



## **Fiscal Year 2017 Application Guidelines**

### **CCSD: Creative Communities San Diego Funding for Nonprofits**

## **The City of San Diego Commission for Arts and Culture**

---

**December 28, 2015**

### **TABLE OF CONTENTS**

Section 1:	Who We Are	Page 2
Section 2:	What We Do & Why We Do It	Page 2
Section 3:	What is Creative Communities San Diego (CCSD)?	Page 3
Section 4:	How Much Funding Is Available?	Page 3
Section 5:	A Big Picture of the Whole Funding Cycle	Page 3
Section 6:	Important Dates	Page 5
Section 7:	Who Can Help?	Page 7
Section 8:	Glossary of Useful Terms	Page 6
Section 9:	Who is Eligible to Apply? And Who is Not Eligible to Apply?	Page 9
Section 10:	Things to Consider When Deciding Whether to Apply	Page 11
Section 11:	Submitting an Application	Page 12
Section 12:	Learning About Your Application Evaluation, Rank and Award	Page 14
Section 13:	Obtaining an Award through a Contract	Page 16
Section 14:	Performing Under Contract	Page 17
Section 15:	Invoicing and Receiving Payment	Page 17
Appendix 1:	Preview of Substantive Questions in the FY17 CCSD Application	
Appendix 2:	Application Evaluator's Rubric & Ranks	
Appendix 3:	Factors Affecting Amount of CCSD Awards	
Appendix 4:	Sample Boilerplate Contract	

---

## **Section 1: Who We Are**

The City of San Diego Commission for Arts and Culture (Commission) was established by ordinance in 1988 to serve in an advisory capacity to the Mayor and City Council of The City of San Diego on promoting, encouraging, and increasing support for the San Diego's diverse artistic and cultural assets, integrating arts and culture into community life and showcasing San Diego as an international cultural tourist destination. The Commission is composed of 15 volunteers (Commissioners) appointed by the Mayor and confirmed by City Council to serve terms up to eight years. A staff of seven (Commission staff), headed by an Executive Director, administers the programs and services of the Commission under the oversight and direction of the Mayor and Deputy Chief Operating Officer for Neighborhood Services.

## **Section 2: What We Do & Why We Do It**

The duties and functions of the Commissioners and Commission staff are set forth in the San Diego Municipal Code and include developing, implementing, evaluating, and/or recommending changes to public policy, legislation, programs, services, and advocacy strategies; overseeing funding allocations in support of nonprofit arts and culture organizations, artists, neighborhood arts programs, festivals, and artworks in public development; ensuring the inclusion of art in private development; managing artworks owned and controlled by the City; supporting cultural tourism and innovative arts and culture programming; and undertaking other initiatives that contribute to the quality of life, economic vitality, and vibrancy of San Diego. The Commission annually recommends to the Mayor and City Council the award of funding for general organizational support and project-specific support for San Diego's nonprofit arts and culture organizations. These funds are awarded through two competitive application processes: Organizational Support Program (OSP) and Creative Communities San Diego Program (CCSD). The source of this funding is Transient Occupancy Tax (TOT), a tax levied on individuals who stay overnight in hotels, motels, and other lodging establishments. Council Policy 100-03 governs the use of TOT money and, in accordance with the policy, a portion of the City's TOT revenue is intended to be used as follows:

1. To enhance the economy;
2. To contribute to San Diego's national and international reputation as a cultural destination;
3. To provide access to excellence in culture and the arts for residents and visitors;
4. To enrich the lives of the people of San Diego; and
5. To build healthy, vital neighborhoods.

### **Section 3: What is Creative Communities San Diego (CCSD)?**

Creative Communities San Diego (CCSD) is the annual, Commission-administered process of accepting and evaluating applications from nonprofit, tax-exempt organizations requesting TOT funding to use for sponsoring community-based festivals, parades and celebrations with an emphasis on projects that promote neighborhood pride and community reinvestment, and on sponsoring projects that make arts and culture activities more available and accessible in San Diego neighborhoods and encourage people diverse backgrounds to share their heritage and culture. In Fiscal Year 2016, 58 nonprofit organizations received \$1,080,000 in TOT funding through CCSD.

### **Section 4: How Much Funding is Available?**

The amount of money an applicant can be awarded is calculated with a logarithm and is dependent on several variables. Learn more about how awards are calculated in Appendix 3 - Factors Affecting Amount of CCSD Awards.

#### **How to Calculate Your Potential CCSD Award Projection**

Enter the TOTAL amount of your projected year FY17 CASH EXPENSES Line 1:  
TOTAL EXPENSES = PERSONNEL + OPERATING + OVERHEAD

If the amount on Line 1 is less than \$30,000, enter the amount of your IN-KIND Line 2:  
CONTRIBUTIONS. The sum of your IN-KIND CONTRIBUTIONS plus CASH INCOME  
may not exceed \$30,000, and you may not claim more than \$10,000 in in-kind  
contributions. You may not claim your own products or services and time as  
in-kind.

Add Lines 1 and 2. This is your total expenses. Line 3:

If Line 3 is \$30,000 or less, divide it by 3. This is the maximum potential award. Line 4:

If Line 3 is greater than \$30,000, divide that amount by 4. This is the maximum Line 5:  
potential award amount.

The amount in LINES 4 or 5 is the amount you should use as a POTENTIAL CCSD AWARD PROJECTION  
for the PROPOSED PROJECT (FY17).

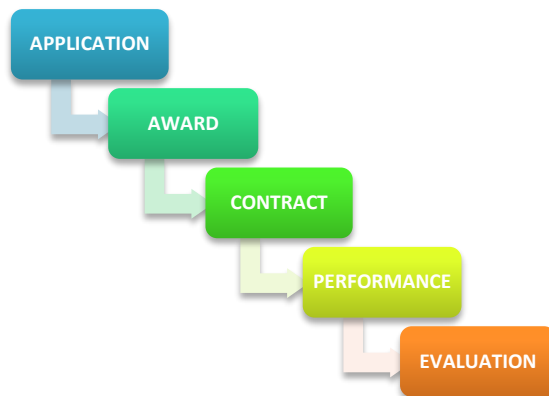
---

This information is not a guarantee of an award amount. It is offered to assist organizations in deciding whether to submit an application for funding and in determining the mandatory cash match. Contractors with project cash expenses over \$30,000 must be able to match City funding at a 3:1 ratio: for every \$1 the City invests, the applicant must match that support with \$3 in cash funding. Cash match funding may come from any number of sources including earned or contributed income, but cannot come from The City of San Diego. Contractors with project cash expenses of \$30,000 or less must match City funding at a 2:1 ratio and up to 50% of the match may consist of in-kind donations.

---

## Section 5: A Big Picture of the Whole Funding Cycle

Applying for funding through CCSD is one step in a five-phase, year-long cycle. When an organization submits an application for CCSD funding, that organization becomes a participant in the cycle. The descriptions and diagram below explain what a CCSD applicant can anticipate in the process.



### FUNDING CYCLE PHASE 1 – APPLICATION

- 1) The Commission staff generates and formats the application and guidelines
- 2) The Commission staff publishes and advertises the application and guidelines
- 3) The Commission staff provides technical assistance for applicants
- 4) Applicants prepare and submit applications
- 5) The Commission staff receives and reviews applications in preparation for award phase

### FUNDING CYCLE PHASE 2 – AWARD

- 1) Panels composed of Commissioners and diverse community volunteers evaluate and rank applications
- 2) The Commission receives the Mayor's annual proposed budget and determines the total amount of funding to allocate to the CCSD program
- 3) The Commission determines the "cut-off" point for all ranked CCSD applicants. Applicants above the "cut-off" point are recommended for awards and applicants below the "cut-off" point are not recommended for awards.
- 4) The Commission staff runs a logarithm to calculate award amounts. The logarithm accounts for the following factors: Amount of money in the funding pool + Number of applicants recommended for awards + Rank of each applicant recommended for an award + Project budget of each applicant recommended for an award

- 5) The Commission presents the award recommendations to the Mayor and City Council for approval
- 6) The Mayor and City Council officially approve the awards and authorize awards through contracts

#### FUNDING CYCLE PHASE 3 – CONTRACT

- 1) The City of San Diego issues a contract to each awardee
- 2) Awardees a.k.a. contractors sign and return contracts to Commission staff
- 3) Commission staff manages each contract, invoicing and payments for each contractor

#### FUNDING CYCLE PHASE 4 – PERFORMANCE

- 1) Contractors perform the scope of services per the terms of the contract
- 2) Commission staff monitors contractors' compliance with the terms of the contract
- 3) Contractors submit invoices, final reports and financial disclosures

#### FUNDING CYCLE PHASE 5 - EVALUATION

- 1) Commissioners and Commission staff gather and synthesize feedback about the prior year's funding cycle
- 2) Commissioners and Commission staff review outcomes of the prior year's funding cycle
- 3) Commissioners and Commission staff identify areas for improvement
- 4) Commissioners and Commission staff develop and implement methods for improvement

### **Section 6: Important Dates**

#### **Monday, December 28, 2016, 12:00 p.m./NOON**

- Survey of Eligibility to Apply available on [www.VibrantCultureVibrantCity.com](http://www.VibrantCultureVibrantCity.com)
- Application Guidelines available on [www.VibrantCultureVibrantCity.com](http://www.VibrantCultureVibrantCity.com)
- Preview of Substantive Application Questions available as Appendix in Guidelines

#### **Monday, January 11, 2016, 12:00 p.m./NOON**

- Survey of Eligibility to Apply closes

#### **Tuesday, January 12, 2016, 11:59 p.m.**

- Access to Online Application Portal (Culture Grants Online by WESTAF) granted to eligible applicants

#### **Wednesday, January 13, 2016**

- Optional Technical Assistance Workshop for applicants. Time and location to be announced on [www.VibrantCultureVibrantCity.com](http://www.VibrantCultureVibrantCity.com)

**Thursday, January 14, 2016**

- Duplicate optional Technical Assistance Workshop for applicants (Time and location to be announced on [www.VibrantCultureVibrantCity.com](http://www.VibrantCultureVibrantCity.com). The same topics will be covered in each workshop; applicants do not need to attend both workshops.

**Tuesday, February 2, 2016, 12:00 p.m./NOON**

- Cut-off for questions from applicants

**Friday, February 5, 2016, 9:00 a.m.**

- Full applications due in Online Application Portal/Online Application Portal closes

**Section 7: Who Can Help?**

Anjanette Maraya-Ramey, Senior Manager of Arts and Culture Funding Programs, can answer questions on the topics of Creative Communities San Diego, The City of San Diego, The Commission for Arts and Culture, Technical Assistance Workshops, the Online Application Portal, and Culture Grants Online. Anjanette can be contacted through email at [AMarayaRamey@sandiego.gov](mailto:AMarayaRamey@sandiego.gov) and (619) 236-6788.

Two optional workshops are scheduled (January 13 and January 14) to provide applicants with technical assistance. Each workshop will cover the same subject matter; applicants do not need to attend both workshops. Workshops are open to the public.

REMINDER: The cut-off for questions from applicants is Tuesday, February 2, 2016, 12:00 p.m./NOON.

**Section 8: Glossary of Useful Terms**

**APPLICANT**

An applicant is a nonprofit organization that has submitted an application to receive funding from The City of San Diego

**ARTIST**

An individual generally recognized by critics and peers as a professional practitioner of the visual, performing, or language arts, or a combination thereof, based on that professional practitioner's body of work, educational background, experience, past commissions, exhibition/performance record, publications, and production of artworks.

**ARTISTIC EXPENSES**

Funds used to recruit, secure, compensate and supply artists and/or exhibits. (Contrast with Entertainment Expenses.)

**ARTS**

In this context, the arts encompass visual genres (i.e. painting, sculpture, design, photography, printing, mosaic, video, film, mixed-media, textiles, etc.), performing genres

(i.e. music, theater, dance, spoken word, etc.) and literary genres (i.e. poetry, fiction, non-fiction, etc.).

### **AWARD**

An award is the amount of money that The City of San Diego decides upon and intends to give to an applicant. An award is a recommendation, not a guarantee of funding.

### **CITY**

The City of San Diego

### **CITY COUNCIL DISTRICT**

There are nine (9) Council Districts in The City of San Diego. Your project or event must occur in one or more Council District(s). Refer to the San Diego City Council District maps online to determine the Council District: <http://www.sandiego.gov/citycouncil/>

### **COMMISSION**

The City of San Diego Commission for Arts and Culture

### **COMMISSIONER**

A volunteer appointed by the Mayor and confirmed by City Council to serve in an advisory capacity to the Mayor and City Council of The City of San Diego on promoting, encouraging, and increasing support for the San Diego's diverse artistic and cultural assets, integrating arts and culture into community life and showcasing San Diego as an international cultural tourist destination.

### **COMMISSION STAFF**

Full time employees of The City of San Diego assigned to administer the programs and services of the Commission under the oversight and direction of the Mayor and Deputy Chief Operating Officer for Neighborhood Services.

### **COMMUNITY**

Community describes a unit of social organization based on some distinguishing characteristic of affinity: proximity (the North Park community), belief (the Jewish community), ethnicity (the Latino community), profession (the medical community) or orientation (the gay community).

### **CONTRACT**

A contract is a legally binding document that establishes the relationship between The City of San Diego and a nonprofit organization and outlines the duties of each party. The contract is the tool that enables The City of San Diego to pay out the award. Organizations that have been awarded funds may not request payment against that award until a contract is executed.

### **CONTRACTOR**

A contractor is an applicant who has successfully entered into a contract with The City of San Diego and is performing duties under the terms of the contract.

### **CULTURE GRANTS ONLINE (CGO)**

Culture Grants Online (CGO) is the name of the web-based software system that The City of San Diego uses to collect applications for Creative Communities San Diego. This system is also referred to as the Online Application Portal. Each applicant confirmed by Commission staff as eligible to apply for Fiscal Year 2017 CCSD funding will be granted access to the Online Application Form in the Online Application Portal. CGO is a product created and managed by The Western States Arts Federation (WESTAF). The City of San Diego holds a licensing agreement with WESTAF to use CGO.

### **CULTURAL TOURISM**

Travel with a primary purpose to experience the arts, heritage, cultures, or special character of a place.

### **CULTURE**

In this context, culture refers to fine arts, humanities and the broad aspects of a science as distinguished from the vocational, recreational and technical. Art, architecture, science and history are considered cultural in this context.

### **ENTERTAINMENT EXPENSES**

Funds used to recruit, secure, compensate and supply amusements including but not limited to fireworks, caricature drawings, balloon animals, mascots, face painting, animal rides, petting zoos, or carnival games. (Contrast with Artistic Expenses).

### **FISCAL SPONSOR**

A nonprofit, tax-exempt organization that chooses to support a project by receiving funds from a private foundation, a government agency, or tax-deductible donation and passing them on to the project. The fiscal sponsor assumes the liabilities, legal and tax reporting requirements associated with accepting funding. For more specific instruction, fiscal sponsors and their sponsored applicant are strongly encouraged to seek professional legal and accounting counsel to determine how best to structure their business relationship. In this context:

- Legal: The fiscal sponsor would be the applicant, and if awarded funding, would become the contractor. The fiscal sponsor must comply with The City of San Diego's contractual requirements.
- Location: The fiscal sponsor must be based in San Diego County.
- Relationship: The sponsored applicant must become employees or volunteers of the fiscal sponsor for the duration of the project. Project expenses must be paid directly by the fiscal sponsor to vendors and suppliers. All activities performed by the project personnel, including writing grant proposals or requesting donations, will be done so on behalf of the fiscal sponsor. All funds raised are the property of the fiscal sponsor.
- Liabilities: Because the project is being conducted on behalf of the fiscal sponsor, the project activities create the same liabilities for the fiscal sponsor as would any other



program. The fiscal sponsor is liable for the actions and omissions of the project personnel – whether employees or volunteers - within the scope of their project work. If the project has unpaid bills, borrows money, injures someone, damages property, infringes someone's copyright, or undertakes the obligation to supply goods or services to others – all these are the fiscal sponsor's liabilities.

- **Tax Reporting:** Depending on the commitments made to grantors and donors, the fiscal sponsor may be required to designate money for the project as a restricted fund on its financial records and on its Form 990 return. Payroll tax returns must also be filed for employee compensation.

### **IN-KIND CONTRIBUTIONS**

In-kind contributions are the value of goods or services donated to an organization either as volunteer staff time or goods donated by vendors at no cash expense to the organization.

### **IN-REACH**

The attendance by groups of people coming to any venue owned, rented or otherwise controlled by an organization from any of the City's Council Districts.

### **LOCAL AUDIENCES**

Those people living within fifty (50) miles of an event site attending the event as spectators (as opposed to participants.)

### **MATCHING REQUIREMENT or CASH MATCH**

Contractors with project cash expenses over \$30,000 must be able to match City funding at a 3:1 ratio: for every \$1 the City invests, the applicant must match that support with \$3 in cash funding. Cash match funding may come from any number of sources including earned or contributed income, but cannot come from The City of San Diego. Contractors with project cash expenses of \$30,000 or less must match City funding at a 2:1 ratio and up to 50% of the match may consist of in-kind donations.

### **NEIGHBORHOOD**

The geographically defined area within The City of San Diego where programs and services are provided and outreach activities are targeted. The boundaries of neighborhoods are sometimes better defined by neighborhood residents than by police or city maps.

### **ONLINE APPLICATION FORM**

See Culture Grants Online.

### **ONLINE APPLICATION PORTAL**

See Culture Grants Online.

### **OUTREACH**

Programs and services implemented at locations other than an organization's primary location, including those locations that are owned or rented and those that are not owned or rented by the applicant.

## **PARTICIPANTS**

The direct recipients and users of the event (e.g. youth and their parents, seniors, the homeless, apprentice artists, etc.). Participants should not be confused with “audiences” or “visitors” - people who may attend an event as guests, but are not actively engaged in the project.

## **PROJECT**

The arts and culture event or activity proposed by the applicant for funding. Eligible projects are typically one or a series of events united by a single theme or purpose and typically of limited duration.

## **PROJECT-SPECIFIC COSTS**

Costs which can be identified and assigned to a specific project activity. These include expenses for personnel directly assigned to the project such as artistic/entertainment, administrative/professional, technical production, etc. Direct costs may also include operating costs specifically associated with the project such as the rental of outside facilities, postage, materials and supplies.

## **TOURIST**

A person who travels more than 50 miles or is traveling from Mexico to visit San Diego and/or someone who stays overnight in a hotel/motel.

## **VENDOR**

A vendor is a person or an organization that provides goods or services to the general public as a feature of your project. For example, the business that sells popcorn at your festival is a vendor for the purposes of this application, but the business that sells you signage for the event is not.

## **WESTAF**

See Culture Grants Online.

## **Section 9: Who is Eligible to Apply? And Who is Not Eligible to Apply?**

Your organization is eligible to submit an application for Fiscal Year 2017 CCSD funding if:

- **NONPROFIT STATUS:** Your organization is nonprofit and is able to produce, upon request, proof of its tax-exempt nonprofit status under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code; OR
- **FISCAL SPONSORS:** You have secured a nonprofit organization to act as a fiscal sponsor to assume the risk and responsibility for the event, to manage the funding and insurance for the event and to enter into a contract with The City of San Diego in the case of an award offer; AND
- **ALIGNMENT OF PURPOSE:** The event obviously aligns with the purpose of TOT funding which is

- 1) To enhance the economy; and
  - 2) To contribute to San Diego's national and international reputation as a cultural destination; and
  - 3) To provide access to excellence in culture and the arts for residents and visitors; and
  - 4) To enrich the lives of the people of San Diego; and
  - 5) To build healthy, vital neighborhoods; AND
- SERVICE AREA: Your event occurs within the boundaries of The City of San Diego; AND
  - HISTORY OF OPERATIONS: The applicant has been operating as a nonprofit to fulfill its mission for three (3) years or more and can produce proof upon request; AND
  - SURVEY OF ELIGIBILITY TO APPLY: The applicant has submitted a complete Survey of Eligibility to Apply by 5:00 p.m. on Monday, January 11, 2016; AND
  - VERIFICATION: Your organization has been verified by Commission staff as eligible to apply has been given a unique code to access the full application form through the Online Application Portal before 11:59 p.m. on Tuesday, January 12, 2016.

Your organization is NOT eligible to submit an application for Fiscal Year 2017 CCSD funding if:

- GENERAL OPERATING SUPPORT: Your organization is seeking funding for general operating support. (The City of San Diego offers a different funding program called Organizational Support Program for general operating support. Guidelines to apply for the Organizational Support Program can be found on the Commission's website at [www.VibrantCultureVibrantCity.com](http://www.VibrantCultureVibrantCity.com))
- SCHOOLS: Your organization is a university, community college, school district, or private educational enterprise.
- REGRANTING: Your organization's primary purpose is grantmaking.
- FOR PROFIT: Your organization is a commercial (for-profit) enterprise.
- DOUBLE-DIPPING: Your organization has applied or will apply for Fiscal Year 2017 TOT funds through another funding category as defined in Council Policy 100-03.

An organization can be deemed by Commission staff as ineligible to apply for Fiscal Year 2017 funding or disqualified from applying for Fiscal Year 2017 at any time on any of the following grounds:

- The organization is found to have provided false information to The City of San Diego.
- The organization has not successfully completed contract requirements in a prior fiscal year.

- The organization owes money to The City of San Diego (i.e. unpaid bills for special event permits, unpaid bills for police security, etc.)
- The organization is not in good standing with the System for Award Management (SAM), the State of California Department of Industrial Relations' Division of Labor Standards Enforcement (DLSE), the State of California Department of Justice's Office of the Attorney General, and the California Secretary of State.
- The organization is found to discriminate, in the conduct of its activities and affairs, against any person because of sex, race, color, creed, national origin, physical handicaps, age or sexual orientation.

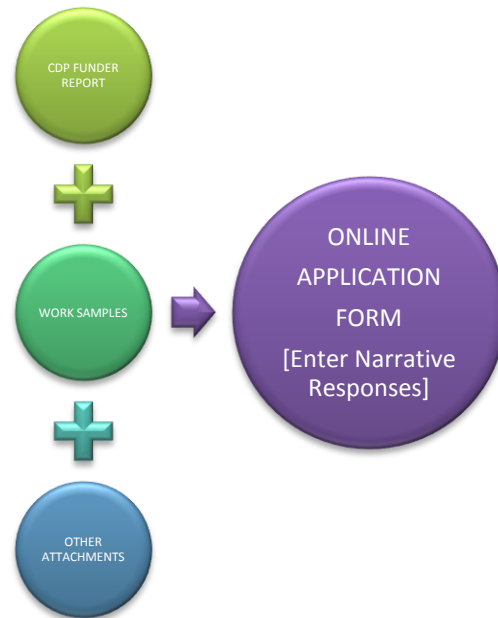
### **Section 10: Things to Consider When Deciding Whether to Apply**

Becoming a steward of public funds by accepting an award from The City of San Diego is an important responsibility. Undertaking a CCSD application that may lead to an award and a contract with The City of San Diego requires an honest assessment of the capacity of your organization to submit a successful application and to successfully fulfill the requirements of any resultant contract. Please take the time to consider these important questions that have proven to be challenges for previous applicants/contractors when you are deciding whether to apply:

- Have you read and understood the nature of the application you will have to prepare and submit? A preview of the most substantive questions that will appear in the Fiscal Year 2017 CCSD application can be found in Appendix 1.
- Have you read and understood the terms of the contract you will be asked to sign if you are awarded funding? The boilerplate contract used in Fiscal Year 2016 for all contractors can be found in Appendix 4. The City of San Diego reserves the right to change the contract boilerplate for Fiscal Year 2017, but it is unlikely to be radically different from prior-year boilerplates.
- Can you deliver all the required insurance coverage evidence? Do you have access to a knowledgeable and helpful insurance broker?
- Can you fulfill the cash match requirement?
- Does the cost versus the benefit pencil out? In other words, will the award your organization might receive exceed the resources that will be consumed in applying for the award and fulfilling the requirements of the contract?
- Can your organization operate even if the first reimbursement payment arrives from The City of San Diego 6-9 months after July 1?
- Can your organization submit financial disclosure documentation pursuant to Council Policy 100-03 if awarded CCSD funding in an amount from \$10,000 to \$74,999 in Fiscal Year 2017?

- Can your organization submit audited financial statements pursuant to Council Policy 100-03 if awarded CCSD funding in an amount from \$75,000 to \$499,999 in Fiscal Year 2017?

## Section 11: Submitting an Application



Follow these steps to submit an application for Fiscal Year 2017 CCSD:

1. Read these guidelines thoroughly.
2. Complete and submit the online Survey of Eligibility to Apply by 5:00 p.m. on Monday, January 11, 2016. No organization will be allowed to submit an application for Fiscal Year 2017 CCSD funding without having first submitted this survey by 5:00 p.m. on Monday, January 11, 2016. Link to Survey of Eligibility to Apply: [https://www.surveymonkey.com/r/SDARTS\\_CCSD\\_FY17](https://www.surveymonkey.com/r/SDARTS_CCSD_FY17)
3. Receive confirmation from Commission staff that your organization is eligible to apply and receive access to your organization's online application form through the Online Application Portal by 11:59 p.m. on Tuesday, January 12, 2016. The Online Application Portal is where applicants will upload their data/responses to the application questions. Prior to receiving access to the Online Application Portal, applicants are encouraged to work on responses to application questions, which can be found in Appendix 1 of these guidelines. Learn how application evaluators will judge your organization's application in Appendix 2 of these guidelines.

4. Enter narrative and numerical responses to all the questions in your organization's online application form, attach all the necessary attachments to the online application form and submit the complete online application form via the Online Application Portal no later than 9:00 a.m. on Friday, February 5, 2016.

---

**REMINDER: Important Dates**

**Monday, January 11, 2016, 12:00 p.m./NOON**  
**Survey of Eligibility to Apply closes**

**Tuesday, January 12, 2016, 11:59 p.m.**  
**Access to Online Application Portal granted to eligible applicants**

**Wednesday, January 13, 2016**  
**Optional Technical Assistance Workshop for applicants**

**Thursday, January 14, 2016**  
**Duplicate optional Technical Assistance Workshop for applicants**

**Tuesday, February 2, 2016, 12:00 p.m./NOON**  
**Cut-off for questions from applicants**

**Friday, February 5, 2016, 9:00 a.m.**  
**Full applications due in Online Application Portal/Online Application Portal closes**

---

**Section 12: Learning About Your Application Evaluation, Rank and Award**

- **APPLICATION PREPARATION:** Once the deadline for submitting applications has passed, Commission staff prepares the applications for evaluation panelists to review. In some cases, Commission staff may contact an applicant with a clarifying question about the application, but is not obligated to do so. Commission staff has the authority to disqualify any application for reasonable cause (e.g. an incomplete application).
- **APPLICATION EVALUATION PANELISTS:** Applications are divided into groups and distributed to teams of evaluation panelists. These teams of evaluation panelists are composed of Commissioners and diverse community volunteers appointed by the Commission. These evaluation panels are responsible for reviewing and evaluating the applications using a rubric and giving each application a rank. The final rank for each application is given after the panel gathers and deliberates. Commission staff does not participate in evaluating and ranking the applications.
- **APPLICATION EVALUATION PANEL MEETINGS:** Applicants are allowed – and encouraged – to attend the meetings of the evaluation panels, which are open to the

public. Applicants who attend the panel meetings must observe the proceedings only and may not address the panel. Past applicants who have observed a panel's deliberations report that it is an important educational opportunity and helpful for gaining insight about funding processes in general. The Fiscal Year 2017 Application Evaluation Panels will be held between March 7 – 18, 2017. For more specific details closer to these dates, check the Commission's website:

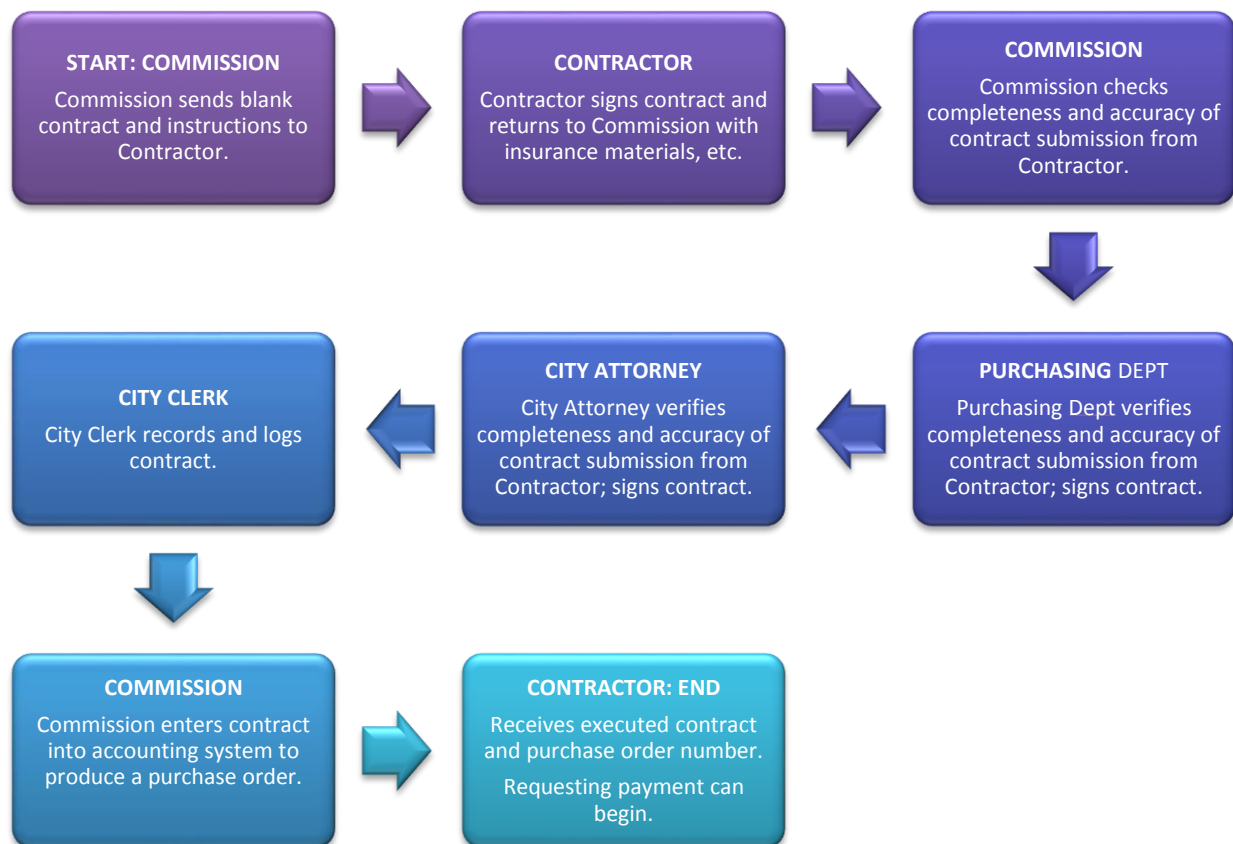
[www.VibrantCultureVibrantCity.com](http://www.VibrantCultureVibrantCity.com)

- **APPLICATION EVALUATION RUBRIC & RANKS:** Application evaluation panelists consistently use a rubric to evaluate each application and decide which rank to give each application. The rubric and ranking system that each evaluator uses is shown in Appendix 2 - Application Evaluator's Rubric & Ranks
- **RECOMMENDATION TO THE COMMISSION:** After a panel agrees on the ranks to give each application, the ranks are forwarded to the Commission as recommendations for ratification or adjustment. The Commission determines the "cut-off" point for all ranked CCSD applicants. Applicants above the "cut-off" point are recommended for awards and applicants below the "cut-off" point are not recommended for awards. No rank is assured of funding. In any given year, the Commission may recommend to fund ranks of 2+ or better, 3- or better, 3 or better, as examples.
- **APPEALS:** Any applicant not recommended by the Commission for an award may submit a written appeal to Commission staff no later than 5:00 p.m. on the tenth calendar day following notification from Commission staff to the applicant that no award is being recommended. Commission staff will consider the appeal and make the final ruling.
- **PANEL COMMENTS:** Upon request from an applicant, Commission staff will provide an oral summary about the panel's discussion about the application as a form of technical assistance.
- **CALCULATING AWARD AMOUNTS:** Following the Commission's ratification or adjustment, the ranks are converted into a monetary award amount using a logarithmic calculation. Learn more about award calculations in Appendix 3 - Factors Affecting Amounts of CCSD Awards.
- **AUTHORIZING AWARDS:** The monetary award amount for each applicant that results from the work of the application evaluation panels and the Commission is forwarded to the Mayor and City Council. Only the Mayor and City Council can authorize awards. Therefore, award amounts are not final until authorized by the Mayor and City Council during The City of San Diego's annual budget process. Applicants typically have a solid idea of what their award is likely to be in May.

- **RESERVATION OF RIGHTS:** The City of San Diego reserves the right to revoke or change awards for convenience.

### **Section 13: Obtaining an Award through a Contract**

Official authorization to distribute awards occurs in mid-July. At that time, Commission staff sends a boilerplate contract to each awardee. The contract includes terms and conditions and the duties of each party. Each awardee must sign and return the contract along with any other materials required by The City of San Diego (i.e. proof of insurance coverage, etc.) The diagram below shows all the steps a contract must go through before an awardee is allowed to begin requesting reimbursement payments. This process can take between 6-9 months. However, there is a direct correlation between how soon a contractor can receive payments and how quickly a contractor prepares and returns a complete and accurate contract package. Contractors are encouraged to participate in any contract preparation technical assistance opportunities offered by Commission staff. The City of San Diego reserves the right to terminate contracts for convenience.





#### **Section 14: Performing Under Contract**

To provide a clear idea of the terms and conditions contained in a typical contract, a sample boilerplate contract has been included in these guidelines as Appendix 4. A few contractual elements vary by contractor. Requisite financial disclosures are one such variable.

Organizations receiving funding from The City of San Diego in excess of \$10,000 must provide the Commission copies of true, accurate and complete financial disclosure documentation evidencing the financial status of the organization's last completed fiscal year within 90 days of the end of that fiscal year.

Organizations receiving funding from The City of San Diego in the amount of \$75,000 or greater must submit audited financial statements prepared in accordance with generally accepted accounting principles (GAAP) and audited by an independent Certified Public Accountant, in accordance with generally accepted auditing standards (GAAS).

Organizations receiving funding from The City of San Diego in the amount of \$500,000 or greater, when that funding represents more than 10% of the organization's annual budget, must provide salary and wage ranges for each of their job classifications, including actual executive salaries and benefits packages applicable for the contract period.

Each contractor is required to deliver a final performance report detailing the extent to which the contractor's scope of services was met during the period of performance. Final reports are due within 90 days after the contract closing date.

#### **Section 15: Invoicing and Receiving Payment**

No invoice is allowed to be submitted until The City of San Diego and the organization have signed a contract. After a contract is signed, contractors submit invoices with requests to be reimbursed for expenses incurred. Each invoice must show evidence of the expenses incurred and the required cash match.

Contractors with project cash expenses over \$30,000 must be able to match City funding at a 3:1 ratio: for every \$1 the City invests, the applicant must match that support with \$3 in cash funding. Cash match funding may come from any number of sources including earned or contributed income, but cannot come from The City of San Diego. Contractors with project cash expenses of \$30,000 or less must match City funding at a 2:1 ratio and up to 50% of the match may consist of in-kind donations.

The frequency of invoicing has typically been quarterly, though The City of San Diego reserves the right to change that schedule. More details about the typical invoicing and payment schedule can be found in Appendix 4 - Sample Boilerplate Contract. Be aware that the

turnaround time for a contract to be executed can lead to initial reimbursement payments arriving from The City of San Diego 6-9 months after July 1.

The following expenses will NOT be reimbursed by The City of San Diego:

- Any expense incurred before July 1, 2016 or after June 30, 2017
- Alcohol, travel, meals, lodging, entertainment, capital or equipment outlay, buildup of reserves, awards, trophies, gifts or uniforms, lobbying or political activities.
- Programs not accessible to the public
- Programs not accessible to people with disabilities
- Competitions, contests, pageants or awards programs to honor or recognize achievement
- Programs with religious, sectarian or political purposes
- Activities taking place in schools, during normal school hours unless they are part of a broader project that includes out-of-school activities
- Activities that are the curricula base of schools, colleges or universities
- Trust or endowment funds
- Cash advances, deposits or the replacement of deficit funds
- Ticket subsidy programs

---

#### NEED HELP?

**Anjanette Maraya-Ramey, Senior Manager of Arts and Culture Funding Programs, can answer questions on the topics of Creative Communities San Diego, The City of San Diego, The Commission for Arts and Culture, Technical Assistance Workshops, the Online Application Portal, and Culture Grants Online. Contact Anjanette: [AMarayaRamey@sandiego.gov](mailto:AMarayaRamey@sandiego.gov) and (619) 236-6788.**

**Two optional workshops are scheduled (January 13 and January 14) to provide applicants with technical assistance. Each workshop will cover the same subject matter; applicants do not need to attend both workshops. Workshops are open to the public.**

**REMINDER: The cut-off for questions from applicants is Tuesday, February 2, 2016, 12:00 p.m./NOON.**

## APPENDIX 1 – Preview of Substantive Questions in the FY17 CCSD Application CREATIVE COMMUNITIES SAN DIEGO

### **PROJECT DETAILS:**

1. What is the name of your project?
2. Is this a new project? YES or NO
3. Provide a brief history of the project. How, why, and by whom was the project idea conceived? (1000 characters)
4. Provide a brief description of the project suitable for display on the Commission's website. Include the following pertinent info: Name of Event, when it will take place, where it will take place (Venue, Address, Neighborhood, City), what will happen, cost to participate (if any), and expected attendance and target audience. (1500)

### **APPLICATION CONTENT SECTION:**

#### **I. SECTOR SUSTAINABILITY**

##### **1. Governance**

- a) Describe your board's composition. Explain how their skills and experience are relevant to the organization's needs and constituents that you serve. Describe how you ensure a balanced composition to make up a diverse governing body that is also genuinely independent (not dominated by family, employees, beneficiaries, or business partners). Attach: board bios and respective term limits (required). (1500 characters)
- b) Are any of your board members or any members of their immediate family compensated in any way by your organization? YES OR NO.
- c) If yes, please disclose the specifics and provide the rationale for doing so.
- d) Are any staff, contractors, volunteers or board members related to each other or each other's immediate family members? YES OR NO?
- e) If yes, please disclose the specifics and provide your rationale for allowing this practice. (500)
- f) What steps has your organization taken to prohibit any acts or appearances of self-dealing or conflicts of interest? (500)
- g) Attach your current Conflict of Interest Policy with date of adoption.

##### **2. Administrative Capacity**

- a) Describe the key project personnel (administrative, artistic, technical) – and the relevant administrative, artistic or technical expertise they bring to the project. (1500)

- b) Describe the process and criteria for key personnel recruitment and selection. (1500)
- c) Attach administrative, artistic, and/or technical staff bios.
- d) Describe the role of volunteers in the implementation of your project. How are volunteers recruited, trained, supervised, and recognized? (1500)
- e) Provide a big picture overview of your project planning process. How are tasks assigned and held accountable to budget and timeline parameters? (1500)

### **3. Financial Management/Project Budget**

- a) Your organization will be asked to provide event budgets for three years. This includes income and expense line items for:
  - The event produced last year
  - The event produced in the current year
  - The event planned for the projected year of FY17 (July 1, 2016-June 30, 2017).
  - If this is a new project, please provide project budget information for past events of similar size and scope.
- b) Budget Notes (related to Budget Table above): Explain any year-to-year major variances that you feel are important for the panel to understand. Reference the Line Item and briefly explain any year-to-year variances (for both increases and decreases). For organizations with an AOI of \$499,999 or less, describe substantive line items with a 10% variance or more. For organizations with an AOI of \$500,000 or more, describe substantive variances of 20% or more. You do not need explain every line item variance. Choose the line items that your organization believes require the most explanation and will help the panel better understand your overall financial position. (3000)
- c) If you hold any debt, explain your process for repayment. (500)
- d) Describe your project budget development process. Who's involved? Who does what? (1500)
- e) Describe your budget monitoring system for tracking project income and expenses. (1500)
- f) What does your organization do to modify project activities in response to increases in expenses and decreases in income? (1500)
- g) Describe the relevant qualifications of key staff/board/volunteers responsible for financial management of this project. (1500)

### **4. Institutional Advancement**

- a) Explain the roles of the people responsible for fundraising that demonstrates relevant fundraising skills to ensure that the work of fund development is getting accomplished. (1500)
- b) List other private and public funding sources from which project funding is being requested. Specify dollar amounts and whether or not funding is: committed, requested, or potential.

Example: (ABC Family Foundation; \$10,000 committed; California Arts Council \$15,000 potential, etc.) (1500)

- c) Describe your marketing and advertising efforts. How do you communicate externally to inform people about your event and how they can support your work (make a donation, purchase tickets, attend your event, etc.)? (1500)
- d) If your event generates overnight hotel stays, approximately how many total hotel night stays were generated in your last completed fiscal year? How do you collect this information? (1500)
- e) Describe key personnel responsible for branding, marketing and advertising your event that demonstrates relevant skills to ensure that the work of external communications is getting accomplished. (1500)

## **APPLICATION CONTENT SECTION:**

### **II. ARTISTIC EXCELLENCE**

- a. How does your organization define ARTISTIC/PROGRAMMATIC EXCELLENCE? (1500)
- b. What strategies does your organization employ to achieve high standards of ARTISTIC/PROGRAMMATIC EXCELLENCE? (1500)
- c. Describe relevant professional training and professional experiences of your artistic team responsible for curating and administering programs and services. Attach artistic team bios. (1500)
- d. If applicable, describe the national recognition your organization/project has received for its programs and services. (1500)
- e. If applicable, describe the international recognition your organization/project has received for its programs and services. (1500)
- f. How does your organization attract and retain artistic talent and value them for their professional expertise? (1500)
- g. List your organization's top artistic achievements of the past three years. (1500)
- h. Attach up to 3 documents from credible sources that reflect the quality of your event (media reviews, letters of support, testimonials, accreditations, awards, etc.)
- i. Attach up to 3 artistic work samples that represents the scope of your event. (photos, video and/or sound clips – limit content to one minute clips, etc.).

## **APPLICATION CONTENT SECTION:**

### **III. ENGAGEMENT**

- 1. Describe the neighborhood and target population your project will serve. What are the geographic boundaries of the neighborhood and the demographics of the residents and target population? (1500)
  - a) What is the benefit to this specific target population and community? (1500)
  - b) Describe the factors that motivated you to work in this neighborhood and with this target population. Why is your organization the best to address these community needs? (1500)

- c) Describe previous work with intended beneficiaries and past projects that enable engagement to beneficiaries. If this is a new target population, describe your strategies for engagement.
- d) Describe how your organization fosters innovation through cross-sector collaboration. How does your organization share resources with other groups, businesses, and nonprofit organizations to achieve long lasting impact on San Diego's arts and culture ecosystem? What is your organization's purpose for joining efforts? How do you measure the results of your collective impact? (3000)
- e) Describe your community outreach activities. How will you make your target population aware of your project and encourage participation? (1500)
- f) Approximately how many people will your event serve?

## **APPLICATION CONTENT SECTION:**

### **IV. EQUITY AND INCLUSION**

- a) How are project activities chosen to support and meet the needs of our diverse community? (1500)
- b) What does your organization do to ensure accessibility to the broadest audiences possible? (Consider vulnerable populations and what programs/services your organization offers that decreases barriers culturally, linguistically, physically, and economically). (1500)
- c) How do you know if what you do is meaningful and relevant to these specific populations? (1500)

## **APPLICATION CONTENT SECTION:**

### **V. GOALS AND DELIVERABLES**

These are your organization's deliverables; the programs/services your organization will provide as part your contractual agreement with the City if your organization receives an award.

- a) State at least one goal for each of the four application content section listed below and include measurable objectives for each goal. (3000 for each)

**GOAL:** What are you trying to achieve?

**OBJECTIVES:** What measurable steps are you going to take to try to successfully achieve your goal?

Please note that if your organization is awarded a grant, you will be asked to report on the results of these goals within one year.

- I. Sector Sustainability Goal (3000 total for Goals and Objectives)
  - a. Sector Sustainability Objectives
  - b. Sector Sustainability Measurements

- II. Artistic Excellence Goal (3000 total for Goals and Objectives)
  - a. Artistic Excellence Objectives
  - b. Artistic Excellence Measurements
- III. Engagement Goal (3000 total for Goals and Objectives)
  - a. Engagement Objectives
  - b. Engagement Measurements
- IV. Equity & Inclusion Goal (3000 total for Goals and Objectives)
  - a. Equity & Inclusion Objectives
  - b. Equity & Inclusion Measurements

**EXAMPLES:**

**SECTOR SUSTAINABILITY GOAL: Improve financial position.**

**OBJECTIVES:**

- i. Launch 50-year anniversary campaign with a goal to raise \$50,000 by April 1, 2017.
- ii. Increase ticket sales by 10% for the 2016-2017 season.

**ENGAGEMENT GOAL: Develop new and traditionally underserved audiences**

**OBJECTIVES:**

- i. Increase the number of first time theatergoers by 15% for the 2016-2017 season
- ii. Increase the number of audiences members under the age of 30 for the 2016-2017 season

## APPENDIX 2 – Application Evaluator’s Rubric & Ranks

### CREATIVE COMMUNITIES SAN DIEGO

	4 Points - Strong	3 Points - Good	2 Points - Basic	1 Point - Weak
<b>Credibility</b>	<p>Consistent evidence (e.g. citations from media or academia, work samples, testimonials, critical reviews, etc.) is provided to support claims.</p> <p>Source of the evidence is a trade publication, national or international media, accredited university, a person widely recognized as an expert or another trustworthy source.</p> <p>Problem-solving logic is well articulated to explain the ideas and actions explored to arrive at a solution.</p> <p>Consistently provides details to show how the organization identifies with and compares to other similar organizations.</p>	<p>Regular evidence (e.g. citations from media or academia, work samples, testimonials, critical reviews, etc.) is provided to support claims.</p> <p>Source of the evidence is a trade publication, national or international media, accredited university, a person widely recognized as an expert or another trustworthy source.</p> <p>Problem-solving logic is articulated to explain the ideas and actions explored to arrive at a solution.</p> <p>Regularly provides details to show how the organization identifies with and compares to other similar organizations.</p>	<p>Intermittent evidence (e.g. citations from media or academia, work samples, testimonials, critical reviews, etc.) is provided to support claims.</p> <p>Source of the evidence is a trade publication, national or international media, accredited university, a person widely recognized as an expert or another trustworthy source; but much of the evidence is anecdotal.</p> <p>Problem-solving logic is somewhat articulated to explain the ideas and actions explored to arrive at a solution.</p> <p>Sporadically provides details to show how the organization identifies with and compares to other similar organizations.</p>	<p>Minimal evidence is provided to support claims.</p> <p>Source of the evidence is vague, uncited, or almost entirely anecdotal.</p> <p>Problem-solving logic is not articulated to explain the ideas and actions explored to arrive at a solution.</p> <p>Provides minimal details to show how the organization identifies with and compares to other similar organizations.</p>
<b>Competence</b>	<p>All the questions are answered completely.</p> <p>Grammar, spelling and punctuation are correct.</p> <p>The narrator’s point of view is third person.</p> <p>Minimal repetition.</p> <p>No extraneous information is given.</p> <p>Information is organized logically.</p> <p>Information is expressed concisely.</p> <p>In nearly all cases, word choices are specific.</p>	<p>All the questions are answered completely.</p> <p>Grammar, spelling and punctuation are correct.</p> <p>The narrator’s point of view is third person.</p> <p>Occasional repetition.</p> <p>Main ideas can be found easily in the narrative.</p> <p>Information is generally organized logically.</p> <p>In most cases, word choices are specific.</p>	<p>All the questions are answered, though some may not be complete.</p> <p>Grammar, spelling and punctuation are mostly correct.</p> <p>The narrator’s point of view is third person.</p> <p>Some repetition.</p> <p>Main ideas can generally be found easily in the narrative, reader may have to hunt for some details.</p> <p>Word choices are simple or non-specific.</p>	<p>Answers to some questions are missing, incomplete, or too vague to be responsive.</p> <p>Several grammar, spelling and punctuation errors.</p> <p>The narrator’s point of view is first or second person.</p> <p>Significant repetition.</p> <p>Ideas are meandering.</p> <p>Main ideas are hard to find in the narrative.</p> <p>Word choices are vague or generic.</p>
<b>Engagement</b>	<p>Tone is natural and easy.</p> <p>Consistently uses transitions to connect ideas and facilitate flow.</p> <p>Consistently piques and retains the reader’s interest using language that “shows” rather than “tells” and varied length of sentence structure.</p> <p>Consistently conveys the personality/spirit of the organization.</p>	<p>Tone is formal but clear.</p> <p>Regularly uses transitions to connect ideas and facilitate flow.</p> <p>Regularly piques and retains the reader’s interest using engaging language that “shows” rather than “tells” and varied length of sentence structure.</p> <p>Regularly conveys the personality/spirit of the organization.</p>	<p>Tone is uneven or stilted.</p> <p>Sporadically uses transitions to connect ideas and facilitate flow.</p> <p>Sporadically piques and retains the reader’s interest using language that “shows” rather than “tells” language and varied length of sentence structure.</p> <p>Flow may be erratic.</p> <p>Sporadically conveys the personality/spirit of the organization.</p>	<p>Tone is monotone or flat.</p> <p>Lacks transitions to connect ideas and facilitate flow.</p> <p>Does not pique and retain the reader’s interest.</p> <p>Language is vague and sentence structure is run-on or choppy or awkward.</p> <p>Does not convey the personality/spirit of the organization.</p>



## Four Point Ranking System Used in Evaluating Applications

The ranks of 4 and 4- designate an applicant as the highest priority for funding. Applications ranked “4” are considered to be “model” in stature; and given the nature of the arts discipline or genre, and the resources of the community, etc. meet all the review criteria to the highest degree possible.

The ranks of 3 (3+, 3 and 3-) are considered good. Some improvements or development are needed.

The ranks of 2 (2+, 2 and 2-) are considered marginally fundable. These applications have some merit, but do not meet the criteria in a strong or solid way.

The rank of 1 is not fundable under any circumstance; inappropriate for Commission support, extremely marginal in quality, etc.

## APPENDIX 3 – Factors Affecting Amount of CCSD Awards

### CREATIVE COMMUNITIES SAN DIEGO

Funding awards for applicants in the Creative Communities San Diego (CCSD) program are calculated using two categories of factors: 1) those factors that are related to an individual applicant, and 2) those factors that affect the entire applicant population. The amount of funding each applicant can be awarded is dependent on **ALL** the factors.

#### **Factors related to each individual applicant:**

- **TOTAL PROJECT EXPENSE BUDGET** - If an applicant has a budget greater than \$30,000, it qualifies to be awarded a maximum of 25% of its project budget, otherwise it qualifies for a maximum of 33%.
- **RANK** - A higher rank given by the application evaluation panel leads to a higher award.
- **YEAR OF APPLICATION** - If an applicant is in its first or second year of applying, it receives a reduced amount. (First-year applicants receive 50% of the calculated award while second-year applicants receive 75% of the calculated award. Applicants in year three and beyond receive 100% of the calculated award.)

#### **Factors that affect the entire pool of applicants:**

- **AMOUNT OF MONEY AVAILABLE TO DISTRIBUTE** - More money available for distribution can lead to higher award amounts per applicant.
- **NUMBER OF APPLICANTS RECOMMENDED FOR FUNDING AWARDS** - A greater number of applicants recommended to receive funding awards stretches the amount of money available to distribute more thinly across all the applicants.
- **THE COLLECTIVE PROJECT EXPENSE BUDGETS OF ALL APPLICANTS** - The greater the collective project expense budgets, the more thinly the amount of money available to distribute must be spread to support applicants relative to the size of their budgets.

The amount of funding each applicant can be awarded is dependent on **ALL** the factors.

Example:

The ABC Arts Festival is a first-year applicant. With a project expense budget of \$1,014,450 and a rank of 4, their funding award is \$180,996 before applying the first-year 50% rule, which brings their recommended funding award to \$90,498.

#### **Four Point Ranking System Used in Evaluating Funding Applications**

The ranks of 4 and 4- designate an applicant as the highest priority for funding. Applications ranked “4” are considered to be “model” in stature; and given the nature of the arts discipline or genre, and the resources of the community, etc. meet all the review criteria to the highest degree possible.

The ranks of 3 (3+, 3 and 3-) are considered good. Some improvements or development are needed.

The ranks of 2 (2+, 2 and 2-) are considered marginally fundable. Funding, if available, may be awarded once all the “4” and “3” ranked applications are awarded funding. These applications have some merit, but do not meet the criteria in a strong or solid way.

The rank of 1 is not fundable under any circumstance; inappropriate for Commission support, extremely marginal in quality, etc. This application would not receive funding even if the funding were available.

APPENDIX 4 – Sample Boilerplate Contract  
CREATIVE COMMUNITIES SAN DIEGO

**CONTRACT BETWEEN CITY OF SAN DIEGO**

**AND Contractor**

**FOR FISCAL YEAR 2016**

**ARTS AND CULTURE TRANSIENT OCCUPANCY TAX ALLOCATIONS**

This Contract **CONTRACT NUMBER** is made and entered into between City of San Diego, a municipal corporation (City), and **CONTRACTOR**, a nonprofit organization (Contractor), for City to provide funding to Contractor to provide arts and culture services pursuant to Council Policy 100-03 Transient Occupancy Tax.

**RECITALS**

- A. Contractor has applied for and been awarded Transient Occupancy Tax (TOT) funding from the Arts, Culture and Community Festivals (ACCF) category as provided for in Council Policy 100-03. Contractor is a legally constituted private nonprofit organization operating in the field of arts and culture.
- B. This Contract is made to further the purpose of the ACCF funding category of TOT: to enhance the economy and contribute to San Diego's reputation as a cultural destination by nurturing and maintaining art and culture institutions of national and international reputation; by supporting programs and projects that provide access to excellence in culture and the arts for residents and visitors; and by funding programs and events which enrich the lives of the people of San Diego and build healthy, vital neighborhoods.
- C. ACCF funding is allocated for either the Organizational Support Program (OSP) subcategory which provides annual, ongoing, general operating support for nonprofit, tax exempt arts and culture organizations with an emphasis on the delivery of programs and services that impact San Diego's quality of life and tourism; or the Creative Communities San Diego Program (CCSD) subcategory. CCSD encompasses the Festivals and Celebrations Program, which provides project support to community-based festivals, parades, and other celebrations, with an emphasis on projects which promote neighborhood pride and community reinvestment, and the Neighborhood Arts Program funds projects that make arts and culture activities more available and accessible in San Diego neighborhoods and encourage people of diverse backgrounds and ages to share their heritage and culture.
- D. The services to be performed by Contractor are of such nature that City is currently not performing and that the interests of City are better served by Contractor's activities than by the performance of such a program by City.

**CONTRACT NUMBER**

The Parties agree as follows:

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

**1.1 Scope of Services.** Pursuant to Council Policy 100-03, Contractor shall provide arts and culture services that fulfill the purpose of the ACCF program in the Transient Occupancy Tax Fund:

- *To enhance the economy;*
- *To contribute to San Diego's national and international reputation as a cultural destination;*
- *To provide access to excellence in culture and the arts for residents and visitors;*
- *To enrich the lives of the people of San Diego; and*
- *To build healthy, vital neighborhoods.*

Services shall be provided in accordance with Contractor's mission and Contractor's Core Programs and Services [OSP] or Contractor's Project Details [CCSD] as described in Contractor's Fiscal Year 2016 application, numbered «**APP\_NUMBER**» and incorporated into this Contract as **Exhibit A**.

### **1.1.1 Contractor's Mission.** «MISSION»

**1.2 Effective Date.** This Contract is effective on the last date that it is signed by the parties and approved by City Attorney in accordance with Charter section 40. Services to be provided under this Contract shall occur between July 1, 2015 and June 30, 2016. Unless otherwise terminated, Contract shall terminate upon Contractor's receipt of final payment from City.

## **ARTICLE II CONTRACT ADMINISTRATOR**

**2.1 Contract Administrator.** The Executive Director of the City of San Diego Commission for Arts and Culture (Commission) is designated as City's Contract Administrator for purposes of this Contract. The Contract Administrator shall receive and process all notices, reports and invoices.

Notices to City shall be addressed to:

Dana Springs, Executive Director  
City of San Diego Commission for Arts and Culture  
1200 Third Avenue, Suite 924  
San Diego, CA 92101-4106

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

Notices to Contractor shall be addressed to:

**CONTRACT NUMBER**

ED First Name, Last Name, Title  
Contractor  
Address Line 1  
Address Line 2

### **ARTICLE III COMPENSATION**

**3.1 Amount of Compensation.** City shall pay Contractor on a reimbursement basis for eligible expenses incurred and paid by Contractor in accordance with this Contract a total amount of **\$FY17 Contract Amount** . The funding awarded through this Contract comes from the **Funding Program Name** category of the Arts, Culture, and Community Festivals program in the Transient Occupancy Tax Fund.

**3.1.1 Eligible Expenses.** Pursuant to Council Policy 100-03, eligible expenses are those made to assist an organization in its annual operating program [OSP] or in its sponsorship of special events [CCSD]. City funding will not be used for capital or equipment outlay, for the purchase of awards, trophies, gifts, or uniforms, nor for the buildup of reserves.

**3.1.2 Matching Requirement.** Pursuant to Council Policy 100-03, for the purposes of this Contract, Contractor's matching obligation equals **\$CONTRACTOR MATCH AMOUNT**. Upon City's request, Contractor shall provide evidence of matching funds between July 1, 2015 and June 30, 2016 pursuant to Council Policy 100-03.

**3.2 Manner of Payment.** Contractor will be reimbursed in accordance with the terms and conditions specified in the Contract for expenses incurred during City's fiscal year (July 1, 2015 - June 30, 2016). Due to the timing of City's accounting procedures, invoices submitted after August 31, 2016 will not be paid. City reserves the right to temporarily withhold or adjust the final payment, subject to City's approval of the final performance report, financial disclosures, and any audits required of Contractor under this Contract. City's approval will not be withheld unreasonably.

**3.2.1 Enrollment in Electronic Funds Transfer (EFT) Payment Option.** Contractor will be given the option to enroll in electronic funds transfer to receive payments from City.

**3.3 Invoicing.** Contractor shall submit invoices (a.k.a. Requests for Payment) for reimbursement of eligible expenses in a standard form to be provided by City.

**3.3.1 OSP Invoicing.** Contractors in the OSP category shall submit invoices no more frequently than (1) time per three-month period, which means a maximum of four (4) invoices and a minimum of one (1) invoice shall be submitted between July 1, 2015 and August 31, 2016.

**3.3.2 CCSD Invoicing.** Contractors in the CCSD category shall submit final invoices for reimbursement no more than sixty (60) calendar days after the conclusion of the project or the date of Contract execution. Requests for payment shall be submitted no more than one (1) time per six-month period, which means a maximum of two (2) invoices and a minimum of one (1) invoice shall be submitted between July 1, 2015 and August 31, 2016.

**CONTRACT NUMBER**

**3.3.3 Invoice Detail.** Contractor's invoices shall clearly itemize, describe and provide supporting evidence for each eligible expense incurred between July 1, 2015 and June 30, 2016.

**3.3.4 Electronic Invoicing Option.** Contractor will be given the option to submit invoices electronically.

### **3.4 Mandatory Reporting.**

**3.4.1 Final Performance Report.** Contractor shall submit a final performance report in a format to be specified by City. Final performance reports must accompany the final invoice. City shall not approve Contractor's final invoice and release payment until Contractor has submitted, and City has approved, Contractor's final performance report.

**3.4.2 Significant Changes in Operations.** To promote public trust, Contractor shall notify City within fifteen (15) calendar days of significant changes to Contractor's operations. Examples of such include, but are not limited to, a change of Contractor's primary managing agent (e.g. Executive Director); a majority change in the membership of Contractor's board of directors; a change in Contractor's financial status such that fulfilling the terms of this Contract, including the matching funds requirement, are at risk of not being met; a change in Contractor's mission; or, Contractor receives written notification that a government agency has begun an investigation of Contractor that may result in a finding that Contractor is or was not in compliance with the laws, or that there has been a finding by a government agency or court of competent jurisdiction of a violation of such laws by Contractor.

**3.4.3 Financial Disclosure.** Pursuant to Council Policy 100-03, Contractor shall submit the following financial disclosure documentation no later than August 31, 2016.

**3.4.3.1** A Contractor receiving City funds in the amount of \$10,000 - \$74,999 within City's fiscal year shall submit copies of true, accurate and complete financial disclosure documentation evidencing the financial status of Contractor's last complete fiscal year within ninety (90) days of the end of that fiscal year. Such financial disclosure documentation shall include, but is not limited to, a statement showing the expenditure of City funds and Contractor's mandatory funding match for that fiscal year and a balance sheet showing all Contractor's revenues and expenditures for that fiscal year. A statement of activities and a statement of financial position for Contractor's last complete fiscal year will suffice.

**3.4.3.2** A Contractor receiving City funds in the amount of \$75,000 - \$499,999 within City's fiscal year shall submit, in addition to the documents required by Section 3.4.3.1, audited financial statements for Contractor's last complete fiscal year within one hundred fifty (150) days of the end of that fiscal year. These disclosure documents must be prepared in accordance with generally accepted accounting principles (GAAP) and audited by an independent Certified Public Accountant in accordance with generally accepted auditing standards (GAAS). Upon written request by the Contractor, and in the sole discretion of the Contract Administrator, Contractor may be granted up to thirty (30) additional days to comply with this requirement.

**3.4.3.3** A Contractor receiving City funds in the amount of \$500,000 or more within City's fiscal year, and if that funding represents more than 10% of the Contractor's annual

budget, shall submit, in addition to the documents required by Sections 3.4.3.1 and 3.4.3.2, salary and wage ranges for each of its job classifications, including actual executive salaries and benefits packages.

**3.4.5 Impact Data.** Upon City's request, Contractor shall provide City with data to use in the publication of the City's annual Arts and Culture Community and Economic Impact Report.

## **ARTICLE IV TERMINATION**

**4.1 City's Right to Terminate for Convenience.** City may, at its sole option and for its convenience, terminate all or any portion of this Contract by giving thirty (30) days' written notice of such termination to Contractor. The termination of the Contract shall be effective upon receipt of the notice by Contractor. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs otherwise); and (2) complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's affected performance under the contract. After filing of documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or received by Contractor in performing this contract, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Contract with regard to the affected performance.

**4.2 City's Right to Terminate for Noncompliance and Default.** If Contractor fails to comply with any law, policy or condition of this Contract, Contractor will be notified of such noncompliance and may be given an opportunity to come into compliance through additional and reasonably appropriate conditions as determined by City in its sole discretion. If City determines that Contractor's noncompliance cannot be remedied by imposing additional and reasonably appropriate conditions and constitutes default, City may take one or more of the following remedial actions, as appropriate in the circumstances.

**4.2.1 Withhold Reimbursement.** City may permanently withhold reimbursement.

**4.2.2 Disallow Reimbursement.** City may disallow (that is, deny the use of City funds all or part of the cost of the activity or action not in compliance.

**4.2.3 Recovery of Funds.** City may require the return of funds paid to Contractor during the term of this Contract.

**4.2.4 Disqualification.** City may recommend disqualification of Contractor from participating in future City contracts.

**4.2.5 Disallow Acknowledgement.** City may require that Contractor remove acknowledgement of City support.

**4.2.6 Terminate Contract and Award.** City may wholly or partly terminate this Contract and the award of funds.

**4.2.7 Other Legal Remedies.** City may take other remedies that may be legally available.

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

## **ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS**

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

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

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

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

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



**5.5 Representations and Warranties.** Contractor represents and warrants that 1) Contractor has been assigned a valid Employer Identification Number (EIN) by the Internal Revenue Service; 2) according to the System for Award Management (SAM), Contractor holds an active registration status, is not a debarred company excluded from Federal procurement and non-procurement programs throughout the U.S. Government, is not excluded from receiving Federal contracts or certain subcontracts, and is not excluded from certain types of Federal financial and nonfinancial assistance and benefits during the performance of this Contract; 3) according to the State of California Department of Industrial Relations' Division of Labor Standards Enforcement (DLSE), Contractor is not barred from bidding on, accepting, or performing any public works contracts either as a contractor or subcontractor; 4) the status of Contractor's registration as a charity is current with the State of California Department of Justice's Office of the Attorney General during the term of this Contract; and 5) the status of Contractor's Statement of Information on file with the California Secretary of State is active during the term of this Contract. Contractors found to be making false representations and warranties shall be subject to remedies for noncompliance.

**5.6 Taxpayer Identification Number and Certification.** Contractor, if doing business with City for the first time, shall submit a completed Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification. Failure to submit said form will delay City's reimbursement payments to Contractor.

**5.7 Acknowledging City.** Contractor shall acknowledge City in advertisements, including but not limited to print, online and broadcast, using the Commission for Arts and Culture's logo and substantially the following credit line: "Financial support is provided by City of San Diego Commission for Arts and Culture." If City terminates this Contract, City may require that Contractor remove acknowledgement of City support from advertisements.

## **ARTICLE VI INTELLECTUAL PROPERTY RIGHTS**

**6.1 Intellectual Property Rights.** If, in connection with the services performed under this Contract, Contractor or its employees, agents, or subcontractors, create or acquire authorship or ownership of artwork, audio recordings, blueprints, designs, diagrams, documentation, photographs, plans, reports, software, source code, specifications, surveys, system designs, video recordings, or any other original works of authorship, whether written or readable by machine (Intellectual Property Materials), all rights, titles, and interests of the Contractor or its employees, agents, or subcontractors in and to the content of the Intellectual Property Materials, including, but not limited to publication, and registration of copyrights, and trademarks in the Intellectual Property Materials, are the sole property and rights of Contractor.

**6.1.1 City's License to Reproduce.** Contractor grants to City, and other parties duly authorized by City, a nonexclusive, irrevocable and royalty-free license to reproduce any Intellectual Property Materials that are subject to copyright and were developed, or for which ownership was acquired, under this Contract during the period of performance. Any such authorized reproduction by City or others under its control shall credit Contractor and may be used for educational, public relations, tourism and arts promotional purposes including, but not limited to, reproducing or preparing photographs, other two-dimensional reproductions, or digital reproductions, and displaying, distributing,

transmitting such reproductions to the general public. Such reproductions and transmissions may be magazines, books, newspapers, journals, brochures and pamphlets, exhibition catalogues, films, television, video, websites, slides, negatives, prints and electronic media, DVD, CD, computerized retrieval systems, and by all means or methods now known or hereafter invented in connection with standard City activities.

**6.1.1.1 Credit for Reproductions.** City agrees that, unless Contractor requests to the contrary in writing, all formal references to, and reproductions of any Intellectual Property Materials that are subject to copyright and were developed, or for which ownership was acquired under this Contract during the period of performance shall credit Contractor with © Contractor's Name.

**6.2 Intellectual Property Warranty and Indemnification.** Contractor represents and warrants that any materials or deliverables, including all Intellectual Property Materials, created or acquired by the Contractor under this Contract are either original, or not encumbered, and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Intellectual Property Materials referenced hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, Contractor shall indemnify, defend, and hold harmless City and its elected officials, officers, employees, agents, and representatives from and against any and all claims, actions, costs, judgments or damages, of any type, alleging or threatening that any Intellectual Property Materials, supplies, equipment, services or works provided under this Contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claim of Infringement). If a Third Party Claim of Infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

## **ARTICLE VII INDEMNIFICATION AND INSURANCE**

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

**7.2 Insurance.** Contractor shall not begin any performance under this Contract until it has (1) provided City insurance certificates and endorsements reflecting evidence of all insurance and endorsements required and described herein; (2) obtained City approval of each insurance company or companies; and (3) confirmed that all policies contain the special provisions required herein (unless specifically waived by the Director of Risk Management or his designee). Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under this Contract, shall not be deemed

limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Contract, and Contractor's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Contract may be treated by City as a material breach of Contract. City reserves the right to require Contractor to submit copies of any policy upon reasonable request by City.

All policies shall include, and the insurance certificates shall reflect, a 30-day non-cancellation clause that provides thirty (30) days written notice by certified mail to City prior to any material change or cancellation of any of said policies.

Contractor shall not modify any policy or endorsement thereto which increases City's exposure to loss for the duration of this Contract.

**7.2.1 Required Types of Insurance.** Unless otherwise provided, Contractor shall maintain insurance coverage at its own expense as follows:

**7.2.1.1 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 bodily injury, personal injury, advertising 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 insurance limiting the scope of coverage for either insured claims or contractual liability. All defense costs shall be outside the limits of the policy. The policy shall include, and the insurance certificate shall reflect, a 30-day non-cancellation clause that provides thirty (30) days written notice by certified mail to City prior to any material change or cancellation of any of said policies.

**7.2.1.2 COMMERCIAL AUTOMOBILE LIABILITY.** For all of Contractor's automobiles including owned, hired and non-owned automobiles, Contractor shall keep in full force and effect Commercial Automobile Liability 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. The insurance certificate shall reflect coverage for any automobile (any auto). The policy shall include, and the insurance certificate shall reflect, a 30-day non-cancellation clause that provides thirty (30) days written notice by certified mail to City prior to any material change or cancellation of any of said policies.

**7.2.1.3 WORKERS' COMPENSATION.** For all of Contractor's employees who are subject to this Contract and to the extent required by the applicable state or federal law, Contractor shall keep in full force and effect a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employer's liability coverage. The policy shall include, and the insurance certificate shall reflect, a 30-day non-cancellation clause that provides thirty (30) days written notice by certified mail to City prior to any material change or cancellation of any of said policies.

**7.2.2 Deductibles.** All deductibles or retentions on any policy shall be the sole responsibility of Contractor and shall be disclosed to City at the time the evidence of insurance is provided.

**7.2.3 Acceptability of Insurers.** Except for the State Compensation Insurance Fund,

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

**7.2.4 Required Endorsements.** Unless otherwise provided, the following endorsements to the policies of insurance are required to be provided to City before any performance is initiated under this Contract.

**7.2.4.1 COMMERCIAL GENERAL LIABILITY ENDORSEMENTS.**

Contractor’s CGL insurance policy shall include the following endorsements.

**7.2.4.1.1 Additional Insured.** To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, Contractor’s CGL insurance policy must be endorsed to include as an insured 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 Contractor or on Contractor’s behalf, (b) Contractor’s products, (c) Contractor’s work, including but not limited to Contractor’s completed operations performed by Contractor or on Contractor’s behalf, or (d) premises owned, leased, controlled or used by Contractor.

**7.2.4.1.2 Primary and Non-Contributory Coverage.** Contractor’s CGL insurance policy must be endorsed to provide that the insurance afforded by Contractor’s policy is primary to any insurance or self-insurance of City and its elected officials, officers, employees, agents and representatives as respects operations of the named insured. Any insurance maintained by City and its elected officials, officers, employees, agents and representatives shall be in excess of Contractor’s insurance and shall not contribute to it.

**7.2.4.1.3 Severability of Interest.** Contractor’s CGL insurance policy must be endorsed to provide that Contractor’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability and shall provide cross-liability coverage.

**7.2.4.2 COMMERCIAL AUTOMOBILE LIABILITY ENDORSEMENTS.**

Contractor’s Commercial Automobile Liability insurance policy shall include the following endorsements.

**7.2.4.2.1 Additional Insured.** To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, Contractor’s Commercial Automobile Liability insurance policy must be endorsed to include as an insured 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 Contractor.

**7.2.4.2.2 Primary and Non-Contributory Coverage.** Contractor’s Commercial Automobile Liability insurance policy must be endorsed to provide that the insurance

afforded by Contractor's policy is primary to any insurance or self-insurance of City and its elected officials, officers, employees, agents and representatives as respects operations of the named insured. Any insurance maintained by City and its elected officials, officers, employees, agents and representatives shall be in excess of Contractor's insurance and shall not contribute to it.

**7.2.4.2.3 Severability of Interest.** Contractor's Commercial Automobile Liability insurance policy must be endorsed to provide that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

**7.2.4.3 WORKERS' COMPENSATION ENDORSEMENTS.** Contractor's Workers' Compensation insurance policy shall include the following endorsements.

**7.2.4.3.1 Waiver of Subrogation.** Contractor's Workers' Compensation insurance policy must be endorsed to provide that the insurer will waive all rights of subrogation against City of San Diego and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy which arise from Contractor's performance of work for City.

**7.2.5 Reservation of Rights.** City reserves the right, from time to time, to review Contractor's insurance coverage, limits, deductibles and self-insured retentions to determine if they are acceptable to City. City will reimburse Contractor for the cost of the additional premium for any coverage requested by City in excess of that required by this Contract without overhead, profit, or any other markup.

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

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

## **ARTICLE VIII COMPLIANCE WITH LAWS AND POLICIES**

**8.1 California Public Records Act, Government Code Section 6250 et seq.** Pursuant to the California Public Records Act, all documents related to the funding request, including, but not limited to, the contents of this Contract, application materials, expenditure documentation, and any documents pertaining to the performance of the Contract are public records and, therefore, subject to disclosure unless a specific exemption in the California Public Records Act applies. Contractor shall acknowledge (**Exhibit B**) and comply with the California Public Records Act.

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

**8.3 Nondiscrimination in Contracting, San Diego Municipal Code Section 22.3501 et seq.** Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

**8.3.1 Compliance Investigations.** Upon City's request, Contractor shall provide to City, within sixty (60) calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five (5) years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, and other sanctions.

**8.4 Equal Benefits Ordinance, San Diego Municipal Code Section 22.4301 et seq.** Contractor shall comply (**Exhibit C**) with the Equal Benefits Ordinance requirements set forth in SDMC 22.4301 et seq. The Contractor shall notify employees of Contractor's equal benefits policy at the time of hire and during open enrollment periods, and shall post a copy of the following statement in a conspicuous manner in an area frequented by employees: *During the performance of a contract with City of San Diego, this employer will provide equal benefits to its employees with spouses and its employees with domestic partners. Contact City of San Diego at (619) 533-3948 for more information.* Contractor shall give City access to documents and records sufficient for City to verify that Contractor is in compliance with the Equal Benefits Ordinance. Failure to maintain equal benefits is a material breach of this Contract.

**8.5 Contractor Standards, San Diego Municipal Code Section 22.3004 (c).** Contractor shall comply with all applicable local, state and federal laws, including, but not limited to, health and safety, labor and employment, and licensing laws that affect the Contractor's employees, agents, or subcontractors, worksite or performance of the Contract. Contractor shall notify City within fifteen (15) calendar days upon receiving written notification that a government agency has begun an investigation of Contractor that may result in a finding that Contractor is or was not in compliance with the laws, or that there has been a finding by a government agency or court of competent jurisdiction of a violation of such laws by Contractor. Initiation of an investigation is not, by itself, a basis for a determination of non-responsibility by City.

**8.6 Noise Abatement and Control, San Diego Municipal Code Section 59.5.0101 et seq.** Contractor shall operate, conduct, or construct in compliance with City's Noise Abatement and Control ordinances.

**8.7 Storm Water Management and Discharge Control, San Diego Municipal Code Section 43.0301 et seq.** Contractor shall comply with the City's Storm Water Management and Discharge Control laws, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing work under this Contract. Contractor shall comply with the

City's Jurisdictional Urban Runoff Management Plan encompassing City programs and activities designed to prevent and reduce storm water pollution within City boundaries, adopted by San Diego Resolution R-303351 and incorporated into this Contract by this reference. Contractor shall comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any damage to the storm water collection system and environment.

**8.8 Council Policy 100-03 Transient Occupancy Tax.** Contractor shall comply with City's TOT requirements set forth in Council Policy 100-03, adopted by San Diego Resolution R-183022 and incorporated into this Contract by this reference.

**8.9 Council Policy 100-04 Americans with Disabilities Act/City Contractors.** Contractor shall comply (**Exhibit D**) with City's Americans with Disabilities Act Compliance/City Contracts requirements set forth in Council Policy 100-04, adopted by San Diego Resolution R-282153 and incorporated into this Contract by this reference. Contractor shall comply with all accessibility requirements under the Americans with Disabilities Act (ADA) and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this Contract shall contain language which indicates the subcontractor's agreement to abide by the provisions of Council Policy 100-04 and any applicable access laws and regulations.

**8.10 Council Policy 100-17 Drug-Free Workplace/City Contractors.** Contractor shall comply (**Exhibit E**) with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952 and incorporated into this Contract by this reference.

**8.11 Lobbying and Political Activities.** Contractor shall not use, and shall require its subcontractors not to use, any of the funds, personnel, or materials received in connection with this Contract, to influence, or attempt to influence, any governmental decision or election in any manner, whatsoever. This prohibition shall apply to any decision of any kind to be made by any electorate, legislative body, agency, bureau, board, commission, district, or any other instrument of federal, state, or local government. The term, "influence or attempt to influence," shall mean the making, with the intent to influence, any communication to, or appearance before, any officer, employee, or appointee of any governmental entity, as well as any communication made to any electorate, regarding any ballot measure or candidate election.

## **ARTICLE IX CONFLICT OF INTEREST**

**9.1 Conflict of Interest Laws.** Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et seq. and 81000, et seq. Contractor shall comply with City's applicable Ethics Ordinance requirements set forth in SDMC 27.3501 et seq. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary disclosure documents.

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

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

**9.4 Certification of Non-Collusion.** Contractor certifies that (1) Contractor's bid or proposal (a.k.a. application for funding) was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

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

## **ARTICLE X DISPUTE RESOLUTION**

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

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

**10.3 Expenses.** The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of



the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

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

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

## **ARTICLE XI MANDATORY ASSISTANCE**

**11.1 Mandatory Assistance.** If a third party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the City under a Contract, Contractor, its employees, agents, or subcontractors agree to assist in resolving the dispute or litigation upon City's request. Contractor's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

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

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

## **ARTICLE XII MISCELLANEOUS**

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

**12.2 Exhibits Incorporated.** All Exhibits referenced herein are hereby incorporated into this Contract.

**CONTRACT NUMBER**

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

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

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

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

**12.7 Compliance with Controlling Law.** Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for Contract termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

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

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

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

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

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

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

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

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

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

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

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

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

**12.20 Integrated Agreement.** This Contract and the Exhibits and references incorporated herein fully express all understandings of the Parties concerning the matters covered in this Contract. All prior negotiations and agreements are merged into this Contract.

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

**CONTRACT NUMBER**

**IN WITNESS WHEREOF**, this Contract is executed by City of San Diego, acting by and through its Mayor or designee, pursuant to SDMC section 22.3207, authorizing such execution, and by Contractor.

**Contractor**

A Nonprofit Organization

---

Authorized Signature

---

Printed Name and Title

---

Date

CITY OF SAN DIEGO,  
A Municipal Corporation

---

Kristina Peralta  
Interim Director, Purchasing and Contracting

---

Date

APPROVED AS TO FORM:

JAN I. GOLDSMITH,  
City Attorney

---

Deputy City Attorney

---

Date

**CONTRACT NUMBER**




---

## CALIFORNIA PUBLIC RECORDS ACT ACKNOWLEDGEMENT

**CONTRACT NUMBER:** «CONTRACT\_NUMBER\_PREFIX»-«CONTRACTOR\_EIN»

**CONTRACTOR:** «CONTRACTOR\_LEGAL\_ORG\_NAME»

The undersigned duly authorized representative, on behalf of the named Contractor declares and acknowledges the following:

The contents of this contract and any documents pertaining to the performance of the contract are public records, and therefore subject to disclosure unless a specific exemption in the California Public Records Act applies.

If a Contractor submits information clearly marked confidential or proprietary, City of San Diego (City) may protect such information and treat it with confidentiality only to the extent permitted by law. However, it will be the responsibility of Contractor to provide to City the specific legal grounds on which City can rely in withholding information requested under the California Public Records Act, should City choose to withhold such information.

General references to sections of the California Public Records Act will not suffice. Rather, Contractor must provide a specific and detailed legal basis, including applicable case law that clearly establishes the requested information is exempt from the disclosure requirements of the California Public Records Act.

If Contractor does not provide a specific and detailed legal basis for withholding the requested information within a time specified by City, City will release the information as required by the California Public Records Act and Contractor will hold City harmless for release of this information.

It will be Contractor's obligation to defend, at Contractor's expense, any legal actions or challenges seeking to obtain from City any information requested under the California Public Records Act withheld by City at Contractor's request. Furthermore, Contractor shall indemnify City and hold it harmless for any claim or liability, and defend any action brought against City, resulting from City's refusal to release information requested under the Public Records Act withheld at Contractor's request.

Nothing in this Contract creates any obligation for City to notify Contractor or obtain Contractor's approval or consent before releasing information subject to disclosure under the California Public Records Act.

### CONTRACTOR

A Nonprofit Organization

---

Authorized Signature

---

Printed Name and Title

---

Date

CONTRACT NUMBER

**FY16**

# EQUAL BENEFITS ORDINANCE CERTIFICATION OF COMPLIANCE



**EXHIBIT C**  
**CITY OF SAN DIEGO**  
**EQUAL BENEFITS PROGRAM**  
202 C Street, MS 9A, San Diego, CA 92101  
Tel (619) 533-3948 Fax (619) 533-3220

## COMPANY INFORMATION

Company Name:	Contact Name:
Company Address:	Contact Phone:
	Contact Email:

## CONTRACT INFORMATION

Contract Title:	Start Date:
Contract Number (if no number, state location):	End Date:

## SUMMARY OF EQUAL BENEFITS ORDINANCE REQUIREMENTS

The Equal Benefits Ordinance [EBO] requires City to enter into contracts only with contractors who certify they will provide and maintain equal benefits as defined in San Diego Municipal Code §22.4302 for the duration of the contract. To comply:

- Contractor shall offer equal benefits to employees with spouses and employees with domestic partners.
  - Benefits include health, dental, vision insurance; pension/401(k) plans; bereavement, family, parental leave; discounts, child care; travel/relocation expenses; employee assistance.
  - Any benefit not offered to an employee shall be offered to the employee's domestic partner.
- Contractor shall post notice of firm's compliance with EBO during open enrollment periods.
- Contractor shall allow City access to all employee benefit plans.
- Contractor shall submit *EBO Certification of Compliance* form to City.

NOTE: This summary is provided for contractor information only.

**LEAVE THIS FORM BLANK:  
EBO Certification of Compliance form  
no longer required per  
September 25, 2015 memo  
from Nora Nugent and Kristina Peralta**

Please indicate your firm's compliance with the EBO:

- ☐ I affirm **compliance** with the EBO:
- ☐ Provides equal benefits to spouses and domestic partners.
  - ☐ Provides no benefits to spouses or domestic partners.
  - ☐ Has no employees.
  - ☐ Has collective bargaining agreement(s) in place prior to January 1, 2011, that has not been renewed or expired.
- ☐ I request City's approval to pay affected employees a **cash equivalent** in lieu of equal benefits and verify my firm made a reasonable effort but is not able to provide equal benefits upon contract award. I agree to notify employees of the availability of a cash equivalent for benefits available to spouses but not domestic partners and to continue to make every reasonable effort to extend all available benefits to domestic partners.

It is unlawful for any contractor to knowingly submit any false information to City regarding equal benefits or cash equivalent associated with the execution, award, amendment, or administration of any contract. [San Diego Municipal Code §22.4307(a)]

Under penalty of perjury under laws of the State of California, I certify the above information is true and correct. I further certify that my firm understands the requirements of the Equal Benefits Ordinance and will provide and maintain equal benefits for the duration of the contract or pay a cash equivalent if authorized by City.

Name/Title of Signatory

Signature

Date

## FOR OFFICIAL CITY USE ONLY

Receipt Date:	EBO Analyst:	<input type="checkbox"/> Approved	<input type="checkbox"/> Not Approved – Reason:
---------------	--------------	-----------------------------------	---

rev 02/15/2011

**CONTRACT NUMBER**



---

**AMERICANS WITH DISABILITIES ACT (ADA)  
COMPLIANCE CERTIFICATION**

**CONTRACT NUMBER:**

**CONTRACTOR:**

I hereby certify that I am familiar with the requirements of San Diego City Council Policy No.100-04 regarding the Americans with Disabilities Act (ADA), and that «**CONTRACTOR\_LEGAL\_ORG\_NAME**» has in place workplace program that complies with said policy. I further certify that each subcontract for this project contains language which indicates the subcontractor will abide by the provisions of the policy as outlined.

**CONTRACTOR**

A Nonprofit Organization

---

Authorized Signature

---

Printed Name and Title

---

Date

**CONTRACT NUMBER**





---

## CERTIFICATION FOR A DRUG-FREE WORKPLACE

**CONTRACT NUMBER:**

**CONTRACTOR:**

I hereby certify that **CONTRACTOR** shall comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17.

**CONTRACTOR** shall publish, and post in a place of prominence, a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.

**CONTRACTOR** shall establish a drug-free awareness program to inform employees about all of the following:

- (a) The dangers of drug abuse in the workplace
- (b) The person's or organization's policy of maintaining a drug-free workplace
- (c) Any available drug counseling, rehabilitation, and employee assistance programs
- (d) The penalties that may be imposed upon employees for drug abuse violations

**CONTRACTOR** shall include language in each subcontract that elicits the subcontractor's agreement to abide by the provisions of Council Policy 100-17.

**CONTRACTOR,**

A Nonprofit Organization

---

Authorized Signature

---

Printed Name and Title

---

Date

**CONTRACT NUMBER**

**CONTRACT NUMBER**