

AGREEMENT

BETWEEN THE

CITY OF SAN DIEGO



AND

**INGRAM LIBRARY
SERVICES LLC**

**TO PROVIDE SHELF-
READY PRINT BOOKS TO
THE LIBRARY
DEPARTMENT**

AGREEMENT

This Agreement (Agreement) is entered into by and between the City of San Diego, a municipal corporation (City), and Ingram Library Services LLC, a limited liability company (Contractor).

RECITALS

- A. City wishes to purchase from Contractor and Contractor desires to sell to City the goods (the "Goods") set forth in the Scope of Work and at the pricing set forth together in the attached Exhibit A. Exhibit A consists of the Scope of Work and the letter dated June 24, 2026 from Contractor to City setting forth pricing.
- B. City and Contractor (collectively, the "Parties") wish to enter into an agreement whereby City will retain Contractor to provide the Goods.
- C. The City of San Diego's Library Department, otherwise known as the San Diego Public Library ("SDPL") requires shelf-ready print books that cannot just be purchased from a regular bookstore.
- D. In order for print books to be shelf-ready, a vendor must provide book covers, barcodes, and RFID tags so that the books can be circulated throughout the library system. The vendor must also be capable of providing ordering through electronic data exchange (EDI) that is compatible with the Library's integrated library system (ILS) in order to circulate books and pay invoices in a timely manner.
- E. The SDPL does not have staff that perform these functions because the City's Business Process Reengineering process in 2007 determined that it was in the best interest of the City to have vendors provide shelf-ready books and staff positions were eliminated as a result.
- F. The SDPL has funding including grant funding that it must expend to replenish its print books that can only be purchased from specialized vendors that can offer shelf-ready print books.
- G. The SDPL has reached out to other large public library systems such as Los Angeles Public Library, San Francisco Public Library, New York Public Library, and Brooklyn Public Library to try to determine whether another vendor can possibly meet the scale and scope of shelf-ready print books that the SDPL would need to purchase and has been unable to determine another vendor who can provide such goods for sale given that the industry has consolidated and prior known vendors that offered similar goods either are no longer in business or no longer offer shelf-ready print books.
- H. Nevertheless, City plans to do a competitive solicitation in the near future to attempt to find another vendor that can provide similar goods.

I. This Agreement is exempt from competitive bidding requirements pursuant to San Diego Municipal Code (SDMC) section 22.3208(d) because the Purchasing Agent has certified that the award of a sole source contract is necessary under SDMC section 22.3016(a).

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 Goods in the quantities and at the prices stated in Exhibit A.

1.2 Contract Administrator. The Library Department (Department) is the Contract Administrator for this Agreement. Contractor shall provide the Services under the direction of a designated representative of the Department as follows:

Robyn Gage-Norquist, Supervising Librarian
San Diego Central Library
330 Park Blvd
San Diego, CA 92101
(619) 236-5803
RGage@sandiego.gov

1.3 General Contract Terms and Provisions. This Agreement incorporates by reference the General Contract Terms and Provisions, attached hereto as Exhibit B.

1.4 Submittals Required with the Agreement. Contractor is required to submit all forms and information delineated in Exhibit C before the Agreement is executed.

ARTICLE 2 DURATION OF AGREEMENT

2.1 Term. This Agreement shall be for a term of one (1) year beginning on the Effective Date. The term of this Agreement shall not exceed five years unless approved by the City Council by ordinance.

2.2 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 (Effective Date).

**ARTICLE 3
COMPENSATION**

3.1 Amount of Compensation. City shall pay Contractor for Goods rendered in accordance with this Agreement in an amount not to exceed \$3,000,000.00.

**ARTICLE 4
WAGE REQUIREMENTS**

4.1 Reserved.

**ARTICLE 5
CONTRACT DOCUMENTS**

5.1 Contract Documents. This Agreement including its exhibits completely describes the goods and services to be provided.

5.2 Counterparts. This Agreement may be executed in counterparts, which when taken together shall constitute a 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
INGRAM LIBRARY SERVICES LLC

By: Carolyn Morris
Carolyn Morris (Aug 5, 2026 09:02:26 CDT)

Name: Carolyn Morris

Title: VP Ingram Library Services

Date: 08/05/2026

CITY OF SAN DIEGO
A Municipal Corporation

By: C. Abarca

Name: Claudia Abarca

Director, Purchasing & Contracting

Date: 08/05/2026

Approved as to form this 5th day of
August, 20 26.

HEATHER FERBERT, City Attorney

By: Kenneth So
Kenneth So (Aug 5, 2026 08:42:32 PDT)

Deputy City Attorney

Kenneth So
Print Name

EXHIBIT A SCOPE OF WORK

A. PURPOSE

The City of San Diego requires Contractor to furnish the City of San Diego Public Library (SDPL) with shelf-ready print books in accordance with the specifications outlined below.

B. SPECIFICATIONS

The following specifications are required of Contractor.

1. Service.

- a) The Contractor must provide a dedicated Customer Service Representative. The contractor's Customer Service Representative must respond to messages within two (2) business days.
- b) The Contractor(s) must provide account management services that will include the following information:
 - 1) Account activity by period, account, and purchase order;
 - 2) Open items;
 - 3) Open invoices;
 - 4) Open credit memos;
 - 5) Purchase order status; and
 - 6) Shipment status, including recently shipped orders.
- c) Contractor must have a real-time, web-based database of its inventory and warehouse availability that includes the following:
 - 1) Ability to create selection lists that can be used as electronic orders; and
 - 2) Unlimited number of individual user accounts for staff at any and all SDPL facilities.
- d) Contractor must have electronic compatibility with SDPL's current ILS vendor, Polaris, to provide electronic data exchange (EDI) for ordering and invoicing. EDI is the process of having orders and invoices imported into the ILS without the need for Library staff to manually input orders and invoices line by line. Contractor must stay compatible with Polaris' product and service updates.

2. Shipping and Receiving.

- a) Individual boxes must weigh no more than fifty (50) pounds. The pallet size must not exceed twenty-five (25) boxes. Multiple pallets are acceptable.
- b) All boxes must clearly display an address label with SDPL's purchase order number and the total number of boxes in the shipment showing the number of each box within that shipment, e.g., Box 1 of 6, Box 2 of 6, etc.

3. Returns.

- a) Books must be returned for replacement or credit, at no charge to SDPL, if the books received were not those ordered or are in imperfect condition due to manufacturing defects or shipping damage.
- b) Returns must be allowed up to six (6) months from invoice date.
- c) Contractor must pay all transportation charges for such returns.

4. Cancellations.

- a) Contractor must provide SDPL with a cancellation report of all items cancelled. This will be done within ten (10) working days of being notified by the publisher. The cancellation report must include the City's purchase order number, quantity ordered, price, author, title, publisher, and reason for cancellation.
- b) Any orders not received after four (4) months will be automatically cancelled. Cancellation of orders whose term has expired must be reported to SDPL. This time period is subject to review and change at the discretion of the City.
- c) The City must be able to cancel individual line items after a purchase order is released if the Contractor(s) has not yet filled the order for the item. This will be done at no charge or penalty to the City.
- d) If an entire purchase order is open and no line items have been filled, the City may cancel the purchase order in its entirety and is not required to cancel each title individually. This will be done at no charge or penalty to the City.

5. Invoices.

- a) Invoices must include the same information as the packing slip. Additionally, invoices must itemize processing charges and tax. Invoices must include page total and invoice total.
- b) Contractor must not invoice back ordered items. All invoiced items must be received prior to issuance of invoice.
- c) Contractor must allow self-credit memos. This allows the City to submit credit memos for erroneous processing charges and books that are defective or short-shipped.

6. Pricing.

Any/all required fees must be included within the price of the books. The City will not accept any additional costs or fees not reflected in the book price.

7. Warehousing.

Contractor must have full capacity warehouses. SDPL must have the capability of ordering and receiving from any warehouse without any additional cost being assessed.

8. Fulfillment and Delivery.

The Contractor(s) must provide confirmation and status of items ordered within twenty-four (24) hours of placement of order.

9. Training.

Training will be provided when the Contractor's system is updated and when any procedures change at no additional cost to the City.

10. Processing.

Contractor will provide print books with full physical processing to ensure that such books are shelf-ready for the SDPL. Shelf-ready books are defined as having book covers, library barcodes, RFID tags, genre labels, spine labels, and library property stamps. The Library will provide the Contractor with library barcodes, RFID tags, genre labels, and library property stamps.

Below are processing and classification specifications.

- a) Books
 - 1) Tape 1.5 mil mylar jacket to all books with dust covers.
 - 2) Apply 15 mil Kapco cover with 2 mil spine protector to trade paperbacks.

- 3) Place spine label 2 inches from the bottom edge of the spine of fiction books.
- 4) Place label protector on spine labels not covered by a mylar jacket.
- 5) Apply a library-supplied RFID book tag to the inside of the back cover. The RFID book tag must be programmed by Contractor(s).
- 6) Barcode is to be applied to the back of the book, 1.5 inches from the spine and 1 inch from the bottom of the book.
- 7) A human readable barcode is to be applied to the title page, 2 inches from the bottom of the page, centered.
- 8) Apply a genre label to adult mysteries, science fiction, and westerns.
- 9) Stamp the top edge of the book with a single line property stamp.

b) Classification Scheme

- 1) All letters in call numbers must be capitalized.
- 2) Adult fiction must be given a call number of FIC and cuttered with the author's surname or the first word of the main entry.
- 3) Adult mysteries must have a call number prefix of MYST.
- 4) Adult science fiction must have a call number prefix of SCI-FI.
- 5) Adult westerns must have a call number prefix of WEST.
- 6) Juvenile fiction must be given a call number of J FIC and cuttered with the author's surname or the first word of the main entry.
- 7) Juvenile easy fiction and board books must be given the call number E and cuttered with the author's surname or the first word of the main entry.
- 8) Young Adult fiction must be given a call number of YA FIC and cuttered with the author's surname or the first word of the main entry.

c) Spine Label Samples

Adult Fiction	FIC SMITH
Juvenile Fiction	J FIC SMITH
Easy Readers, Picture Books, Board Books	E SMITH

Young Adult Fiction	YA FIC SMITH
Adult Mystery	MYST FIC SMITH

June 24, 2026

San Diego Public Library
330 Park Blvd
San Diego, CA 92101-7416

RE: Ingram and San Diego Public Library Sole Source Agreement – EXHIBIT A

Discounts

***Trade Hardcover, Quality and Mass Market Paperbacks:**

Copies per TITLE	DISCOUNTS
1 to 4	40.0%
5 to 9	41.0%
10 to 99	42.0%
100+	43.0%

Additional Discounts:

Library Bindings	15.0%
University Press	10.0%
** Short Discounted Titles	10.0%
*** Spoken Word Audio	0-45.0%
Games	0.0 - 5.0%
DVD/Blu-ray.....	0.0 - 15.0%
Net Titles	0.0%

** Trade Hardcover, Quality Paperbacks and Mass Market Paperback titles ordered with a cover price of \$14.99 or less will receive a 25% discount.*

*** Short Discount/Non-Trade: Lower demand, small print-run books in various bindings, and includes graphic novels, legal, technical, reference, scientific, and medical titles as defined by Ingram subject categories. Titles are generally published by small or university presses. Also included are print and audiobook titles purchased at lower than full trade discount; titles with limited sales volume; and/or titles from publishers not in compliance with Ingram's purchasing requirements. Ingram is pleased to make this broad base of titles available to our customers with no service charges.*

**** Eighty to eighty-five percent of all Spoken Word Audio is at 45% discount; however, some Spoken Word Audio is short discounted by the publisher.*

Cataloging and Processing:

To simplify budgeting and to speed items through our facilities, Ingram offers bundled cataloging and processing services. With our tiered service levels, your library can easily estimate its yearly C&P costs and identify ways to save. Rather than charging for each item applied to a unit, all units on a designated account will be charged the same C&P fee. This speeds up the work in our processing units and lets the library reconcile charges with little effort. It also distributes cataloging costs across all Ingram's cataloging customers more fairly and enables us to maintain lower fees.

The following shipping account will receive the **iClassic-A Bundle at \$2.54/unit**.
20BA284

This bundle includes the following:

- Best Available Marc Record
- Mylar Jacket
- 5 Mil Laminate

**Per the Sole Source Agreement
Specifications, Item #10:**

We can provide a bundle for these items. iComplete-C at \$4.97/ unit

Account set up fee of \$5000.00.

This applies with each new account set up that have the same specifications.

Items of note: Books –

- 1) We provide Kapco, 5 mil Laminate. We do not provide Spine tape.
- 8) We will provide ILS Genre labels only.
- 9) We do not provide property stamps. We can provide a property label inside or outside the book.

Prices subject to change with notice. These bundles will be reviewed annually with the library.

Freight Terms:

We are pleased to offer **Ingram-paid freight** from your designated primary and secondary distribution centers on shipments of 10 units or more. Orders will be held until a minimum quantity of 10 units is met. The qualifying unit quantity is subject to change with notice. Items picked, packed, and shipped together count as an individual shipment.

UPS ground service is used to transport the majority of Ingram's goods. Ingram will choose the most cost-effective shipping method. To provide the best service for your Library, your Ingram Distribution center designation is subject to change to better balance order volume or when a requested service is only provided from a specific distribution center. Orders will ship FOB Destination. Ingram defines FOB Destination as Ingram being responsible for the products until they are delivered to the library. Once the items have been delivered, liability lies with the receiving agency. When freight charges on an individual account surpass 2.5% of the account's expenditures, Ingram reserves the right to change the shipping settings under this offer. Changes to account settings such as one warehouse for shipments or shipment timetables and order consolidation levels are examples of such alterations. We will work closely with the Library to ensure if changes are made, they are in the best interests of both parties.

Due to the impact of rising oil prices, Ingram has instituted a \$3.00 fuel surcharge per shipment. This charge is subject to change with notice. These charges will appear as a Shipping and Handling charge on your invoice.

Payment Terms:

Payment terms under this offer shall be Net 30 Days. Payment is required for invoices within these terms even when a purchase order has not been completed. Ingram does not invoice for items until they have been shipped.

While other vendors demand payment from invoice date, Ingram's terms are calculated on statement date at the end of each month. With payment due 30 days from statement date, the customer's payment is due an average of 45 days from invoice (30-59 days). Ingram reserves the right to assess a late charge on all past due invoices.

Ingram inDemand Lease Alternative Program

Pricing and Discounts:

Trade Titles	Price or Discount
MSRP up to \$20.00	\$14.00
MSRP up to \$20.01 - \$31.00	\$19.00
MSRP up to \$31.01 - \$45.00	\$27.00
MSRP over \$45.01	20% Discount
Net Titles	0.0%

Cataloging and Processing

Option #1

The tiered prices include a bundle with the following items - \$0.00 (TOS'd)

- Barcode
- RFID (unprogrammed)
- Label Protectors
- Mylar attached (stickered/hinged)
- InDemand Sticker
- Spine Label
- Best Available Marc Record

(Orders placed through ipage only, a MARC file will be sent to you when your book ships)

Freight Terms:

We are pleased to offer **Ingram-paid freight** from Fort Wayne or Roseburg Distribution Center. (Added Roseburg January 2025)

- Fast, free shipping
- No order or shipment minimums
- No FSC

Payment Terms:

Payment terms under this offer shall be Net 30 Days. Payment is required for invoices within these terms even when a purchase order has not been completed. Ingram does not invoice for items until they have been shipped.

Orders placed via ipage.

Ingram Contact List:

Ingram Library Services LLC One Ingram Blvd P.O. Box 3006 LaVergne, TN 37086
www.ingramcontent.com/libraries

Members of the San Diego Public Library have toll-free telephone access to Ingram Customer Care at (800) 937-8200, or you may reach your Sales Representative directly at:

- Amy Sackett, Sales Manager- Western Region..... (724) 953-9807
Email: amy.sackett@ingramcontent.com
- **Hannah Jones, Sales Representative**(801) 999-8404
Email: hannah.jones@ingramcontent.com
- Brandy Cain, Sales Specialist Lead (615)-213-5786
Email: brandy.cain@ingramcontent.com
- Ingram Library Services 615-793-5000
- Credit Department..... (800) 937-8100

Email: ILSCustomer.service@ingramcontent.com

To Discuss Concerns or Issues Regarding Your Account

Email: catalogingprocessing@ingramcontent.com

To Set Up / Update an Account

EXHIBIT B



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. Such option shall be exercised by providing written notice to Contractor no later than sixty (60) days before the end of the then-current term. In addition, the City may, in its sole discretion, unilaterally extend the Contract on a month-to-month basis following contract expiration for no longer than six (6) months 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 10th 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 [Reserved].

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 thirty (30) 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 thirty (30) 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. 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, provided such damage is not the result of ordinary wear and tear related to the circulation of the goods.

5.3 Responsibility for Damages. Contractor is responsible for all damage that occurs as a result of Contractor's fault or gross 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. Contractor shall use commercially reasonable efforts to ensure delivery is 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. 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, Contractor shall be entitled to a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. 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.

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. Contractor is responsible to City for all warranty service, parts, and labor. Contractor is required to ensure that warranty work is performed and that services, parts, and labor are available and provided to meet City's reasonable schedules and deadlines. Contractor may establish a warranty service contract with an agency reasonably 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 three (3) 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 electronically via secure file transfer protocol (sFTP) at any time during normal business hours. If records are not made available electronically via secure file transfer protocol (sFTP), 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, and all project invoices received from Subcontractors. Records shall show name, telephone number including area code, and business address of each and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City consistent with Section 5.9 above.

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 consistent with Section 5.9 above. 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 to 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.

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, in its sole discretion, may 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 all Deliverable Materials 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 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. To the extent that Contractor has secured similar warranties from its contractors and suppliers, Contractor warrants that the goods, materials, supplies, and equipment to be supplied do not infringe upon any patent, trademark, or copyright, and to the extent that Contractor has secured similar indemnity from its contractors and suppliers, Contractor 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 or its equivalent 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 or its equivalent 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 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. Upon reasonable request, 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 [RESERVED]

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. If applicable, 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), if applicable. 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) that is applicable. 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, if applicable. 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, if applicable.

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.

9.1.3.3 Compliance Investigations. Upon City's request, Contractor agrees to provide to City, within sixty (60) calendar days, a truthful and complete list of the names of all subcontractors 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. If applicable, 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. If applicable, 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.

If applicable, 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, if applicable.

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

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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 Dispute Resolution. If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and City shall have recourse in a court of law.

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 not to exceed that portion of fees incurred due to Contractor's acts or omissions.

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, 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.