



**CITY OF SAN DIEGO
REAL ESTATE ASSETS DEPARTMENT
1200 Third Avenue, Suite 1700
San Diego, CA 92101-4195**

**REQUEST FOR PROPOSALS
(COVER SHEET)**

Solicitation Type: Operation, Sublease and Maintenance of City-leased Bridge Deck Kiosks at 4023 and 4024 El Cajon Boulevard and 4023 and 4024 University Avenue, San Diego, CA 92105

Solicitation Number: RFP No. 2020 - 4023A

Solicitation Issue Date: February 3, 2020

**Proposal Due Date
and Time (Closing Date):** April 1, 2020 at 4:00 p.m. P.S.T.

City Contact: Heide Farst, Property Agent – Phone: (619) 236-6727
Email: HFarst@sandiego.gov

**Recommended Site
Inspection:** February 20, 2020 at 9 a.m. at 4023 El Cajon Boulevard, San Diego, CA 92105. Contact City Contact prior to inspection, if you are planning to attend.

**Questions and
Comments Due:** February 27, 2020 at 4:00 p.m. P.S.T.

Duration of Offer: By submitting a proposal, the proposer guarantees that the offer is firm for ninety (90) calendar days commencing the day following the Closing Date. Proposer agrees to accept a resulting contract subject to the terms and conditions stated herein. If an award is not made during that period, proposer's offer shall automatically extend for another ninety (90) calendar days unless the proposer indicates otherwise in writing thirty (30) calendar days prior to the end of the first ninety (90) calendar day period to the City Contact.

Proposer _____
Street Address _____
City _____
Telephone No _____
E-Mail _____

PROPOSER'S AUTHORIZED REPRESENTATIVE. Proposer is required to sign this document and return four (4) original hard copy proposals (one unbound and three bound) and an electronic copy of their proposal on an USB flash-drive in sealed envelopes or cartons to the City Contact.

Proposer agrees to furnish and deliver all goods and/or provide all services set forth or otherwise identified above subject to the terms and conditions specified herein.

An original signature below is required. If the RFP is being submitted by more than one entity/individual, each entity/individual must sign and submit this page separately along with the proposal. By signing below, the signer declares under penalty of perjury that she/he is authorized to submit and sign this proposal.

Signature of Proposer's Authorized Representative

Print Name

Title

Signature

Date

INTRODUCTION

The City of San Diego (City) is requesting proposals from qualified organizations or individuals (hereinafter referred to as "Proposer(s)") to sublease, operate, maintain, and use the City-leased premises, within the City Heights Community area, commonly known as the El Cajon Boulevard Bridge Decks and the University Avenue Bridge Decks, located at 4023 and 4024 El Cajon Boulevard and 4023 and 4024 University Avenue, San Diego, CA 92105 (Premises). The City is seeking proposals that reflect the City's desire to have an operator who provides a high level of service to the local and regional community, while operating the Premises in a fiscally responsible manner. It is the City's desire that the Premises operate with minimal, if any interruption in service to the local community. The use of the Premises shall be in accordance with the terms and conditions contained in this RFP, and, if awarded, pursuant to a sublease agreement (Sublease) to be negotiated between the City and the Proposer whose proposal is selected (Selected Proposer), subject to approval by the City of San Diego Real Estate Assets Department and subject to the consent of the State of California.

A. BACKGROUND

The State of California owns premises comprised of the State Route 15. On April 27, 2012, State and City executed an Operation and Maintenance Agreement, whereby City agreed to continue its maintenance of certain improvements on the bridge decks crossing State Route 15 at El Cajon Boulevard and University Avenue.

The City desires to activate the El Cajon Boulevard and University Avenue bridge deck plaza areas for use by the general public.

The portion of the Premises, commonly known as the I-15, El Cajon Boulevard Bridge Decks, consists of restrooms and retail areas of the two permanent structures located at 4023 and 4024 El Cajon Boulevard, and an additional 400 square feet on the north bridge deck and 400 square feet on the south bridge deck, for the placement of four (4) prefabricated kiosks with a total maximum square footage of 1,200 square feet. The prefabricated kiosks will be supplied by the sublessee. The portions of the I-15, El Cajon Boulevard Bridge Decks subject to this Sublease are depicted in the attached "Exhibit A."

The portion of the Premises, commonly known as the I-15, University Avenue Bridge Decks, consists of restrooms and retail areas of the two permanent structures located at 4023 and 4024 University Avenue, and an additional 400 square feet on the north bridge deck and 400 square feet on the south bridge deck, for the placement of four (4) prefabricated kiosks with a total maximum square footage of 1,200 square feet. The prefabricated kiosks will be supplied by the sublessee. The portions of the I-15, University Avenue Bridge Decks subject to this Sublease are depicted in the attached "Exhibit B."

The Premises shall be used by sublessee(s) only for the purpose of operating and maintaining the permanent and temporary kiosks on the Premises in accordance with a Sublease, and for no other purpose whatsoever.

The following ridership information for the I-15 transit plazas at El Cajon Boulevard and University Avenue is derived from MTS' Spring 2019 booking period, is for informational purposes only, and is not warranted. Proposer's use of any information shall be at the Proposer's own risk. For an average weekday, 448 bus trips stop at the transit center on El Cajon Boulevard. Approximately 1,029 passengers board the bus at these stops and approximately 988 passengers depart the bus at these stops. On University Avenue, 544 bus trips stop at the transit plaza. Approximately 1,245 passengers board the bus and approximately 1,128 passengers depart the bus at these stops.

As transit priority efforts like the El Cajon Boulevard Pilot Bus Lane and the University Avenue Mobility Project move forward, MTS is anticipating increased passenger volumes at these plazas in the near future.

There is no private vehicle parking, stopping, or standing allowed along the bridge decks themselves because that curb space is reserved exclusively for transit vehicles.

B. TYPE OF PROPOSALS SOUGHT

Each proposal should reflect the City's desire to have a sublessee who provides a high level of service to the public while operating, managing and maintaining the Property in a fiscally responsible manner that preserves and improves the Property as a community resource for the benefit of the community.

The goal of this solicitation is to enter into a short-term sublease of no more than three (3) years. The Sublease may contain a provision authorizing the Sublessee to request up to two three (3) year extensions; however, any extensions will be granted in the City's sole discretion.

C. OPERATING PLAN

The City is seeking a Proposer to sublease, operate, and maintain the Property. Each Proposer should demonstrate the ability to support the City's desire to sublease the Property for the benefit of the general public, users and the surrounding community. The City would like the Proposer to be operational seven days per week. Suggested uses may include a coffee and snack stand, flower stand, telecom site or any alternative use to assist the City in achieving its ultimate goals not considered in this solicitation.

Proposals should include, at a minimum, detailed responses for the following requirements:

1. A proposed operating plan (Operating Plan), which shall include a detailed plan highlighting how the Property will be operated if the Sublease is awarded. The City requires, and the Operating Plan must include, the following:
 - a) A program plan providing a detailed description of the various types of activities and services proposed to be offered at the Property ("Proposed Uses").
 - b) Proposer's required qualifications for on-site personnel in charge of conducting and operating the facilities when the Property is open to the public. The City is requiring the Proposer to have at least three (3) years' experience in the past five (5) years in the sublease and operations of a venue of comparable function.
 - c) Detailed description of how the Proposer will operate the Property, including a detailed description of the Proposer's organizational structure, a list of the leadership/management team, the responsibilities of the leadership/management team, staff, and any other personnel/member which are proposed to be involved in the operations under the Sublease.
 - d) A detailed plan for any proposed construction or renovations. Plan must include, but is not limited to: project description, location, impact to operations, cost estimates, depreciation schedule, and list of City responsibilities, if any. All construction or renovation is subject to City approval and will be negotiated with the selected Proposer.

2. The Proposer(s), or signatory to the proposal, must be the direct operator of the entire Property under the Sublease. For proposals with multiple Proposers, Proposers should indicate whether any non-direct operator Proposers are seeking to be a co-lessee under the Sublease.
3. Each Proposer must provide the most recent three (3) years of financial statements (including, but not limited to: balance sheets, income statements, and cash flow statements) demonstrating successful management or must provide as to why three (3) years of financial statements cannot be provided.
4. The necessary trade fixtures and equipment, if any, to be provided by the Proposer needed to provide the level of service to be required under the Sublease. Title to those fixtures and equipment would remain vested in the selected Proposer unless negotiated otherwise.
5. A proposed initial annual rent. If the annual rent is based on a percentage of revenues, this section shall include a list of percentage rents by category for the proposed Sublease term and the initial minimum annual rent.
6. Proposer should demonstrate in detail the community need that is being met and the anticipated number of clients that will be served by each type of activity or service proposed to be offered at the Property.

All aspects of the Operating Plan, including proposed uses, fees, and improvements, are subject to approval by the City.

Proposals shall consider all applicable laws and available industry guidelines as they apply to liability, public health standards, Americans with Disabilities Act (ADA) access, and the highest standards of maintenance of all facilities and equipment. Proposals must address any required off-site improvements, including but not limited to, curbs, gutters, sidewalks, utilities, landscaping, and ADA compliance for the Property.

D. SUBLEASE TERMS

The City anticipates entering into the Sublease with the selected Proposer to memorialize, in detail, the elements of the selected proposal. The following terms and conditions shall be incorporated into the Sublease to be negotiated and executed between the selected Proposer and the City, subject to modification, deletion, and additional terms and conditions as determined by the City in the City's sole discretion. If Proposer intends to request a modification from any of the identified terms or conditions listed below, such request must be included in the Proposal in order to be considered.

1. Premises. The Premises taken "as is" consists of portions of the real property commonly known as the I-15, El Cajon Boulevard Bridge Decks and the I-15, University Avenue Bridge Decks. The I-15, El Cajon Boulevard Bridge Decks, consists of restrooms and retail areas of the two permanent structures located at 4023 and 4024 El Cajon Boulevard, and an additional 400 square feet on the north bridge deck and 400 square feet on the south bridge deck, for the placement of four (4) prefabricated kiosks with a total maximum square footage of 1,200 square feet. The prefabricated kiosks will be supplied by the sublessee. The portions of the I-15, El Cajon Boulevard Bridge Decks subject to this Sublease are depicted in the attached "Exhibit A".

The Premises taken "as is" consists of portions of the real property commonly known as the I-15, University Avenue Bridge Decks, consists of restrooms and retail areas of

the two permanent structures located at 4023 and 4024 University Avenue, and an additional 400 square feet on the north bridge deck and 400 square feet on the south bridge deck, for the placement of four (4) prefabricated kiosks with a total maximum square footage of 1,200 square feet. The prefabricated kiosks will be supplied by the sublessee. The portions of the I-15, University Avenue Bridge Decks subject to this Sublease are depicted in the attached "Exhibit B."

2. Uses. The Premises shall be used by sublessee(s) only for the purpose of operating and maintaining permanent and temporary kiosks.

Prohibited uses include:

- a) Using the Property in violation of any law, statute, zoning restriction, ordinance or governmental rule or regulation or requirements.
 - b) Operating or installing gasoline or petroleum supply station, transporting or storing gasoline or petroleum products under the structures.
 - c) Manufacturing or storage or use of flammable materials, explosives or other materials, deemed by LESSOR to be a potential fire or other hazard to the transportation facility. The occupancy and use of the area shall not be such as will permit hazardous or unreasonably objectionable smoke, fumes, vapors or odors to rise above the surface of the traveled way of the transportation facility.
 - d) Using, creating, storing or allowing any hazardous materials on the premises, except as otherwise expressly permitted in this Lease.
 - e) Constructing, erecting, maintaining or permitting any sign, banner or flag upon the Premises, except as provided for in Section 7.3, without the prior written approval of LESSOR. LESSEE shall not place, construct or maintain upon the premises or fencing any advertising media that include moving or rotating parts, searchlights, flashing lights, loudspeakers, phonographs or other similar visual or audio media.
 - f) Parking of any vehicles, storing wrecked or inoperable vehicles of any kind on the leased premises. Vending in any manner that would require or encourage vehicles to stop or park on the bridge decks, in the bus lane, or any portion of the travel way, in such a manner that would impede traffic or create a hazard to the traveling public (i.e. Food Trucks).
 - g) Vending, offering, trading, marketing or selling whatsoever, of any kind of cannabis, cannabis product or extract, cannabis based edible or beverage, or alcoholic beverage of any kind.
 - h) Flea markets, swap meets, or farmers markets.
3. Term. The term will be a short-term sublease of no more than three (3) years with three two-year extensions; however, any extensions will be granted in the City's sole discretion.
 4. Rent. Proposer shall propose a rental amount to be paid to City, appropriate to the proposed use of the Property. Initial rent may be adjusted upward according to annual CPI adjustments or a fixed percentage increase (for example, 3.5% per year increase) for flat rate sublease agreements. City may, at its option, periodically adjust the Percentage Rent rates upward to fair-market Percentage Rent for percentage rent sublease agreements. Percentage Rent increases shall be determined by qualified CITY staff which rates shall only be higher, not lower, than the then-current percentage rates.
 5. Right to Assign and Sublet. The selected Proposer may not assign the Sublease or any interest therein and may not sublet any portion thereof without prior written approval from the City. The City's approval may be conditioned upon the proposed assignee agreeing to revisions to the Sublease, to reflect market conditions or the City

requirements that are then in effect. Also, no assignee will be approved by City who is not at least comparable to the original selected Proposer in financial and professional capabilities to operate the Property, as determined by the City.

6. Equity Participation. The selected Proposer shall pay to City two percent (2%) of the gross amount paid for the leasehold in connection with any approved assignment of the Sublease; two percent (2%) of any amount paid to the selected Proposer in consideration of a sub-sublease of all or a majority portion of the leasehold; or two percent (2%) of the amount of any loan or encumbrance against the Sublease over and above the amount of the encumbrance needed to finance the improvements. The amount upon which the two percent (2%) shall be based shall be total consideration resulting from the transaction including total cash payments and the market value of non-cash consideration, including but not limited to stocks.
7. Compliance with Laws. The selected Proposer shall secure and maintain full compliance with all applicable municipal, county, state, and federal laws and regulations at its own cost, regarding all aspects of the Sublease and activities at the Property.
8. Utilities. The selected Proposer shall order, obtain, and pay for all utilities, service, and installation in connection with the Property, subject to obtaining all applicable approvals and permits. All utilities shall be installed underground. Sub-metering shall be used for proper billing of utilities.
9. Single Use Plastic Reduction Ordinance. Unless an exception applies, selected Proposer will comply with the Single Use Plastic Reduction Ordinance codified in San Diego Municipal Code sections 66.0901 through 66.0907. Upon successful negotiation, the selected Proposer will sign a Sublease, certifying that it will comply with the requirements of the Single Use Plastic Reduction Ordinance throughout the Term.
10. Hazardous Substances. The selected Proposer shall not allow the illegal installation, storage, utilization, generation, sale or release of a Hazardous Substance or otherwise regulated substance in, on, under or from the Property. The selected Proposer and the selected Proposer's agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance on the Property without City's prior written consent. The selected Proposer shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.
 - a) Release. A "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a hazardous substance.
 - b) Hazardous Substance. "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
 - c) Remediation. If the selected Proposer's occupancy, use, development, maintenance or restoration of the Property results in a release of a Hazardous

Substance, the selected Proposer shall pay all costs of remediation and removal to the City's satisfaction for unrestricted reuse of the Property, and in accordance with all applicable laws, rules and regulations of governmental authorities.

- d) Removal. If the selected Proposer or the selected Proposer's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances or hazardous wastes to the Property, the selected Proposer and/or the selected Proposer's contractors or agents shall remove all Hazardous Substances and hazardous wastes in any type of container, equipment or device from the Property immediately upon or prior to the expiration or earlier termination of the Lease. Upon City's request, the selected Proposer shall deliver to City true copies of documentation demonstrating the legal removal and/or disposal of the Hazardous Substances and/or hazardous wastes, containers, equipment or devices from the Property. The selected Proposer shall be responsible for any and all costs incurred by City to remove any container, equipment or device requiring disposal or removal as required by this provision.
 - e) Indemnity. The selected Proposer shall protect, defend, indemnify, and hold City harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from the selected Proposer's occupancy, use, development, maintenance, or restoration of the Property, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary City response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, the selected Proposer's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
 - f) Notice of Release. If the selected Proposer knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the Premises, the selected Proposer shall immediately notify City and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. The selected Proposer shall deliver a written report thereof to City within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If the selected Proposer knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, the selected Proposer shall take all actions necessary to alleviate the danger. The selected Proposer shall immediately notify City in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Property.
11. Encumbrance of Sublease. The selected Proposer shall not encumber the Sublease, its interest in the Sublease, or any improvements on the Property by deed of trust, mortgage, chattel mortgage, or other security instrument without the City's prior written consent.
12. Nondiscrimination. The selected Proposer shall not discriminate in any manner against any person by reason of race, color, religion, gender, gender expression, gender identity, sexual orientation, medical status, national origin, age, marital status, or physical disability in the selected Proposer's use of the Property. The selected Proposer shall comply with the City adopted program for equal employment opportunities. This program includes requiring the selected Proposer to submit a

Workforce Report, and in some cases an Equal Opportunity Plan. The Selected Proposer shall comply with the San Diego Municipal Code sections 22.4301- 22.4308, which requires lessees of City-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners.

13. Indemnification & Hold Harmless. Selected Proposer shall protect, defend, indemnify, and hold City and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to selected Proposer's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with the Lease or selected Proposer's occupancy, use, development, maintenance, restoration, or improvement of the Premises or any areas outside the Premises used or occupied by selected Proposer from time to time, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that selected Proposer's duty to indemnify and hold City harmless shall not include any established liability arising from the sole negligence or intentional misconduct of City or its elected officials, officers, employees, representatives, or agents. City may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If City chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, selected Proposer shall pay all the costs related thereto, including without limitation reasonable attorney fees and costs.
14. Insurance. Proposer 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.

Proposer shall provide, at a minimum, the following:

- 14.1 Types of Insurance. At all times during the term of this Agreement, the Proposer shall maintain insurance coverage as follows:
 - a. Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$2 million per occurrence and subject to an annual aggregate of \$4 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
 - b. Commercial Automobile Liability. For all of the Proposer's automobiles including owned, hired and non-owned automobiles, the Proposer shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).
 - c. Causes of Loss - Special Form Property Insurance. Proposer shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property

Insurance on all of PERMITTEE's insurable property related to the Allowed Uses of the Premises under this Permit or the Premises in an amount to cover 100 percent (100%) of the replacement cost. Proposer shall deliver a certificate of such insurance to CITY's Real Estate Assets Department.

- d. Workers' Compensation. For all of the Proposer 's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Proposer shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and the Proposer shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.
- 14.2 Self-Insured Retentions. Self-insured retentions must be declared to and approved by City. City may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses 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.
- 14.3 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this PERMIT or in the Special General Conditions shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the City. The 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 Eligible Surplus Lines Insurers (LESLI 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.
- 14.4 Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving PERMITTEE thirty (30) days prior written notice. PERMITTEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses.
- 14.5 Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed Uses. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 14.6 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to the City before any work is initiated under this Agreement.

Commercial General Liability Insurance Endorsements:

- i. ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.
- ii. PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of Contractor's insurance and shall not contribute to it.

Workers' Compensation Insurance Endorsements:

- i. WAIVER OF SUBROGATION. The Workers' Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the City.
15. Taxes. The selected Proposer must pay all taxes and assessments, including possessory interest taxes levied by reason of its possession, development or use of the Property.
 16. Default. The City will reserve the right to terminate the Sublease in the event of selected Proposer's failure to pay any rent within five (5) days of notice thereof, or to cure any curable default or breach within thirty (30) days of legal notice thereof.
 17. Permits and Licenses. The selected Proposer will be required to obtain all necessary permits and licenses for the construction, operations and activities at the Property, at the selected Proposer's sole cost and expense. By the selection of a proposal or execution of the Sublease, neither the City nor the San Diego City Council is obligating itself or any governmental agent, board, commission or agency with regard to any other discretionary action relating to any occupancy, use, development, maintenance or restoration of the Property. "Discretionary action" includes without limitation rezonings, variances, environmental clearances and all other required governmental approvals.
 18. Non-responsibility. The City hereby disclaims any responsibility, liability, or obligation to issue any permits or licenses or to waive any legal requirement by reason of selecting a Proposer or executing the Sublease with the selected Proposer.
 19. Construction Requirements. The selected Proposer will construct all improvements in accordance with all federal, state and local laws, rules and regulations, including, but not limited to, the California Environmental Quality Act and ADA.

20. Living Wages. The Sublease is subject to the City's Living Wage Ordinance (LWO), codified in San Diego Municipal Code Chapter 2, Article 2, Division 42. Proposer agrees to require all of its subcontractors, sublessees, and concessionaires subject to the LWO to comply with the LWO and all applicable regulations and rules.
- a) Payment of Living Wages. Pursuant to San Diego Municipal Code section 22.4220(a), Proposer and its subcontractors shall ensure that all workers who perform work under this Lease are paid not less than the required minimum hourly wage rates and health benefits rate unless an exemption applies.
 - i. Copies of such living wage rates are available on the City website at <https://www.sandiego.gov/purchasing/programs/livingwage/>. Proposer and its subcontractors shall post a notice informing workers of their rights at each job site or a site frequently accessed by covered employees in a prominent and accessible place in accordance with San Diego Municipal Code section 22.4225(e).
 - ii. LWO wage and health benefit rates are adjusted annually in accordance with San Diego Municipal Code section 22.4220(b) to reflect the Consumer Price Index. Service contracts, financial assistance agreements, and City facilities agreements must include this upward adjustment of wage rates to covered employees on July 1 of each year.
 - b) Compensated Leave. Pursuant to San Diego Municipal Code section 22.4220(c), Proposer and its subcontractors shall provide a minimum of eighty (80) hours per year of compensated leave. Part-time employees must accrue compensated leave at a rate proportional to full-time employees.
 - c) Uncompensated Leave. Proposer and its subcontractors must also permit workers to take a minimum of eighty (80) hours of uncompensated leave per year to be used for the illness of the worker or a member of his or her immediate family when the worker has exhausted all accrued compensated leave.
 - d) Enforcement and Remedies. City will take any one or more of the actions listed in San Diego Municipal Code section 22.4230 should Proposer or its subcontractors be found to be in violation of any of the provisions of the LWO.
 - e) Payroll Records. Proposer and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Proposer is responsible for ensuring its subcontractors submit certified payroll records to the City.
 - iii. For contracts subject to both living wage and prevailing wage requirements, only one submittal will be required. Submittals by a Proposer and all subcontractors must comply with both ordinance requirements.
 - f) Certification of Compliance. San Diego Municipal Code section 22.4225 requires each Proposer to fill out and file a living wage certification with the Living Wage Program Manager within thirty (30) days of Award of the Contract.
 - g) Annual Compliance Report. Proposer and its subcontractors must file an annual report documenting compliance with the LWO pursuant to San Diego Municipal Code section 22.4225(d). Records documenting compliance must be maintained for a minimum of three (3) years after the City's final payment on the service contract or agreement.
 - h) Exemption from Living Wage Ordinance. Pursuant to San Diego Municipal Code section 22.4215, this Contract may be exempt from the LWO. For a determination on this exemption, Proposer must complete the Living Wage Ordinance Application for Exemption.

21. Prevailing Wages. If in its proposal, and/or during Lease negotiations, a Proposer seeks any of the following: (1) the payment of money or the equivalent of money from the City directly to or on behalf of the Proposer; (2) transfer from the City of an asset of value for less than fair market price; (3) the payment, reduction, to be charged at less than fair market value, waiver or forgiveness of fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the Lease; (4) money loaned by the City that is to be repaid on a contingent basis; or (5) credits that are applied by the City against repayment obligations to the City, then pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Sublease is subject to State prevailing wage laws. For construction work performed under the Sublease cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under the Sublease cumulatively exceeding \$15,000, the selected Proposer and its contractors and subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.
- a) Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, the selected Proposer and its contractors and subcontractors shall ensure that all workers who perform work under the Sublease are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.
- i. Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. The Selected Proposer and its contractors and subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.
- ii. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of the Sublease. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to the Sublease in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of the Sublease, each successive predetermined wage rate shall apply to the Sublease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of the Sublease, such wage rate shall apply to the balance of the Sublease.
- b) Penalties for Violations. The selected Proposer and its contractors and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 - 1861.
- c) Payroll Records. The selected Proposer and its contractors and subcontractors

shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. The selected Proposer shall require its contractors and subcontractors to also comply with section 1776. The selected Proposer and its contractors and subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. The selected Proposer is responsible for ensuring its contractors and subcontractors submit certified payroll records to the City. The selected Proposer, its contractors and subcontractor shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

- d) Apprentices. The selected Proposer and its contractors and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. The selected Proposer shall be held responsible for their compliance as well as the compliance of their contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.
- e) Working Hours. The selected Proposer and its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.
- f) Required Provisions for Subcontracts. The selected Proposer shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
- g) Labor Code Section 1861 Certification. The selected Proposer in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing the Lease, the selected Proposer will certify that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Sublease."
- h) Labor Compliance Program. The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will instruct the selected Proposer to withhold contract payments to the selected Proposer's contractor when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.
- i) Contractor and Subcontractor Registration Requirements. Certain work performed pursuant to the Sublease is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Labor Code section 1725.5. In accordance with Labor Code section 1771.1(a), "[i]t is not a violation of this section

for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 2103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.”

- i. The selected Proposer’s inadvertent error in listing a contractor or subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to this RFP shall not be grounds for filing a protest or grounds for considering the proposal non-responsive provided that any of the following apply: (1) the contractor or subcontractor is registered prior to the Proposal Due Date; (2) within twenty-four hours after the Proposal Due Date, the contractor or subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the contractor or subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.
 - ii. A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, Selected Proposer, contractor, or any subcontractor to comply with the requirements of section 1725.5 of this section.
 - iii. By submitting a proposal to the City, the selected Proposer is certifying that he or she has verified that all contractor and subcontractors used on any public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and selected Proposer shall provide proof of contractor and subcontractor registration to the City upon request.
21. Highest Wage Rate Applies. Proposer is required to pay the highest applicable wage rate where more than one wage rate applies.
22. Performance and Payment Bond. The selected Proposer shall provide to City, prior to commencement of any construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated design and construction costs of the work to be performed. The bond must be a corporate surety bond or other security satisfactory to City. The bond shall insure that the construction to be commenced by the Selected Proposer shall be completed in accordance with the plans approved by City or, at the option of City that the uncompleted construction shall be removed, and the Property restored to a condition satisfactory to City. The bond shall be held in trust by City for the purpose specified above, or at City’s option may be placed in an escrow approved by City. This requirement is not intended to be duplicative of a construction bond otherwise required of the selected Proposer.

Prior to the commencement of any work on the Property, the selected Proposer shall deliver to City a payment bond (materials and labor bond) in an amount not less than one hundred percent (100%) of the total amount payable under the contract(s) for construction on the Property to satisfy claims of material suppliers and of mechanics and laborers employed on the contract(s) for construction on the Property. The bond shall be provided in compliance with California Civil Code sections 9550-9566. The bond shall be executed by an admitted surety, consistent with California Code of Civil Procedure section 995.670 that is authorized by the State of California Department of Insurance to transact surety insurance in the State. The selected Proposer shall maintain the bond in full force and effect until all improvements for the construction on the Property are accepted by City and until all claims for materials and labor are paid and must otherwise comply with the Government Code. Should the bond become

insufficient, the Selected Proposer shall renew, or cause the renewal of, the bond within ten (10) calendar days after receiving notice from City.

23. Improvements and Alterations. All improvements, demolition, or alterations to the Property, including kiosk design and method of installation, shall be in accordance with plans and specifications approved in writing by the City in advance and shall be made at the sole cost and expense of the Selected Proposer.
24. Maintenance. All maintenance and repairs of the Property shall be the responsibility of the selected Proposer throughout the entire term of the Sublease without expense to the City. Maintenance and repairs shall include, but not be limited to, the roof, heating and air conditioning, plumbing, and electrical. The selected Proposer shall maintain the Property and all improvements, fixtures, and installations thereon in a clean, safe and well-maintained condition throughout the term of the Sublease, to the satisfaction of the City and in compliance with all applicable laws.
25. Ownership of Improvements. All improvements shall become the property of the City unless the City elects not to take ownership of any or all improvements upon termination or expiration of the Sublease. If the City elects not to take ownership of any or all improvements, all improvements shall be removed from the Property at the termination or expiration of the Sublease, at the selected Proposer's sole cost and expense. If the City elects to retain the improvements, the selected Proposer must remove all trade fixtures and personal property upon termination or expiration of the Lease without cost to the City or damage to the Property.
26. Hours of Operation. A regular schedule of days and hours of operation shall be established by the selected Proposer to best serve the public. The schedule shall be subject to prior approval by the City.
27. Rate of Charges. All prices of merchandise, equipment, and services shall be comparable with the prices of like merchandise, equipment, and services offered in the San Diego County area. **If no other similar venues are found within San Diego County comparables from other geographic regions can be used to determine pricing.**
28. Entry and Inspection. CITY may at all times enter and inspect the Premises and the operations conducted on the Premises. This Sublease is subject to an agreement with the Metropolitan Transit Development Board ("MTS") that authorizes MTS, from time to time, to access to the Premises to work on electrical lines and service outdoor signage. SUBLESSEE shall not deny MTS access or interfere with MTS's right to enter the Premises for this purpose. This Sublease is also subject to a Master Lease with the State of California that authorizes the State, through its representatives, and other city, county, state and federal agencies through their agents and representatives, the full right and authority to enter in and upon the Property and any building and improvements situated thereon at any and all reasonable times during the term.
29. Future Transportation Project. SUBLESSEE specifically acknowledges that this sublease may be terminated upon 60 days' notice if the State of California determines that the Property is needed for the construction of an "Approved of Funded Transportation Project" or an emergency repair. In that event, SUBLESSEE will have no claim upon City and State of California and SUBLESSEE waives any and all claims for compensation, damages or relocation assistance.
30. Termination by City. Notwithstanding any provision herein to the contrary, this

Sublease may be terminated at any time and for any reason by City upon thirty (30) days prior notice in writing.

E. RESPONSIBILITIES OF PROPOSERS

1. Proposers are responsible for carefully examining this RFP and all documents incorporated into this RFP by reference before submitting a proposal. If selected for award of the Sublease the Selected Proposer shall be bound by same unless the City has accepted Proposer's exceptions, if any, in writing.
2. Each Proposer is responsible for making all investigations and examinations necessary for formulating proposals and operating the Property. Submission of a proposal will be considered evidence that Proposers have familiarized themselves with the nature and extent of the requirements and has made such investigations and examinations.
3. The selected Proposer shall be responsible for obtaining all necessary approvals and permits to the satisfaction of the City.
4. Proposers may withdraw their proposals at any time prior to the selection of a Proposer upon written notice to the City Contact.

F. PROPOSAL CONTENTS

All proposals must include, at a minimum, the information specified below. Failure to include this information shall be cause to deem the proposal non-responsive and result in its complete rejection. The inclusion of any additional information that will assist the City in the evaluation is encouraged. The adequacy, depth, and clarity of the proposal will influence, to a considerable degree, its evaluation as stated in Section J. The proposal submitted must be complete and evaluation and selection of proposals shall be strictly based on the material contained in the proposals alone. Proposers are advised to submit thorough, complete proposals, since the City reserves the right to make a selection based solely on the information contained in submitted proposals.

Each proposal **MUST** include the following items:

1. Cover Sheet. Proposer shall submit with its proposal the signed Request for Proposal (RFP) Cover Sheet.
2. Summary of Experience. A resume or summary of each Proposer's direct experience, which should be a minimum of three (3) years in the past five (5) years, and qualifications to operate the use presented in the proposal. The names and contact information from a minimum of three (3) references who can provide a referral of Proposer's experience during the past five (5) years. For proposals with multiple Proposers, if a Proposer is not going to be involved in the day-to-day operations of the Property, then that Proposer must include qualifications and verification that all persons to be employed in management capacity at the Property are sufficiently qualified to satisfy the requirements of this RFP.
3. Financial Statements. Each Proposer must submit either: (a) financial statements for the preceding three (3) years that were audited or prepared by a certified public accountant; (b) tax returns for the preceding three (3) years; or (c) substantial justification as to why three (3) years of financial statements or tax returns cannot be provided. Each Proposer shall submit a full and detailed statement of their true financial condition as of **December 31, 2019**, or as recent as possible if that date is not

available. The statement shall include the Proposer's assets, liabilities and net worth, including the availability of operation capital and its source. If the Proposer plans to use borrowed capital, then the amount of borrowed capital proposed for the improvements and operation of the Property, and its source and terms of repayment, must be included in the financial statement.

4. The Operating Plan. Proposer shall submit the Operating Plan, as set forth in Section C, above.
5. Proposed Term. Each Proposer shall confirm that Proposer understands the term of the Lease is for three (3) years with the opportunity to request three two-year extensions, which will be granted in the City's sole discretion.
6. Lessee's Questionnaire. Each Proposer shall submit a completed Lessee Questionnaire. Copy of Lessee Questionnaire is attached as Exhibit D.
7. Certification. By submission of a proposal, the Proposer certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal, State or Local departments or agencies. Proposer shall submit with its proposal a completed Contractor Standards Pledge of Compliance. Copy of the Pledge of Compliance is attached as Exhibit E (Contractor Standards Pledge of Compliance).
8. Work Force Report. Each Proposer shall submit a completed Work Force Report. Copy of the Work Force Report is attached as Exhibit F.
9. Business Tax Certificate. Proposers shall submit with its proposal a copy of their business tax certificate, or a copy of their application receipt.

G. NONCONFORMING PROPOSALS

Proposers requesting deviations from the provisions of this RFP should specifically identify the requirements being deviated from and address the requested deviation in their proposals. The City is not obligated to accept any proposal, whether conforming or nonconforming.

H. PRE-PROPOSAL INSPECTION

To give Proposers an opportunity to view the Property, a pre-proposal inspection of the Property has been scheduled as set forth in the Request for Proposals (RFP) Cover Sheet. It is strongly suggested that all Proposers attend this inspection. Attendance is not mandatory. It is the sole responsibility of the Proposer to become familiar with the scope of the City's requirements prior to submitting a proposal.

I. PROPOSAL SUBMISSION

1. Due Date
 - a) Proposals must be received at the address listed below no later than 4:00 p.m. as set forth in the Request for Proposals (RFP) Cover Sheet.
 - b) Proposals received after that time will not be considered.
2. Place of Delivery
 - a) All proposals should be delivered to:

City of San Diego
Real Estate Assets Department
1200 Third Avenue, Suite 1700
San Diego, CA 92101
Attn: Heide Farst

3. Faithful Performance Deposits. All proposals **MUST** include a cashier's check or certified check in the amount of Two Thousand Five Hundred Dollars (\$2,500) payable to **City Treasurer** as a faithful performance deposit to assure that if the proposal is selected by the City, that the Proposer will enter in good faith into a sublease agreement containing substantially the same terms and conditions as set out in this RFP and in the selected proposal. No personal checks will be accepted, and no interest will be paid on deposits.
4. Number of Copies. Proposers are required to submit their proposals as set forth in the Request for Proposals (RFP) Cover Sheet. All materials submitted by Proposers become the property of the City of San Diego and may not be returned.
5. Questions and Comments. Written questions and comments must be electronically mailed (e-mailed) to the City Contact no later than the date specified on the Request for Proposals (RFP) Cover Sheet. Only written communications relative to the RFP shall be considered. E-mail is the only acceptable method for submission of questions. It is incumbent upon Proposers to verify that the City has received their questions and/or comments. All responses to questions will be posted on the City's website at (<https://www.sandiego.gov/real-estate-assets/>) as an Addendum. The City will distribute questions and answers, without identification of the inquirer(s), to all Proposers who are on record as having received this RFP. No oral communications can be relied upon for this RFP. Addenda will be issued addressing questions or comments that are determined by the City to cause a change to any part of this RFP.

J. PROPOSAL EVALUATION AND SELECTION

The City reserves the right to select the proposal that will provide the best value to the City given the requirements of this RFP. The City reserves the right, based upon its deliberations and in its opinion, to accept or reject any or all proposals at any time, including any proposals that have been scored or been the subject of oral presentations and/or interviews. The City also reserves the right to waive minor irregularities or variations to the specifications stated herein and in the solicitation process provided that such a waiver does not provide an unfair competitive advantage to the Selected Proposer.

The City has the right to accept the proposal that serves the best interest of the City, as submitted, without discussion or negotiation. Proposers should, therefore, not rely on having a chance to discuss, negotiate, and adjust their proposals. The City may negotiate the terms of a Lease with the Selected Proposer based on the RFP and the Proposer's proposal or award the Lease without further negotiation.

The City reserves the right to inspect the Proposer's equipment and facilities to determine if the Proposer is capable of fulfilling the Lease. Inspection will include, but not limited to, survey of Proposer's physical assets and financial capability. Proposer, by signing the RFP and submitting a proposal agrees to the City's right of access to physical assets and financial records for the sole purpose of determining proposer's capability to perform pursuant to a Lease. Should the City conduct this inspection, the City reserves the right to disqualify a Proposer who does not, in the City's judgment, exhibit the sufficient physical and financial resources to perform pursuant to the Lease.

Proposals shall be evaluated in a two-step process by an evaluation committee of qualified City staff, and if necessary other persons selected by the City.

In Step One, the committee will evaluate all responsive proposals based upon the information, references and materials contained in the proposals as submitted. The committee will score and rank all responsive proposals based on the evaluation criteria indicated below.

If the score of the highest scoring proposal resulting from Step One is more than ten (10) points greater than the scores of the other proposals, and the committee is satisfied that the highest scoring proposal is sufficient for recommendation, the Proposer with the highest scoring proposal will negotiate the Sublease with the City, which will then be recommended to the City Council for award. The Selected Proposer may be required to appear before the City Council and any of its committees to answer questions and for award of the Sublease.

If one or more proposals score within ten (10) points of the highest scoring proposal, the process will proceed to Step Two. Only the Proposer with the highest scoring proposal and those Proposers scoring within ten (10) points or less of the highest scoring proposal (collectively the “finalists”) will be asked to participate in Step Two. In Step Two, the finalists will be required to provide an oral presentation and/or participate in an interview of key personnel by appearing before the evaluation committee or by conference telephone call. The purpose of the oral presentation/interview is to provide the committee with an opportunity to further evaluate the finalists’ proposals, which may include requesting clarification to the finalists’ proposals. The finalists are required to make the oral presentation/interview within seven (7) business days after request by the City. The committee may also inspect the finalists’ facilities and perform other due diligence as it may determine. The committee may then, at the committee’s sole discretion, add up to eleven (11) additional points to the score of any finalist.

If the committee is satisfied that the first-ranked proposal resulting from Step Two is sufficient for recommendation, the Proposer with the highest scoring proposal will negotiate the Sublease with the City, which will then be recommended to the City Council for award. The Selected Proposer may be required to appear before the City Council and any of its committees to answer questions and for award of the Sublease.

Selection of the proposal to be recommended for award of the Sublease will be based on the evaluation criteria listed below:

1. Responsiveness to RFP (Maximum 20 points):

The extent to which a proposal clearly addresses the elements of this RFP, including: quality, attractiveness, and thoroughness of the proposal; responsiveness to the minimum requirements described in the RFP; and understanding the needs, goals and objectives of the City while providing the highest and best use of the Property.

2. Operating Plan (Maximum 25 points):

The extent to which a Proposer clearly addresses the Operating Plan elements of this RFP, including, the quality and professionalism of the Proposer’s Operating Plan; responsiveness to the Operating Plan minimum requirements described in the RFP, including the proposed operation of the Property; understanding the needs, goals, and objectives of the City while providing the highest and best use of the Property, and ensuring continuity of operations at the Property. The overall attractiveness of the terms of the Proposer’s Operating Plan.

3. Professional Experience and Qualifications (Maximum 25 points):

The extent to which a proposal demonstrates, among other things, the following: The Proposer's direct experience and qualifications in successfully managing an operation of the type contemplated in this RFP. The Proposer should include verification that his/her employees are well qualified to conduct the business contemplated in this RFP and should describe in detail the Proposer's ability to implement the components of the proposal. The Proposer should have at a minimum three (3) years' direct experience in the past five (5) years conducting similar operations.

4. Financial Capability (Maximum 20 points):

The extent to which a Proposer demonstrates, among other things, the following: the necessary financial capability and strength to successfully operate and restore the Property in accordance with the proposal and the Sublease, including the possibility of obtaining bonding; ability to adequately staff the proposed operation on the Property; and possession of, or ability to obtain, additional financing to address unexpected or emergency circumstances at the Property.

5. Community/Public Service (Maximum 10 points):

The Proposal will be evaluated based on the Proposer's overall ability to best serve the needs of the public by providing the most benefits which are accessible to all community members and the general public.

Maximum Total Points: 100

6. Oral Presentation/Interview (Maximum 11 points)

If Step Two is initiated points will be awarded to the extent to which a Proposer demonstrates, among other things, the following: ability to communicate information that is concise, easy to understand and relevant to the goals of this solicitation.

K. ANNOUNCEMENT OF INTENT TO AWARD

1. Intent to Award Sublease. The City will inform all proposers of its intent to award a Sublease, subject to negotiation and approval by City Council, in writing.
2. Obtaining Proposal Results. No proposal results can be obtained until the City announces the proposal best meeting the City's requirements. Proposal results may be obtained by: (1) e-mailing a request to the City Contact identified on the Request for Proposals (RFP) Cover Sheet or (2) visiting the READ e-procurement system to review the proposal results. To ensure an accurate response, requests should reference the Solicitation Number set forth in the Request for Proposals (RFP) Cover Sheet. Proposal results will not be released over the phone.

L. ADDITIONAL INFORMATION FROM PROPOSERS

The City reserves the right to request information from Proposers to clarify information pursuant to this RFP.

M. INCURRED COSTS

Each Proposer is solely and fully responsible for any and all costs associated with submitting a response to this RFP. The City will not be responsible for any costs incurred by Proposers in the preparation and submission of proposals.

N. CONTACT WITH CITY STAFF

Unless otherwise authorized herein, Proposers who are considering submitting a proposal in response to this RFP, or who submit a proposal in response to this RFP, are prohibited from communicating with City staff (who are directly involved with this RFP) or evaluation committee members about this RFP from the date this RFP is issued until final approval of the Sublease to the Selected Proposer.

O. ADDENDA

The City may issue addenda to this RFP as necessary. All addenda are incorporated into the RFP. The Proposer is responsible for determining whether addenda were issued prior to a proposal submission. Failure to respond to or properly address addenda may result in rejection of a proposal.

P. PUBLIC RECORDS

All proposals, and all contents thereof, received shall be considered confidential until the City's Real Estate Assets Department recommends a proposal to the City Council. By signing this RFP and submitting a proposal, the Proposer acknowledges that any information submitted in response to this RFP is a public record subject to disclosure unless the City determines that a specific exemption in the California Public Records Act (CPRA) applies. If the Proposer submits information clearly marked confidential or proprietary, the City may protect such information and treat it with confidentiality to the extent permitted by law. However, it will be the responsibility of the Proposer to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the CPRA should the City choose to withhold such information. General references to sections of the CPRA will not suffice. Rather, the Proposer must provide a specific and detailed legal basis, including applicable case law, which clearly establishes the requested information is exempt from the disclosure under the CPRA. If the Proposer does not provide a specific and detailed legal basis for requesting the City to withhold Proposer's confidential or proprietary information at the time of proposal submittal, the City will release the information as required by the CPRA and Proposer will hold the City, its elected officials, officers, and employees harmless for release of this information. It will be the Proposer's obligation to defend, at Proposer's expense, any legal actions or challenges seeking to obtain from the City any information requested under the CPRA withheld by the City at the Proposer's request. Furthermore, the Proposer shall indemnify and hold harmless the City, its elected officials, officers, and employees from and against any claim or liability, and defend any action brought against the City, resulting from the City's refusal to release information requested under the CPRA which was withheld at Proposer's request. Nothing in the Lease resulting from the proposal creates any obligation on the part of the City to notify the Proposer or obtain the Proposer's approval or consent before releasing information subject to disclosure under the CPRA.

Q. CITY'S RIGHT TO REJECT ALL PROPOSALS

The City reserves the right to reject all offers and proposals regarding this RFP and the Property, including those submitted by Proposers who have outstanding debt with the City. The City reserves the right to determine which proposal it deems in the best interest of the City to accept. The City also reserves the right to waive any informality not material to cost or performance in any proposal provided that any such waiver is deemed to be inconsequential and does not provide an unfair competitive advantage to any Proposer.

R. QUALIFICATION OF PROPOSAL

This is not a bid solicitation and the City is not obligated to accept any proposal or to negotiate with any Proposer. The City Council reserves the right to reject any Sublease presented as a result of a Proposal without cause or liability. All transactions discussed,

referenced, or implied herein are subject to final approval by the City Council.

S. NON-DISCRIMINATION NOTICE

It is the policy of the City not to discriminate against the disabled in employment or provision of services. The information contained in this RFP will be made available in alternative formats to disabled persons upon request. It is the policy of the City to encourage equal opportunity in its contracts and leases. The City endeavors to do business with firms sharing the City's commitment to equal opportunity and will not do business with any firm that discriminates on the basis of race, religion, color, ancestry, age, gender, gender expression, gender identity, sexual orientation, disability, medical condition, or place of birth.

T. COMPLIANCE WITH CITY'S EQUAL OPPORTUNITY CONTRACTING PROGRAM

Proposer understands that failure to comply with the following requirements and/or submitting false information in response to these requirements may result in rejection of the proposal by the City and debarment of the Proposer from participating in City contracts for a period of not less than one (1) year:

1. Equal Opportunity Contracting. Proposer acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. Proposer and all of its subcontractors are individually responsible to abide by its contents.

Proposer shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. Proposer will not discriminate against any employee or applicant for employment on any basis prohibited by law.

Proposer shall insert the foregoing provisions in all contracts and subcontracts for any work covered by the proposal so that such provisions will be binding upon each contractor and subcontractor. Proposer agrees that compliance with Equal Employment Opportunity (EEO) provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by the City's Equal Opportunity Contracting Program staff.

Proposer shall submit a current Work Force Report or a current EEO Plan, as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that Proposer will take to achieve the City's commitment to equal employment opportunities. Copy of Work Force Report is attached as **Exhibit B**.

2. Equal Benefits. Proposer shall comply with San Diego Municipal Code sections 22.4301- 22.4308, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. Proposer shall certify that it will maintain such equal benefits throughout the term of the Lease.
3. Local Business and Employment. Proposer acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms in all City contracts. Proposer shall, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with the proposal from local residents and firms as opportunities occur.

Proposer shall hire qualified local residents and firms whenever feasible.

U. RETURN OF FAITHFUL PERFORMANCE DEPOSIT

All good faith deposits will be returned to unsuccessful Proposers within thirty days of final passage of City Council approval of the Lease to the Selected Proposer. For the selected Proposer, the deposit will be applied to the Lease deposit upon completion of negotiations and execution of the Lease between the selected Proposer and the City. Should the selected Proposer unilaterally withdraw from negotiations after selection, the entire deposit of the selected Proposer will be forfeited to the City.

V. PROTESTS

The City's protest procedures are codified in Chapter 2, Article 2, Division 30 of the San Diego Municipal Code (SDMC). These procedures shall apply to this RFP and provide unsuccessful Proposers with the opportunity to challenge the City's determination on legal and factual grounds. The City will not consider or otherwise act upon an untimely protest.

W. ASBESTOS DISCLOSURE

Portions of certain structures on the Property may contain asbestos. By virtue of its submission of a proposal, Proposer acknowledges having received notice from City of the presence of such asbestos in accordance with Health and Safety Code Section 25915. Proposer shall indemnify and hold City harmless from any loss or claim which may result from existence of asbestos on the Property.

X. REAL ESTATE BROKER'S COMMISSION

The City will not pay a brokerage commission in this RFP.

Y. SCHEDULE OF EXHIBITS

Exhibit A: Site Diagram – El Cajon Boulevard Bridge Deck Kiosks
Exhibit B: Site Diagram – University Avenue Bridge Deck Kiosks
Exhibit C: Sample of the City of San Diego Flat Rate Sublease Agreement
Exhibit D: Contractor Standards Pledge of Compliance
Exhibit E: Lessee's Questionnaire
Exhibit F: Work Force Report

The foregoing forms listed as Exhibits D, E and F are required to be completed and submitted with the proposal. Failure to submit any of the forms listed as Exhibits D, E and F will result in the City deeming the proposal incomplete and non-responsive.

Exhibit A: Site Diagram
(El Cajon Boulevard Bridge Deck Kiosks)

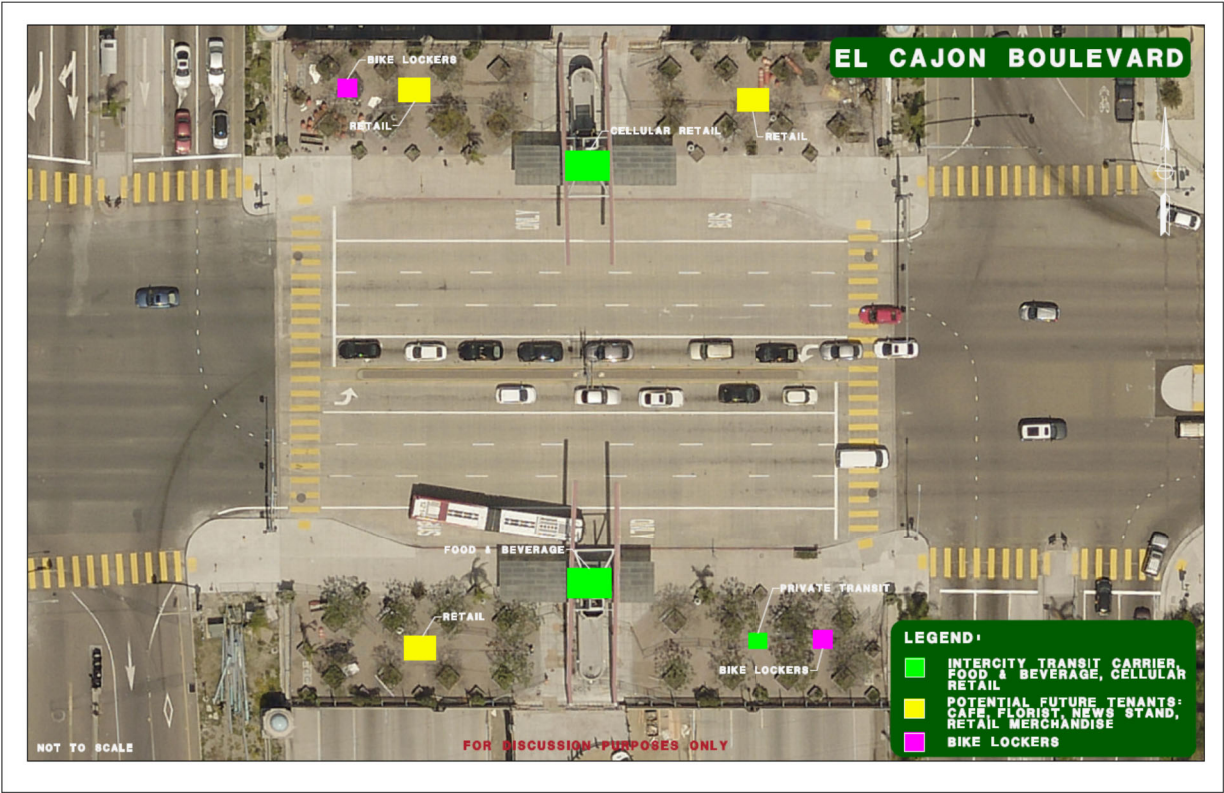


Exhibit B: Site Diagram (University Avenue Bridge Deck Kiosks)

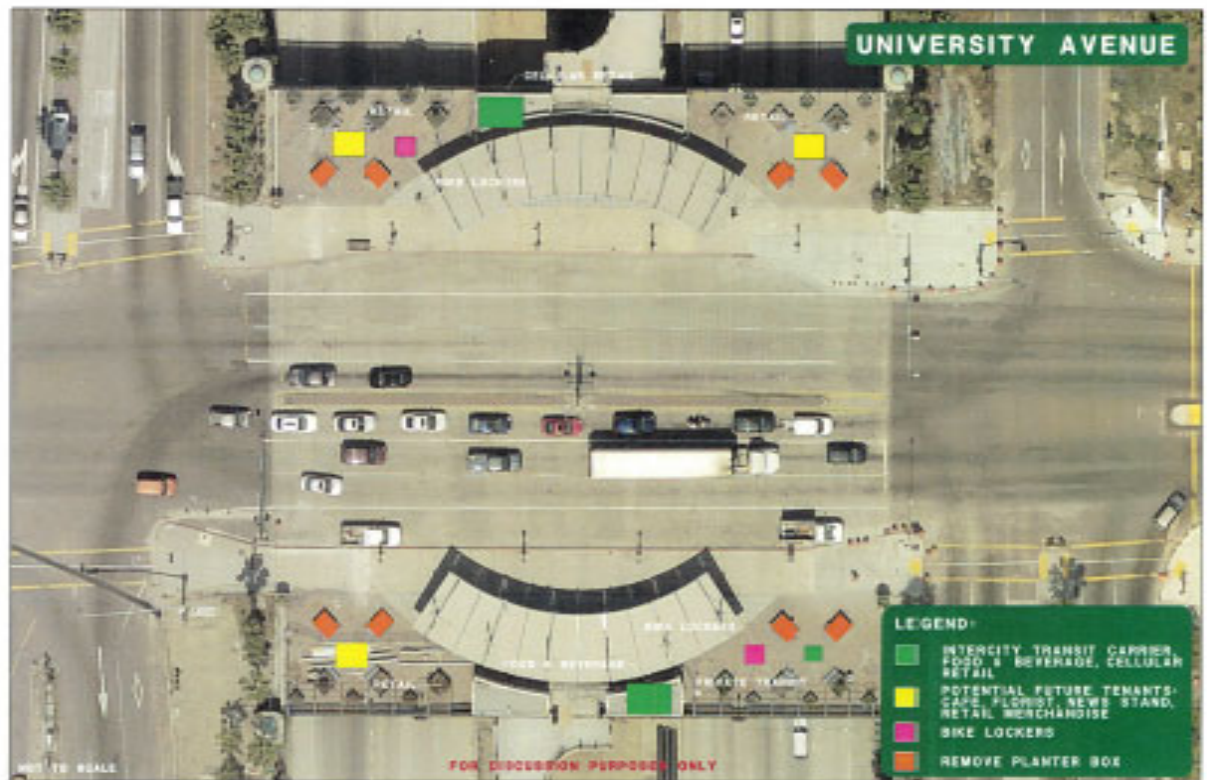


Exhibit C: City of San Diego Flat Rate Lease (Sample)



**CITY OF SAN DIEGO
FLAT RATE SUBLEASE**

BY AND BETWEEN

**THE CITY OF SAN DIEGO,
A CALIFORNIA MUNICIPAL CORPORATION**

AND

A _____ CORPORATION

CITY OF SAN DIEGO
FLAT RATE SUBLEASE

THIS CITY OF SAN DIEGO FLAT RATE SUBLEASE ("Sublease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and _____, a _____ corporation ("SUBLESSEE"), to be effective the first day of the following month when executed by the parties and as of the date approved by the San Diego City Attorney (the "Effective Date").

RECITALS

- A. The CITY leases the El Cajon Boulevard Bridge Decks and University Avenue Bridge Decks from the State of California under a lease effective _____ ("Master Lease").
- B. SUBLESSEE desires to sublease the bridge decks from the CITY for the allowed uses.
- C. This Sublease is subordinate and subject to the provisions of the Master Lease. The effectiveness of this Sublease is subject to the written consent of the State of California and subject to the terms of the Master Lease.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

SECTION 1: PREMISES; USES

- 1.1 Subleased Premises. CITY subleases to SUBLESSEE and SUBLESSEE subleases from CITY all of that CITY-leased real property located at 4023 and 4024 El Cajon Boulevard and 4023 and 4024 University Avenue, San Diego, California 92105 as depicted in the attached "Exhibit A" and "Exhibit B" (the "Premises").

The Premises includes portions of the real property commonly known as I-15, University Avenue Bridge Decks depicted in Exhibit A, consisting of restrooms and retail areas of the two permanent structures located at 4023 and 4024 El Cajon Boulevard, and an additional 400 square feet on the north bridge deck and 400 square feet on the south bridge deck, for the placement of four (4) prefabricated kiosks with a total maximum square footage of 1,200 square feet. The prefabricated kiosks will be supplied by the sublessee.

The Premises also includes portions of the real property commonly known as I-15, University Avenue Bridge Decks depicted in Exhibit B, consisting of restrooms and retail areas of the two permanent structures located at 4023 and 4024 University Avenue, and an additional 400 square feet on the north bridge deck and 400 square feet on the south bridge deck, for the placement of four (4) prefabricated kiosks with a total maximum square footage of 1,200 square feet. The prefabricated kiosks will be supplied by the sublessee.

- 1.2 Allowed Uses. SUBLESSEE may use the Premises for the following purposes and no other purposes whatsoever:

The Premises shall be used by sublessee(s) only and exclusively for the purpose of operating micro vendors occupying the permanent and temporary kiosks, and for no other

purpose whatsoever.

Prohibited uses include:

- a) Using the Premises in violation of any law, statute, zoning restriction, ordinance or governmental rule or regulation or requirements.
- b) Operating or installing gasoline or petroleum supply station, transporting or storing gasoline or petroleum products under the structures.
- c) Manufacturing or storage or use of flammable materials, explosives or other materials, deemed by LESSOR to be a potential fire or other hazard to the transportation facility. The occupancy and use of the area shall not be such as will permit hazardous or unreasonably objectionable smoke, fumes, vapors or odors to rise above the surface of the traveled way of the transportation facility.
- d) Using, creating, storing or allowing any hazardous materials on the premises, except as otherwise expressly permitted in this Sublease.
- e) Constructing, erecting, maintaining or permitting any sign, banner or flag upon the Premises, except as provided for in Section 7.3, without the prior written approval of LESSOR. SUBLESSEE shall not place, construct or maintain upon the premises or fencing any advertising media that include moving or rotating parts, searchlights, flashing lights, loudspeakers, phonographs or other similar visual or audio media.
- f) Parking of any vehicles, storing wrecked or inoperable vehicles of any kind on the leased premises. Vending in any manner that would require or encourage vehicles to stop or park on the bridge decks, in the bus lane, or any portion of the travel way, in such a manner that would impede traffic or create a hazard to the traveling public (i.e. Food Trucks).
- g) Vending, offering, trading, marketing or selling whatsoever, of any kind of cannabis, cannabis product or extract, cannabis based edible or beverage, or alcoholic beverage of any kind.
- h) Flea markets, swap meets, or farmers markets.

Notwithstanding the foregoing, and subject to the prior written approval of CITY in each instance, which approval shall be at CITY's sole discretion, other reasonably related and incidental uses may be requested. Combined, all the authorized uses shall hereinafter be referred to as the "Allowed Uses".

- 1.3 Superior Interests. This Sublease is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases (including the Master Lease), permits and licenses, easements, and rights-of-way pertaining to the Premises, whether or not of record. SUBLESSEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Premises, relative to any such superior interest. If SUBLESSEE's use of the Premises is or becomes inconsistent or incompatible with a preexisting, superior interest, SUBLESSEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
- 1.4 Governmental Approvals. By entering into this Sublease, neither CITY nor CITY's City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to SUBLESSEE's occupancy, use, development, maintenance, or restoration of the Premises. Discretionary action includes without limitation re-zonings, variances, environmental clearances, and all other required governmental approvals.

- 1.5 CITY's Consent, Approval. Unless otherwise expressly provided herein, CITY's consent or approval under this Sublease shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), which shall not be unreasonably withheld or delayed. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided herein.
- 1.6 Quiet Possession. SUBLESSEE, performing the covenants and agreements in this Sublease, shall at all times during the term of this Sublease peaceably and quietly have, hold, and enjoy the Premises. If SUBLESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, this Sublease shall not be voidable nor shall CITY be liable to SUBLESSEE for any loss or resulting damages.
- 1.7 Reservation of Rights.
- 1.7.1 Mineral Rights. CITY reserves all rights, title, and interest in and to any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
- 1.7.2 Easements. CITY reserves the right to grant, establish, and use easements and rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- 1.7.3 Repairs. CITY may at all reasonable times enter the Premises for the purpose of making repairs to or developing municipal resources and services.
- 1.7.4 Noninterference. CITY shall not unreasonably interfere with SUBLESSEE's use of the Premises, and shall repair or reimburse SUBLESSEE for reasonable costs incurred by SUBLESSEE to repair any physical damages to the Premises or SUBLESSEE's personal property directly caused by CITY's exercising its rights reserved in this section. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.
- 1.7.5 Public Safety; Homeland Security. CITY reserves the right to install, repair and replace, at its own expense, secured-access video surveillance equipment for the purposes of public safety and homeland security. CITY shall have access to existing roof tops, light poles, existing electrical power and/or other structures on the Premises necessary to support this objective. CITY shall give SUBLESSEE reasonable notice prior to entering upon the Premises for this reserved right. CITY shall pay all costs and expense related to the installation, repair and replacement of such video surveillance equipment.
- 1.8 Competent Management. SUBLESSEE shall provide competent management of the Allowed Uses to CITY's reasonable satisfaction. "Competent management" shall mean management practices generally considered acceptable within SUBLESSEE's industry for the management and operation of activities substantially similar to the Allowed Uses and in compliance with all applicable local, state and federal laws, rules and regulations, and in a fiscally responsible manner. "Fiscally responsible manner" shall mean in accordance with generally accepted accounting principles consistently applied and absent financial malfeasance.

- 1.9 Consent of the State of California. This Sublease and the tenancy of SUBLESSEE are subject to the written consent of the State of California. If this Sublease is not consented to by the State of California it shall be void and of no force or effect.\
- 1.10 Master Lease. This Sublease shall be, and remain, subject and subordinate to the terms, covenants, and conditions of the Master Lease, and furthermore, in the event of any conflict or inconsistency between the Sublease and the Master Lease, the provisions of the Master Lease shall govern and prevail. If the Master Lease should terminate for any reason, this Sublease shall likewise terminate with no liability to CITY. SUBLESSEE and CITY agree that the terms and conditions of the Master Lease are incorporated herein by reference, and shall, as between CITY and SUBLESSEE, constitute the terms, covenants, conditions, and provisions of this Sublease, except to the extent that they are inapplicable to, inconsistent with, or modified by the provisions of this Sublease. SUBLESSEE shall strictly comply with each term and condition of the Master Lease. Any breach by SUBLESSEE of any terms of the Master Lease shall be a deemed breach under this Sublease. It is expressly noted that the term of the Master Lease is not the same as the Term of this Sublease. The foregoing does not provide to SUBLESSEE any rights to extend the Term of the Sublease, to only pay the rents due to the State from the CITY, to contact the State or claim privity with the State regarding this Sublease or the Master Lease, or to take the benefit of any provision of the Master Lease enjoyed by the CITY for any reason, including any alleged default by the CITY. The SUBLESSEE expressly waives any right to contest any provision of the Master Lease in existence as of the commencement of the Term of any time during the Term or any modification to the Master Lease. SUBLESSEE shall not commence any litigation or file any claim against the State without the express prior approval of the CITY with any approval subject to the sole, unfettered, and absolute discretion of the CITY. Even if the CITY grants consent, the Subtenant shall hold harmless, defend and indemnify the CITY from any claim, expense, liability or action of the State regarding the claim of SUBLESSEE.

SECTION 2: TERM

- 2.1 Term. The term of this Sublease shall commence on the Effective Date and expire on _____.
- 2.2 Holdover. Any holding over by SUBLESSEE after the expiration or earlier termination of this Sublease shall not be considered a renewal or extension of this sublease. The occupancy of the Premises after the expiration or earlier termination of this Sublease shall constitute a month-to-month tenancy at will, and all other terms and conditions of this Sublease shall continue in full force and effect, except that CITY may then demand and receive from SUBLESSEE rent in an amount which is two times that of the rent in effect upon expiration or earlier termination of the Sublease, in addition to fifty percent (50%) of the sublease revenue referenced in Section 5.2.5 of this Sublease.
- 2.3 Surrender of Premises. Upon the expiration or earlier termination of this Sublease, SUBLESSEE shall vacate the Premises and surrender it to CITY free and clear of all liens and encumbrances, and in a decent, safe, and sanitary condition, reasonable wear and tear excepted. At any time after the expiration or earlier termination of this Sublease, SUBLESSEE shall execute, acknowledge, and deliver to CITY, within thirty (30) days after CITY's demand, a valid and recordable quitclaim deed covering all of the

Premises. If SUBLESSEE fails or refuses to deliver the required quitclaim deed, CITY may prepare and record a notice reciting SUBLESSEE's failure to perform this Sublease provision, and the notice shall be deemed conclusive evidence of the termination of this Sublease and all of SUBLESSEE's rights in and to the Premises.

- 2.4 Early Termination. Notwithstanding any provision herein to the contrary, this Sublease may be terminated at any time and for any reason by City upon thirty (30) days prior notice in writing. In addition, CITY may terminate the Sublease immediately in the event the State of California terminates the Master Lease for any reason.
- 2.5 Entire Agreement. This Sublease constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Sublease and SUBLESSEE's occupancy, use, development, maintenance and restoration of the Premises. Any modification, alteration or amendment of this Sublease shall be in writing and signed by all the parties hereto. Each party represents and warrants that this Sublease is binding upon such party in accordance with its terms.

SECTION 3: OPERATIONS ON THE PREMISES

- 3.1 Operation of Facilities. SUBLESSEE shall conduct its business and operate the Premises continuously and without interruption during the Term. A regular schedule of days and hours of operation shall be established by SUBLESSEE to best serve the public. SUBLESSEE shall diligently furnish services to the public in a creditable manner.
- 3.2 Trash and Refuse. SUBLESSEE shall, at its sole cost and expense, provide containers on the Premises to receive trash and refuse generated on the Premises. Refuse containers shall not be located outside the Premises. Such containers shall be covered and emptied regularly enough to prevent them from overflowing or creating unhealthful, unsightly, or unsanitary conditions. The contents of the containers shall be disposed of by SUBLESSEE or others acting pursuant to SUBLESSEE's direction at authorized landfills or other garbage reception areas as provided under applicable law at the time of collection.

SECTION 4: RENT

- 4.1 Rent. SUBLESSEE shall pay to CITY monthly rent ("Monthly Rent") in the amount of _____ (\$00000.00), each month during the Sublease term. The first month's Monthly Rent shall be due and owing as of the Effective Date of this Sublease. SUBLESSEE shall thereafter pay the Monthly Rent in advance, on or before the first day of each month, during the Sublease term.
- 4.2 Time and Place of Payment. All payments to be paid by SUBLESSEE under this Sublease shall be made payable to "City Treasurer" and be mailed to:

The Office of the City Treasurer
City of San Diego
P.O. Box 129030
San Diego, California 92112-9030

or hand-delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to SUBLESSEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

- 4.3 CITY's Right to Inspect and Audit. SUBLESSEE shall keep all of its books of account, records, and supporting documentation throughout the Term, plus five (5) years. SUBLESSEE shall make such books, records, and documentation available for inspection and audit by CITY in one location within the County of San Diego. SUBLESSEE shall maintain separate books and records related to SUBLESSEE's use of the Premises. Upon reasonable prior notice, CITY may inspect and audit the operation of SUBLESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from SUBLESSEE's use of the Premises as CITY may deem necessary, in its sole reasonable discretion, to protect CITY's rights under this Lease.

- 4.3.1 Audit Cost. The full cost of each CITY audit shall be borne by CITY, unless one or both of the following conditions exists, in which case SUBLESSEE shall reimburse CITY for all costs of the audit:

4.3.1.1 For any given sublease year, if an audit reveals an underpayment of additional consideration of more than five percent (5%) on an annual basis, calculated as the difference between the rent reported as payable by SUBLESSEE and the rent payable as determined by the audit; or

4.3.1.2 SUBLESSEE failed to maintain true, accurate, and complete books, records, accounts, and supporting source documents as required by this Sublease.

Any deficiency determined by the audit shall be considered delinquent rent, subject to all penalties and remedies provided to CITY for delinquent rent under this Sublease. CITY shall credit any overpayment determined by the audit, without interest, against future rents due under this Sublease. If no future rents are then due under this Sublease, CITY shall refund to SUBLESSEE any overpayment determined by the audit, without interest, within sixty (60) days after CITY's certification of the audit.

- 4.3.2 Default. SUBLESSEE'S failure to keep complete and accurate records by means of double entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with covenants of this Sublease, a breach of this Sublease and cause for termination.

- 4.4 Delinquent Monthly Rent. If SUBLESSEE fails to pay Monthly Rent when due, SUBLESSEE shall pay, in addition to the unpaid Monthly Rent, five percent (5%) of the

delinquent Monthly Rent. If the Monthly Rent is still unpaid after fifteen (15) days past due, SUBLESSEE shall pay an additional five percent (5%) (being a total of ten percent [10%]), which is agreed by the parties to be appropriate to compensate CITY for the cost of servicing the delinquent account. In no event shall the charge for late payments of Monthly Rent be less than Twenty-Five Dollars (\$25). Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of SUBLESSEE'S default with respect to late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity.

SECTION 5: ENCUMBRANCES; ASSIGNMENT & SUBLETTING

- 5.1 Sub-leasehold Encumbrances. SUBLESSEE may not encumber SUBLESSEE's leasehold estate by deed of trust or other security instrument.
- 5.2 Assignment and Subletting. SUBLESSEE shall not assign this Sublease or any interest in this Sublease, and shall not sublet the Premises or any part of the Premises, or grant any license or other right or appurtenant privilege to the Premises, or permit any other person, except SUBLESSEE's employees, agents, and guests, to use or occupy the Premises or any part of the Premises without CITY's prior written consent. Any such consent shall not be deemed a consent to any subsequent assignment, subletting, occupation, or use by another person. Neither this Sublease nor any interest in it shall be assignable, as to SUBLESSEE's interest, by operation of law, without CITY's written consent. "Assignment" shall include without limitation the transfer of any interest in this Sublease and, if SUBLESSEE is other than a natural person, the transfer of a controlling interest in SUBLESSEE or any of SUBLESSEE's general partners, principals, or controlling shareholders.
 - 5.2.1 Consent Conditions. CITY may require, as a condition to consenting to any assignment, sublease or other grant of rights related to the use and occupancy of the Premises, that this Sublease be revised to comply with then-current CITY lease provisions, and that the assignment, sublease or other grant of rights be subject and subordinate to each and every provision of this Sublease.
 - 5.2.2 Charter Section 225. Pursuant to San Diego City Charter section 225, SUBLESSEE and each of its subtenants and assignees shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in this Sublease and the precise nature of all interests of all persons therein. Pursuant to City Charter Section 225, every person or entity which will have an interest in this Sublease must be reviewed and approved by CITY.
 - 5.2.3 Additional Consideration to CITY from SUBLESSEE. SUBLESSEE and CITY agree that in the event of an assignment, in the event of a subletting of the majority portion of the Premises, or in the event of a refinancing creating an encumbrance against the Premises, SUBLESSEE shall pay to CITY two percent (2%) of the gross amount paid to SUBLESSEE in connection with an approved assignment of the Sublease, two percent (2%) of any amount paid SUBLESSEE in consideration of an approved sublease of all or a majority portion of the Premises or two percent (2%) of the amount of any increased loan or encumbrance against the Premises over and above the amount of the then existing balance(s) of the existing encumbrances(s). The amount upon which the two percent (2%) shall be based shall be the total consideration resulting from the transaction including total cash

payments and the market value of noncash consideration, including but not limited to stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY's consent to any assignment, majority subletting, or refinancing, SUBLESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from SUBLESSEE pursuant to the provisions of this section, together with an acknowledgment from the proposed assignee, sublessee, or refinancing agency as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction, be it an assignment, a sublease, or a refinancing. Any assignment, subletting, or refinancing in violation of the terms and conditions of this section shall be void. The provisions of this section shall not apply to:

5.2.3.1 an assignment or transfer of a beneficial interest in the Premises resulting from devise, bequest, intestate succession, or by operation of law for the benefit of the spouse or descendants (i) of SUBLESSEE (if an individual) or (ii) of SUBLESSEE's principal owner or chief executive office (if SUBLESSEE is other than an individual); or

5.2.3.2 such other assignment for which CITY determines that the legal and equitable ownership interests in the Premises have remained unchanged, such as a change in the legal or fictitious name of the SUBLESSEE without any other change in the equity in beneficial use of, or legal title to, the Premises as an asset or the income produced thereby.

5.2.4 Additional Consideration to CITY from Sub-Subleases. As a condition to CITY's approval of any sub-sublease or other rental agreement as allowed under this Lease for a portion of the Premises, SUBLESSEE shall pay to CITY fifty percent (50%) of the gross revenues owed to SUBLESSEE under any sub-sublease or other rental agreement for the Premises.

SECTION 6: DEFAULT AND REMEDIES

6.1 Default. SUBLESSEE shall be in default of this Sublease if any of the following occurs:

6.1.1 SUBLESSEE fails to make any payment required under this Sublease when due;

6.1.2 SUBLESSEE breaches any of its obligations under this Sublease, other than those requiring payment to CITY, and fails to cure the breach within thirty (30) days following written notice thereof from CITY, or if not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion;

6.1.3 SUBLESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;

6.1.4 SUBLESSEE is adjudicated a bankrupt; or

6.1.5 SUBLESSEE makes a general assignment for the benefit of creditors.

6.2 Remedies. Upon SUBLESSEE's default, CITY may, at its option, give SUBLESSEE, or

any person claiming rights through SUBLESSEE, a written "Three Day Notice to Pay or Quit," or CITY may terminate the Sublease and all rights of SUBLESSEE, and all persons claiming rights through SUBLESSEE, to the Premises or to possession of the Premises. Upon termination, CITY may enter and take possession of the Premises, and may recover from SUBLESSEE the sum of:

- 6.2.1 the worth at the time of any unpaid rent that was due at the time of termination;
- 6.2.2 the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that SUBLESSEE affirmatively proves could have been reasonably avoided;
- 6.2.3 the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss, if any, that SUBLESSEE affirmatively proves could be reasonably avoided;
- 6.2.4 any other amount necessary to compensate CITY for all the detriment proximately caused by SUBLESSEE's breach and default, or that in the ordinary course of things, would be likely to result; and
- 6.2.5 all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses 6.2.1 and 6.2.2, above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause 6.2.3, above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent and any other amounts payable by SUBLESSEE under this Sublease.

- 6.3 Default if Leasehold is Encumbered. If there is a CITY-approved encumbrance on SUBLESSEE's leasehold interest, CITY shall give the mortgagee or beneficiary written notice of SUBLESSEE's default under this Sublease, and the same mortgagee or beneficiary shall have thirty (30) days from the notice to cure the default, or, if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion. CITY may extend the cure period if the mortgagee or beneficiary uses reasonable diligence to pursue a cure. If the mortgagee or beneficiary chooses to cure the default through litigation or foreclosure, then CITY may exercise any of the following options:

- 6.3.1 CITY may correct the default and charge the costs to the account of SUBLESSEE, which charge shall be due and payable on the date that the rent is next due after CITY's notice of such costs to SUBLESSEE, and mortgagee or beneficiary;
- 6.3.2 CITY may correct the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and SUBLESSEE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the costs of correction performed by or at the direction of CITY; and

6.3.3 CITY may terminate this Sublease as to the rights of SUBLESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. SUBLESSEE shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute the terminated SUBLESSEE with a new lessee reasonably satisfactory to the mortgagee or beneficiary. SUBLESSEE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

If the default is non-curable by SUBLESSEE, then any lender holding a beneficial interest in the Premises, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of SUBLESSEE hereunder and to commence performance of this Sublease. If the mortgagee or beneficiary gives notice in writing of its election to substitute itself within the thirty (30) day period after receiving CITY's written notice of a default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Sublease will not terminate pursuant to the default. In that event, CITY consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Sublease with all the rights, privileges, and obligations of SUBLESSEE, subject to the curing of the default, if possible, by mortgagee or beneficiary. In that event, SUBLESSEE shall assign to mortgagee or beneficiary all of its interest in and to the leasehold estate under this Sublease.

6.4 Abandonment by SUBLESSEE. If SUBLESSEE abandons the Premises, this Sublease shall continue in effect as long as CITY does not terminate this Sublease, and CITY may enforce all of its rights and remedies under this Sublease, including without limitation the right to recover rent as it becomes due, plus damages.

6.5 Waiver. Any waiver by CITY of a breach or default by SUBLESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Sublease. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. CITY's acceptance of any rents shall not be a waiver of any default preceding such payment. SUBLESSEE acknowledges that the Premises are a part of publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by CITY to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any breach or default. CITY's acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.

SECTION 7: EMINENT DOMAIN

7.1 Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of

eminent domain, the interests of CITY and SUBLESSEE (or beneficiary or mortgagee) shall be as follows:

- 7.1.1 Full Taking. If the entire Premises are taken, this Sublease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- 7.1.2 Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises are suitable for continued Lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that SUBLESSEE's operations are reduced or impaired.
- 7.1.3 Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both. SUBLESSEE shall be entitled to any award attributable to the taking of, or damages to SUBLESSEE's then remaining leasehold interest in installations or improvements of SUBLESSEE. CITY shall have no liability to SUBLESSEE for any award not provided by the condemning authority.
- 7.1.4 Transfer. CITY has the right to transfer CITY's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, SUBLESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this Sublease.
- 7.1.5 No Inverse Condemnation. The exercise of any CITY right under this Sublease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 8: INDEMNITY; HOLD HARMLESS; INSURANCE

- 8.1 Indemnification and Hold Harmless. SUBLESSEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to SUBLESSEE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with SUBLESSEE's acts or omissions in the performance of its obligations under this Sublease, and all expenses of investigating and defending against same, including without limitation attorneys' fees and costs; provided, however, that SUBLESSEE's duty to indemnify and hold CITY harmless shall not include any claims or liability arising from the sole negligence or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents.
- 8.2 Insurance. SUBLESSEE shall not begin operating under this Lease until it has:

- 8.2.1 obtained, and provided to CITY, insurance certificates reflecting evidence of all insurance as set forth herein; however, CITY reserves the right to request, and SUBLESSEE shall submit, copies of any policy upon reasonable request by CITY;
- 8.2.2 obtained CITY approval of each company or companies as required in Section 8.5 of this Sublease; and
- 8.2.3 confirmed that all policies contain the specific provisions required in Section 8.6 of this Lease. SUBLESSEE's liabilities, including but not limited to SUBLESSEE's indemnity obligations, under this Sublease, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that CITY is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Sublease and SUBLESSEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Sublease may be treated as a material breach of contract by CITY.

Further, SUBLESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss for the duration of this Sublease.

8.3 Types of Insurance. At all times during the term of this Sublease, SUBLESSEE shall maintain insurance coverage as follows:

- 8.3.1 Commercial General Liability. Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate of \$2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
- 8.3.2 Commercial Automobile Liability. For all of SUBLESSEE's automobiles including owned, hired and non-owned automobiles, SUBLESSEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificates shall reflect coverage for any automobile.
- 8.3.3 Workers' Compensation. For all of SUBLESSEE's employees who are subject to this Lease and to the extent required by the applicable state or federal law, SUBLESSEE shall keep in full force and effect, a Workers' Compensation policy. The policy shall provide a minimum of \$1 million of employers' liability coverage, and SUBLESSEE shall provide an endorsement that the insurer waives the right of subrogation against CITY and its respective elected officials, officers, employees, agents and representatives.

8.3.4 Professional Liability. For all of SUBLESSEE's employees who are subject to this Sublease, SUBLESSEE shall keep in full force and effect, Professional Liability coverage for professional liability with a limit of \$1 million per claim and \$2 million annual aggregate. SUBLESSEE shall ensure both that:

8.3.4.1 the policy retroactive date is on or before the date of commencement of this Sublease; and

8.3.4.2 the policy will be maintained in force for a period of three years or termination of this Sublease whichever occurs last. SUBLESSEE agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase CITY's exposure to loss.

8.3.5 Causes of Loss - Special Form Property Insurance. SUBLESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of SUBLESSEE's insurable property related to the Allowed Uses of the Premises under this Sublease or the Premises in an amount to cover one hundred percent (100%) of the replacement cost. SUBLESSEE shall deliver a certificate of said insurance to CITY's Real Estate Assets Department.

8.4 Deductibles. All deductibles on any policy shall be the responsibility of SUBLESSEE and shall be disclosed to CITY at the time the evidence of insurance is provided.

8.5 Acceptability of Insurers.

8.5.1 Except for the State Compensation Insurance Fund, all insurance required by this Sublease shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY.

8.5.2 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 Eligible Surplus Lines Insurers (LESLI 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.

8.6 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to CITY before any operations are initiated under this Sublease.

8.6.1 Commercial General Liability Insurance Endorsement.

8.6.1.1 Additional Insured. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by SUBLESSEE or on SUBLESSEE's behalf, (b) SUBLESSEE's products, (c) SUBLESSEE's work, including but not limited to SUBLESSEE's completed operations performed by

SUBLESSEE or on SUBLESSEE's behalf, or (d) premises owned, leased, controlled or used by SUBLESSEE.

8.6.1.2 Primary and Non-Contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives with respect to the operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of SUBLESSEE's insurance and shall not contribute to it.

8.6.2 Automobile Liability Insurance Endorsements.

8.6.2.1 Additional Insured. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of SUBLESSEE.

8.6.3 Worker's Compensation and Employer's Liability Insurance Endorsements.

8.6.3.1 Waiver of Subrogation. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against CITY and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of the policy or policies which arise from work performed by the Named Insured for CITY.

8.7 Reservation of Rights. CITY reserves the right, from time to time, to review SUBLESSEE's insurance coverage, limits, deductibles and self-insured retentions to determine if they are acceptable to CITY.

8.8 Additional Insurance. SUBLESSEE may obtain additional insurance not required by this Lease.

8.9 Accident Reports. SUBLESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed Uses. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

SECTION 9: IMPROVEMENTS; ALTERATIONS; REPAIRS; MAINTENANCE

- 9.1 Waste, Damage, or Destruction. SUBLESSEE shall not commit or allow to be committed any waste or any public or private nuisance on the Premises, shall keep the Premises clean and clear of refuse and obstructions, and shall dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Premises are put into a condition which is not decent, safe, healthy, and sanitary, SUBLESSEE shall restore the Premises to their prior condition within a reasonable time.
- 9.2 Acceptance of Premises. SUBLESSEE acknowledges that the Premises are in good order and condition and shall take possession of the Premises "as is." CITY has not made and makes no representation or warranty as to the condition or suitability of the Premises for SUBLESSEE's intended use, and assumes no obligation to alter or improve the Premises. SUBLESSEE has relied solely on its own independent investigations of the condition and suitability of the Premises, and is satisfied with the condition thereof.
- 9.3 Asbestos. If either CITY or SUBLESSEE makes improvements, alterations or repairs to the Building or the Premises, the party causing such improvements, alterations or repairs shall be responsible for any asbestos removal, management, or containment, and shall pay all costs associated therewith. Asbestos removal, management or containment shall be conducted in accordance with all applicable laws and as approved by CITY. CITY reserves the right to inspect any improvements, alterations or repairs to the Premises or the Building made by SUBLESSEE. CITY may, at its discretion, station supervisory personnel at the work site to ensure that SUBLESSEE's obligations under this section are fulfilled. Each party shall coordinate with the other any improvement, alteration or repair, and except in the event of an emergency, the party responsible for such work shall provide written notice to the other party at least fifteen (15) days prior to commencing the work.
- 9.4 Entry and Inspection. CITY may at all times enter and inspect the Premises and the operations conducted on the Premises. This Sublease is subject to an agreement with the Metropolitan Transit Development Board ("MTS") that authorizes MTS, from time to time, to access to the Premises to work on electrical lines and service outdoor signage. SUBLESSEE shall not deny MTS access or interfere with MTS's right to enter the Premises for this purpose.
- 9.5 Maintenance. SUBLESSEE shall maintain the Premises in a decent, safe, healthy, and sanitary condition reasonably satisfactory to CITY, including without limitation performing all maintenance and repair to the structural components of the Premises, such as interior wall supports, exterior wall supports, the roof, floor supports, and building-wide mechanical systems. SUBLESSEE shall, at its cost and expense, obtain and maintain trash receptacles and trash-removal service.
- 9.6 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by SUBLESSEE without CITY's prior written approval. Once consent is given for any specific improvement/alteration, SUBLESSEE shall not make any structural or architectural design alterations to said approved improvements, structures, or installations on the Premises without CITY's additional prior written approval. This provision shall not relieve SUBLESSEE of any maintenance obligation under this Sublease. CITY shall not be obligated by this Sublease to make or assume any expense for any improvements or alterations to the Premises.

- 9.7 Utilities. SUBLESSEE shall order, obtain, and pay for all water, utilities, and service and installation charges in connection with the operation of the Premises. All utilities shall be installed underground.
- 9.8 Construction Bond. If SUBLESSEE constructs any type of improvements/alterations on the Premises, CITY may require SUBLESSEE to deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by SUBLESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY.
- 9.9 Liens. SUBLESSEE shall protect, defend, indemnify, and hold CITY harmless from and against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against such claims, including without limitation reasonable attorneys' fees. If SUBLESSEE causes improvements, alterations, or repairs to be made to the Premises, and a lien or notice of lien is filed against the property, SUBLESSEE shall notify CITY of the lien within five (5) days after SUBLESSEE first becomes aware of the existence of the lien, and within thirty (30) days after the filing either: (a) take all actions necessary to record a valid release of the lien; or (b) file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.
- 9.10 Taxes. SUBLESSEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon the Premises or upon SUBLESSEE's use and occupancy of the Premises, including without limitation licenses and permits, and including the land and any improvements or fixtures installed or maintained by SUBLESSEE thereon. SUBLESSEE acknowledges that this Sublease may create a possessory interest subject to property taxation and that SUBLESSEE may be subject to the payment of taxes levied on that possessory interest. SUBLESSEE shall pay all such possessory interest taxes. SUBLESSEE's payment of taxes, fees and assessments shall not reduce any rent due to the CITY. CITY shall not assume any responsibility for any taxes whatsoever resulting from SUBLESSEE's possession, use, or occupancy of the Premises.
- 9.11 Signs. SUBLESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without CITY's prior written consent. If any such unauthorized item is found on the Premises, SUBLESSEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter remove the item at SUBLESSEE's cost.
- 9.12 Ownership of Improvements and Personal Property.
- 9.12.1 Improvements. During the term of this Sublease, SUBLESSEE shall own all improvements, fixtures, structures, and installations or additions to the Premises constructed or installed on the Premises during the term of this Sublease by SUBLESSEE. Upon expiration or termination of this Sublease, all such

improvements, fixtures, structures, and installations or additions shall be deemed a part of the Premises and thereafter shall be owned by CITY. Notwithstanding the foregoing, CITY may, upon notice to SUBLESSEE at Sublease termination or at any time prior to the expiration of the Term, elect to have part or all of such improvements, fixtures, structures, and installations or additions removed by SUBLESSEE at the end of the Term. In that case, SUBLESSEE shall, at SUBLESSEE's sole cost and expense, remove those items designated for removal in CITY's notice and restore the Premises to CITY's reasonable satisfaction as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Sublease. SUBLESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such items. If SUBLESSEE fails to remove the items as required herein, CITY may, at its option, remove them at SUBLESSEE's sole cost and expense.

- 9.12.2 Personal Property. SUBLESSEE shall remove SUBLESSEE-owned machines, appliances, equipment, trade fixtures, and other items of personal property upon the expiration of the Term, or as soon as practicable after termination, but in no event later than thirty (30) days after the expiration or earlier termination of this Sublease. Any such items which SUBLESSEE fails to so remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at SUBLESSEE's sole cost and expense. SUBLESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Premises.
- 9.12.3 Late Removal. Notwithstanding any provision of this Sublease to the contrary, SUBLESSEE shall pay rent to CITY for any period of time after the expiration or termination of this Sublease needed to remove improvements or personal property as required by this Lease, whether by CITY or SUBLESSEE. Such rent shall be calculated on a per diem basis using the then-current fair market rental rate as determined by qualified CITY staff.
- 9.12.4 CITY's Right to Acquire Personal Property. If SUBLESSEE wants to dispose of any of its personal property used in its operations on the Premises upon expiration or termination of this Sublease, CITY shall have the first right to acquire such personal property.
- 9.13 Unavoidable Delay. Except as otherwise expressly set forth herein, in the event either party hereto shall be delayed or hindered in, or prevented from, the performance of any act or rendering any service required under this Sublease, by reason of strikes, inability to procure materials, riot, insurrection, war or other reasons of a similar nature which are beyond the reasonable control of the party (collectively referred to herein as "Event"), then the performance of any such act or rendering of any such service shall be excused for the period equivalent to the period of such delay. Notwithstanding the foregoing, nothing contained in this section shall be applied so as to: (i) permit any delay or time extension due to shortage of funds, or (ii) excuse any nonpayment or delay in payment of any type of rent. It shall be a condition to either party's claim of the benefit of this section that such party ("Claiming Party") notify the other in writing within 48 hours after the occurrence of the Event, and within 24 hours after request shall advise the other party in writing of its

good faith estimate of the time which will be required until the delay is ended. Claiming Party shall advise the other in writing whenever Claiming Party learns that any material additional time shall be required, and promptly upon request shall advise the other party of any latest estimated time of cure of the delay and the actions being taken to cure the delay.

- 9.14 Hazardous Substances. SUBLESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of hazardous or otherwise regulated substances in, on, under, or from the Premises. SUBLESSEE and SUBLESSEE's agents and contractors shall not install, store, utilize, generate, or sell any hazardous substance on the Premises without CITY's prior written consent. SUBLESSEE shall obtain and maintain all required licenses and permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a hazardous substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment, or device which holds or incorporates a hazardous substance or hazardous waste.
- 9.14.1 Release. For the purposes of this provision, a release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances.
- 9.14.2 "Hazardous substances" shall mean any hazardous liquid, solid, or gaseous material substances listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents.
- 9.14.3 Remediation. If SUBLESSEE's occupancy, use, development, maintenance, or restoration of the Premises results in a release of a hazardous substance, or petroleum related substance or its chemical constituents, SUBLESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- 9.14.4 Removal. If SUBLESSEE or SUBLESSEE's contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring hazardous materials or hazardous wastes to the Premises, SUBLESSEE and/or SUBLESSEE's contractor or agent shall remove all hazardous substances and hazardous wastes in any type of container, equipment, or device from the Premises immediately upon or prior to the expiration or earlier termination of this Lease. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment, or devices from the Premises. SUBLESSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment, or device requiring disposal or removal as required by this provision.

- 9.14.5 Indemnity. SUBLESSEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from SUBLESSEE's occupancy, use, development, maintenance, or restoration of the Premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, SUBLESSEE's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- 9.14.6 Notice of Release. If SUBLESSEE knows or has reasonable cause to believe that a hazardous substance or petroleum related substance or its chemical constituents has been released on, from, or beneath the Premises, SUBLESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Administrative Code Title 19 and any other applicable laws or regulations. SUBLESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If SUBLESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, SUBLESSEE shall take all actions necessary to alleviate the danger. SUBLESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.
- 9.14.7 Environmental Assessment. Upon reasonable cause to believe that SUBLESSEE's occupancy, use, development, maintenance, or restoration of the Premises resulted in any hazardous substance being released on, from or beneath the Premises, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at SUBLESSEE's sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by SUBLESSEE on, in, from or under the Premises, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. SUBLESSEE shall cause, or if SUBLESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with environmental law and regulations are achieved, and LESSEE shall pay all costs and expenses therefore.

SECTION 10: GENERAL PROVISIONS

- 10.1 Notices. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or by United States mail, postage prepaid, addressed as follows:

If to SUBLESSEE:

If to CITY:

THE CITY OF SAN DIEGO

Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020

- 10.2 Compliance with Law. SUBLESSEE shall at all times in the construction, maintenance, occupancy, restoration and operation of the Premises comply with all applicable laws, rules, regulations, and requirements of competent legal authority at SUBLESSEE's sole cost and expense. SUBLESSEE shall promptly deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to SUBLESSEE (e.g., validation of periodic inspection of SUBLESSEE's fire-suppression equipment in the Premises).
- 10.3 California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE pursuant to this Lease is or is not a public record subject to disclosure under the California Public Records Act ("CPRA"). SUBLESSEE shall hold CITY, its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the CPRA.
- 10.4 Equal Opportunity. SUBLESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations. SUBLESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or place of birth. Upon CITY's request, SUBLESSEE shall submit a current Workforce Report and, if required, an Equal Opportunity Plan which set forth the actions SUBLESSEE will take to achieve the CITY's goals for the employment of African Americans, Native Americans, Asians, Latinos, women, and people with disabilities. SUBLESSEE shall cause the foregoing provisions to be inserted in all subleases and all contracts for any work covered by this Sublease so that such provisions will be binding upon each sublessee and contractor. SUBLESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Sublease and debarment from participating in CITY contracts for a period of not less than one (1) year.

- 10.5 Equal Benefits. SUBLESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require sublessees of City-leased property to offer the same employment benefits to employees with spouses and employees with domestic partners. SUBLESSEE shall certify that it will maintain such equal benefits throughout the term of this Sublease. SUBLESSEE's failure to maintain equal benefits shall be a default of this Lease.
- 10.6 Disabled Access Compliance. SUBLESSEE shall, as applicable to the Premises and SUBLESSEE's possession, use and occupancy thereof, comply with Title 24 of the California Code of Regulations (i.e., the "California Building Code"); the Americans with Disabilities Act of 1990 (ADA); and all other applicable local, state and federal laws and regulations enacted, or hereafter enacted, protecting the rights of people with disabilities. SUBLESSEE's compliance shall include but not necessarily be limited to the following:
- 10.6.1 SUBLESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
 - 10.6.2 No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of SUBLESSEE.
 - 10.6.3 SUBLESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
 - 10.6.4 Where required by law, any improvements made to the Premises by SUBLESSEE shall comply with municipal disabled access requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All improvements and alterations shall be at the sole cost of SUBLESSEE.
 - 10.6.5 SUBLESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. SUBLESSEE and sublessees shall be individually responsible for their own ADA employment programs.

SUBLESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this Sublease.

- 10.7 Drug-free Workplace. SUBLESSEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- 10.7.1 Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Permit Area and specifying the actions that will be taken against employees for violations of the prohibition.

- 10.7.2 Establish a drug-free awareness program to inform employees about all of the following:
- 10.7.3 The dangers of drug abuse in the workplace;
- 10.7.4 SUBLESSEE's policy of maintaining a drug-free workplace;
- 10.7.5 Any available drug counseling, rehabilitation, and employee assistance programs; and
- 10.7.6 The penalties that may be imposed upon employees for drug abuse violations.

SUBLESSEE shall include in each of its subleases and contracts related to this Permit language obligating each sub-licensee and contractor to comply with the provisions of this section to maintain a drug-free workplace. SUBLESSEE, and each of its subleases and contractors, shall be individually responsible for their own drug-free workplace program.

- 10.8 CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Lease if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of LESSEE for this Sublease. It is not the intent of this policy that these provisions apply to members of the CITY Council.
- 10.9 Local Business and Employment. SUBLESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Sublease and to the extent legally possible, SUBLESSEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. SUBLESSEE shall use its best efforts to hire qualified local residents and firms whenever practicable.
- 10.10 Water Quality Best Management Practices. SUBLESSEE shall, at its sole cost and expense, comply with all laws, rules, regulations and direction of competent governmental authority (such as the San Diego Regional Water Quality Control Board) relating to water quality assurance and storm water management. LESSEE acknowledges and agrees that such legal requirements may change at any time and from time to time.
 - 10.10.1 NPDES. LESSEE shall comply with all applicable requirements of the National Pollutant Discharge Elimination System ("NPDES") permit in force on the Effective Date of the Lease (i.e., Permit No. R9-2013-0001), and any and all amendments thereto and all applicable succeeding NPDES permits.
 - 10.10.2 Storm Water Management. LESSEE shall comply with all applicable requirements of the San Diego Municipal Code Chapter 4, Article 3, Division 3: Storm Water Management and Discharge Control (the "Storm Water Code"), and employ "Best Management Practices," as that term is defined by the Storm Water Code, and as approved by the City of San Diego, in its governmental capacity, under its Storm water Management Program.

- 10.11 Nondiscrimination. This Sublease is made and accepted upon and subject to the covenant and condition, which shall run with the land, that SUBLESSEE or any person claiming under or through SUBLESSEE shall not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, disability, sexual orientation, marital status, national origin, ancestry, familial status, or source of income in the possession, use and occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees in the Premises.
- 10.12 Cumulative Remedies. Except as expressly provided in this Sublease, CITY's rights and remedies under this Lease are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
- 10.13 Survival. Any obligation which accrues under this Sublease prior to its expiration or termination shall survive such expiration or termination.
- 10.14 Joint and Several Liability. If SUBLESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of SUBLESSEE under this Sublease.
- 10.15 No Affiliation. Nothing contained in this Sublease shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and SUBLESSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of SUBLESSEE or any other party or entity.
- 10.16 Entire Agreement. This Sublease constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties, and agreements between them pertaining to this Sublease and SUBLESSEE's occupancy, use, development, maintenance, and restoration of the Premises. Any modification, alteration, or amendment of this Sublease shall be in writing and signed by all the parties hereto.
- 10.17 Partial Invalidity. If any term, covenant, condition, or provision of this Sublease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

[Remainder of page intentionally left blank.]

10.18 Authority to Contract. Each individual executing this Sublease on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Sublease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Sublease is binding upon such person or entity in accordance with its terms. Each person executing this Sublease on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, this Sublease is executed to be effective as of the Effective Date.

a _____ corporation

THE CITY OF SAN DIEGO,
a California municipal corporation

By: _____
Name
Title

By: _____
Cybele L. Thompson
Director, Real Estate Assets

Environmental Analysis Section Environmental Clearance:

Date: _____

By: _____
Deputy Director
Environment & Policy Analysis

Approved as to form this _____ day
of _____, 2020.

MARA W. ELLIOTT, City Attorney

By: _____
Name: _____
Title: _____

Exhibit A: Site Plan – El Cajon Boulevard Bridge Deck

Exhibit B: Site Plan – University Avenue Bridge Deck

Exhibit D: Lessee's Questionnaire

CITY OF SAN DIEGO
LESSEE'S AND SUBLESSEE'S QUESTIONNAIRE
FOR ALL LEASES, ASSIGNMENTS AND SUBLEASES OF MORE THAN FIVE YEARS

Before the City of San Diego will process requests to (Sub)Lease, all information requested in this Questionnaire must be completed by the proposed (Sub)Lessee. Even though a proposed Sublessee may complete the Questionnaire, the Questionnaire must be delivered or mailed to the City with a cover letter signed by the City Lessee or proposed Lessee. **THE CITY WILL NOT ACCEPT THE QUESTIONNAIRE, DOCUMENTS, OR OTHER INFORMATION DIRECTLY FROM A SUBLESSEE.**

All information furnished in this Questionnaire must be complete and accurate. Omissions, inaccuracies, or misstatements may cause the rejection and/or subsequent revocation of the City's Lease, consent to Sublease, or consent to Assignment of (Sub)Lease.

In submitting this Questionnaire, the proposed (Sub)Lessee completing the Questionnaire authorizes the City to make any inquiry or investigation it believes necessary to substantiate or supplement the information furnished in the Questionnaire, and authorizes others to release such information to the City.

Exact name of existing Lessee (always complete):

Exact name of proposed Lessee (complete only if applicable):

Exact name of existing Sublessee (complete only if applicable):

Exact name of proposed Sublessee (complete only if applicable):

Date this Questionnaire completed: _____, ____.

The information furnished in and with this Questionnaire is true, complete, and correct to the best of my knowledge.

Signature: _____

Title: _____

Thank you for taking the time to complete the Questionnaire. Lessees may contact Real Estate if they have any questions. Please return the completed Questionnaire, with any additional information or documents to:

REAL ESTATE ASSETS DEPARTMENT
1200 THIRD AVENUE STE. 1700
SAN DIEGO, CA 92101
TEL.: (619) 236-6020 FAX: (619) 236-6706

This Questionnaire contains 15 pages.

PROPOSED (SUB)LESSEE

1. Name of proposed (Sub)Lessee exactly as it will appear on the actual tenancy document:

2. Mailing Address of proposed (Sub)Lessee for purposes of notice or other communication relating to the proposed tenancy:

Telephone No.: _____ Fax. No.: _____

E-mail Address: _____

3. Billing Address (*only if different from Mailing Address*);

Telephone No.: _____ Fax. No.: _____

4. Proposed (Sub)Lessee intends to operate as a:

Sole Proprietorship (); Partnership (); Corporation ();
Limited Liability Company (); Other _____

Explain if necessary:

5. Effective date of assignment (complete only if applicable): _____

PARTNERSHIP STATEMENT

If proposed (Sub)Lessee is a partnership, please answer the following:

1. Date of Organization: _____
2. General Partnership ()
Limited Partnership ()
Other () Explain _____

3. Statement of Partnership recorded: Yes () No ()

Date Book Page County
4. Has the partnership conducted business in San Diego County?
Yes () No () If so, when? _____
If so, where? _____
5. Name, address, and partnership share of each general and limited partner. If a general partner is another partnership, a corporation, or a limited liability company (LLC), please complete separate pages 3; or 4 and 5; or 6, as appropriate for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page for identification purposes). If a limited partner holding a 10% or greater interest is another partnership, a corporation, or an LLC, pages 3; or 4 and 5; or 6 must also be completed for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page).

General/Limited	Name	Address	Share %

6. Attach a complete copy of the Partnership Agreement. If a Partnership Agreement has been previously submitted, a new Partnership Agreement need be submitted only if the Partnership Agreement on file with the City is no longer current.

CORPORATION STATEMENT

If proposed (Sub)Lessee is a corporation, please answer the following:

1. Type of corporation: C () Subchapter S ()
2. When incorporated? _____
3. Where incorporated? _____
4. Is the corporation authorized to do business in California? Yes () No ()
If so, as of what date? _____
5. The corporation is held:
 - a. Publicly () Privately ()
 - b. If publicly held, how and where is the stock traded?

- | | | | |
|-------------------------------------|-------------------|---------------|--------------------|
| 6. Please list the following: | <u>Authorized</u> | <u>Issued</u> | <u>Outstanding</u> |
| a. Number of voting shares: | _____ | _____ | _____ |
| b. Number of nonvoting shares: | _____ | _____ | _____ |
| c. Number of shareholders: | _____ | _____ | _____ |
| d. Value per share of Common Stock: | | Par | \$ _____ |
| | | Book | \$ _____ |
| | | Market | \$ _____ |

7. Please furnish the name, title, address, and the number of voting and nonvoting shares of stock owned by each officer and, in addition, the same information for each stockholder owning more than 10% of any class of stock.

Name: _____

Title: _____

Address: _____

No. of Shares: _____

Name: _____

Title: _____

Address: _____

No. of Shares:	_____
Name:	_____
Title:	_____
Address:	_____

No. of Shares:	_____
Name:	_____
Title:	_____
Address:	_____

No. of Shares:	_____
Name:	_____
Title:	_____
Address:	_____

No. of Shares:	_____

(Additional page(s) may be added if needed to complete list of stockholders [type proposed (Sub)Lessee name (from page 2) on the top of each page].)

Any partnership, corporation, or LLC owning more than a 10% ownership interest must also complete separate pages 3; or 4 and 5; or 6, as appropriate for each entity (type proposed [Sub]Lessee name [from page 2] on the top of each page for identification purposes). Also, furnish the financial data for such partnership, corporation, or LLC, as required on page 7. If there is an ownership chain of additional partnerships, corporations, or LLCs, the above requirements extend to each such entity having either: (1) a 10% or greater direct, indirect, beneficial ownership, or membership interest in the proposed (Sub)Lessee; or (2) effective control of the proposed (Sub)Lessee, regardless of the percentage of ownership or membership interest.

LIMITED LIABILITY COMPANY STATEMENT

If the proposed (Sub)Lessee is an LLC, please answer the following:

1. Date of Organization: _____
2. Where Organized: _____
3. Is the Company authorized to do business in California?
 - a. Yes () No ()
 - b. If so, as of what date? _____
4. Has the Company conducted business in San Diego County?
 - a. Yes () No ()
 - b. If so, when? _____
 - c. If so, where? _____
5. Please furnish the name, address, and membership share held by each manager and officer, and each member owning more than a 10% membership interest. If a member is a partnership, corporation, or another LLC, please complete separate pages 3; or 4 and 5; or 6, as appropriate for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page).

Manager/Officer/ Member	Name	Address	Share %

6. Attach a complete copy of the Operating Agreement. If an Operating Agreement has been previously submitted, a new Operating Agreement need be submitted only if the Operating Agreement on file with the City is no longer current.

FINANCIAL AND OTHER BACKGROUND INFORMATION

FINANCIAL STATEMENT

(Sub)Lessee, general partners of (Sub)Lessee, owner-corporations of (Sub)Lessee, members of (Sub)Lessee owning more than a 10% membership interest, and any person or business entity guaranteeing the performance of (Sub)Lessee **must attach a complete report, prepared in accordance with good accounting practice, reflecting current financial condition.** The report **must** include a balance sheet **and** annual income statement. The person or entity covered by the report must be prepared to substantiate all information provided.

OTHER INFORMATION

Each (Sub)Lessee, each general partner of (Sub)Lessee, each owner-corporation of (Sub)Lessee, each member of (Sub)Lessee owning more than a 10% membership interest, any person or business entity guaranteeing the performance of (Sub)Lessee, any person or entity owning more than a 10% interest of (Sub)Lessee, and any guarantor of (Sub)Lessee must answer the following questions:

1. **Surety Information** - Has a surety or bonding company ever been required to perform on the default of any of the individuals or entities?
 - a. Yes () No ()
 - b. If yes, please attach a statement naming the surety or bonding company, date, amount of bond, and the circumstances surrounding said default and performance.
2. **Bankruptcy Information** - Have any of the individuals or entities ever been adjudicated bankrupt or are any presently a debtor in a pending bankruptcy action?
 - a. Yes () No ()
 - b. If yes, please give dates, court jurisdiction, and amount of liabilities and assets.
3. **Pending Litigation** - Are any of the individuals or entities presently a party to ANY pending litigation?
 - a. Yes () No ()
 - b. If yes, please provide detailed information for each action.
4. **Claims, Liens, or Judgments** - Are any of the individuals or entities now subject to any outstanding claims, liens, or judgments?
 - a. Yes () No ()
 - b. If yes, please provide detailed information for each claim, lien, or judgment.

REFERENCES FOR PROPOSED (SUB)LESSEE

Please list four persons or firms with whom you have conducted business transactions during the past three years. Two of the references must have knowledge of your debt payment history, with at least one being a financial institution. Two of the references must have knowledge of your business experience.

REFERENCE NO. 1

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business, association, etc.:

REFERENCE NO. 2

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business, association, etc.:

REFERENCE NO. 3

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business, association, etc.:

REFERENCE NO. 4

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business, association, etc.:

CITY OF SAN DIEGO PERSONAL DESCRIPTION AND RELEASE

PLEASE NOTE: All partners, both general and limited; all stockholders owning more than 10% of any class of stock of corporations; all members of a limited liability company; and sole proprietors requesting to (sub)lease, must each complete this page before the tenancy request can be processed. (You may reproduce and use copies of this page, if necessary.)

The following personal information is required to initiate a credit investigation. The business and personal reputation of principals, partners, and members will be considered in qualifying Lessees or in consenting to Sublessees.

First, Middle, & Last Name	_____
Date of Birth	_____
Place of Birth	_____
Social Security Number	_____
Driver's License Number/State	_____
Home Address	_____

Previous Address	_____

Home Telephone No.	_____
Employer	_____
Occupation	_____
Business Address	_____
Business Telephone No.	_____
Business Fax No.	_____

The City is hereby authorized to request a credit report and other information covering my financial and business history.

Date _____ Signed _____

Print or type exact name of proposed (Sub)Lessee from page 2 of Questionnaire:

METHOD OF OPERATION

Please describe your proposed business operation on the property to be (Sub)Leased. Discuss any optional services and uses which you propose to provide.

PROPOSED METHOD OF FINANCING

DEVELOPMENT OR LEASEHOLD PURCHASE

Describe the method of financing for the Leasehold purchase or any new or additional development on tidelands in excess of \$100,000. Include a schedule of approximate dates when construction of each significant improvement is expected to be commenced and completed.

ESTIMATE OF GROSS RECEIPTS

If this Questionnaire is being completed by a prospective Lessee, please show the best estimate of the average annual gross sales for each significant use or service, and for each significant optional use or service which the Lessee and its Sublessees (if any) plan to conduct on or from the property. (If the Questionnaire is being completed by a Sublessee, only the estimate of the Sublessee's gross sales is required.) This data will be used by the City to analyze the proposed Lease or Sublease Consent application. The time periods shown should not be assumed to necessarily represent the term of a (Sub)Lease that may be granted or consented to by the City.

Average annual gross sales for each proposed significant use during each of the first five operating years:

Year of Operation	Uses (Identify Each Use)				
1	\$	\$	\$	\$	\$
2					
3					
4					
5					

EXPERIENCE STATEMENT

Please describe in detail the duration and extent of your business experience, with special emphasis upon experience with the type of business which you propose to conduct on City property. Also state in detail the pertinent experience of the persons who will be directly involved in development and management of the business.

**TERMS AND CONDITIONS OF PURCHASE, SALE,
OR TRANSFER OF (SUB)LEASEHOLD INTEREST**

(NOTE: Complete this page only if the transaction involves a Lease transfer, or the transfer of a Sublease having a remaining term of more than five years.)

Please summarize the terms and conditions of the purchase, sale, or transfer of (Sub)Leasehold interest(s) which requires City consent, as specified in the Assignment-Sublease provisions of the City Lease. Please attach copies of the applicable sales agreement(s), escrow instructions, assignment agreement(s), or other documents in conjunction with the sale, purchase, or transfer of the (Sub)Leasehold interest(s).

Exhibit E: Contractor Standards Pledge of Compliance

City of San Diego

CONTRACTOR STANDARDS

Pledge of Compliance

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

A. BID / PROPOSSAL / SOLICITATION TITLE:

B. BIDDER / PROPOSER INFORMATION:

C. OWNERSHIP AND NAME CHANGES:

1. In the past (5) years, has your firm changed it's name?

☐Yes ☐No

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

2. In the past (5) years, has your firm owner, partner, or officer operated a similar business?

☐Yes ☐No

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

D. BUSINESS ORGANIZATION / STRUCTURE:

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

Corporation Date incorporated: ____/____/____ State of incorporation: _____

List corporation's current officers: President: _____
Vice Pres: _____
Secretary: _____
Treasurer: _____

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

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

Limited Liability Company Date formed: ____/____/____ State of formation: _____

List names of members who own (10%) or more of the company:

Partnership Date formed: ____/____/____ State of formation: _____

List names of all firm partners:

Sole Proprietorship Date started: ____/____/____

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

Joint Venture Date formed: ____/____/____

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

Note: To be responsive, each member of a Joint Venture must complete a separate *Pledge of Compliance*.

E. FINANCIAL RESOURCES AND RESPONSIBILITY:

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

☐ **Yes** ☐ **No**

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

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

☐ **Yes** ☐ **No**

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

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

☐Yes ☐No

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

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

☐Yes ☐No

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

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

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

Name of Bank: _____

Point of Contact: _____

Address: _____

Phone Number: _____

7. By submitting a response to a City solicitation, Contractor certifies that he or she has sufficient operating capital and/or financial reserves to properly fund the requirements identified in the solicitation. At City's request, Contractor will promptly provide to City a copy of Contractor's most recent balance sheet and/or other necessary financial statements to substantiate financial ability to perform.

F. PERFORMANCE HISTORY:

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

☐Yes ☐No

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

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

☐Yes ☐No

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

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

☐Yes ☐No

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

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

☐Yes ☐No

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

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

☐Yes ☐No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances.

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

☐Yes ☐No

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

7. Performance References:

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

Company Name: _____

Contact Name and Phone Number: _____

Contact Email: _____

Address: _____

Contract Date: _____

Contract Amount: _____

Requirements of Contract: _____

Company Name: _____

Contact Name and Phone Number: _____

Contact Email: _____

Address: _____

Contract Date: _____

Contract Amount: _____

Requirements of Contract: _____

Company Name: _____

Contact Name and Phone Number: _____

Contact Email: _____

Address: _____

Contract Date: _____

Contract Amount: _____

Requirements of Contract: _____

G. COMPLIANCE:

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

☐Yes ☐No

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

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

☐Yes ☐No

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

H. BUSINESS INTEGRITY:

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

☐Yes ☐No

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

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

☐Yes ☐No

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

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

☐Yes ☐No

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

I. WAGE COMPLIANCE:

In the past five (5) years, has your firm been required to pay back wages or penalties for failure to comply with the federal, state or local prevailing, minimum, or living wage laws? ☐Yes ☐No

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

J. STATEMENT OF SUBCONTRACTORS:

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

Company Name: _____

Contact Name and Phone Number: _____

Contact Email: _____

Address: _____

Contract Date: _____

Sub-Contract Dollar Amount: _____

Requirements of Contract: _____

What portion will be assigned to this subcontractor: _____

Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE? (Circle One)

☐ **Yes** ☐ **No**

If **YES**, Contractor must provide valid proof of certification with the response to the bid or proposal.

Company Name: _____

Contact Name and Phone Number: _____

Contact Email: _____

Address: _____

Contract Date: _____

Sub-Contract Dollar Amount: _____

Requirements of Contract: _____

What portion will be assigned to this subcontractor: _____

Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE? (Circle One)

☐ **Yes** ☐ **No**

If **YES**, Contractor must provide valid proof of certification with the response to the bid or proposal.

K. STATEMENT OF AVAILABLE EQUIPMENT:

List all necessary equipment to complete the work specified. Use *Pledge of Compliance Attachment "A"* if additional pages are necessary. In instances where the required equipment is not owned by the Contractor, Contractor shall explain how the equipment will be made available before the commencement of work. The City of San Diego reserves the right to reject any response when, in its opinion, the Contractor has not demonstrated he or she will be properly equipped to perform the work in an efficient, effective manner for the duration of the contract period.

If no equipment is necessary to complete the work specified, please write "Not Applicable."

Equipment Description: _____

Please circle one:

OWNED

RENTED

OTHER (Explain Below)

If Owned, Quantity Available: _____

Year, Make & Model: _____

Explanation: _____

Equipment Description: _____

Please circle one:

OWNED

RENTED

OTHER (Explain Below)

If Owned, Quantity Available: _____

Year, Make & Model: _____

Explanation: _____

Equipment Description: _____

Please circle one:

OWNED

RENTED

OTHER (Explain Below)

If Owned, Quantity Available: _____

Year, Make & Model: _____

Explanation: _____

L. TYPE OF SUBMISSION: This document is submitted as:

Initial submission of *Contractor Standards Pledge of Compliance*.

Update of prior *Contractor Standards Pledge of Compliance* dated ____/____/____

Complete all questions and sign below.

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

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

- (a) I and my firm will comply with all applicable local, State and Federal laws, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.
- (b) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of receiving notice that a government agency has begun an investigation of me or my firm that may result in a finding that I or my firm is or was not in compliance with laws stated in paragraph (a).
- (c) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of a finding by a government agency or court of competent jurisdiction of a violation by the Contractor of laws stated in paragraph (a).
- (d) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of becoming aware of an investigation or finding by a government agency or court of competent jurisdiction of a violation by a subcontractor of laws stated in paragraph (a).
- (e) I and my firm will cooperate fully with the City during any investigation and to respond to a request for information within ten (10) working days.

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

_____ Name and Title	_____ Signature	_____ Date
-------------------------	--------------------	---------------

Exhibit F: Work Force Report



City of San Diego

EQUAL OPPORTUNITY CONTRACTING (EOC)

1200 Third Avenue • Suite 200 • San Diego, CA 92101

Phone: (619) 236-6000 • Fax: (619) 235-5209

WORK FORCE REPORT

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report (WFR)*.

NO OTHER FORMS WILL BE ACCEPTED

CONTRACTOR IDENTIFICATION

Type of Contractor: ☐ Construction ☐ Vendor/Supplier ☐ Financial Institution ☐ Lessee/Lessor
☐ Consultant ☐ Grant Recipient ☐ Insurance Company ☐ Other

Name of Company: _____

ADA/DBA: _____

Address (Corporate Headquarters, where applicable): _____

City: _____ County: _____ State: _____ Zip: _____

Telephone Number: () _____ Fax Number: () _____

Name of Company CEO: _____

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: _____

City: _____ County: _____ State: _____ Zip: _____

Telephone Number: () _____ Fax Number: () _____

Type of Business: _____ Type of License: _____

The Company has appointed: _____

As its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: _____

Telephone Number: () _____ Fax Number: () _____

- ☐ One San Diego County (or Most Local County) Work Force - Mandatory
☐ Branch Work Force *
☐ Managing Office Work Force

Check the box above that applies to this WFR.

*Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.

I, the undersigned representative of _____

(Firm Name)

_____, _____ hereby certify that information provided

(County)

(State)

herein is true and correct. This document was executed on this _____ day of _____, 20____

(Authorized Signature)

(Print Authorized Signature Name)

WORK FORCE REPORT – Page 2

NAME OF FIRM: _____ DATE: _____

OFFICE(S) or BRANCH(ES): _____ COUNTY: _____

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- | | |
|--|--|
| (1) Black, African-American | (5) Filipino |
| (2) Hispanic, Latino, Mexican-American, Puerto Rican | (6) White, Caucasian |
| (3) Asian, Pacific Islander | (7) Other ethnicity; not falling into other groups |
| (4) American Indian, Eskimo | |

ADMINISTRATION OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Management & Financial														
Professional														
A&E, Science, Computer														
Technical														
Sales														
Administrative Support														
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*														

*Construction laborers and other field employees are not to be included on this page

Totals Each Column														
--------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Grand Total All Employees

Indicate by Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

WORK FORCE REPORT – Page 3

NAME OF FIRM: _____ DATE: _____

OFFICE(S) or BRANCH(ES): _____ COUNTY: _____

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- | | |
|--|--|
| (1) Black, African-American | (5) Filipino |
| (2) Hispanic, Latino, Mexican-American, Puerto Rican | (6) White, Caucasian |
| (3) Asian, Pacific Islander | (7) Other ethnicity; not falling into other groups |
| (4) American Indian, Eskimo | |

TRADE OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Brick, Block or Stone Masons														
Carpenters														
Carpet, Floor & Tile Installers Finishers														
Cement Masons, Concrete Finishers														
Construction Laborers														
Drywall Installers, Ceiling Tile Inst														
Electricians														
Elevator Installers														
First-Line Supervisors/Managers														
Glaziers														
Helpers; Construction Trade														
Millwrights														
Misc. Const. Equipment Operators														
Painters, Const. & Maintenance														
Pipelayers, Plumbers, Pipe & Steam Fitters														
Plasterers & Stucco Masons														
Roofers														
Security Guards & Surveillance Officers														
Sheet Metal Workers														
Structural Metal Fabricators & Fitters														
Welding, Soldering & Brazing Workers														
Workers, Extractive Crafts, Miners														

Totals Each Column														
--------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Grand Total All Employees														
---------------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Indicate By Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--



CITY OF SAN DIEGO WORK FORCE REPORT

HISTORY

The Work Force Report (WFR) is the document that allows the City of San Diego to analyze the work forces of all firms wishing to do business with the City. We are able to compare the firm's work force data to County Labor Force Availability (CLFA) data derived from the United States Census. CLFA data is a compilation of lists of occupations and includes the percentage of each ethnicity we track (Black, Hispanic, Asian, American Indian, Filipino) for each occupation. Currently, our CLFA data is taken from the 2000 Census. In order to compare one firm to another, it is important that the data we receive from the consultant firm is accurate and organized in the manner that allows for this fair comparison.

WORK FORCE & BRANCH WORK FORCE REPORTS

When submitting a WFR, especially if the WFR is for a specific project or activity, we would like to have information about the firm's work force that is actually participating in the project or activity. That is, if the project is in San Diego and the work force is from San Diego, we want a San Diego County Work Force Report.¹ By the same token, if the project is in San Diego, but the work force is from another county, such as Orange or Riverside County, we want a Work Force Report from that county.² If participation in a San Diego project is by work forces from San Diego County and, for example, from Los Angeles County and from

Sacramento County, we ask for separate Work Force Reports representing your firm from each of the three counties.

MANAGING OFFICE WORK FORCE

Equal Opportunity Contracting may occasionally ask for a Managing Office Work Force (MOWF) Report. This may occur in an instance where the firm involved is a large national or international firm but the San Diego or other local work force is very small. In this case, we may ask for both a local and a MOWF Report.^{1,3} In another case, when work is done only by the Managing Office, only the MOWF Report may be necessary.³

TYPES OF WORK FORCE REPORTS:

Please note, throughout the preceding text of this page, the superscript numbers one ¹, two ² & three ³. These numbers coincide with the types of work force report required in the example. See below:

- ¹ One San Diego County (or Most Local County) Work Force – Mandatory in most cases
- ² Branch Work Force *
- ³ Managing Office Work Force

**Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

Exhibit A: Work Force Report Job categories-Administration

Refer to this table when completing your firm's Work Force Report form(s).

Management & Financial

Advertising, Marketing, Promotions, Public Relations, and Sales Managers
Business Operations Specialists
Financial Specialists
Operations Specialties Managers
Other Management Occupations
Top Executives

Professional

Art and Design Workers
Counselors, Social Workers, and Other Community and

Social Service Specialists
Entertainers and Performers, Sports and Related Workers
Health Diagnosing and Treating Practitioners
Lawyers, Judges, and Related Workers
Librarians, Curators, and Archivists
Life Scientists
Media and Communication Workers
Other Teachers and Instructors
Postsecondary Teachers
Primary, Secondary, and Special Education School Teachers
Religious Workers
Social Scientists and Related Workers

Architecture & Engineering, Science, Computer

Architects, Surveyors, and Cartographers
Computer Specialists
Engineers
Mathematical Science Occupations
Physical Scientists

Technical

Drafters, Engineering, and Mapping Technicians
Health Technologists and Technicians
Life, Physical, and Social Science Technicians
Media and Communication Equipment Workers

Sales

Other Sales and Related Workers
Retail Sales Workers
Sales Representatives, Services
Sales Representatives, Wholesale and Manufacturing
Supervisors, Sales Workers

Administrative Support

Financial Clerks
Information and Record Clerks
Legal Support Workers
Material Recording, Scheduling, Dispatching, and Distributing Workers
Other Education, Training, and Library Occupations
Other Office and Administrative Support Workers
Secretaries and Administrative Assistants
Supervisors, Office and Administrative Support Workers

Services

Building Cleaning and Pest Control Workers
Cooks and Food Preparation Workers
Entertainment Attendants and Related Workers
Fire Fighting and Prevention Workers
First-Line Supervisors/Managers, Protective Service Workers
Food and Beverage Serving Workers
Funeral Service Workers
Law Enforcement Workers
Nursing, Psychiatric, and Home Health Aides
Occupational and Physical Therapist Assistants and Aides
Other Food Preparation and Serving Related Workers
Other Healthcare Support Occupations
Other Personal Care and Service Workers
Other Protective Service Workers
Personal Appearance Workers
Supervisors, Food Preparation and Serving Workers
Supervisors, Personal Care and Service Workers
Transportation, Tourism, and Lodging Attendants

Crafts

Construction Trades Workers
Electrical and Electronic Equipment Mechanics, Installers, and Repairers
Extraction Workers
Material Moving Workers
Other Construction and Related Workers
Other Installation, Maintenance, and Repair Occupations
Plant and System Operators
Supervisors of Installation, Maintenance, and Repair Workers
Supervisors, Construction and Extraction Workers
Vehicle and Mobile Equipment Mechanics, Installers, and Repairers
Woodworkers

Operative Workers

Assemblers and Fabricators
Communications Equipment Operators
Food Processing Workers
Metal Workers and Plastic Workers
Motor Vehicle Operators
Other Production Occupations
Printing Workers
Supervisors, Production Workers
Textile, Apparel, and Furnishings Workers

Transportation

Air Transportation Workers
Other Transportation Workers
Rail Transportation Workers
Supervisors, Transportation and Material Moving Workers
Water Transportation Workers

Laborers

Agricultural Workers
Animal Care and Service Workers
Fishing and Hunting Workers
Forest, Conservation, and Logging Workers
Grounds Maintenance Workers
Helpers, Construction Trades
Supervisors, Building and Grounds Cleaning and Maintenance Workers
Supervisors, Farming, Fishing, and Forestry Workers

Exhibit B: Work Force Report Job categories-Trade

Brick, Block or Stone Masons

Brickmasons and Blockmasons
Stonemasons

Carpenters

Carpet, floor and Tile Installers and Finishers

Carpet Installers
Floor Layers, except Carpet, Wood and Hard Tiles
Floor Sanders and Finishers
Tile and Marble Setters

Cement Masons, Concrete Finishers

Cement Masons and Concrete Finishers
Terrazzo Workers and Finishers

Construction Laborers

Drywall Installers, Ceiling Tile Inst

Drywall and Ceiling Tile Installers
Tapers

Electricians

Elevator Installers and Repairers

First-Line Supervisors/Managers

First-line Supervisors/Managers of Construction Trades and Extraction Workers

Glaziers

Helpers, Construction Trade

Brickmasons, Blockmasons, and Tile and Marble Setters
Carpenters
Electricians
Painters, Paperhangers, Plasterers and Stucco
Pipelayers, Plumbers, Pipefitters and Steamfitters
Roofers
All other Construction Trades

Millwrights

Heating, Air Conditioning and Refrigeration Mechanics and Installers
Mechanical Door Repairers
Control and Valve Installers and Repairers
Other Installation, Maintenance and Repair Occupations

Misc. Const. Equipment Operators

Paving, Surfacing and Tamping Equipment Operators
Pile-Driver Operators
Operating Engineers and Other Construction Equipment Operators

Painters, Const. Maintenance

Painters, Construction and Maintenance
Paperhangers

Pipelayers and Plumbers

Pipelayers
Plumbers, Pipefitters and Steamfitters

Plasterers and Stucco Masons

Roofers

Security Guards & Surveillance Officers

Sheet Metal Workers

Structural Iron and Steel Workers

Welding, Soldering and Brazing Workers

Welders, Cutter, Solderers and Brazers
Welding, Soldering and Brazing Machine Setter, Operators and Tenders

Workers, Extractive Crafts, Miners