

**CONTRACT BETWEEN CITY OF SAN DIEGO
AND «CONTRACTOR_LEGAL_ORG_NAME»**

FOR FISCAL YEAR 2018

ARTS AND CULTURE TRANSIENT OCCUPANCY TAX ALLOCATIONS

This Contract «CONTRACT_NUMBER_PREFIX»-«CONTRACTOR_EIN» is made and entered into between City of San Diego, a municipal corporation (City), and «CONTRACTOR_LEGAL_ORG_NAME», 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.

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 2018 application, numbered «APP_NUMBER» and incorporated into this Contract as Exhibit A.

1.1.1 Contractor's Mission. «MISSION»

1.2 Contract Term. 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, 2017 and June 30, 2018. Unless otherwise terminated, Contract shall terminate upon Contractor's receipt of final payment from City unless the Contract is extended pursuant to Section 1.2.1.

1.2.1 Option to Extend. The City may, at its option and with the agreement of Contractor, extend the Term of this Contract for up to four consecutive one (1) year periods. The City will exercise its option to extend this Contract each year (up to a total of four years) only after it determines on an annual basis that (1) Contractor's mission is substantially the same as the prior year's; and (2) Contractor remains eligible to apply for funding under the application guidelines for the OSP and CCSD programs.

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:

«ED_FIRST_NAME» «ED_LAST_NAME», «ED_TITLE»
«CONTRACTOR_LEGAL_ORG_NAME»
«ADDRESS1»,
«CITY», «STATE» «POSTAL_CODE»

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 \$«FY18_CONTRACT_AMT_PGM_ONLY». The funding awarded through this Contract comes from the «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_AMT». Upon City's request, Contractor shall provide evidence of matching funds between July 1, 2017 and June 30, 2018 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, 2017 - June 30, 2018). Due to the timing of City's accounting procedures, invoices submitted after August 31, 2018 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 a maximum of four (4) invoices and a minimum of one (1) invoice between July 1, 2017 and July 31, 2018.

3.3.2 CCSD Invoicing. Contractors in the CCSD category shall submit final invoices for reimbursement no more than ninety (90) 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, 2017 and July 31, 2018.

3.3.3 Invoice Detail. Contractor's invoices shall clearly itemize, describe and provide supporting evidence for each eligible expense incurred between July 1, 2017 and June 30, 2018. Contractor's invoice must be on Contractor's stationery with Contractor's name, address, and remittance address if different. Contractor's invoice must have a date, an invoice number, a purchase order number, a description of the expenses for reimbursement and an amount due.

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.

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.

3.4.4 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 and Social 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 deny the use of City funds for 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 City of San Diego's logo, as provided, and substantially the following credit line: "Financial support is provided by the City of San Diego." 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. 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 ISO Form CG 00 01, or an equivalent form, covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit. 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.

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 ISO Form Number CA 0001 or an equivalent form covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence.

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 per accident for bodily injury or disease.

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

7.2.3 Acceptability of Insurers. Except for the State Compensation Insurance Fund, Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to City. City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

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

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

7.2.5.1 Additional Insured Status. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, *City of San Diego, its respective elected officials, officers, employees, agents and representatives* are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

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

7.2.5.3 Notice of Cancellation. Each of the Contractor's insurance policies required above shall provide that coverage shall not be canceled, except with notice to City.

7.2.5.4 Waiver of Subrogation. Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be

necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

7.2.6 Reservation of Rights. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

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

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

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

ARTICLE VIII COMPLIANCE WITH LAWS AND POLICIES

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

8.1.1 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 and comply with the California Public Records Act.

8.1.2 Council Policy 100-17 Drug-Free Workplace/City Contractors. Contractor shall comply 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.

8.1.3 Council Policy 100-04 Americans with Disabilities Act/City Contractors. Contractor shall comply 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.

8.1.4 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.

8.1.5 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.

8.1.6 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 certified in SDMC.

8.1.7 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 provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of City regardless of location. Contractor shall comply with the City's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended. Contractor shall comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

8.1.8 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.

8.1.9 Contractor Standards, San Diego Municipal Code Section 22.3004 (c). Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions. 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.

8.1.10 Non-Discrimination Requirements.

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

8.1.10.2 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.

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

8.1.10.4 Equal Benefits Ordinance, San Diego Municipal Code Section 22.4301 et seq. Unless an exception applies, Contractor shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (SDMC). Failure to maintain equal benefits is a material breach of the Contract.

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., and the Ethics Ordinance, codified in the SDMC. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary documents to City.

9.2 Contractor's Responsibility for Employees and Agents. Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees

from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

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 or default thereof under Section 4.2 and cannot be settled and resolved 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.

10.2.1 Any such mediation shall be held in San Diego, California and subject to California law pursuant to Section 12.8.

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 agents, officers, employees, and 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, its agents, officers, employees, and subcontractors, Contractor shall reimburse City for all fees paid to Contractor, its agents, officers, employees, and subcontractors. for Mandatory Assistance.

11.3 Attorneys' Fees Related to Mandatory Assistance. In providing City with dispute or litigation assistance, Contractor or its agents, officers, employees, and subcontractors may incur expenses and/or costs. Contractor agrees that any attorney fees it may incur as a result of assistance provided 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.

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

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.

12.21 Confidentiality of Services. All services performed by Contractor, and any sub-contractor(s) if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Contractor, are for the sole use of City, its agents, and employees. Neither the documents nor their contents shall be released by Contractor or any subcontractor to any third party without the prior written consent of City. This provision does not

apply to information that: (1) was publicly known, or otherwise known to Contractor, at the time it was disclosed to Contractor by City; (2) subsequently becomes publicly known through no act or omission of Contractor; or (3) otherwise becomes known to Contractor other than through disclosure by City.

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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_LEGAL_ORG_NAME**»,
A Nonprofit Organization

Authorized Signature

Printed Name and Title

Date

CITY OF SAN DIEGO,
A Municipal Corporation

Kristina Peralta
Director, Purchasing and Contracting

Date

APPROVED AS TO FORM:

MARA W. ELLIOTT,
City Attorney

Deputy City Attorney

Date

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CITY OF SAN DIEGO,
A Municipal Corporation

Kristina Peralta
Director, Purchasing and Contracting

Date

APPROVED AS TO FORM:

MARA W. ELLIOTT,
City Attorney

Deputy City Attorney

Date

**DECLARATION IN LIEU OF REQUIRED
COMMERCIAL AUTOMOBILE LIABILITY INSURANCE POLICY**

CONTRACT NUMBER: «CONTRACT_NUMBER_PREFIX»-«CONTRACTOR_EIN»
CONTRACTOR: «CONTRACTOR_LEGAL_ORG_NAME»

If signed by Contractor «CONTRACTOR_LEGAL_ORG_NAME», this declaration will serve as an addendum to Contract «CONTRACT_NUMBER_PREFIX»-«CONTRACTOR_EIN» and as Contractor’s confirmation that (1) Contractor does not currently own any vehicles; (2) Contractor shall obtain and keep in full force and effect automobile insurance for hired and non-owned automobiles; and (3) if Contractor acquires any vehicle(s) during the term of the Contract, Contractor shall obtain -- and provide to City evidence of -- the Commercial Automobile Liability insurance policies and endorsements required by City.

For the purpose of such declaration, automobile insurance coverage for any auto, hired, and non-owned automobiles are defined as follows:

- Any Auto: Coverage is provided for any auto, including autos owned by Contractor, autos Contractor hires or borrows from others, and other non-owned autos used in Contractor’s business.
- Hired Autos: Coverage is provided only for autos leased, hired, rented, or borrowed for use in Contractor’s business.
- Non-owned Autos: Coverage is provided only for autos not owned, leased, hired, or borrowed by Contractor. Coverage includes autos owned by Contractor’s employees or members of their households, but only while used in Contractor’s business or personal affairs.

«CONTRACTOR_LEGAL_ORG_NAME»
A Nonprofit Organization

Authorized Signature

Printed Name and Title

Date

**DECLARATION IN LIEU OF REQUIRED
WORKERS' COMPENSATION INSURANCE POLICY**

**CONTRACT NUMBER: «CONTRACT_NUMBER_PREFIX»-«CONTRACTOR_EIN»
CONTRACTOR: «CONTRACTOR_LEGAL_ORG_NAME»**

If signed by Contractor , this declaration will serve as an addendum to Contract and as Contractor's confirmation that 1) All work required by City to be performed under the Contract shall be performed by Contractor's volunteer board members, their parents, spouses or children, or other persons who perform voluntary services without pay; 2) If Contractor hires employees to perform the Contract or any portion thereof, Contractor shall obtain, and provide evidence of, the Workers' Compensation insurance policy and endorsements required by City; 3) Contractor's declaration against its financial interest is relative to any claims Contractor should assert under the California Workers' Compensation and/or Labor laws against City relating to any bid or contract awarded to Contractor; and 4) Contractor shall defend, indemnify and hold harmless City from any and all claims and liability, including Workers' Compensation claims and liability that may be asserted or established by any party in the event Contractor hires an employee in violation of Contractor's declaration, and Contractor shall indemnify City for any damages City thereby suffers.

«CONTRACTOR_LEGAL_ORG_NAME»
A Nonprofit Organization

Authorized Signature

Printed Name and Title

Date