

AGREEMENT

BETWEEN THE

CITY OF SAN DIEGO



AND

PBC GURU, LLC

**TO PROVIDE LIBRARY
SPEAKER SERVICES**

AGREEMENT

This Agreement (Agreement) is entered into by and between the City of San Diego, a municipal corporation (City), and PBC Guru, LLC. (Contractor).

RECITALS

- A. City wishes to retain Contractor to provide library speaker services (Services) as further described in the Scope of Work, attached hereto as Exhibit A.
- B. Contractor has the expertise, experience, and personnel necessary to provide the Services.
- C. City and Contractor (collectively, the "Parties") wish to enter into an agreement whereby City will retain Contractor to provide the Services.
- D. This Agreement is exempt from competitive bidding requirements pursuant to San Diego Municipal Code (SDMC) section 22.3208(a) because it is a contract with an expenditure of \$25,000 or less.

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 to the City as described in Exhibit A, Scope of Work, which is incorporated herein by reference.
- 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:
 - Oscar Gittemeier
 - Program Manager for Innovation and Community Engagement
 - 330 Park Boulevard
 - San Diego, CA 92101
 - Library Department
 - (619) 236-5806
 - OGittemeier@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 two years 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 all Services rendered in accordance with this Agreement in an amount not to exceed \$25,000. The cost will be \$12,500 per year. Before the expiration of the one-year term, City in its sole discretion shall have the option to renew the Agreement for an additional year by providing written notice to Contractor about the City's intent to renew. The cost for the Services outlined in this Agreement will remain the same for both years.

**ARTICLE 4
WAGE REQUIREMENTS**

4.1 Reserved.

**ARTICLE 5
CONTRACT DOCUMENTS**

5.1 Contract Documents. This Agreement including its exhibits completely describes the 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
PBC GURU, LLC

By: Christopher Williams

Name: Christopher Williams

Title: Chief Financial Officer

Date: 6/26/2023

CITY OF SAN DIEGO
A Municipal Corporation

By: C. Abarca

Name: Claudia C. Abarca

Director, Purchasing & Contracting

Date: June 27, 2023

Approved as to form this 27th day of
June, 2023
MARA W. ELLIOTT, City Attorney

By: [Signature]
Deputy City Attorney

Ken So
Print Name

EXHIBIT A SCOPE OF WORK

A. OVERVIEW

This Agreement is to provide the City of San Diego, specifically the Library Department, with library speaker services. The San Diego Public Library would become a member of the Library Speakers Consortium (LSC) provided by Contractor.

B. REQUIREMENTS AND TASKS

Contractor shall produce two to three white-label livestream author/speaker events per month. These programs will be designed to appeal to a wide audience of library patrons. Three primary types of authors/speakers will be featured:

1. **Novelists/Poets/Fiction Writers:** What people most often think of when they hear of an author talk, these speakers will discuss their specific work, inspirations, and ideas.
2. **Business/Career/Personal Growth:** These speakers will discuss topics relating to helping people professionally and personally. Topics are expected to include communication, personal productivity, innovation, career happiness, health, wellness, and more.
3. **Lifelong Learning:** These speakers will discuss a range of topics related to society, history, art, culture, and much more within their areas of expertise.

City will be able to share these events with patrons on City's own branded microsite and City can choose which upcoming events to open to their community. Where appropriate, programs will be archived for patrons to access at their convenience. These programs will allow libraries to:

- Offer far more high-quality virtual programs than they could develop on their own.
- Meet patron demand for author talks on a wide range of subjects.
- Focus limited resources on programs that are unique to their community.

C. ROLES AND RESPONSIBILITIES

1. **Contractor's General Roles and Responsibilities.** With respect to all services provided to the Department, Contractor will fulfill the following operational roles and responsibilities:

The Contractor will provide City access to the platform and technical support for white-label programs. Features include:

- Unlimited participants per event.

- Custom branded microsite that allows patrons to register for upcoming livestreams, view livestreams, and watch past events.
- Admin portal for event analytics of who registered and attended each program.
- Up to 8 admin accounts.

D. TERMS AND OTHER DETAILS

1. **Participant Privacy:** Contractor will not share, sell, rent, or give away participants' information in any way unless required by a court of law. This does not include trusted third parties (including San Diego Public Library) who help us to operate and provide valuable services as long as those parties agree to keep the information private. Contractor's complete privacy policy applies to all programs and is attached as Exhibit A-1.

2. **Sharing Participant Information:** As a trusted third party, City through the San Diego Public Library will have access to the names, email addresses, and other information of participants who register for events through your instance of the platform.

3. **Event Sharing Limitations:** City may share white-label author/speaker programs through all their own marketing channels including email, physical flyers/posters, mailers, and social media. Both active cardholders and others may register for the programs regardless of if they live in a library system's service area. Events may also be shared with community partners located within the library's service area including K-12 schools, museums, community centers, retirement homes, and other government and community organizations. However, programs may not be shared through the marketing channels of other library systems or community organizations located outside of the library's service area or college academic libraries located inside or outside the library's service area. More specifically, City may not allow other public libraries, college academic libraries, or library consortiums of any kind to share the white-label author/speaker programs. Other libraries are encouraged to become members of the LSC if they want to share the programs with their patrons. In the event an organization outside of the City's service area shares a program without the library's knowledge, there will be no penalty, but a library representative must ask that organization not to share future programs when they become aware of the issue.

4. **Author Event Conflicts:** Some author speaking agreements for in-person events include a period of time when that author cannot plan to speak in the same metropolitan area during the same time of year. This is done so that two organizations are not hosting competing events with the same author at the same time of year. In certain cases, an LSC event may not be able to be shared with libraries in the same metropolitan area where an author has a preexisting speaking agreement. This is expected to be a rare occurrence and our goal when coordinating with authors will be to keep this possible conflict to an absolute minimum.

5. **Additional Terms:** Additional general terms and conditions are set forth as Exhibit A-2.

Exhibit A-1

Privacy Policy

We value your privacy greatly at PBC Guru and are committed to keeping your information safe. This policy outlines how we use your information to give you the best experience possible. This policy applies to all PBC Guru services and programs including company book clubs, alumni book clubs, professional society book clubs, alumni association livestreams/webinars, the Alumni Learning Consortium and other programs.

PLEASE READ THIS POLICY CAREFULLY BEFORE SUBMITTING ANY INFORMATION TO PBC GURU. USE OF THIS WEBSITE AND ANY OF THE SERVICES PBC GURU PROVIDES INDICATES YOUR ACCEPTANCE OF THIS PRIVACY POLICY.

Information Collection

PBC Guru collects information related to book club, livestream and other program participants. This information includes first and last name, email address, graduation year, interests related to books and program goals, address, phone number, job title, reading quizzes, polling data such as voting for book selections, survey data and other related data. This data is collected when the participant provides it when they register for a program or when they participate in a poll or survey. Non-essential data to the service is optional to provide.

PBC Guru also collects information related to participants activity with their program including opening emails, clicking on links in emails, logging into online discussion forums and posting in the discussion forum.

If you give us credit card information, we use it solely to check your financial qualifications and collect payment from you. We use a third-party service provider to manage credit card processing. This service provider is not permitted to store, retain, or use information you provide except for the sole purpose of credit card processing on our behalf.

Information Use

PBC Guru uses personal information to provide valuable experiences for book club, livestream and other program participants. This includes:

- Providing the online book club, livestream and other program experiences
- Personalization of content and the user experience
- Account set up and administration
- Sending email reminders and related content relevant to programs that participants have opted into
- Selecting books and other materials for groups to read or vote for
- Carrying out polls, voting for books and feedback surveys
- Internal research and development purposes to improve our services
- Legal obligations
- Meeting internal audit requirements
- Creating reporting on the level of program participation for the sponsoring organization

Information Sharing

PBC Guru sends users email for two primary reasons. The first relate to book clubs, livestreams and programs users are currently participating in and/or registered for. The second reason for emails is important updates on site features and other news which PBC Guru deems important to provide to users. PBC Guru reserves the right to email a user if we feel it necessary but will try to respect users wishes to receive as few emails as possible. Users have the option to adjust which emails they receive.

There are two categories of trusted third parties. The first are other online services which help us to operate our services and provide a fantastic experience to our users. All of these services, to the best of our understanding, keep personal information secure and private as part of their terms of service. These include:

- Web Hosting Providers: These organizations store our website and data so users can participate in our programs on the internet.
- Email Communication Tools: These tools allow us to send emails to participants and track engagement data such as whether an email is opened and/or a link in an email is clicked.
- Credit Card Processing: We use a third party service to manage credit card processing. Please see more information under “Information Collection”.
- Analytics Tools: These tools allow us to track important data that helps improve our service such as how many people visit a specific web page and how often they click on a link.

The second category of trusted third parties are program sponsoring organizations. These are the organizations that actually commission a given book club, livestream or other program. They include companies, colleges, universities, schools, professional societies, non-profits and other organizations. As an example, for a University of Maryland Alumni Book Club, the sponsoring organization would be University of Maryland. The sponsoring organization for any PBC Guru program, where one exists, will be made explicitly clear through the name and description of the program.

PBC Guru will share participant contact information (e.g. name, email, address) and participation metrics (e.g. email open rates, online discussion activity) with a program’s sponsoring organization or organizations upon request. Note that personal information is only shared with an individual’s sponsoring organization meaning that if a participant signed up for a University of Maryland Book Club then we would share their information with University of Maryland but not with any other sponsoring organization.

Sponsoring organizations may use participant data that we share with them to inform participants about the program, track program success metrics, inform participants about other programs and any other lawful purpose.

Non-personally identifiable information may be provided to third parties for purposes such as analytics or other uses.

If we (or our assets) are acquired by another company, whether by merger, acquisition, bankruptcy or otherwise, that company would receive all information gathered by PBC Guru. In this event, you will be notified via email and/or a

prominent notice on our website, of any change in ownership, uses of your information, and choices you may have regarding your information.

We reserve the right to use or disclose your information if required by law or if we reasonably believe that use or disclosure is necessary to protect our rights, protect your safety or the safety of others, investigate fraud, or comply with a law, court order, or legal process.

Public and Private Forums

We offer both publicly accessible and private message boards, blogs, and community forums. Please keep in mind that if you directly disclose any information through our public message boards, blogs, or forums, this information may be collected and used by others. Private forums require a login account to access but should be treated as public for all intents and purposes where sensitive information is concerned. We will correct or delete any information you have posted on these areas if you so request.

Legal Basis for Storing and Processing Information (European Economic Area visitors only)

PBC Guru relies on the legal basis of consent, contract and legitimate interests to store and process information. Individual participants consent to participate in programs with PBC Guru when they sign up. Participants have the right to withdraw their consent from programs and for PBC Guru to no longer store or process their information when requested.

PBC Guru also has contractual agreements with program sponsoring organizations (see Information Sharing) which outline our relationship with these organizations.

Finally, PBC Guru has legitimate interests to store and process data in order to help individual participants and to improve our services.

Retention of Personal Information

How long we keep information we collect about you depends on the type of information as described in further detail below. After such time, we will either delete or anonymize your information or, if this is not possible, then we will securely store your information and isolate it from any further use until deletion is possible.

We retain information that you provide to us where we have an ongoing legitimate business need to do so (for example, as long as is required in order to contact you about other services, or as needed to comply with our legal obligations, resolve disputes and enforce our agreements).

We will delete this information from the servers at an earlier date if you so request, as described in " Data Protection Rights" below.

Use of Cookies and Session Variables

Cookies and session variables are used on PBC Guru to allow for certain essential functionality like remaining logged into the site as you go from page to page. Session variables are automatically deleted whenever you close your web browser. Cookies expire after a set period. We use both primary cookies (those created by PBC Guru) and third party cookies (those created by one of our trusted third parties).

You can set or amend your web browser controls to accept or refuse cookies. If you choose to reject cookies, you may still use our website though your access to some functionality and areas of our website may be restricted. As the means by which you can refuse cookies through your web browser controls vary from browser-to-browser, you should visit your browser's help menu for more information.

Use of Web Beacons

We employ a software technology called clear gifs (a.k.a. Web Beacons/Web Bugs), that help us better manage our service by informing us what content is effective. Clear gifs are tiny graphics with a unique identifier, similar in function to cookies, and are used to track the online movements of Web users. In contrast to cookies, which are stored on a user's computer hard drive, clear gifs are embedded invisibly on Web pages or in emails and are about the size of the period at the end of this sentence. We use clear gifs or pixels in our HTML-based

emails to let us know which emails have been opened by recipients. This allows us to gauge the effectiveness of certain communications and the effectiveness of our marketing campaigns. We tie the information gathered by clear gifs in emails to our customers' personal information.

Outside Web Links and Embedded Content

Our site has links to other sites such as social networking platforms and interesting online resources as well as embed content such as recorded or livestream videos. These third party sites have separate and independent privacy policies. We therefore have no responsibility or liability for the content and activities of these linked sites. We do wish to preserve your integrity and welcome any feedback about these sites, as we do all feedback.

Data Protection Rights

You have the following data protection rights:

- You can request access, correction, updates or deletion of your personal information.
- You can object to processing of your personal information, ask us to restrict processing of your personal information or request portability of your personal information.
- If we have collected and process your personal information with your consent, then you can withdraw your consent at any time. Withdrawing your consent will not affect the lawfulness of any processing we conducted prior to your withdrawal, nor will it affect processing of your personal information conducted in reliance on lawful processing grounds other than consent.

To exercise any of these rights, please contact us at info@pbc.guru or via our website contact form. We will respond to your request to change, correct, or delete your information within a reasonable timeframe and notify you of the action we have taken.

Data Security

We take data security very seriously and use secure technology for data storage and data processing.

Data Storage and Process

We store and process data on third party web servers in the United States. Our services are available for access anywhere in the world for participants with the appropriate credentials.

To Unsubscribe From Our Communications

You may unsubscribe from our marketing communications by clicking on the "unsubscribe" link located on the bottom of our e-mails or by sending us email us at info@pbc.guru.

Children's Online Privacy Protection Act Compliance

We are in compliance with the requirements of COPPA because we do not collect information from anyone under 13 years of age. Our site and services is directed to people who are at least 13 years of age.

Exhibit A-2

Business and Organization Terms and Conditions

General

PBC Guru LLC will provide the pbc.guru Programs to organizations who register for the service and follow the terms outlined herein. In the event of any inconsistency among these Terms and Conditions and any other terms, the order of control shall be: (i) Business and Organization Terms & Conditions and (ii) any other exhibits, addenda or attachments to the Terms & Conditions including any links contained in these Terms and Conditions, which are incorporated by reference herein. Note that areas of the user terms apply to organizations where applicable but in no way limiting the business specific terms.

Intellectual Property Rights

(i) PBC Guru LLC owns all right, title and interest in and to any data provided to PBC Guru LLC by your employee, member or an end user to PBC Guru LLC in connection with the pbc.guru Programs ("Customer Data").

(ii) PBC Guru LLC owns all right, title and interest in and to the pbc.guru Programs including, without limitation, any intellectual property rights and any improvements, modifications, enhancements or refinements thereto. Except as set forth in the Agreement, all rights not expressly granted to you are reserved. You agree not to decipher, decompile, disassemble, reconstruct, translate, reverse engineer, or discover any of the pbc.guru Programs, intellectual property or ideas, algorithms, file formats, programming, or interoperability interfaces underlying or such intellectual property.

All company names and logos are trademarks™ or registered® trademarks of their respective holders. Reference to them is for the information and convenience of the public, and does not constitute affiliation, endorsement, recommendation, or favoring by them.

All content posted to the Site is must comply with U.S. copyright law. PBC Guru LLC does not pre-screen content posted to the Site, but does maintain the right (but not the obligation) in their sole discretion to refuse or remove any content that is available via the Site and services.

Restrictions

You: (i) will use the pbc.guru Programs solely for your internal business purposes, and (ii) will not, for itself, any affiliate of you or any third party (a) sell, rent, lease, license or sub-license, assign, distribute, or transfer the pbc.guru Programs; (b) modify, change, alter, create derivative works of, decipher, decompile, disassemble, reconstruct, translate, reverse engineer, or discover any source code of the underlying ideas, algorithms, file formats, programming, or interoperability interfaces of the pbc.guru Programs; (c) copy any tangible versions of the pbc.guru Programs; or (d) remove from any of the pbc.guru Programs any language or designation indicating the confidential nature thereof or the proprietary rights of PBC Guru LLC. In addition, you will not export, re-export or permit any third party to export or re-export, directly or indirectly, the pbc.guru Programs where such export or re-export is prohibited by applicable law without appropriate licenses and clearances. All content posted and activity that occurs under your account is your responsibility.

Fees; Pricing and Payment Terms; Taxes

(i) You will be responsible for any sales, use, value-added or import taxes, customs duties or similar taxes assessed in accordance with applicable law with respect to the provision of the pbc.guru Programs.

(ii) Notwithstanding anything herein to the contrary, PBC Guru LLC, in its sole discretion, may suspend or terminate the Agreement and corresponding access and right to use the pbc.guru Programs, at any time, upon notice to you, if you have not paid all amounts due on or before the payment due date, or for any

other material breaches of the Business and Organization Terms and Conditions or any other exhibits, addenda or attachments to the Terms & Conditions including any links contained in these Terms and Conditions, which are incorporated by reference herein. You are responsible for amounts that remain outstanding as of the date of such termination. You agree to pay reasonable attorneys' fees and court costs incurred by PBC Guru LLC to collect any unpaid amounts owed by you.

Term; Termination; Survival

The Agreement will remain in full force specified in the Memorandum. Each party shall have the right to terminate the Agreement upon written notice to the other party for any reason. Any provision of the Agreement which contemplates performance or observance subsequent to any termination or expiration of the Agreement shall survive any termination or expiration of the Agreement and continue in full force and effect.

Representations and Warranties; Disclaimer

(i) PBC Guru LLC warrants that PBC Guru LLC has the authority to enter into this Agreement.

(ii) You represent and warrant to PBC Guru LLC that: (a) you have the authority to enter into this Agreement; and (b) you will only use the pbc.guru Programs for lawful purposes and will not violate any law of any country or the intellectual property rights of any third party.

(iii) EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION, EACH PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF QUALITY, ACCURACY, BUSINESSABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOU EXPRESSLY AGREE THAT THE USE OF pbc.guru PROGRAMS OR SERVICES AND THE INTERNET IS AT YOUR SOLE RISK. pbc.guru PROGRAMS AND SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.

Confidential Information

Any information that a receiving party knows or has reason to know (either because such information is marked or otherwise identified by the disclosing party orally or in writing as confidential or proprietary, has commercial value, or because it is not generally known in the relevant trade or industry) is “Confidential Information” of the disclosing party and will remain the sole property of the disclosing party. Such Confidential Information includes but is not limited to data, information (including personally identifiable information), ideas, materials, specifications, procedures, schedules, software, technical processes and formulas, source code, product designs, sales, cost and other unpublished financial information, product and business plans, advertising revenues, usage rates, advertising relationships, projections, marketing data and other similar information provided by a party. For avoidance of doubt, Customer Data shall be deemed Confidential Information of PBC Guru LLC. Each party agrees that it will not disclose, use, modify, copy, reproduce or otherwise divulge such Confidential Information to any third party without the prior written approval of the disclosing party except that the receiving party shall have the right to disclose such Confidential Information to the extent required by applicable law or to the directors, officers or employees of the receiving party who have a need to know such Confidential Information in order to perform its obligations under the Agreement and to the extent such directors, officers or employees are subject to obligations of confidentiality and non-disclosure that are substantially similar to the obligations set forth in the Agreement. The prohibitions contained in this Section will not apply to information (i) already lawfully known to the receiving party prior to such disclosure by the disclosing party; (ii) independently developed by the receiving party without access to or use of the disclosing party’s Confidential Information; (iii) disclosed in published materials; (iv) generally known to the public; or (v) lawfully obtained from any third party. In addition, a party will not be considered to have breached its obligations under the Agreement to the extent Confidential Information is required to be disclosed by any governmental authority, provided that, to the extent legally practicable, the receiving party advises the disclosing party prior to making such disclosure in order that the disclosing party may object to such disclosure, take action to ensure confidential treatment of the Confidential Information, or take such other action as it considers appropriate to protect the Confidential Information.

Dispute Resolution; Governing Law

In the event of a dispute or mistake between a Business or Organization and User, PBC Guru LLC will not be liable in any way for damages to either Business or User.

To the extent any disputes arise under the Agreement or otherwise between the parties, the parties will first attempt in good faith to resolve their dispute informally. This Agreement is governed by the State of Maryland.

Use of Business Names and Logos

PBC Guru LLC reserves the right to use business and organization names and logos on our website and promotional material. This may include but is not limited to postings on pbc.guru, printouts distributed for marketing purposes, listings of client names and/or logos on promotional material, etc. PBC Guru LLC may ask a business or organization's permission to use its name or logo in promotions but this is not a requirement for such use. A business or organization may contact pbc.guru via the contact form to express how they prefer their information to be used and PBC Guru LLC will make an effort to honor such requests but is in no way bound to do so.

Book Selection Requests

PBC Guru LLC reserves the right, in its sole discretion, to reject any book selection request that we do not believe will be successful with a book club group. Reasons for rejection can include but are not limited to books that are overly dense, one-sided or will be difficult for participants to find a copy to read/ access. We are always happy to work with you to find an alternative title if we believe a book won't be successful with your group.

Indemnification

You will defend, indemnify, and hold PBC Guru LLC and its affiliates and their respective directors, officers, employees, agents and representatives harmless from and against any third party suit, proceeding, assertion against any damages, judgments, liability, costs and expenses (including without limitation any reasonable attorneys' fees) incurred arising from your material breach of this Agreement, your unauthorized use or misuse of the pbc.guru Programs or any unauthorized combination of the PBC Guru LLC with any hardware, software, products, data or other materials not specified or provided by PBC Guru LLC.

Limitation of Liability

PBC Guru LLC's aggregate liability for all claims (including claims for indemnification of third party damages) arising out of the Agreement, whether in contract, tort or otherwise, will not exceed the amount of fees paid by you to PBC Guru LLC under the Agreement during the twelve (12) months preceding the date on which the claim occurred. To the maximum extent permitted by applicable law, in no event will PBC Guru LLC be liable for any loss of business profits, business interruption, loss of data or any special, indirect, exemplary, incidental or consequential damages arising from or in relation to the Agreement or the use of the Services, however caused and regardless of theory of liability.

Notice

Except where explicitly provided otherwise herein, any notice required or permitted hereunder will be delivered to the contact person listed on the business account via electronic mail. Electronic mail will be considered received as long as no server error is received from the sending of an electronic mail. It is the responsibility of the Business to ensure that any changes to the appropriate electronic mail address are provided to PBC Guru LLC.

Assignment

This agreement can only be assigned by mutual agreement, unless one party is selling its business or assets, in which case they can include this Agreement and

the obligations on both parties as part of the sale. The obligations in this Agreement continue with the new owners and the remaining party.

No Third Party Beneficiaries

The Agreement is solely for the benefit of the parties and their successors and permitted assigns, and does not confer any rights or remedies on any other person or entity.

Amendment; Waiver

This Agreement may be changed only by written agreement signed by both PBC Guru LLC and you. The failure of either party to exercise or enforce any of its rights under the Agreement will not act as a waiver of subsequent breaches and the waiver of any breach will not act as a waiver of subsequent breaches.

Severability

If any provision of the Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, that provision will be enforced to the maximum extent permissible under applicable law and the other provisions of the Agreement will remain in full force and effect.

Force Majeure

If either party is prevented from performing any of its obligations under the Agreement due to any cause beyond the party's reasonable control including, without limitation, an act of God, fire, flood, explosion, terrorism, war, embargo, government regulation, civil or military authority, acts or omissions of carriers, transmitters, providers, or acts of vandals, or hackers, the time for that party's performance will be extended for the period of the delay or failure to perform due to such occurrence, except that you will not be excused from the payment of any sums of money owed by you to PBC Guru LLC provided prior to the force majeure event.

Independent Contractor

The Agreement will not be construed as creating or constituting a partnership, joint venture, or agency relationship between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

Compliance with Laws

Each party will comply with all applicable laws, regulations, and ordinances relating to their performance hereunder.



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 services (Contractor) is described in the Contract Documents. The Contract Documents are comprised of Services Agreement, including the Exhibit A Scope of Work, Exhibits A-1 and A-2, and these General Contract Terms and Provisions (Exhibit B), and Required Documents (Exhibit C).

1.2 [Reserved].

1.3 [Reserved].

**ARTICLE II
CONTRACT ADMINISTRATOR**

2.1 Contract Administrator. The individual and department (Oscar Gittemeier, Library Department) listed in Section 1.2 of the main agreement 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 yearly services provided in accordance with the terms and provisions specified in the Agreement.

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 once a year annually.

3.2.3 [Reserved].

3.2.4 [Reserved].

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].

3.2.6.1 [Reserved].

3.2.6.2 [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 [Reserved].

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 [Reserved].

5.2 [Reserved].

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 [Reserved].

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 [Reserved].

5.13 [Reserved].

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 [Reserved].

**ARTICLE VIII
BONDS**

8.1 [Reserved].

8.2 [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. 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 [Reserved].

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 or 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.

ARTICLE XIV

PAYMENT CARD INDUSTRY DATA SECURITY STANDARDS

14.01 [Reserved].

14.02 [Reserved].

14.03 [Reserved].

14.04 [Reserved].

14.05 [Reserved].

14.06 [Reserved].

EXHIBIT C
CITY REQUIRED FORMS

Business Tax Certificate

Contractor Standards Pledge of Compliance

Equal Opportunity Contracting forms, including Contractors Certification of Pending Actions and Work Force Report

Insurance Certificates with all endorsements

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

Taxpayer Identification Form W-9 (if applicable)