notice of Restoration Project completion.

**A.16 Reserved.**

**A.17 Documentation.** As soon as possible following the completion of the artwork installation, the Contractor must supply the City with no fewer than 20 digital images of the artwork, measuring at least 300 dpi in JPG or RAW format, which are accurate in color and detail, and fully representative of each element of the artwork in its context. The parties agree that the digital images will be placed on file with the City.

**A.18 Reserved.**

**A.19 Notice of Restoration Project Acceptance.** Upon the City's receipt and approval of the notice of Restoration Project completion and digital image documentation, the City will issue the Contractor a notice of Restoration Project acceptance. City is the owner once the Restoration Project is complete and upon City's receipt and approval of the Notice of Restoration Project Acceptance.

**A.20 Risk of Loss.** Until the Contractor receives the notice of Restoration Project acceptance from the City, any theft of, damage or vandalism to, or acts of God or nature affecting the Restoration Project, are the Contractor's responsibility, including, but not limited to, any loss occurring during the fabrication, storage, transportation, or delivery of the Restoration Project. Notwithstanding the foregoing, the Contractor is not responsible for any damage to the Restoration Project arising from the sole negligence or willful misconduct of the City, its agents, employees, representatives, and contractors.

**A.21 Errors and Omissions.** The City's acceptance of the Restoration Project will not release the Contractor of the responsibility for the correction of errors or omissions in the Approved Shop Drawings or the Restoration Project, including any errors or omissions which arise from the Contractor's errors or omissions, or the errors and omissions of the Contractor's employees, agents, representatives, or subconsultants regardless of whether these errors or omissions were the result of unforeseen circumstances at the time of development or approval.

## **EXHIBIT B**

### **ADDITIONAL PROVISIONS**

#### **B.1 Reserved.**

**B.2 Artist's Representations and Warranties.** The Contractor represents and warrants that: the Restoration Project is being performed faithful to the original artwork by the late Rossie Wade; the Contractor has not sold, assigned, transferred, licensed, granted, encumbered, or utilized the Restoration Project any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to the Consulting Agreement; the Restoration Project are free and clear of any liens from any source whatsoever; all Services created or performed by the Contractor under the Consulting Agreement, whether created by the Contractor alone or in collaboration with others, is wholly original with the Contractor and does not infringe upon or violate the rights of any third party; the Contractor has the full power to enter into and perform the Consulting Agreement and to make the grant of rights contained in the Consulting Agreement; and all services performed hereunder will be performed in accordance with all applicable rules, policies, laws, regulations, and ordinances, and with all necessary care, skill, and diligence.

**B.2.1 Defects in Workmanship.** The Contractor represents and warrants that all work by the Contractor and Contractor's sub-consultants will be performed in accordance with professional standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Restoration Project) for one year after the date of final acceptance by the City.

**B.2.2 Inherent Defects.** If within two years from the date the artwork is formally accepted, the City observes any breach of warranty that is curable by the Contractor, the Contractor must, at the request of the City, cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to the City. The City must give notice to the Contractor of such breach with reasonable promptness.

**B.2.3 Breach of Warranty.** If, within one year from the date the Restoration Project is formally accepted, the City observes a breach of warranty that is not curable by the Contractor, the Contractor is responsible for reimbursing the City for damages, expenses, and loss incurred by the City as a result of the breach. However, if the Contractor disclosed the risk of this breach, and the City, through the Restoration Project proposal review and approval process outlined in **Exhibit A** to the Consulting Agreement, accepted that it may occur, it will not be deemed a breach for purposes of the Consulting Agreement.

**B.2.4 Hazardous Materials.** The Contractor represents and warrants that the Restoration Project and the materials used are not currently known to be hazardous or potentially hazardous to any plant life, animal life, human life, or natural ecosystem.

**B.2.5 Public Safety.** The Contractor represents and warrants that the Restoration Project will not constitute any threat to the safety of persons or property when used in the manner for which it is designed.

**B.2.5.1 Adjustments to Eliminate Hazards.** The Contractor agrees to cooperate with the City in making or permitting adjustments to the Restoration Project if necessary to eliminate hazards which become apparent after the Restoration Project is accepted by the City. The Contractor will be notified in writing when an adjustment is necessary and the City will consult with the Contractor.

**B.2.6 Reserved.**

**B.2.7 Acceptable Standard for Display.** Contractor represents and warrants that: general routine cleaning and repair of the Restoration Project and any associated working parts and equipment will maintain the Restoration Project within an acceptable standard for public display; foreseeable exposure to the elements and general wear and tear will cause the Restoration Project to experience only minor repairable damages and will not cause the Restoration Project to fall below an acceptable standard for public display; with general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Restoration Project will not experience irreparable conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading, and peeling; and to the extent the Restoration Project incorporate products covered by a manufacturer's warranty, the Contractor must provide copies of such warranties to the City.

**B.3 Ownership of Documents.** Copies of designs, plans, specifications, reports, documentation, and other informational materials, whether written or readable by machine, originated or prepared for the City pursuant to the Consulting Agreement, will become the property of the City. The Contractor must deliver such documents to the City whenever reasonably requested to do so by the City.

**B.3.1 Use by City.** The Contractor agrees that the City may use the documents and materials submitted by the Contractor for purposes related to the development, review, and approval of the Restoration Project proposal.

**B.4 Reserved.**

**B.5 Reproduction Rights.** The Contractor must not make any additional exact-duplicate, two or three-dimensional, reproductions of the final Restoration Project, nor may the Contractor grant permission to others to do so except with the written permission of the City.

**B.5.1 Contractor Acknowledgment of No Rights to the Restoration Project and City's Right to Reproduce.** The Contractor agrees and understands that Contractor has no rights of any kind to the Restoration Project, including but not



limited to, rights under the Visual Artists Rights Act of 1990 or California Civil Code section 987, and to the extent Contractor may have any such rights, Contractor fully and completely waives them to the fullest extent possible. Furthermore, City may reproduce the Restoration Project for any and all purposes including, but not limited to, commercial and noncommercial City educational, public relations, tourism, and arts promotional purposes including displaying the Restoration Project, reprinting the Restoration Project, lending the Restoration Project, reproducing or preparing photographs, other two-dimensional reproductions, or digital reproductions of the Restoration Project, and displaying, distributing, transmitting such reproductions or images to the general public by any available means. Such reproductions and transmissions may include magazines, books, newspapers, journals, brochures and pamphlets, exhibition catalogues, films, television, video, websites, slides, negatives, prints and electronic media, DVD, CD, computerized retrieval systems, and all means or methods now known or hereafter invented in connection with City activities. In addition, City may authorize others to reproduce the Restoration Project through separate agreements that duly authorize such reproduction.

**B.6 Acknowledging the City.** The Contractor must use the Contractor's best efforts in any public showing, or on a résumé, to give acknowledgment to the City in substantially the following credit line: "A restoration project by the City of San Diego for the Civic Art Collection in partnership with the San Diego College of Continuing Education, funded in part by the State of California."

**B.7 Publicity.** The City will work in partnership with the Contractor to develop a marketing plan for media press releases, social media and newsletter content. Upon approval of both parties, Contractor may use the plan to promote the Project through their social media channels, newsletters, and other college or community communications.

**B.7.1 Plaque.** The Contractor must design and fabricate a steel plaque approximately 18 inches x 18 inches in size. The final dimensions and text of the plaque are to be confirmed by the City, in collaboration with the Contractor, before fabrication begins. The City will install the plaque at the site. The plaque must acknowledge the City and the Contractor, in addition to the information provided by the City related to the restoration project funder, the daughters of Rossie Wade, the community, and artwork information.

**B.8 through B.13 Reserved.**

**B.14 Sub-consultants: Ownership of Documents.** The Contractor must require each sub-consultant to agree that copies of designs, plans, specifications, reports, documentation, and other informational materials, whether written or readable by machine, originated or prepared for the City pursuant to the Consulting Agreement will become the property of the City. The Contractor or sub-consultant must deliver such documents to the City whenever reasonably requested to do so by the City. This language must be in contracts between the Contractor and any subconsultants.

**B.15 through B.16 Reserved.**

# EXHIBIT C



**THE CITY OF SAN DIEGO**

**GENERAL CONTRACT TERMS AND PROVISIONS**

**APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS**

## **ARTICLE I SCOPE AND TERM OF CONTRACT**

**1.1 Scope of Contract.** The scope of contract between the City and a provider of goods and/or services (Contractor) is described in the Contract Documents. The Contract Documents are comprised of the Request for Proposal, Invitation to Bid, or other solicitation document (Solicitation); the successful bid or proposal; the letter awarding the contract to Contractor; the City's written acceptance of exceptions or clarifications to the Solicitation, if any; and these General Contract Terms and Provisions.

**1.2 Effective Date.** A contract between the City and Contractor (Contract) is effective on the last date that the contract is signed by the parties and approved by the City Attorney in accordance with Charter section 40. Unless otherwise terminated, this Contract is effective until it is completed or as otherwise agreed upon in writing by the parties, whichever is the earliest. A Contract term cannot exceed five (5) years unless approved by the City Council by ordinance.

**1.3 Contract Extension.** The City may, in its sole discretion, unilaterally exercise an option to extend the Contract as described in the Contract Documents. In addition, the City may, in its sole discretion, unilaterally extend the Contract on a month-to-month basis following contract expiration if authorized under Charter section 99 and the Contract Documents. Contractor shall not increase its pricing in excess of the percentage increase described in the Contract.

## **ARTICLE II CONTRACT ADMINISTRATOR**

**2.1 Contract Administrator.** The Purchasing Agent or designee is the Contract Administrator for purposes of this Contract, and has the responsibilities described in this Contract, in the San Diego Charter, and in Chapter 2, Article 2, Divisions 5, 30, and 32.

**2.1.1 Contractor Performance Evaluations.** The Contract Administrator will evaluate Contractor's performance as often as the Contract Administrator deems necessary throughout the term of the contract. This evaluation will be based on criteria including the quality of goods or services, the timeliness of performance, and adherence to applicable laws, including prevailing wage and living wage. City will provide Contractors who receive an unsatisfactory rating with a copy of the evaluation and an opportunity to respond. City may consider final evaluations, including Contractor's response, in evaluating future proposals and bids for contract award.

**2.2 Notices.** Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the Purchasing Agent. Proper notice is effective on the date of personal delivery or five (5) days after deposit in a United States postal mailbox unless provided otherwise in the Contract. Notices to the City shall be sent to:

Purchasing Agent  
City of San Diego, Purchasing and Contracting Division  
1200 3rd Avenue, Suite 200  
San Diego, CA 92101-4195

### **ARTICLE III COMPENSATION**

**3.1 Manner of Payment.** Contractor will be paid monthly, in arrears, for goods and/or services provided in accordance with the terms and provisions specified in the Contract.

**3.2 Invoices.**

**3.2.1 Invoice Detail.** Contractor's invoice must be on Contractor's stationary with Contractor's name, address, and remittance address if different. Contractor's invoice must have a date, an invoice number, a purchase order number, a description of the goods or services provided, and an amount due.

**3.2.2 Service Contracts.** Contractor must submit invoices for services to City by the 10<sup>th</sup> of the month following the month in which Contractor provided services. Invoices must include the address of the location where services were performed and the dates in which services were provided.

**3.2.3 Goods Contracts.** Contractor must submit invoices for goods to City within seven days of the shipment. Invoices must describe the goods provided.

**3.2.4 Parts Contracts.** Contractor must submit invoices for parts to City within seven calendar (7) days of the date the parts are shipped. Invoices must include the manufacturer of the part, manufacturer's published list price, percentage discount applied in accordance with Pricing Page(s), the net price to City, and an item description, quantity, and extension.

**3.2.5 Extraordinary Work.** City will not pay Contractor for extraordinary work unless Contractor receives prior written authorization from the Contract Administrator. Failure to do so will result in payment being withheld for services. If approved, Contractor will include an invoice that describes the work performed and the location where the work was performed, and a copy of the Contract Administrator's written authorization.

**3.2.6 Reporting Requirements.** Contractor must submit the following reports using the City's web-based contract compliance portal. Incomplete and/or delinquent reports may cause payment delays, non-payment of invoice, or both. For questions, please view the City's online tutorials on how to utilize the City's web-based contract compliance portal.

**3.2.6.1 Monthly Employment Utilization Reports.** Contractor and Contractor's subcontractors and suppliers must submit Monthly Employment Utilization Reports by the fifth (5<sup>th</sup>) day of the subsequent month.

**3.2.6.2 Monthly Invoicing and Payments.** Contractor and Contractor's subcontractors and suppliers must submit Monthly Invoicing and Payment Reports by the fifth (5<sup>th</sup>) day of the subsequent month.

**3.3 Annual Appropriation of Funds.** Contractor acknowledges that the Contract term may extend over multiple City fiscal years, and that work and compensation under this Contract is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. This Contract may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by City Council.

**3.4 Price Adjustments.** Based on Contractor's written request and justification, the City may approve an increase in unit prices on Contractor's pricing pages consistent with the amount requested in the justification in an amount not to exceed the increase in the Consumer Price Index, San Diego Area, for All Urban Customers (CPI-U) as published by the Bureau of Labor Statistics, or 5.0%, whichever is less, during the preceding one year term. If the CPI-U is a negative number, then the unit prices shall not be adjusted for that option year (the unit prices will not be decreased). A negative CPI-U shall be counted against any subsequent increases in the CPI-U when calculating the unit prices for later option years. Contractor must provide such written request and justification no less than sixty days before the date in which City may exercise the option to renew the contract, or sixty days before the anniversary date of the Contract. Justification in support of the written request must include a description of the basis for the adjustment, the proposed effective date and reasons for said date, and the amount of the adjustment requested with documentation to support the requested change (e.g. CPI-U or 5.0%, whichever is less). City's approval of this request must be in writing.

## **ARTICLE IV SUSPENSION AND TERMINATION**

**4.1 City's Right to Suspend for Convenience.** City may suspend all or any portion of Contractor's performance under this Contract at its sole option and for its convenience for a reasonable period of time not to exceed six (6) months. City must first give ten (10) days' written notice to Contractor of such suspension. City will pay to Contractor a sum equivalent to the reasonable value of the goods and/or services satisfactorily provided up to the date of suspension. City may rescind the suspension prior to or at six (6) months by providing Contractor with written notice of the rescission, at which time Contractor would be required to resume performance in compliance with the terms and provisions of this Contract. Contractor will be entitled to an extension of time to complete performance under the Contract equal to the length of the suspension unless otherwise agreed to in writing by the Parties.

**4.2 City's Right to Terminate for Convenience.** City may, at its sole option and for its convenience, terminate all or any portion of this Contract by giving thirty (30) days' written notice of such termination to Contractor. The termination of the Contract shall be effective upon receipt of the notice by Contractor. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs otherwise); and (2) complete any and all additional work necessary for the orderly filing of

documents and closing of Contractor's affected performance under the Contract. After filing of documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or received by Contractor in performing this Contract, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Contract with regard to the affected performance.

**4.3 City's Right to Terminate for Default.** Contractor's failure to satisfactorily perform any obligation required by this Contract constitutes a default. Examples of default include a determination by City that Contractor has: (1) failed to deliver goods and/or perform the services of the required quality or within the time specified; (2) failed to perform any of the obligations of this Contract; and (3) failed to make sufficient progress in performance which may jeopardize full performance.

**4.3.1** If Contractor fails to satisfactorily cure a default within ten (10) calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

**4.3.2** If City terminates this Contract, in whole or in part, City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, equivalent goods or services and Contractor shall be liable to City for any excess costs. Contractor shall also continue performance to the extent not terminated.

**4.4 Termination for Bankruptcy or Assignment for the Benefit of Creditors.** If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to, or demand upon Contractor, terminate this Contract, and terminate each and every right of Contractor, and any person claiming rights by and through Contractor under this Contract.

#### **4.5 Contractor's Right to Payment Following Contract Termination.**

**4.5.1 Termination for Convenience.** If the termination is for the convenience of City an equitable adjustment in the Contract price shall be made. No amount shall be allowed for anticipated profit on unperformed services, and no amount shall be paid for an as needed contract beyond the Contract termination date.

**4.5.2 Termination for Default.** If, after City gives notice of termination for failure to fulfill Contract obligations to Contractor, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of City. In such event, adjustment in the Contract price shall be made as provided in Section 4.3.2. City's rights and remedies are in addition to any other rights and remedies provided by law or under this Contract.

**4.6 Remedies Cumulative.** City's remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which City may be lawfully entitled in case of any breach or threatened breach of any provision of this Contract.

## **ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS**

**5.1 Inspection and Acceptance.** The City will inspect and accept goods provided under this Contract at the shipment destination unless specified otherwise. Inspection will be made and acceptance will be determined by the City department shown in the shipping address of the Purchase Order or other duly authorized representative of City.

**5.2 Responsibility for Lost or Damaged Shipments.** Contractor bears the risk of loss or damage to goods prior to the time of their receipt and acceptance by City. City has no obligation to accept damaged shipments and reserves the right to return damaged goods, at Contractor's sole expense, even if the damage was not apparent or discovered until after receipt.

**5.3 Responsibility for Damages.** Contractor is responsible for all damage that occurs as a result of Contractor's fault or negligence or that of its' employees, agents, or representatives in connection with the performance of this Contract. Contractor shall immediately report any such damage to people and/or property to the Contract Administrator.

**5.4 Delivery.** Delivery shall be made on the delivery day specified in the Contract Documents. The City, in its sole discretion, may extend the time for delivery. The City may order, in writing, the suspension, delay or interruption of delivery of goods and/or services.

**5.5 Delay.** Unless otherwise specified herein, time is of the essence for each and every provision of the Contract. Contractor must immediately notify City in writing if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. City may terminate this Contract as provided herein if City, in its sole discretion, determines the delay is material.

**5.5.1** If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, City may allow Contractor to a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Contractor. This provision does not apply to a delay caused by Contractor's acts or omissions. Contractor is not entitled to an extension of time to perform if a delay is caused by Contractor's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof satisfactory to City of Contractor's inability to obtain materials, equipment, or labor, in which case City's approval must be in writing.

**5.6 Restrictions and Regulations Requiring Contract Modification.** Contractor shall immediately notify City in writing of any regulations or restrictions that may or will require Contractor to alter the material, quality, workmanship, or performance of the goods and/or services to be provided. City reserves the right to accept any such alteration, including any resulting reasonable price adjustments, or to cancel the Contract at no expense to the City.

**5.7 Warranties.** All goods and/or services provided under the Contract must be warranted by Contractor or manufacturer for at least twelve (12) months after acceptance by City, except automotive equipment. Automotive equipment must be warranted for a minimum of 12,000 miles or 12 months, whichever occurs first, unless otherwise stated in the Contract. Contractor is responsible to City for all warranty service, parts, and labor. Contractor is required to ensure that warranty work is performed at a facility acceptable to City and that services, parts, and labor are available and provided to meet City's schedules and deadlines. Contractor may establish a warranty service contract with an agency satisfactory to City instead of performing the warranty service itself. If Contractor is not an authorized service center and causes any damage to equipment being serviced, which results in the existing warranty being voided, Contractor will be liable for all costs of repairs to the equipment, or the costs of replacing the equipment with new equipment that meets City's operational needs.

**5.8 Industry Standards.** Contractor shall provide goods and/or services acceptable to City in strict conformance with the Contract. Contractor shall also provide goods and/or services in accordance with the standards customarily adhered to by an experienced and competent provider of the goods and/or services called for under this Contract using the degree of care and skill ordinarily exercised by reputable providers of such goods and/or services. Where approval by City, the Mayor, or other representative of City is required, it is understood to be general approval only and does not relieve Contractor of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.

**5.9 Records Retention and Examination.** Contractor shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Contract for five (5) years after receipt of final payment by City under this Contract. Contractor shall make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of City, including the Purchasing Agent or designee. Contractor shall make available all requested data and records at reasonable locations within City or County of San Diego at any time during normal business hours, and as often as City deems necessary. If records are not made available within the City or County of San Diego, Contractor shall pay City's travel costs to the location where the records are maintained and shall pay for all related travel expenses. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of the Contract. Contractor must include this provision in all subcontracts made in connection with this Contract.



**5.9.1** Contractor shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

**5.10 Quality Assurance Meetings.** Upon City's request, Contractor shall schedule one or more quality assurance meetings with City's Contract Administrator to discuss Contractor's performance. If requested, Contractor shall schedule the first quality assurance meeting no later than eight (8) weeks from the date of commencement of work under the Contract. At the quality assurance meeting(s), City's Contract Administrator will provide Contractor with feedback, will note any deficiencies in Contract performance, and provide Contractor with an opportunity to address and correct such deficiencies. The total number of quality assurance meetings that may be required by City will depend upon Contractor's performance.

**5.11 Duty to Cooperate with Auditor.** The City Auditor may, in his sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review Contractor's records to confirm contract compliance. Contractor shall make reasonable efforts to cooperate with Auditor's requests.

**5.12 Safety Data Sheets.** If specified by City in the solicitation or otherwise required by this Contract, Contractor must send with each shipment one (1) copy of the Safety Data Sheet (SDS) for each item shipped. Failure to comply with this procedure will be cause for immediate termination of the Contract for violation of safety procedures.

**5.13 Project Personnel.** Except as formally approved by the City, the key personnel identified in Contractor's bid or proposal shall be the individuals who will actually complete the work. Changes in staffing must be reported in writing and approved by the City.

**5.13.1 Criminal Background Certification.** Contractor certifies that all employees working on this Contract have had a criminal background check and that said employees are clear of any sexual and drug related convictions. Contractor further certifies that all employees hired by Contractor or a subcontractor shall be free from any felony convictions.

**5.13.2 Photo Identification Badge.** Contractor shall provide a company photo identification badge to any individual assigned by Contractor or subcontractor to perform services or deliver goods on City premises. Such badge must be worn at all times while on City premises. City reserves the right to require Contractor to pay fingerprinting fees for personnel assigned to work in sensitive areas. All employees shall turn in their photo identification badges to Contractor upon completion of services and prior to final payment of invoice.

**5.14 Standards of Conduct.** Contractor is responsible for maintaining standards of employee competence, conduct, courtesy, appearance, honesty, and integrity satisfactory to the City.

**5.14.1 Supervision.** Contractor shall provide adequate and competent supervision at all times during the Contract term. Contractor shall be readily available to meet with the City. Contractor shall provide the telephone numbers where its representative(s) can be reached.

**5.14.2 City Premises.** Contractor's employees and agents shall comply with all City rules and regulations while on City premises.

**5.14.3 Removal of Employees.** City may request Contractor immediately remove from assignment to the City any employee found unfit to perform duties at the City. Contractor shall comply with all such requests.

**5.15 Licenses and Permits.** Contractor shall, without additional expense to the City, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to Contract performance. This includes, but is not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the work.

**5.16 Contractor and Subcontractor Registration Requirements.** Prior to the award of the Contract or Task Order, Contractor and Contractor's subcontractors and suppliers must register with the City's web-based vendor registration and bid management system. The City may not award the Contract until registration of all subcontractors and suppliers is complete. In the event this requirement is not met within the time frame specified by the City, the City reserves the right to rescind the Contract award and to make the award to the next responsive and responsible proposer of bidder.

## **ARTICLE VI INTELLECTUAL PROPERTY RIGHTS**

**6.1 Rights in Data.** If, in connection with the services performed under this Contract, Contractor or its employees, agents, or subcontractors, create artwork, audio recordings, blueprints, designs, diagrams, documentation, photographs, plans, reports, software, source code, specifications, surveys, system designs, video recordings, or any other original works of authorship, whether written or readable by machine (Deliverable Materials), all rights of Contractor or its subcontractors in the Deliverable Materials, including, but not limited to publication, and registration of copyrights, and trademarks in the Deliverable Materials, are the sole property of City. Contractor, including its employees, agents, and subcontractors, may not use any Deliverable Material for purposes unrelated to Contractor's work on behalf of the City without prior written consent of City. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City, without the prior written consent of the City.

**6.2 Intellectual Property Rights Assignment.** For no additional compensation, Contractor hereby assigns to City all of Contractor's rights, title, and interest in and to the content of the Deliverable Materials created by Contractor or its employees, agents, or subcontractors, including copyrights, in connection with the services performed under this Contract. Contractor

shall promptly execute and deliver, and shall cause its employees, agents, and subcontractors to promptly execute and deliver, upon request by the City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials. Contractor also shall cooperate and assist in the prosecution of any action or opposition proceeding involving such intellectual property rights and any adjudication of those rights.

**6.3 Contractor Works.** Contractor Works means tangible and intangible information and material that: (a) had already been conceived, invented, created, developed or acquired by Contractor prior to the effective date of this Contract; or (b) were conceived, invented, created, or developed by Contractor after the effective date of this Contract, but only to the extent such information and material do not constitute part or all of the Deliverable Materials called for in this Contract. All Contractor Works, and all modifications or derivatives of such Contractor Works, including all intellectual property rights in or pertaining to the same, shall be owned solely and exclusively by Contractor.

**6.4 Subcontracting.** In the event that Contractor utilizes a subcontractor(s) for any portion of the work that comprises the whole or part of the specified Deliverable Materials to the City, the agreement between Contractor and the subcontractor shall include a statement that identifies the Deliverable Materials as a “works for hire” as described in the United States Copyright Act of 1976, as amended, and that all intellectual property rights in the Deliverable Materials, whether arising in copyright, trademark, service mark or other forms of intellectual property rights, belong to and shall vest solely with the City. Further, the agreement between Contractor and its subcontractor shall require that the subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to City, all titles, rights and interests in and to the Deliverable Materials, including all copyrights, trademarks and other intellectual property rights. City shall have the right to review any such agreement for compliance with this provision.

**6.5 Intellectual Property Warranty and Indemnification.** Contractor represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this Contract are either original, or not encumbered, and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Contractor to produce, at Contractor’s own expense, new non-infringing materials, deliverables or works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Contractor further agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages, of any type, alleging or threatening that any Deliverable Materials, supplies, equipment, services or works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claim of Infringement). If a Third Party Claim

of Infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

**6.6 Software Licensing.** Contractor represents and warrants that the software, if any, as delivered to City, does not contain any program code, virus, worm, trap door, back door, time or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of licensor-selected conditions or manually on command. Contractor further represents and warrants that all third party software, delivered to City or used by Contractor in the performance of the Contract, is fully licensed by the appropriate licensor.

**6.7 Publication.** Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City without prior written consent from the City.

**6.8 Royalties, Licenses, and Patents.** Unless otherwise specified, Contractor shall pay all royalties, license, and patent fees associated with the goods that are the subject of this solicitation. Contractor warrants that the goods, materials, supplies, and equipment to be supplied do not infringe upon any patent, trademark, or copyright, and further agrees to defend any and all suits, actions and claims for infringement that are brought against the City, and to defend, indemnify and hold harmless the City, its elected officials, officers, and employees from all liability, loss and damages, whether general, exemplary or punitive, suffered as a result of any actual or claimed infringement asserted against the City, Contractor, or those furnishing goods, materials, supplies, or equipment to Contractor under the Contract.

## **ARTICLE VII INDEMNIFICATION AND INSURANCE**

**7.1 Indemnification.** To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any goods provided or performance of services under this Contract by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

**7.2 Insurance.** Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or

in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors.

Contractor shall provide, at a minimum, the following:

**7.2.1 Commercial General Liability.** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

**7.2.2 Commercial Automobile Liability.** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

**7.2.3 Workers' Compensation.** Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

**7.2.4 Professional Liability (Errors and Omissions).** For consultant contracts, insurance appropriate to Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

**7.2.5 Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:

**7.2.5.1 Additional Insured Status.** The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

**7.2.5.2 Primary Coverage.** For any claims related to this contract, Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

**7.2.5.3 Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

**7.2.5.4 Waiver of Subrogation.** Contractor hereby grants to City a waiver of any right to subrogation which the Workers' Compensation insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

**7.2.5.5 Claims Made Policies (applicable only to professional liability).** The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

**7.3 Self Insured Retentions.** Self-insured retentions must be declared to and approved by City. City may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

**7.4 Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to City.

City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

**7.5 Verification of Coverage.** Contractor shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**7.6 Special Risks or Circumstances.** City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**7.7 Additional Insurance.** Contractor may obtain additional insurance not required by this Contract.

**7.8 Excess Insurance.** All policies providing excess coverage to City shall follow the form of the primary policy or policies including but not limited to all endorsements.

**7.9 Subcontractors.** Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as the CG 20 38 04 13 endorsement.

## **ARTICLE VIII BONDS**

**8.1 Payment and Performance Bond.** Prior to the execution of this Contract, City may require Contractor to post a payment and performance bond (Bond). The Bond shall guarantee Contractor's faithful performance of this Contract and assure payment to contractors, subcontractors, and to persons furnishing goods and/or services under this Contract.

**8.1.1 Bond Amount.** The Bond shall be in a sum equal to twenty-five percent (25%) of the Contract amount, unless otherwise stated in the Specifications. City may file a claim against the Bond if Contractor fails or refuses to fulfill the terms and provisions of the Contract.

**8.1.2 Bond Term.** The Bond shall remain in full force and effect at least until complete performance of this Contract and payment of all claims for materials and labor, at which time it will convert to a ten percent (10%) warranty bond, which shall remain in place until the end of the warranty periods set forth in this Contract. The Bond shall be renewed annually, at least sixty (60) days in advance of its expiration, and Contractor shall provide timely proof of annual renewal to City.

**8.1.3 Bond Surety.** The Bond must be furnished by a company authorized by the State of California Department of Insurance to transact surety business in the State of California and which has a current A.M. Best rating of at least "A-, VIII."

**8.1.4 Non-Renewal or Cancellation.** The Bond must provide that City and Contractor shall be provided with sixty (60) days' advance written notice in the event of non-renewal, cancellation, or material change to its terms. In the event of non-renewal, cancellation, or material change to the Bond terms, Contractor shall provide City with evidence of the new source of surety within twenty-one (21) calendar days after the date of the notice of non-renewal, cancellation, or material change. Failure to maintain the Bond, as required herein, in full force

and effect as required under this Contract, will be a material breach of the Contract subject to termination of the Contract.

**8.2 Alternate Security.** City may, at its sole discretion, accept alternate security in the form of an endorsed certificate of deposit, a money order, a certified check drawn on a solvent bank, or other security acceptable to the Purchasing Agent in an amount equal to the required Bond.

## **ARTICLE IX CITY-MANDATED CLAUSES AND REQUIREMENTS**

**9.1 Contractor Certification of Compliance.** By signing this Contract, Contractor certifies that Contractor is aware of, and will comply with, these City-mandated clauses throughout the duration of the Contract.

**9.1.1 Drug-Free Workplace Certification.** Contractor shall comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Contract by this reference.

**9.1.2 Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations:** Contractor shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City's ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor's agreement to abide by the provisions of the City's Council Policy and any applicable access laws and regulations.

### **9.1.3 Non-Discrimination Requirements.**

**9.1.3.1 Compliance with City's Equal Opportunity Contracting Program (EOCP).** Contractor shall comply with City's EOCP Requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Prime Contractor liable for any discriminatory practice of its subcontractors.

**9.1.3.2 Non-Discrimination Ordinance.** Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result



in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

**9.1.3.3 Compliance Investigations.** Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

**9.1.4 Equal Benefits Ordinance Certification.** Unless an exception applies, Contractor shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (SDMC). Failure to maintain equal benefits is a material breach of the Contract.

**9.1.5 Contractor Standards.** Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

**9.1.6 Noise Abatement.** Contractor shall operate, conduct, or construct without violating the City's Noise Abatement Ordinance codified in the SDMC.

**9.1.7 Storm Water Pollution Prevention Program.** Contractor shall comply with the City's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of City regardless of location.

Contractor shall comply with the City's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended.

Contractor shall comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

**9.1.8 Service Worker Retention Ordinance.** If applicable, Contractor shall comply with the Service Worker Retention Ordinance (SWRO) codified in the SDMC.

**9.1.9 Product Endorsement.** Contractor shall comply with Council Policy 000-41 which requires that other than listing the City as a client and other limited endorsements, any advertisements, social media, promotions or other marketing referring to the City as a user of a product or service will require prior written approval of the Mayor or designee. Use of the City Seal or City logos is prohibited.

**9.1.10 Business Tax Certificate.** Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before a Contract is executed.

**9.1.11 Equal Pay Ordinance.** Unless an exception applies, Contractor shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. Contractor shall certify in writing that it will comply with the requirements of the EPO.

**9.1.11.1 Contractor and Subcontract Requirement.** The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of a Contractor to the same extent as it would apply to that Contractor. Any Contractor subject to the Equal Pay Ordinance shall require all of its subcontractors to certify compliance with the Equal Pay Ordinance in its written subcontracts.

## **ARTICLE X CONFLICT OF INTEREST AND VIOLATIONS OF LAW**

**10.1 Conflict of Interest Laws.** Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, *et. seq.* and 81000, *et. seq.*, and the Ethics Ordinance, codified in the SDMC. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary documents to City.

**10.2 Contractor's Responsibility for Employees and Agents.** Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

**10.3 Contractor's Financial or Organizational Interests.** In connection with any task, Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

**10.4 Certification of Non-Collusion.** Contractor certifies that: (1) Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or

solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

**10.5 Hiring City Employees.** This Contract shall be unilaterally and immediately terminated by City if Contractor employs an individual who within the twelve (12) months immediately preceding such employment did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the selection of Contractor.

## **ARTICLE XI DISPUTE RESOLUTION**

**11.1 Mediation.** If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and City shall use mandatory non-binding mediation before having recourse in a court of law.

**11.2 Selection of Mediator.** A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Contract, if possible.

**11.3 Expenses.** The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

**11.4 Conduct of Mediation Sessions.** Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

**11.5 Mediation Results.** Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

## **ARTICLE XII MANDATORY ASSISTANCE**

**12.1 Mandatory Assistance.** If a third party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the City under a Contract, Contractor, its agents, officers, and employees agree to assist in resolving the dispute or litigation upon City's request. Contractor's assistance includes, but is not limited to, providing professional consultations,

attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

**12.2 Compensation for Mandatory Assistance.** City will compensate Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and employees, Contractor shall reimburse City for all fees paid to Contractor, its agents, officers, and employees for Mandatory Assistance.

**12.3 Attorneys' Fees Related to Mandatory Assistance.** In providing City with dispute or litigation assistance, Contractor or its agents, officers, and employees may incur expenses and/or costs. Contractor agrees that any attorney fees it may incur as a result of assistance provided under Section 12.2 are not reimbursable.

## **ARTICLE XIII MISCELLANEOUS**

**13.1 Headings.** All headings are for convenience only and shall not affect the interpretation of this Contract.

**13.2 Non-Assignment.** Contractor may not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due under this Contract, without City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the City's sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

**13.3 Independent Contractors.** Contractor and any subcontractors employed by Contractor are independent contractors and not agents of City. Any provisions of this Contract that may appear to give City any right to direct Contractor concerning the details of performing or providing the goods and/or services, or to exercise any control over performance of the Contract, shall mean only that Contractor shall follow the direction of City concerning the end results of the performance.

**13.4 Subcontractors.** All persons assigned to perform any work related to this Contract, including any subcontractors, are deemed to be employees of Contractor, and Contractor shall be directly responsible for their work.

**13.5 Covenants and Conditions.** All provisions of this Contract expressed as either covenants or conditions on the part of City or Contractor shall be deemed to be both covenants and conditions.

**13.6 Compliance with Controlling Law.** Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract

termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

**13.7 Governing Law.** The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

**13.8 Venue.** The venue for any suit concerning solicitations or the Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

**13.9 Successors in Interest.** This Contract and all rights and obligations created by this Contract shall be in force and effect whether or not any parties to the Contract have been succeeded by another entity, and all rights and obligations created by this Contract shall be vested and binding on any party's successor in interest.

**13.10 No Waiver.** No failure of either City or Contractor to insist upon the strict performance by the other of any covenant, term or condition of this Contract, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Contract, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Contract, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

**13.11 Severability.** The unenforceability, invalidity, or illegality of any provision of this Contract shall not render any other provision of this Contract unenforceable, invalid, or illegal.

**13.12 Drafting Ambiguities.** The parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms and conditions of this Contract, and the decision of whether to seek advice of legal counsel with respect to this Contract is the sole responsibility of each party. This Contract shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Contract.

**13.13 Amendments.** Neither this Contract nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of City and Contractor. Any alleged oral amendments have no force or effect. The Purchasing Agent must sign all Contract amendments.

**13.14 Conflicts Between Terms.** If this Contract conflicts with an applicable local, state, or federal law, regulation, or court order, applicable local, state, or federal law, regulation, or court order shall control. Varying degrees of stringency among the main body of this Contract, the exhibits or attachments, and laws, regulations, or orders are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Contract.

**13.15 Survival of Obligations.** All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Contract, as well as all continuing obligations indicated in this Contract, shall survive, completion and acceptance of performance and termination, expiration or completion of the Contract.

**13.16 Confidentiality of Services.** All services performed by Contractor, and any sub-contractor(s) if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Contractor, are for the sole use of City, its agents, and employees. Neither the documents nor their contents shall be released by Contractor or any subcontractor to any third party without the prior written consent of City. This provision does not apply to information that: (1) was publicly known, or otherwise known to Contractor, at the time it was disclosed to Contractor by City; (2) subsequently becomes publicly known through no act or omission of Contractor; or (3) otherwise becomes known to Contractor other than through disclosure by City.

**13.17 Insolvency.** If Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the Purchasing Agent and the Contract Administrator responsible for administering the Contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of City contract numbers and contracting offices for all City contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Contract.

**13.18 No Third Party Beneficiaries.** Except as may be specifically set forth in this Contract, none of the provisions of this Contract are intended to benefit any third party not specifically referenced herein. No party other than City and Contractor shall have the right to enforce any of the provisions of this Contract.

**13.19 Actions of City in its Governmental Capacity.** Nothing in this Contract shall be interpreted as limiting the rights and obligations of City in its governmental or regulatory capacity.

**EXHIBIT D**  
**CITY REQUIRED FORMS**

Contractor Standards Pledge of Compliances

Insurance Certificates with all endorsements

Taxpayer Identification Form W-9 (if not currently on file)

IRS Letter of Non-Profit 501(c) (3) Status

Living Wage Certification Form or Living Wage Exemption Form (if applicable)

•

## **EXHIBIT E COMPENSATION AND FEE SCHEDULE**

The following amounts shall be paid to the Contractor within 30 days of the City's receipt of an invoice from the Contractor indicating that the appropriate milestone as described below has been reached:

**Payment #1** - \$10,000 upon Contractor's receipt of the City's Notice to Proceed with the Restoration Project (Exhibit A, Section A.1);

**Payment #2** - \$20,000 upon receipt of the City's Notice of Approval for Final Restoration Proposal (Exhibit A, Section A.11.5.1.);

**Payment #3** - \$10,000 upon receipt of Contractor's Fabrication Progress Report (Exhibit A, Section A.14.2);

**Payment #4** - \$10,000 upon receipt of the City's Notice to proceed with transport (Exhibit A, Section A.14.4);

**Payment #5** - \$10,000 upon Contractor's receipt of City's Notice of Restoration Project Acceptance (Exhibit A, Section A.19).



## **EXHIBIT F SCHEDULE OF WORK**

The Contractor agrees to adhere to the following schedule:

**Final Restoration Proposal.** Submit Final Restoration Proposal for the review process (Exhibit A, Section A.11): May 31, 2025.

**Shop Drawings.** Submit Shop Drawings for the review process (Exhibit A, Section A.13): June 30, 2025.

**Notice of Fabrication Progress Report.** Submit Fabrication Progress Report to the Project Manager (Exhibit A, Section A.14.2): August 29, 2025.

**Notice of Fabrication Completion.** Submit Notice of Fabrication Completion to the Project Manager (Exhibit A, Section A.14.3): September 29, 2025.

**Notice of Restoration Project Completion.** Submit a Notice of Restoration Project Completion (Exhibit A, Section A.15.4): October 15, 2025.

**ADJUSTMENT OF SCHEDULE OF WORK:** The City reserves the right, in its sole judgment and discretion, to make any reasonable adjustments to the Schedule of Work.

NOTE: All work must be completed by the Agreement's expiration date stated in Section 2.2 of the Consulting Agreement.

**City of San Diego**  
**CONTRACTOR STANDARDS**  
**Pledge of Compliance**

The City of San Diego has adopted a Contractor Standards Ordinance (CSO) codified in section 22.3004 of the San Diego Municipal Code (SDMC). The City of San Diego uses the criteria set forth in the CSO to determine whether a contractor (bidder or proposer) has the capacity to fully perform the contract requirements and the business integrity to justify the award of public funds. This completed Pledge of Compliance signed under penalty of perjury must be submitted with each bid and proposal. If an informal solicitation process is used, the bidder must submit this completed Pledge of Compliance to the City prior to execution of the contract. All responses must be typewritten or printed in ink. If an explanation is requested or additional space is required, Contractors must provide responses on Attachment A to the Pledge of Compliance and sign each page. Failure to submit a signed and completed Pledge of Compliance may render a bid or proposal non-responsive. In the case of an informal solicitation or cooperative procurement, the contract will not be awarded unless a signed and completed Pledge of Compliance is submitted. A submitted Pledge of Compliance is a public record and information contained within will be available for public review except to the extent that such information is exempt from disclosure pursuant to applicable law.

By signing and submitting this form, the contractor is certifying, to the best of their knowledge, that the contractor and any of its Principals have not within a five (5) year period – preceding this offer, been convicted of or had a civil judgement rendered against them for commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) contract or subcontract.

“Principal” means an officer, director, owner, partner or a person having primary management or supervisory responsibilities within the firm. The Contractor shall provide immediate written notice to the Procurement Contracting Officer handling the solicitation, at any time prior to award should they learn that this Representations and Certifications was inaccurate or incomplete.

**This form contains 10 pages, additional information may be submitted as part of *Attachment A*.**

**A. BID/PROPOSAL/SOLICITATION TITLE:**

CONSULTING AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND SAN DIEGO CONTINUING EDUCATION FOUNDATION FOR ARTWORK RESTORATION SERVICES 40000048-25-F

**B. BIDDER/PROPOSER INFORMATION:**

San Diego Continuing Education Foundation

Legal Name	San Diego	DBA	
4343 Ocean View Blvd		CA	92113
Street Address	City	State	Zip
Dr. Tami Foy, CEO/Executive Director	(619) 650-9027	(619) 488-1160	
Contact Person, Title	Phone	Fax	

Provide the name, identity, and precise nature of the interest\* of all persons who are directly or indirectly involved\*\* in this proposed transaction (SDMC § 21.0103). Use additional pages if necessary.

\* The precise nature of the interest includes:

- the percentage ownership interest in a party to the transaction,
- the percentage ownership interest in any firm, corporation, or partnership that will receive funds from the transaction,
- the value of any financial interest in the transaction,
- any contingent interest in the transaction and the value of such interest should the contingency be satisfied, and
- any philanthropic, scientific, artistic, or property interest in the transaction.

\*\* Directly or indirectly involved means pursuing the transaction by:

- communicating or negotiating with City officers or employees,
- submitting or preparing applications, bids, proposals or other documents for purposes of contracting with the City, or
- directing or supervising the actions of persons engaged in the above activity.

Dr. Tina M. King	President
Name	Title/Position
San Diego, CA	San Diego College of Continuing Education
City and State of Residence	Employer (if different than Bidder/Proposer)
Artistic and Property Interest	
Interest in the transaction	

Jacqueline Sabanos	VP of Administrative Services
Name	Title/Position
San Diego, CA	San Diego College of Continuing Education
City and State of Residence	Employer (if different than Bidder/Proposer)
Artistic and Property Interest	
Interest in the transaction	

NA	NA
Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

NA	NA
Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

NA	NA
Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

NA	NA
Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

NA	NA
Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

  

NA	NA
Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

  

NA	NA
Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

### C. OWNERSHIP AND NAME CHANGES:

1. In the past five (5) years, has your firm changed its name?  
☐ Yes ☒ No

If **Yes**, use Attachment A to list all prior legal and DBA names, addresses, and dates each firm name was used. Explain the specific reasons for each name change.

2. Is your firm a non-profit?  
☒ Yes ☐ No

If **Yes**, attach proof of status to this submission.

3. In the past five (5) years, has a firm owner, partner, or officer operated a similar business?  
☐ Yes ☒ No

If **Yes**, use Attachment A to list names and addresses of all businesses and the person who operated the business. Include information about a similar business only if an owner, partner, or officer of your firm holds or has held a similar position in another firm.

### D. BUSINESS ORGANIZATION/STRUCTURE:

Indicate the organizational structure of your firm. Fill in only one section on this page. Use Attachment A if more space is required.

☒ **Corporation** Date incorporated: 07/21/2008 State of incorporation: California

List corporation's current officers: President: Neill Kovrig  
Vice Pres: Roma Weaver  
Secretary: Bill Grimes  
Treasurer: Mary LeDuc

Type of corporation: C ☒ Subchapter S ☐

Is the corporation authorized to do business in California: ☒ Yes ☐ No

If **Yes**, after what date: 07/21/2008

Is your firm a publicly traded corporation? ☐ Yes ☒ No

If **Yes**, how and where is the stock traded? \_\_\_\_\_

If **Yes**, list the name, title and address of those who own ten percent (10 %) or more of the corporation's stocks:

Not Applicable  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Do the President, Vice President, Secretary and/or Treasurer of your corporation have a third party interest or other financial interests in a business/enterprise that performs similar work, services or provides similar goods? ☐ Yes ☒ No

If **Yes**, please use Attachment A to disclose.

Please list the following:	Authorized	Issued	Outstanding
a. Number of voting shares:	_____	_____	_____
b. Number of nonvoting shares:	_____	_____	_____
c. Number of shareholders:			_____
d. Value per share of common stock:		Par	\$ _____
		Book	\$ _____
		Market	\$ _____

**Limited Liability Company** Date formed: \_\_\_\_\_ State of formation: \_\_\_\_\_

List the name, title and address of members who own ten percent (10%) or more of the company:

Not Applicable  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ **Partnership** Date formed: \_\_\_\_\_ State of formation: \_\_\_\_\_

List names of all firm partners:

Not Applicable  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ **Sole Proprietorship** Date started: \_\_\_\_\_

List all firms you have been an owner, partner or officer with during the past five (5) years. Do not include ownership of stock in a publicly traded company:

Not Applicable  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ **Joint Venture** Date formed: \_\_\_\_\_

List each firm in the joint venture and its percentage of ownership:

Not Applicable

**Note:** To be responsive, each member of a Joint Venture or Partnership must complete a separate *Contractor Standards form*.

**E. FINANCIAL RESOURCES AND RESPONSIBILITY:**

1. Is your firm preparing to be sold, in the process of being sold, or in negotiations to be sold?

☐ Yes ☒ No

If **Yes**, use Attachment A to explain the circumstances, including the buyer's name and principal contact information.

2. In the past five (5) years, has your firm been denied bonding?

☐ Yes ☒ No

If **Yes**, use Attachment A to explain specific circumstances; include bonding company name.

3. In the past five (5) years, has a bonding company made any payments to satisfy claims made against a bond issued on your firm's behalf or a firm where you were the principal?

☐ Yes ☒ No

If **Yes**, use Attachment A to explain specific circumstances.

4. In the past five (5) years, has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?

☐ Yes ☒ No

If **Yes**, use Attachment A to explain specific circumstances.

5. Within the last five years, has your firm filed a voluntary petition in bankruptcy, been adjudicated bankrupt, or made a general assignment for the benefit of creditors?

☐ Yes ☒ No

If **Yes**, use Attachment A to explain specific circumstances.

6. Are there any claims, liens or judgements that are outstanding against your firm?

☐ Yes ☒ No

If **Yes**, please use Attachment A to provide detailed information on the action.

7. Please provide the name of your principal financial institution for financial reference. By submitting a response to this Solicitation Contractor authorizes a release of credit information for verification of financial responsibility.

Name of Bank: Wells Fargo Bank

Point of Contact: Luis Leyva

Address: 1205 Rosecrans St. San Diego, CA 92106

Phone Number: (619) 226-1538

8. By submitting a response to a City solicitation, Contractor certifies that he or she has sufficient operating capital and/or financial reserves to properly fund the requirements identified in the solicitation. At City's request, Contractor will promptly provide to City

a copy of Contractor's most recent balance sheet and/or other necessary financial statements to substantiate financial ability to perform.

9. In order to do business in the City of San Diego, a current Business Tax Certificate is required. Business Tax Certificates are issued by the City Treasurer's Office. If you do not have one at the time of submission, one must be obtained prior to award.

Business Tax Certificate No.: NA Year Issued: \_\_\_\_\_

**F. PERFORMANCE HISTORY:**

1. In the past five (5) years, has your firm been found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for defaulting or breaching a contract with a government agency?

☐ Yes ☒ No

If **Yes**, use Attachment A to explain specific circumstances.

2. In the past five (5) years, has a public entity terminated your firm's contract for cause prior to contract completion?

☐ Yes ☒ No

If **Yes**, use Attachment A to explain specific circumstances and provide principal contact information.

3. In the past five (5) years, has your firm entered into any settlement agreement for any lawsuit that alleged contract default, breach of contract, or fraud with or against a public entity?

☐ Yes ☒ No

If **Yes**, use Attachment A to explain specific circumstances.

4. Is your firm currently involved in any lawsuit with a government agency in which it is alleged that your firm has defaulted on a contract, breached a contract, or committed fraud?

☐ Yes ☒ No

If **Yes**, use Attachment A to explain specific circumstances.

5. In the past five (5) years, has your firm, or any firm with which any of your firm's owners, partners, or officers is or was associated, been debarred, disqualified, removed, or otherwise prevented from bidding on or completing any government or public agency contract for any reason?

☐ Yes ☒ No

If **Yes**, use Attachment A to explain specific circumstances.

6. In the past five (5) years, has your firm received a notice to cure or a notice of default on a contract with any public agency?

☐ Yes ☒ No

If **Yes**, use Attachment A to explain specific circumstances and how the matter resolved.

7. Performance References:

Please provide a minimum of three (3) references familiar with work performed by your firm which was of a similar size and nature to the subject solicitation within the last five (5) years.

Please note that any references required as part of your bid/proposal submittal are in addition to those references required as part of this form.

Company Name: Optima Office, Inc.

Contact Name and Phone Number: 858.283.1234  
Contact Email: AR@optimaoffice.com  
Address: 5120 Shoreham Place, Suite 285, SD CA 92122  
Contract Date: May 1, 2025  
Contract Amount: \_\_\_\_\_  
Requirements of Contract: Accounting firm services

Company Name: Cengage Learning, Inc.  
Contact Name and Phone Number: Cheryl Fernald 866.441.5454 option 2  
Contact Email: ed2goaccounting@cengage.com  
Address: PO Box 936743 Atlanta, GA 31193-6743  
Contract Date: January 1, 2020  
Contract Amount: \_\_\_\_\_  
Requirements of Contract: Contract Ed Vendor  
Company Name: NA  
Contact Name and Phone Number: NA  
Contact Email: NA  
Address: NA  
Contract Date: \_\_\_\_\_  
Contract Amount: \_\_\_\_\_  
Requirements of Contract: NA

**G. COMPLIANCE:**

1. In the past five (5) years, has your firm or any firm owner, partner, officer, executive, or manager been criminally penalized or found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for violating any federal, state, or local law in performance of a contract, including but not limited to, laws regarding health and safety, labor and employment, permitting, and licensing laws?

☐ Yes ☒ No

If Yes, use Attachment A to explain specific circumstances surrounding each instance. Include the name of the entity involved, the specific infraction(s) or violation(s), dates of instances, and outcome with current status.

2. In the past five (5) years, has your firm been determined to be non-responsible by a public entity?

☐ Yes ☒ No



If **Yes**, use Attachment A to explain specific circumstances of each instance. Include the name of the entity involved, the specific infraction, dates, and outcome.

#### H. BUSINESS INTEGRITY:

1. In the past five (5) years, has your firm been convicted of or found liable in a civil suit for making a false claim or material misrepresentation to a private or public entity?

☐ **Yes** ☒ **No**

If **Yes**, use Attachment A to explain specific circumstances of each instance. Include the entity involved, specific violation(s), dates, outcome and current status.

2. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a crime, including misdemeanors, or been found liable in a civil suit involving the bidding, awarding, or performance of a government contract?

☐ **Yes** ☒ **No**

If **Yes**, use Attachment A to explain specific circumstances of each instance; include the entity involved, specific infraction(s), dates, outcome and current status.

3. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a federal, state, or local crime of fraud, theft, or any other act of dishonesty?

☐ **Yes** ☒ **No**

If **Yes**, use Attachment A to explain specific circumstances of each instance; include the entity involved, specific infraction(s), dates, outcome and current status.

4. Do any of the Principals of your firm have relatives that are either currently employed by the City or were employed by the City in the past five (5) years?

☐ **Yes** ☒ **No**

If **Yes**, please disclose the names of those relatives in Attachment A.

#### I. BUSINESS REPRESENTATION:

1. Are you a local business with a physical address within the County of San Diego?

☒ **Yes** ☐ **No**

2. Are you a certified Small and Local Business Enterprise certified by the City of San Diego?

☐ **Yes** ☒ **No**

Certification # \_\_\_\_\_ NA \_\_\_\_\_

3. Are you certified as any of the following:

- a. Disabled Veteran Business Enterprise Certification # \_\_\_\_\_
- b. Woman or Minority Owned Business Enterprise Certification # \_\_\_\_\_
- c. Disadvantaged Business Enterprise Certification # \_\_\_\_\_

#### J. WAGE COMPLIANCE:

In the past five (5) years, has your firm been required to pay back wages or penalties for failure to comply with the federal, state or local **prevailing, minimum, or living wage laws**? ☐ **Yes** ☒ **No** If **Yes**, use Attachment A to explain the specific circumstances of each instance. Include the entity involved, the specific infraction(s), dates, outcome, and current status.

By signing this Pledge of Compliance, your firm is certifying to the City that you will comply with the requirements of the Equal Pay Ordinance set forth in SDMC sections 22.4801 through 22.4809.

**K. STATEMENT OF SUBCONTRACTORS & SUPPLIERS:**

Please provide the names and information for all subcontractors and suppliers used in the performance of the proposed contract, and what portion of work will be assigned to each subcontractor. Subcontractors may not be substituted without the written consent of the City. Use Attachment A if additional pages are necessary. If no subcontractors or suppliers will be used, please write "Not Applicable."

Company Name: San Diego College of Continuing Education

Address: 4343 Ocean View Blvd, San Diego, CA 92113

Contact Name: Jacqueline Sabanos Phone: (619) 388-4884 Email: jsabanos@sdccd.edu

Contractor License No.: \_\_\_\_\_ DIR Registration No.: \_\_\_\_\_

40,000. — Sub-Contract Dollar Amount: \$ \_\_\_\_\_ (per year)

\$ 50,000. — (total contract term) Scope of work subcontractor will perform:

\_\_\_\_\_ Identify whether company is a  
subcontractor or supplier: ☐ ☐ ☐ ☐ ☐ ☐ Certification type (check all  
that apply): DBE DVBE ELBE MBE SLBE WBE Not Certified Contractor must provide valid ☒  
proof of certification with the response to the bid or proposal to receive participation credit.

Company Name: NA

Address: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Contractor License No.: \_\_\_\_\_ DIR Registration No.: \_\_\_\_\_

\_\_\_\_\_ Sub-Contract Dollar Amount: \$ \_\_\_\_\_ (per year)

\$ \_\_\_\_\_ (total contract term) Scope of work subcontractor will perform:

\_\_\_\_\_ Identify whether company is a  
subcontractor or supplier: ☐ ☐ ☐ ☐ ☐ ☐ Certification type (check all  
that apply): DBE DVBE ELBE MBE SLBE WBE Not Certified Contractor must provide valid  
proof of certification with the response to the bid or proposal to receive participation credit.

**L. STATEMENT OF AVAILABLE EQUIPMENT:**

A full inventoried list of all necessary equipment to complete the work specified may be a requirement of the bid/proposal submission.

By signing and submitting this form, the Contractor certifies that all required equipment included in this bid or proposal will be made available one week (7 days) before work shall commence. In instances where the required equipment is not owned by the Contractor, Contractor shall explain how the equipment will be made available before the commencement of work. The City of San

Diego reserves the right to reject any response, in its opinion, if the Contractor has not demonstrated he or she will be properly equipped to perform the work in an efficient, effective manner for the duration of the contract period.

**M. TYPE OF SUBMISSION:** This document is submitted as:

- ☐ Initial submission of *Contractor Standards Pledge of Compliance*
- ☐ Initial submission of *Contractor Standards Pledge of Compliance* as part of a Cooperative agreement
- ☒ Initial submission of *Contractor Standards Pledge of Compliance* as part of a Sole Source agreement
- ☐ Update of prior *Contractor Standards Pledge of Compliance* dated \_\_\_\_\_.

**Complete all questions and sign below.**

Under penalty of perjury under the laws of the State of California, I certify that I have read and understand the questions contained in this Pledge of Compliance, that I am responsible for completeness and accuracy of the responses contained herein, and that all information provided is true, full and complete to the best of my knowledge and belief. I agree to provide written notice to the Purchasing Agent within five (5) business days if, at any time, I learn that any portion of this Pledge of Compliance is inaccurate. Failure to timely provide the Purchasing Agent with written notice is grounds for Contract termination.

I, on behalf of the firm, further certify that I and my firm will comply with the following provisions of SDMC section 22.3004:

(a) I and my firm will comply with all applicable local, State and Federal laws, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.

(b) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of receiving notice that a government agency has begun an investigation of me or my firm that may result in a finding that I or my firm is or was not in compliance with laws stated in paragraph (a).

(c) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of a finding by a government agency or court of competent jurisdiction of a violation by the Contractor of laws stated in paragraph (a).

(d) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of becoming aware of an investigation or finding by a government agency or court of competent jurisdiction of a violation by a subcontractor of laws stated in paragraph (a).

(e) I and my firm will cooperate fully with the City during any investigation and to respond to a request for information within ten (10) working days.

**Failure to sign and submit this form with the bid/proposal shall make the bid/proposal non-responsive. In the case of an informal solicitation, the contract will not be awarded unless a signed and completed *Pledge of Compliance* is submitted.**

Dr. Tami Foy, CEO/Executive Director

Name and Title



Signature

06.11.2025

Date

**City of San Diego  
CONTRACTOR STANDARDS  
Attachment "A"**

Provide additional information in space below. Use additional Attachment "A" pages as needed. Each page must be signed. Print in ink or type responses and indicate question being answered.

Not Applicable

I have read the matters and statements made in this Contractor Standards Pledge of Compliance and attachments thereto and I know the same to be true of my own knowledge, except as to those matters stated upon information or belief and as to such matters, I believe the same to be true. I certify under penalty of perjury that the foregoing is true and correct.

Tami Foy, CEO/Executive Director

Print Name, Title



Signature

6/18/2025

Date