

**SERVICES AGREEMENT**

**BETWEEN THE**

**CITY OF SAN DIEGO**



**AND**

**INTERSTATE MANAGEMENT COMPANY, LLC**

**TO**

**PROVIDE MEETING SPACE, AUDIO VISUAL SERVICES,  
FOOD SERVICES AND LODGING SERVICES**

## SERVICES AGREEMENT

This Services Agreement (Agreement) is entered into by and between the City of San Diego, a municipal corporation (City), and **Interstate Management Company, LLC** (Contractor).

### RECITALS

City wishes to retain Contractor to provide meeting space, audio visual services, food services and lodging services as further described in the Scope of Services (Services), attached hereto as Exhibit A.

Contractor has the expertise, experience, and personnel necessary to provide the Services.

City and Contractor (collectively, the "Parties") wish to enter into an agreement whereby City will retain Contractor to provide the Services.

This Agreement has met the competitive bidding requirements pursuant to San Diego Municipal Code (SDMC) section 22.3203(a) because the Purchasing Agent has certified that competitive prices either orally or in writing have been received.

For good and valuable consideration, the sufficiency of which is acknowledged, City and Contractor agree as follows:

### ARTICLE I CONTRACTOR SERVICES

**1.1 Scope of Services.** Contractor shall provide the Services to City as described in Exhibit A, Scope of Services, which is incorporated herein by reference.

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

David Gerboth, Battalion Chief  
619.533.4348  
dgerboth@sandiego.gov  
Fire-Rescue Department

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

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

## **ARTICLE II DURATION OF AGREEMENT**

**2.1 Term.** This Agreement shall be for a period of **three days** beginning February 23, 2021 through February 25, 2021. Unless otherwise terminated, this Agreement shall be effective until completion of the Scope of Services or **February 25, 2021**, whichever is earliest. The term of this Agreement shall not exceed five years unless approved by the City Council by ordinance.

**2.2 Effective Date.** This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40.

**2.3 Automatic Extension.** The term of this agreement as set forth in section 2.1 shall be automatically extended if, due to COVID-19, Federal, State or County orders or regulations, including but not limited to the San Diego County "Order of the Health Officer and Emergency Regulations," continue to prohibit gatherings or any of the Scope of Services as described in Exhibit A. The automatic extension of the term shall continue until Federal, State, or San Diego County orders or regulations are lifted and the parties mutually agree, in writing, to a revised term date. Contractor shall not increase its pricing as described Section 3.1 during the term of this agreement. The total term of this agreement, including any extensions shall not exceed five years unless approved by the City Council by ordinance.

## **ARTICLE III COMPENSATION**

**3.1 Amount of Compensation.** City shall pay Contractor for performance of all Services rendered in accordance with this Agreement in an amount not to exceed \$45,000.00 or the amount referenced in the Purchase Order.


**ARTICLE IV  
CONTRACT DOCUMENTS**

**4.1 Contract Documents.** This Agreement and its exhibits constitute the Contract Documents. The Contract Documents completely describes the goods and services to be provided.

**4.2 Counterparts.** This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

IN WITNESS WHEREOF, this Agreement is executed by City and Contractor acting by and through their authorized officers.

INTERSTATE MANAGEMENT COMPANY

BY:   
\_\_\_\_\_  
8/3/2020  
\_\_\_\_\_  
DATE SIGNED

CITY OF SAN DIEGO

A Municipal Corporation

BY:   
\_\_\_\_\_  
Print Name  
CHRISTIANA GAUGER  
\_\_\_\_\_  
Interim Director Purchasing &  
Contracting Department  
08/10/2020  
\_\_\_\_\_  
DATE SIGNED

Approved as to form this 11<sup>th</sup> day of  
August, 20 20.  
MARA ELLIOTT, City Attorney


BY:   
\_\_\_\_\_  
Deputy City Attorney

EXHIBIT A  
**THE WESTIN**  
SAN DIEGO

**LETTER OF INTENT**

This Agreement is made and entered into as of Monday, August 03, 2020, by and between **Interstate Management Company, LLC** ("Operator"), as agent for **DiamondRock San Diego Tenant, LLC** ("Owner"), dba **Westin San Diego** (hereinafter referred to as "Hotel") and **San Diego Fire Department** (hereinafter referred to as "Group"). Group agrees that the terms of this Agreement are based upon the information provided by **San Diego Fire Department** below. In the event that the information provided by Group materially change or is incorrect, then this Agreement may be terminated.

**SECTION ONE: DESCRIPTION OF THE EVENT**

Ms. Christiana Gauger	Ms. Laura DePoister	Mrs. Ann Manning
Interim Director, Purchasing & Contracting	San Diego Office of the City Attorney Deputy City Attorney	Director of Sales & Marketing
Purchasing & Contracting Department	San Diego Fire Department	The Westin San Diego
1200 3 <sup>rd</sup> Avenue, Suite 200	1010 2 <sup>nd</sup> Avenue	400 West Broadway
San Diego, CA 92101	San Diego, CA 92101	San Diego, CA 92101
Phone: 619-236-5921	Phone: 619-884-9905	Phone: 619-338-3604
E-mail: CGauger@sandiego.gov	E-mail : LDePoister@sandiego.gov	E-mail: ann.manning@westinsandiego.com

**Name of Event:** FEMA ISTCE Feb2021

**Date of event:** Monday, February 22 – Friday, February 25, 2021

**Type of event:** Guestrooms Only/ Guestrooms with Functions

**SECTION TWO: GROUP ROOM RESERVATIONS**

**GUEST ROOM ACCOMMODATIONS:** Hotel will hold the following block of rooms for Group's Use. Unless as indicated in this Agreement, Hotel does not guarantee any particular rooms nor does it guarantee that rooms will be in proximity to each other.

Date	Day	Deluxe Bayview	Total Rooms
02/22/21	Mon	40	40
02/23/21	Tue	150	150
02/24/21	Wed	150	150
02/25/21	Thu	120	120
<b>Room Block Total</b>			<b>460</b>

**CHECK IN TIME:** 3:00PM **CHECK OUT DATE/TIME:** NOON

**For our front door and arrival experience please use address 1051 Columbia Street**

**CUT OFF DATE:** Monday, January 25, 2021. Reservation requests received after 5:00 p.m. local time at Hotel after this date, rooms not guaranteed to master by rooming list or individual reservations, as provided in Section 2 hereof, shall be released from Group's room block and Hotel may contract with other parties for the use of such rooms. Room nights will be available three days, pre and post, based on room and rate availability. Pre and post rooms are not guaranteed unless contracted. Unavailability of pre and post rooms will not release the group's obligation to fulfill contracted room block.

Group and Hotel do agree to a block review 90 days out to increase group block if needed. Monday October 26, 2020.

**GUEST ROOM RATES:** The Hotel is pleased to confirm the following room rates for this group:

Rooms	Single Rate	Double Rate	Triple Rate	Quad Rate
Deluxe Bayview- King or Two Double Beds	\$173.00	\$173.00	\$193.00	\$213.00

Hotel room rates are subject to applicable state and local taxes, which are currently an occupancy tax of 10.695% and an SDTMD assessment of 2%. These rates are subject to change.

Hotel rates are subject to a waived Hotel Facility Fee per night (Values at \$25.00 per night, plus tax) which includes the following:

- High speed internet access in guestroom
- Local and domestic long-distance phone calls in guestroom
- 2 bottles of water per day upon request
- Round-trip airport shuttle service

- Guest Service Instant Messaging Service
- Snack Hour in the Main Lobby, daily from 5:00 PM- 6:00 PM

If Group is tax-exempt, it must present all documentation required by Hotel and pay in the manner specified by Hotel. If Group is claiming tax-exempt status, Group hereby accepts all liability and agrees to indemnify Hotel for all taxes paid and all costs incurred, including attorney fees, if a taxing authority requires that the Hotel remit tax for the room nights covered by this Agreement. Otherwise, Group will be charged all applicable taxes.

**PREVAILING GOVERNMENT PER DIEM:** These rates are subject to change without notice.

**EARLY DEPARTURE FEE:** In the event that a guest who has reserved a room within your block checks out prior to the guest's reserved checkout date, an early departure fee of one night room and tax will be charged to that guest's individual account. Guests wishing to avoid this fee must advise the hotel at or before check-in of any change in the scheduled length of stay. The Hotel will inform members of your group of this fee upon check-in. The hotel will deduct any such fees that are collected from any amount you may owe as sleeping room attrition.

**COMMISSION:** All rates are net non-commissionable.

**RESERVATIONS: INDIVIDUAL RESERVATIONS:** Each individual guest must make their own reservations by calling 1-888-627-9033 by **Monday, February 17, 2020**. They must identify themselves as members of the **FEMA ISTCE FEB 2021** to be guaranteed the group rate. Any reservations made outside the room block will not be counted towards pick up or complimentary concessions. All reservations must be guaranteed with a major credit card or accompanied by a first night room deposit.

**RESLINK DIRECT:** Hotel will create a free customized website for Group's event or meeting through a product known as Reslink Direct. This customized website will allow attendees to book their hotel reservations online, and may also include personalized information about the event or meeting, including Content, links to Group's website, and dining, entertainment, and city information. The website's unique URL will be distributed to, or to such other person designated by Group, for distribution to members and other attendees.

**CONCESSIONS:** Hotel will provide the following additional concessions:

- Waived Hotel Facility Fee (Valued at \$25.00 per night, plus tax)
- Complimentary Deluxe Bayview upgrade (Valued at \$30.00 per night, plus tax)
- Waived five (5%) percent event fee towards food and beverage minimum
- Three (3) VIP welcome amenities upon arrival chef choice (Valued at \$50.00 each)
- Ten (10%) percent off in-house audio and visual
- Waived All meeting room power strips
- Waived basic meeting room internet set-up
- Seventy (70%) percent off one (1) day basic meeting room internet for 250+ devices
- \$20.00 day of event parking (non-overnight guest)
- Three (3) complimentary vendor tables outside Emerald Ballroom over program dates
- Two (2) complimentary easels over program dates

### **SECTION THREE: MEETING ROOM/BALLROOM AND CATERING SERVICES**

**MEETING ROOMS:** Upon the signature of this Agreement, Hotel reserves and Group guarantees payment for the following meeting rooms for the specified days/times:

Date	Start – End Time	Function Description	Function Space	Set Up	# PPL	Room Rental
Monday, February 22, 2021	6:00pm – 11:59pm	Registration/Set-up	Permanente Registration Desk	Registration	4	Waived
	6:00pm – 11:59pm	Office/Set-up	Convention Office	Existing	4	Waived
	6:00pm – 11:59pm	Set-up	Topaz Room	Classroom	50	Waived
	6:00pm – 11:59pm	Set-up	Opal Room	Classroom	50	Waived
	6:00pm – 11:59pm	Set-up	Diamond I Room	Classroom	50	Waived
	6:00pm – 11:59pm	Set-up	Diamond II Room	Classroom	50	Waived
	6:00pm – 11:59pm	Set-up	Coral Room	Conference	10	Waived
Tuesday, February 23, 2021	6:00am – 7:00pm	Registration	Permanente Registration Desk	Registration	4	Waived
	6:00am – 7:00pm	Office	Convention Office	Existing	4	Waived
	8:00am – 5:00pm	General Session	Topaz Room	Classroom	50	Waived
	8:00am – 5:00pm	Conference Room	Coral Room	Conference	10	Waived

	2:35pm – 3:25pm	Breakout 3	Opal Room	Classroom	50	Waived
	2:35pm – 3:25pm	Breakout 4	Diamonds I	Classroom	50	Waived
	2:35pm – 3:25pm	Breakout 5	Diamonds II	Classroom	50	Waived
	7:00am – 8:00am	Continental Breakfast	Topaz Foyer	Flow Through	50	Waived
	10:00am – 10:30am	AM Break	Topaz Foyer	Flow Through	50	Waived
	2:00pm – 2:30pm	PM Break	Topaz Foyer	Flow Through	50	Waived
	6:00pm – 11:59PM	Set-up	Emerald Ballroom	Classroom	200	Waived
Wednesday, February 24, 2021	6:00am – 7:00pm	Registration	Permanente Registration Desk	Registration	4	Waived
	6:00am – 7:00pm	Office	Convention Office	Existing	4	Waived
	7:00am – 8:00am	Continental Breakfast	Emerald Foyer	Flow Through	200	Waived
	8:00am – 5:00pm	General Session	Emerald Ballroom	Classroom	200	Waived
	10:00am – 10:30am	AM Break	Emerald Foyer	Flow through	200	Waived
	8:00am – 5:00pm	Breakout 1	Emerald Ballroom	Existing	50	Waived
	8:00am – 5:00pm	Breakout 2	Topaz Room	Classroom	50	Waived
	8:00am – 5:00pm	Breakout 3	Opal Room	Classroom	50	Waived
	8:00am – 5:00pm	Breakout 4	Diamond I Room	Classroom	50	Waived
	8:00am – 5:00pm	Breakout 5	Diamond II Room	Classroom	50	Waived
	3:00pm – 3:30pm	PM Break	Emerald Foyer	Flow Through	200	Waived
Thursday, February 25, 2021	6:00am – 7:00pm	Registration	Permanente Registration Desk	Registration	4	Waived
	6:00am – 7:00pm	Office	Convention Office	Existing	4	Waived
	7:00am – 8:00am	Continental Breakfast	Emerald Foyer	Flow Through	200	Waived
	8:00am – 5:00pm	General Session	Emerald Ballroom	Classroom	200	Waived
	10:00am – 10:30am	AM Break	Emerald Foyer	Flow through	200	Waived
	8:00am – 5:00pm	Breakout 1	Emerald Ballroom	Existing	50	Waived
	8:00am – 5:00pm	Breakout 2	Topaz Room	Classroom	50	Waived
	8:00am – 5:00pm	Breakout 3	Opal Room	Classroom	50	Waived
	8:00am – 5:00pm	Breakout 4	Diamond I Room	Classroom	50	Waived
	8:00am – 5:00pm	Breakout 5	Diamond II Room	Classroom	50	Waived
	3:00pm – 3:30pm	PM Break	Emerald Foyer	Flow Through	200	Waived

Hotel reserves the right to assign and change specific meeting rooms at its discretion. Group must obtain final approval from Hotel before publishing meeting room names. Once the final agenda has been submitted to the hotel, the client acknowledges all additional space in the contract is released.

A 25% service charge of the total food and beverage revenue, total meeting room rental and total AV revenue (plus all applicable taxes) will be added. This includes an 11% gratuity for banquet employees. No other fee or charge is a tip, gratuity, or service charge for any employee. All fees are subject to change. If Group modifies the room block or food and beverage functions, the Hotel reserves the right to increase meeting room rental charges accordingly.

Separate meeting rooms reserved and designated for meals only, will be charged a \$1,000++ room rental fee.

#### EXHIBITS AND TABLETOP DISPLAYS

\$100.00\* per exhibit or tabletop display – billed to the Master Client

(\*A 25% service charge of the total food and beverage revenue, total meeting room rental and total AV revenue (plus all applicable taxes) will be added. This includes an 11% gratuity for banquet employees. No other fee or charge is a tip, gratuity, or service charge for any employee.) All fees are subject to change.

If you require any of the following items in the next three paragraphs, you must notify the Hotel using the below form no later than 30 days prior to start of the conference.

The following items are provided by the Hotel for each \$100.00 display:

One (1) 6' table cloth or box draped (depending upon room layout and availability), two (2) banquet chairs, one (1) wastebasket, cleaning services and applied to a 25% service charge of the total food and beverage revenue, total meeting room rental and total AV revenue (plus all applicable taxes) will be added. This includes an 11% gratuity for banquet employees. No other fee or charge is a tip, gratuity, or service charge for any employee. All fees are subject to change.

The following items can be provided for your exhibitors and will be billed to the master account: (see attached form)  
Electrical power, audio-visual services, pipe & drape, table skirting, security guard service, decorations, lighting.

Drayage Booths can be supplied by an outside vendor which we can recommend to you upon request.

**CATERING SERVICES:** A minimum of \$18,986.54 in food and beverage must be spent at your function (the "Guaranteed Amount"). This Guaranteed Amount does not include room rental, meeting space rental, service charges, tax and labor charges, audio-visual, parking or any other miscellaneous charges incurred. Group is required to pay Hotel the full Guaranteed Amount, regardless of whether Group actually charges that amount. Group is required to pay Hotel any amounts exceeding the Guaranteed Amount. Such amount shall be subject to a 25% service charge of the total food and beverage revenue, total meeting room rental and total AV revenue (plus all applicable taxes) will be added. This includes an 11% gratuity for banquet employees. No other fee or charge is a tip, gratuity, or service charge for any employee, which shall be paid by Group (service charge and administrative fees are taxable). All fees are subject to change.

**FOOD & BEVERAGE POLICY:** Due to licensing and insurance requirements, all food and beverage to be served on Hotel property must be supplied and prepared by Hotel. In addition, no remaining food or beverage shall be removed from the premises. At the conclusion of the function, such food and beverage becomes the property of Hotel.

A 25% service charge of the total food and beverage revenue, total meeting room rental and total AV revenue (plus all applicable taxes) will be added. This includes an 11% gratuity for banquet employees. No other fee or charge is a tip, gratuity, or service charge for any employee. All fees are subject to change. Menu prices will be confirmed six months prior to scheduled function.

Final menu selections, meeting agendas including requested room sets and Audio Visual requirements must be submitted to Hotel's Catering/Convention Service Manager at least 30 days in advance to first scheduled event; otherwise, hotel reserves the right to choose selections from the meeting planner package.

Should hotel not receive final menu selections, meeting agendas including requested room sets and Audio Visual requirements at least 30 days in advance to first scheduled event, previously negotiated discounted or complimentary room rental will not be honored and current published room rental charges will apply. See meeting agenda chart above.

At the time final menu selections are made, Group shall review, approve and initial the final menu. Other than specifically stated in the approved menu (or otherwise agreed in a separate writing signed by Group and the General Manager or his designee), Hotel will not be responsible for any specific dietary requests or requirements.

Signed BEOs must be received no later than 10 days prior to first scheduled event. Failure to comply may result in menu adjustments based on current inventory and insufficient staffing levels.

The Catering Office must be notified of the guarantee attendance no later than Noon, three working days prior to the scheduled function. Guaranteed attendance for functions scheduled Monday or Tuesday must be received by noon on the preceding Thursday. Hotel agrees to set 5% percent over the guaranteed attendance for banquets. Guarantees of attendance are not subject to reduction and Hotel will charge the Master Account, at a minimum, the amount due in accordance with the guaranteed attendance.

Group will have available an authorized representative at the event who will be presented a check prior to the conclusion of the event. Such representative shall verify that all charges are correct and consistent with this Agreement and any changes and shall sign off on such check.

**Food & Beverage meeting options:**

- All day Coffee, Tea, Juice, Soda service \$24.00++ per person, per day
- Continental Breakfast \$13.00++ per person, per day
  - Assorted Pastries
  - Fresh Sliced Seasonal Fruit
- PM Break
  - Choose only one (1) item below for 225ppl \$5.95++ per person, per day
    - Assorted Freshly Baked Cookies
    - Fudge Brownies
    - Assorted Cupcakes
    - Chocolate Dipped Strawberries
  - Fresh Seasonal Whole Fruit for 113ppl \$4.68 per person, per day
  - Assorted Granola Bars for 113ppl \$4.15 per person, per day
- Lunch options for \$18.00 per person, per day (inclusive of 18% service charge and 7.775% sales tax) (each individual attendee will be paying for their own lunch)
  - Turkey Wrap



- o Chicken Salad Wrap
- o Mixed Greens with Chicken
- o Caesar with Chicken
- o Grilled Veggie Wrap

**AUDIO-VISUAL:** Based on the Group's initial Audio & Visual requirements, a minimum of **\$11,089.25** in Audio & Visual must be spent at Group's function (the "Guaranteed Amount"). The Westin San Diego is the onsite provider of all Audio Visual Equipment and Services for The Westin San Diego. All audio visual equipment and services are subject to a 25% service charge of the total AV revenue (plus all applicable taxes) will be added. This includes an 11% gratuity for banquet employees. No other fee or charge is a tip, gratuity, or service charge for any employee. All fees are subject to change.

Should the Group consider utilizing outside audio visual, the hotel will impose an Event Technology Fee of up to 25% service charge of the AV revenue (plus all applicable taxes) will be added of the equipment rental value for similar items based on the Hotel's published rates. This includes an 11% gratuity for banquet employees. No other fee or charge is a tip, gratuity, or service charge for any employee. This would include an audio visual representative onsite for the duration of your program from 8:00 am to 5:00 pm. Any extra equipment required, including assistance for set-up, provided by Hotel, is subject to the hotel's standard fees.

If the group chooses to retain vendors, other than The Westin San Diego Hotel's in-house department, to provide services and/or equipment for Group's event at the Hotel, Group acknowledges and agrees that any damage to The Westin San Diego hotel, or to the outside vendor's employees, equipment or property, or to any guest or third party caused in whole or in part by the outside vendor, is the sole responsibility of Group and the outside vendor.

Your meeting services representative will provide a list of preferred vendors and guidelines by which they must perform on site. Please note that The Westin San Diego Hotel reserves the right to prohibit the continuance of services provided by an outside vendor if said vendor fails to adhere to guidelines established to ensure appropriate service to and safety of our guests.

If applicable, please ensure all estimated charges for audiovisual services provided by Hotel are included in purchase orders and or applications for direct billing.

#### **SECTION FOUR: BILLING/CREDIT PROCEDURES**

**MASTER ACCOUNT:** The hotel currently has \$24,348.98 in deposits with an uncashed check for \$16,000.00. Once this contract is executed we will cash the \$16,000.00 check giving the Hotel a total amount of \$40,348.98 for the mater bill charges which will be noted paid in full.

**BILLING INFORMATION:** Guestrooms, tax, and incidentals will be paid by each individual. Food & beverage, room rentals, audio & visual, etc. to master bill.

**INCIDENTALS:** Individual guests are to be responsible for incidental expenses, the guest will be expected to leave a valid credit card with the hotel at the time of check-in. It will be Group's responsibility to inform its members of this requirement.

#### **SECTION FIVE: CANCELLATION/ATTRITION**

**CANCELLATION OF ROOM RESERVATIONS:** Guests are responsible for paying for their own accommodations. Deposits (taken either in cash or by credit card) are refunded or credited only if notice is received 72 hours prior to arrival date and cancellation number must be obtained by guest.

**GROUP'S CANCELLATION:** Group and Hotel have entered into a binding commitment. The Hotel is committed to providing the rooms and services specified in this Agreement and the Hotel has offered special rates and other concessions based upon anticipated revenues for your event. The anticipated revenue includes the revenue from the total number of sleeping rooms you have requested as well as the revenue received from the food and beverage services you may have requested and any ancillary services, such as in-room movies, telephone tolls, room service and other charges.

If Hotel cancels this Agreement or is unable to provide the requested rooms or meeting space, the Hotel will work with Group to arrange alternative accommodations and space at the prices set forth herein. Hotel will arrange for comparable space in the same vicinity of the Hotel and shall provide, without charge, necessary transportation between the alternative site and the Hotel. Hotel's liability is limited to these remedies and Hotel shall not be liable for any consequential, punitive or special damages.

**Minimum Revenue:** This Agreement will generate revenue for Hotel from a variety of sources, including guest rooms, food & beverage, and charges for ancillary services. The minimum revenue anticipated by Hotel under this Agreement (excluding taxes and other charges) is:

Minimum Guest Room Revenue (#460 total room nights x \$173.00 guestroom rate):	\$79,580.00
Minimum Food & Beverage Revenue (based on committed food & beverage minimum):	\$18,986.54
Minimum Audio & Visual Revenue (based on committed audio and visual minimum (11,089.25):	\$11,089.25

Meeting Room Rental:	Waived
<b>Total Minimum Revenue:</b>	<b>\$109,655.79</b>

**Attrition:** Waive group attrition.

**Cancellation:** Waived group cancellation.

**MULTIPLE CONTRACTS:** Hotel may cancel upon written notice to Group any future events booked by Group, or any entity or person affiliated with Group, whether included in this Agreement or pursuant to any agreements or orders signed prior to or after this Agreement, in any of the following circumstances: (1) Group fails to pay any amounts when due under this Agreement or any other agreement or arrangement with the Hotel; (2) Group causes any damage, in the Hotel's sole discretion, to the Hotel property or reputation; (3) Group violates, in Hotel's opinion, any term of this Agreement.

#### **MISCELLANEOUS**

**SIGNS AND DISPLAYS/USE OF HOTEL NAME:** Group shall not display signs in Hotel nor use the name/logo of the Hotel in any promotional brochures or ads without prior approval of the General Manager of Hotel. It is further agreed that no sign, banner or display shall be affixed to any part of Hotel. Any damages caused to the walls, fixtures or carpet will be billed to Group.

**CONTRACTED VENDORS:** Hotel has contracted with certain other providers of services (e.g., destination management companies, florists or drayage/exhibit provider) that Group may elect to use to provide services for its meeting or event ("Contracted Vendors"). Although the use of Contracted Vendors is encouraged, Group may use its own vendors for these services provided that Group's proposed vendors meet minimum standards established by Hotel, including insurance and indemnification requirements.

**SECURITY:** Hotel may, in its sole discretion, require Group to take certain security measures in light of the size or nature of the function, which may include the requirement to hire sufficient security personnel from the Hotel or Hotel may allow Group to retain an outside service that meets required bonding and insurance requirements and is approved by the Hotel prior to the function. If Group hires an outside service in accordance with the above, Group must provide Hotel with a copy of the agreement, which shall indemnify the Hotel and its owner, and their parent, subsidiary and affiliated companies and their employees, representatives and agent, from and against any liabilities related to the services.

**WESTIN SMOKE FREE POLICY:** In alignment with all Westin Hotels, The Westin San Diego is a smoke free hotel. The hotel is smoke free in all areas of the Hotel: lobby, guest rooms, restaurant, lounge, meeting and banquet facilities. Restaurants on property that are not operated by Westin may not participate in the smoke free policy. To protect the smoke free environment, the Hotel will post a \$200 cleaning fee to the account of any guests who smokes in their hotel room. To ensure the cooperation and comfort of Group's attendees, Group agrees to advise its attendees in writing in promotional materials for Group's event of the Westin Smoke Free policy, and Westin will also advise the attendees upon check in.

**SHIPPING AND PACKAGES:** In the event Group will be shipping packages to Hotel, Group must notify Hotel at least one week in advance. All packages sent to Hotel must include the name of Group, date of program and number of items. Due to limited space, the hotel cannot accept packages more than 48 hours prior to the beginning to the conference date. Handling charges will apply. Hotel has no liability for the delivery, security or condition of the packages.

#### **CHARGES**

shipping/receiving fees: (inclusive of fees & taxes)

size	delivery	ship	storage (above 72 hours)
- envelopes	\$3.94	\$2.63	\$2.63
- 1-25 lbs.	\$9.20	\$6.57	\$6.57
- 26-50 lbs.	\$19.71	\$6.57	\$6.57
- 51+ lbs.	\$32.87	\$25.50	\$25.50
- golf clubs/display case	\$46.01	\$26.29	\$26.29
- pallets ½ under 36"	\$131.45	\$98.59	\$98.59
- pallets full	\$197.19	\$130.38	\$130.38
- crates under 150 lbs.	\$131.45	\$98.59	\$98.59
- crates over 150 lbs.	\$197.19	\$130.38	\$130.38

We are unable to guarantee prompt delivery of improperly labeled packages. Therefore, shipped materials should read:

The Westin San Diego  
**In House: FEMA ISTCE Mar2020**  
 <On-site Group Contact Name or Exhibitor/Vendor Company>  
 c/o The Westin San Diego Erica J. Benford-Riley (Sales Manager)  
 400 West Broadway

Due to limited space, the hotel cannot accept packages more than 48 hours prior to the beginning of the conference date. In order for the Hotel to receive, manage and to store materials, handling charges apply to all incoming and outgoing shipments, including those shipped via pre-paid accounts:

- \*Fees apply to both incoming and outgoing packages.
- \*Pallets are billed differently.
- \*The Group will be responsible for packing, labeling and shipping of outgoing materials.
- \*Storage for all Group Packages Complimentary for 72 hours. Storage charges apply following 72 hours.
- \*If the hotel is unable to accommodate storage, packages will not be accepted and be returned to sender.
- \*All package handling and storage rates are up to the discretion of the hotels banquet/purchasing staff.
- \*Storage of packages received outside of the set periods will incur additional fees.

For inquiries regarding packages, please contact the hotel operator at (619)239-4500.

**PARKING:** Hotel parking is available at the prevailing rates. Valet Parking is available to Hotel guests at a cost of \$50.00 per day with in and out privileges. These charges may be paid individually or applied to the Master Account. Parking charges for Hotel guests are not included in the Group Room Rate. Self-parking options are also available within the vicinity of the hotel. **All parking rates are subject to change.**

**SIGNING AUTHORITY:** The following individuals have the proper authority to sign for the Master Account and/or act on behalf of and bind the Group pursuant to the terms of this Agreement:

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

**HOTEL CONTACT/NOTICES:** All notices, offers, acceptances, requests and other communications hereunder shall be in writing and shall be deemed to delivered if hand delivered or sent by Federal Express, or certified or registered mail to the Group contact on the first page of this Agreement, or, if to Hotel, to the following address: Hotel Address: 400 West Broadway San Diego, CA 92101 Attn: (meeting planner name). Hotel may change Hotel's designated contact at any time upon notice. Hotel will not be bound by any notice unless delivered to Hotel in the manner specified herein.

**NOT QUALIFIED FOR MARRIOTT BONVOY EVENTS**

Marriott Bonvoy Events provides Points or Miles to eligible Marriott Bonvoy Members who book and hold qualifying meetings and events at Participating Properties. Capitalized terms used in this section have the meanings given to them in the Marriott Bonvoy terms and conditions, available at <https://www.marriott.com/loyalty/terms/default.mi>.

San Diego Fire Department and the Contact (as identified on page 1 of this Agreement or the Authorized Signer of this Agreement) acknowledge that the Marriott Bonvoy Events program is only available to certain qualified Marriott Bonvoy Members.

Marriott Bonvoy Events is not available in certain circumstances, including (1) for any government employee or official booking a government event (U.S. government event or non-U.S. government event); (2) for any employee of a state-owned or state-controlled entity ("SOE") booking an event on behalf of the SOE; or (3) for any other planner or intermediary when booking an event on behalf of a non-U.S. governmental entity or SOE. Hotels in the Asia Pacific region are restricted from awarding Points or Miles to any intermediary booking an event on behalf of any governmental entity or SOE.

In addition, Points or Miles are available only if San Diego Fire Department's own policies permit the Contact to receive Points or Miles for the Event.

The Contact (as identified on page 1 of this Agreement or the Authorized Signer of this Agreement) is not qualified to receive Points or Miles in connection with the Event, and by entering into this Agreement, hereby waives the right to receive an award of Points or Miles in connection with the Event.

**GENERAL PROVISIONS**

**DAMAGE CLAUSE:** In the event that damage to any Hotel property occurs as a result of any guest related to Group, Group assumes all liability and expense and agrees that, in addition to any other rights as against such guest or others, Hotel may charge Group's Master Account or directly bill Group for all such charges proportional to any damage allegedly caused by any guest of the Group. Group shall indemnify, defend and hold harmless Hotel and its officers, directors, partners, affiliates, members and employees from and against all demands, claims, damages to persons and/or property, losses and liabilities, including reasonable attorney fees (collectively "Claims") arising out of or cause by Group's negligence or intentional misconduct. Group does not waive, by reason of this paragraph, any defense that it may have with respect to such Claims.

**GROUP'S PROPERTY:** Group agrees Hotel will not be responsible for the safe-keeping of equipment, supplies, written material or other valuable items left in function rooms, guest rooms or anywhere on Hotel property other than the Hotel safe. California law will govern Hotel's liability for items stolen in guestrooms or items kept in Hotel's safe. Group is responsible for securing any such aforementioned items and hereby assumes responsibility for loss thereof. Group may not rely on any verbal or written assurances provided by Hotel staff, other than as provided in this Agreement.

**INSURANCE:** Property of Group is the sole responsibility of the Group and/or its owner. Group agrees that it has procured sufficient insurance to cover the loss of such property and waives any claims under Hotel's insurance policy for the loss of Group's property or the property of any of its attendees or invitees.

**FORCE MAJEURE:** The performance of this Agreement is subject to termination without liability upon the occurrence of any circumstance beyond the control of either party – such as acts of God, war, acts of terrorism, government regulations, disaster, strikes, civil disorder, activation of the FEMA Branch or any Urban Search and Rescue teams including but not limited to CA-TF8 for a national response or an emergency incident where the City of San Diego Fire-Rescue Department is activated on a full scale, or curtailment of transportation facilities – to the extent that such circumstance makes it illegal or impossible for the Hotel to provide, or for groups in general to use, the Hotel facilities. The ability to terminate this Agreement without liability pursuant to this paragraph is conditioned upon delivery of written notice to the other party setting forth the basis for such termination as soon as reasonably practical - but in no event longer than ten (10) days - after learning of such basis.

**DISPUTE RESOLUTION:** Hotel and Group agree to use its best efforts to resolve any disputes under this Agreement through informal means. In the unlikely event that formal action must be taken, this Agreement will be interpreted in accordance with the laws of the State in which the Hotel is situated and the exclusive venue for any dispute arising out of this Agreement shall be in the county or city in which the Hotel is situated. The prevailing party to any litigation shall be entitled to recover, in addition to damages, all legal costs and reasonable attorney fees as fixed by the Court, both at the trial and appellate levels, and in any bankruptcy case and post judgment proceedings.

**ENTIRE AGREEMENT:** This Agreement and any Exhibits hereto constitutes the entire agreement between the parties and supersedes any previous communications, representations or agreements, whether written or oral. Any changes to this Agreement must be made in writing and signed by authorized representative of each party.

**MISCELLANEOUS:** The persons signing this Agreement each warrants that they are authorized to bind the party for which they are signing. Any provision of this Agreement that is deemed unenforceable shall be ineffective to the extent of such unenforceability without invalidating or rendering the remainder of this Agreement invalid. Each party shall execute such other and further documents as may be necessary to carry out the intention as well as to comply with the provisions of this Agreement.

**NO ASSIGNMENT:** Group may not assign or transfer this Agreement or any part thereof without the written consent of Hotel. Any attempted assignment or transfer by Group without such consent may, at the option of Hotel, be deemed to be a cancellation of this Agreement by Group, in which case Group shall remain liable for all cancellation charges set forth herein.

**PAYMENT:** Payment of all invoices is due upon receipt. Invoices remaining unpaid after 30 days of the invoice date will incur an interest charge of the lesser of 18% or the highest amount allowed by law. Group shall be responsible for all collection and/or attorney fees or other costs in collecting all amounts due hereunder. No payment by Group or receipt by Hotel of a lesser amount than any amount due shall be deemed to be other than on account of the amount due, and no endorsement or statement on any check or any letter accompanying any payment shall be deemed an accord and satisfaction, and Hotel may accept such check or payment without prejudice to Hotel's right to recover the balance of all amounts due or pursue any other remedies available to Hotel under this Agreement or in law or in equity.

**COMPLIANCE WITH LAWS:** Group shall comply with all Federal, State and local laws, rules and regulations with respect to its activities on Hotel property, including obtaining any permits required for Group's activities during the event. Hotel may require Group to present proof of such compliance prior to the event. Hotel relies upon Group's attendance projections in reserving the appropriate room(s) and in observing all federal, state and local regulations regarding room capacity limitations and health, safety and fire codes. Hotel reserves the right to take all necessary actions to cause the event to be in compliance with all laws, rules and regulations, including (1) closing the Event, (2) requiring certain guests to leave the event, (3) restricting access to the event, (4) restricting the consumption of alcoholic beverages, and (5) monitoring the event. If the Hotel decides, in its discretion, to take any of the actions above, it shall do so without penalty and Group shall remain liable for all obligations under this Agreement.

**RIGHT OF INSPECTION/ENTRY:** Hotel will have the right to enter and inspect all functions. If Hotel observes any illegal activity or activity that may result in harm to persons or objects, Hotel has the right to immediately cancel the event, in which case all of Group's guests and invitees must immediately vacate the meeting room premises. In such event, Group will remain liable for all fees and charges related to the function pursuant to the terms of this Agreement.

**EXHIBIT B**



**THE CITY OF SAN DIEGO**  
**GENERAL CONTRACT TERMS AND PROVISIONS**  
**APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS**

## **ARTICLE I**

### **SCOPE AND TERM OF CONTRACT**

**1.1 Scope of Contract.** The scope of contract between the City and a provider of goods and/or services (Contractor) is described in the Contract Documents. The Contract Documents are comprised of the Request for Proposal, Invitation to Bid, or other solicitation document (Solicitation); the successful bid or proposal; the letter awarding the contract to Contractor; the City's written acceptance of exceptions or clarifications to the Solicitation, if any; and these General Contract Terms and Provisions.

**1.2 Effective Date.** A contract between the City and Contractor (Contract) is effective on the last date that the contract is signed by the parties and approved by the City Attorney in accordance with Charter section 40. Unless otherwise terminated, this Contract is effective until it is completed or as otherwise agreed upon in writing by the parties, whichever is the earliest. A Contract term cannot exceed five (5) years unless approved by the City Council by ordinance.

**1.3 Contract Extension.** The City may, in its sole discretion, unilaterally exercise an option to extend the Contract as described in the Contract Documents. In addition, the City may, in its sole discretion, unilaterally extend the Contract on a month-to-month basis following contract expiration if authorized under Charter section 99 and the Contract Documents. Contractor shall not increase its pricing in excess of the percentage increase described in the Contract.

## **ARTICLE II**

### **CONTRACT ADMINISTRATOR**

**2.1 Contract Administrator.** The Purchasing Agent or designee is the Contract Administrator for purposes of this Contract, and has the responsibilities described in this Contract, in the San Diego Charter, and in Chapter 2, Article 2, Divisions 5, 30, and 32.

**2.1.1 Contractor Performance Evaluations.** The Contract Administrator will evaluate Contractor's performance as often as the Contract Administrator deems necessary throughout the term of the contract. This evaluation will be based on criteria including the quality of goods or services, the timeliness of performance, and adherence to applicable laws, including prevailing wage and living wage. City will provide Contractors who receive an unsatisfactory rating with a copy of the evaluation and an opportunity to respond. City may consider final evaluations, including Contractor's response, in evaluating future proposals and bids for contract award.

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

Purchasing Agent  
City of San Diego, Purchasing and Contracting Division  
1200 3rd Avenue, Suite 200  
San Diego, CA 92101-4195

### **ARTICLE III COMPENSATION**

**3.1 Manner of Payment.** Contractor will be paid monthly, in arrears, for goods and/or services provided in accordance with the terms and provisions specified in the Contract.

**3.2 Invoices.**

**3.2.1 Invoice Detail.** Contractor's invoice must be on Contractor's stationary with Contractor's name, address, and remittance address if different. Contractor's invoice must have a date, an invoice number, a purchase order number, a description of the goods or services provided, and an amount due.

**3.2.2 Service Contracts.** Contractor must submit invoices for services to City by the 10<sup>th</sup> of the month following the month in which Contractor provided services. Invoices must include the address of the location where services were performed and the dates in which services were provided.

**3.2.3 Goods Contracts.** Contractor must submit invoices for goods to City within seven days of the shipment. Invoices must describe the goods provided.

**3.2.4 Parts Contracts.** Contractor must submit invoices for parts to City within seven calendar (7) days of the date the parts are shipped. Invoices must include the manufacturer of the part, manufacturer's published list price, percentage discount applied in accordance with Pricing Page(s), the net price to City, and an item description, quantity, and extension.

**3.2.5 Extraordinary Work.** City will not pay Contractor for extraordinary work unless Contractor receives prior written authorization from the Contract Administrator. Failure to do so will result in payment being withheld for services. If approved, Contractor will include an invoice that describes the work performed and the location where the work was performed, and a copy of the Contract Administrator's written authorization.

**3.2.6 Reporting Requirements.** Contractor must submit the following reports using the City's web-based contract compliance portal. Incomplete and/or delinquent reports may cause payment delays, non-payment of invoice, or both. For questions, please view the City's online tutorials on how to utilize the City's web-based contract compliance portal.

**3.2.6.1 Monthly Employment Utilization Reports.** Contractor and Contractor's subcontractors and suppliers must submit Monthly Employment Utilization Reports by the fifth (5<sup>th</sup>) day of the subsequent month.

**3.2.6.2 Monthly Invoicing and Payments.** Contractor and Contractor's subcontractors and suppliers must submit Monthly Invoicing and Payment Reports by the fifth (5<sup>th</sup>) day of the subsequent month.

**3.3 Annual Appropriation of Funds.** Contractor acknowledges that the Contract term may extend over multiple City fiscal years, and that work and compensation under this Contract is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. This Contract may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by City Council.

**3.4 Price Adjustments.** Based on Contractor's written request and justification, the City may approve an increase in unit prices on Contractor's pricing pages consistent with the amount requested in the justification in an amount not to exceed the increase in the Consumer Price Index, San Diego Area, for All Urban Customers (CPI-U) as published by the Bureau of Labor Statistics, or 5.0%, whichever is less, during the preceding one year term. If the CPI-U is a negative number, then the unit prices shall not be adjusted for that option year (the unit prices will not be decreased). A negative CPI-U shall be counted against any subsequent increases in the CPI-U when calculating the unit prices for later option years. Contractor must provide such written request and justification no less than sixty days before the date in which City may exercise the option to renew the contract, or sixty days before the anniversary date of the Contract. Justification in support of the written request must include a description of the basis for the adjustment, the proposed effective date and reasons for said date, and the amount of the adjustment requested with documentation to support the requested change (e.g. CPI-U or 5.0%, whichever is less). City's approval of this request must be in writing.

#### **ARTICLE IV SUSPENSION AND TERMINATION**

**4.1 City's Right to Suspend for Convenience.** City may suspend all or any portion of Contractor's performance under this Contract at its sole option and for its convenience for a reasonable period of time not to exceed six (6) months. City must first give ten (10) days' written notice to Contractor of such suspension. City will pay to Contractor a sum equivalent to the reasonable value of the goods and/or services satisfactorily provided up to the date of suspension. City may rescind the suspension prior to or at six (6) months by providing Contractor with written notice of the rescission, at which time Contractor would be required to resume performance in compliance with the terms and provisions of this Contract. Contractor will be entitled to an extension of time to complete performance under the Contract equal to the length of the suspension unless otherwise agreed to in writing by the Parties.

**4.2 City's Right to Terminate for Convenience.** City may, at its sole option and for its convenience, terminate all or any portion of this Contract by giving thirty (30) days' written notice of such termination to Contractor. The termination of the Contract shall be effective upon receipt of the notice by Contractor. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs otherwise); and (2) complete any and all additional work necessary for the orderly filing of



documents and closing of Contractor's affected performance under the Contract. After filing of documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or received by Contractor in performing this Contract, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Contract with regard to the affected performance.

**4.3 City's Right to Terminate for Default.** Contractor's failure to satisfactorily perform any obligation required by this Contract constitutes a default. Examples of default include a determination by City that Contractor has: (1) failed to deliver goods and/or perform the services of the required quality or within the time specified; (2) failed to perform any of the obligations of this Contract; and (3) failed to make sufficient progress in performance which may jeopardize full performance.

**4.3.1** If Contractor fails to satisfactorily cure a default within ten (10) calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

**4.3.2** If City terminates this Contract, in whole or in part, City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, equivalent goods or services and Contractor shall be liable to City for any excess costs. Contractor shall also continue performance to the extent not terminated.

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

**4.5 Contractor's Right to Payment Following Contract Termination.**

**4.5.1 Termination for Convenience.** If the termination is for the convenience of City an equitable adjustment in the Contract price shall be made. No amount shall be allowed for anticipated profit on unperformed services, and no amount shall be paid for an as needed contract beyond the Contract termination date.

**4.5.2 Termination for Default.** If, after City gives notice of termination for failure to fulfill Contract obligations to Contractor, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of City. In such event, adjustment in the Contract price shall be made as provided in Section 4.3.2. City's rights and remedies are in addition to any other rights and remedies provided by law or under this Contract.

**4.6 Remedies Cumulative.** City's remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which City may be lawfully entitled in case of any breach or threatened breach of any provision of this Contract.

## **ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS**

**5.1 Inspection and Acceptance.** The City will inspect and accept goods provided under this Contract at the shipment destination unless specified otherwise. Inspection will be made and acceptance will be determined by the City department shown in the shipping address of the Purchase Order or other duly authorized representative of City.

**5.2 Responsibility for Lost or Damaged Shipments.** Contractor bears the risk of loss or damage to goods prior to the time of their receipt and acceptance by City. City has no obligation to accept damaged shipments and reserves the right to return damaged goods, at Contractor's sole expense, even if the damage was not apparent or discovered until after receipt.

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

**5.4 Delivery.** Delivery shall be made on the delivery day specified in the Contract Documents. The City, in its sole discretion, may extend the time for delivery. The City may order, in writing, the suspension, delay or interruption of delivery of goods and/or services.

**5.5 Delay.** Unless otherwise specified herein, time is of the essence for each and every provision of the Contract. Contractor must immediately notify City in writing if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. City may terminate this Contract as provided herein if City, in its sole discretion, determines the delay is material.

**5.5.1** If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, City may allow Contractor to a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Contractor. This provision does not apply to a delay caused by Contractor's acts or omissions. Contractor is not entitled to an extension of time to perform if a delay is caused by Contractor's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof satisfactory to City of Contractor's inability to obtain materials, equipment, or labor, in which case City's approval must be in writing.

**5.6 Restrictions and Regulations Requiring Contract Modification.** Contractor shall immediately notify City in writing of any regulations or restrictions that may or will require Contractor to alter the material, quality, workmanship, or performance of the goods and/or services to be provided. City reserves the right to accept any such alteration, including any resulting reasonable price adjustments, or to cancel the Contract at no expense to the City.

**5.7 Warranties.** All goods and/or services provided under the Contract must be warranted by Contractor or manufacturer for at least twelve (12) months after acceptance by City, except automotive equipment. Automotive equipment must be warranted for a minimum of 12,000 miles or 12 months, whichever occurs first, unless otherwise stated in the Contract. Contractor is responsible to City for all warranty service, parts, and labor. Contractor is required to ensure that warranty work is performed at a facility acceptable to City and that services, parts, and labor are available and provided to meet City's schedules and deadlines. Contractor may establish a warranty service contract with an agency satisfactory to City instead of performing the warranty service itself. If Contractor is not an authorized service center and causes any damage to equipment being serviced, which results in the existing warranty being voided, Contractor will be liable for all costs of repairs to the equipment, or the costs of replacing the equipment with new equipment that meets City's operational needs.

**5.8 Industry Standards.** Contractor shall provide goods and/or services acceptable to City in strict conformance with the Contract. Contractor shall also provide goods and/or services in accordance with the standards customarily adhered to by an experienced and competent provider of the goods and/or services called for under this Contract using the degree of care and skill ordinarily exercised by reputable providers of such goods and/or services. Where approval by City, the Mayor, or other representative of City is required, it is understood to be general approval only and does not relieve Contractor of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.

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

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

**5.10 Quality Assurance Meetings.** Upon City's request, Contractor shall schedule one or more quality assurance meetings with City's Contract Administrator to discuss Contractor's performance. If requested, Contractor shall schedule the first quality assurance meeting no later than eight (8) weeks from the date of commencement of work under the Contract. At the quality assurance meeting(s), City's Contract Administrator will provide Contractor with feedback, will note any deficiencies in Contract performance, and provide Contractor with an opportunity to address and correct such deficiencies. The total number of quality assurance meetings that may be required by City will depend upon Contractor's performance.

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

**5.12 Safety Data Sheets.** If specified by City in the solicitation or otherwise required by this Contract, Contractor must send with each shipment one (1) copy of the Safety Data Sheet (SDS) for each item shipped. Failure to comply with this procedure will be cause for immediate termination of the Contract for violation of safety procedures.

**5.13 Project Personnel.** Except as formally approved by the City, the key personnel identified in Contractor's bid or proposal shall be the individuals who will actually complete the work. Changes in staffing must be reported in writing and approved by the City.

**5.13.1 Criminal Background Certification.** Contractor certifies that all employees working on this Contract have had a criminal background check and that said employees are clear of any sexual and drug related convictions. Contractor further certifies that all employees hired by Contractor or a subcontractor shall be free from any felony convictions.

**5.13.2 Photo Identification Badge.** Contractor shall provide a company photo identification badge to any individual assigned by Contractor or subcontractor to perform services or deliver goods on City premises. Such badge must be worn at all times while on City premises. City reserves the right to require Contractor to pay fingerprinting fees for personnel assigned to work in sensitive areas. All employees shall turn in their photo identification badges to Contractor upon completion of services and prior to final payment of invoice.

**5.14 Standards of Conduct.** Contractor is responsible for maintaining standards of employee competence, conduct, courtesy, appearance, honesty, and integrity satisfactory to the City.

**5.14.1 Supervision.** Contractor shall provide adequate and competent supervision at all times during the Contract term. Contractor shall be readily available to meet with the City. Contractor shall provide the telephone numbers where its representative(s) can be reached.

**5.14.2 City Premises.** Contractor's employees and agents shall comply with all City rules and regulations while on City premises.

**5.14.3 Removal of Employees.** City may request Contractor immediately remove from assignment to the City any employee found unfit to perform duties at the City. Contractor shall comply with all such requests.

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

**5.16 Contractor and Subcontractor Registration Requirements.** Prior to the award of the Contract or Task Order, Contractor and Contractor's subcontractors and suppliers must register with the City's web-based vendor registration and bid management system. The City may not award the Contract until registration of all subcontractors and suppliers is complete. In the event this requirement is not met within the time frame specified by the City, the City reserves the right to rescind the Contract award and to make the award to the next responsive and responsible proposer of bidder.

## **ARTICLE VI INTELLECTUAL PROPERTY RIGHTS**

**6.1 Rights in Data.** If, in connection with the services performed under this Contract, Contractor or its employees, agents, or subcontractors, create artwork, audio recordings, blueprints, designs, diagrams, documentation, photographs, plans, reports, software, source code, specifications, surveys, system designs, video recordings, or any other original works of authorship, whether written or readable by machine (Deliverable Materials), all rights of Contractor or its subcontractors in the Deliverable Materials, including, but not limited to publication, and registration of copyrights, and trademarks in the Deliverable Materials, are the sole property of City. Contractor, including its employees, agents, and subcontractors, may not use any Deliverable Material for purposes unrelated to Contractor's work on behalf of the City without prior written consent of City. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City, without the prior written consent of the City.

**6.2 Intellectual Property Rights Assignment.** For no additional compensation, Contractor hereby assigns to City all of Contractor's rights, title, and interest in and to the content of the Deliverable Materials created by Contractor or its employees, agents, or subcontractors, including copyrights, in connection with the services performed under this Contract. Contractor

shall promptly execute and deliver, and shall cause its employees, agents, and subcontractors to promptly execute and deliver, upon request by the City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials. Contractor also shall cooperate and assist in the prosecution of any action or opposition proceeding involving such intellectual property rights and any adjudication of those rights.

**6.3 Contractor Works.** Contractor Works means tangible and intangible information and material that: (a) had already been conceived, invented, created, developed or acquired by Contractor prior to the effective date of this Contract; or (b) were conceived, invented, created, or developed by Contractor after the effective date of this Contract, but only to the extent such information and material do not constitute part or all of the Deliverable Materials called for in this Contract. All Contractor Works, and all modifications or derivatives of such Contractor Works, including all intellectual property rights in or pertaining to the same, shall be owned solely and exclusively by Contractor.

**6.4 Subcontracting.** In the event that Contractor utilizes a subcontractor(s) for any portion of the work that comprises the whole or part of the specified Deliverable Materials to the City, the agreement between Contractor and the subcontractor shall include a statement that identifies the Deliverable Materials as a "works for hire" as described in the United States Copyright Act of 1976, as amended, and that all intellectual property rights in the Deliverable Materials, whether arising in copyright, trademark, service mark or other forms of intellectual property rights, belong to and shall vest solely with the City. Further, the agreement between Contractor and its subcontractor shall require that the subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to City, all titles, rights and interests in and to the Deliverable Materials, including all copyrights, trademarks and other intellectual property rights. City shall have the right to review any such agreement for compliance with this provision.

**6.5 Intellectual Property Warranty and Indemnification.** Contractor represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this Contract are either original, or not encumbered, and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Contractor to produce, at Contractor's own expense, new non-infringing materials, deliverables or works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Contractor further agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages, of any type, alleging or threatening that any Deliverable Materials, supplies, equipment, services or works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claim of Infringement). If a Third Party Claim

of Infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

**6.6 Software Licensing.** Contractor represents and warrants that the software, if any, as delivered to City, does not contain any program code, virus, worm, trap door, back door, time or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of licensor-selected conditions or manually on command. Contractor further represents and warrants that all third party software, delivered to City or used by Contractor in the performance of the Contract, is fully licensed by the appropriate licensor.

**6.7 Publication.** Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City without prior written consent from the City.

**6.8 Royalties, Licenses, and Patents.** Unless otherwise specified, Contractor shall pay all royalties, license, and patent fees associated with the goods that are the subject of this solicitation. Contractor warrants that the goods, materials, supplies, and equipment to be supplied do not infringe upon any patent, trademark, or copyright, and further agrees to defend any and all suits, actions and claims for infringement that are brought against the City, and to defend, indemnify and hold harmless the City, its elected officials, officers, and employees from all liability, loss and damages, whether general, exemplary or punitive, suffered as a result of any actual or claimed infringement asserted against the City, Contractor, or those furnishing goods, materials, supplies, or equipment to Contractor under the Contract.

## **ARTICLE VII INDEMNIFICATION AND INSURANCE**

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

**7.2 Insurance.** Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or

in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors.

Contractor shall provide, at a minimum, the following:

**7.2.1 Commercial General Liability.** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

**7.2.2 Commercial Automobile Liability.** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

**7.2.3 Workers' Compensation.** Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

**7.2.4 Professional Liability (Errors and Omissions).** For consultant contracts, insurance appropriate to Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

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

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



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

**7.2.5.3 Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

**7.2.5.4 Waiver of Subrogation.** Contractor hereby grants to City a waiver of any right to subrogation which the Workers' Compensation insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

**7.2.5.5 Claims Made Policies (applicable only to professional liability).** The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

**7.3 Self Insured Retentions.** Self-insured retentions must be declared to and approved by City. City may require Contractor to 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.

**7.4 Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to City.

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

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

**7.6 Special Risks or Circumstances.** City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

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

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

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

## **ARTICLE VIII BONDS**

**8.1 Payment and Performance Bond.** Prior to the execution of this Contract, City may require Contractor to post a payment and performance bond (Bond). The Bond shall guarantee Contractor's faithful performance of this Contract and assure payment to contractors, subcontractors, and to persons furnishing goods and/or services under this Contract.

**8.1.1 Bond Amount.** The Bond shall be in a sum equal to twenty-five percent (25%) of the Contract amount, unless otherwise stated in the Specifications. City may file a claim against the Bond if Contractor fails or refuses to fulfill the terms and provisions of the Contract.

**8.1.2 Bond Term.** The Bond shall remain in full force and effect at least until complete performance of this Contract and payment of all claims for materials and labor, at which time it will convert to a ten percent (10%) warranty bond, which shall remain in place until the end of the warranty periods set forth in this Contract. The Bond shall be renewed annually, at least sixty (60) days in advance of its expiration, and Contractor shall provide timely proof of annual renewal to City.

**8.1.3 Bond Surety.** The Bond must be furnished by a company authorized by the State of California Department of Insurance to transact surety business in the State of California and which has a current A.M. Best rating of at least "A-, VIII."

**8.1.4 Non-Renewal or Cancellation.** The Bond must provide that City and Contractor shall be provided with sixty (60) days' advance written notice in the event of non-renewal, cancellation, or material change to its terms. In the event of non-renewal, cancellation, or material change to the Bond terms, Contractor shall provide City with evidence of the new source of surety within twenty-one (21) calendar days after the date of the notice of non-renewal, cancellation, or material change. Failure to maintain the Bond, as required herein, in full force

and effect as required under this Contract, will be a material breach of the Contract subject to termination of the Contract.

**8.2 Alternate Security.** City may, at its sole discretion, accept alternate security in the form of an endorsed certificate of deposit, a money order, a certified check drawn on a solvent bank, or other security acceptable to the Purchasing Agent in an amount equal to the required Bond.

## **ARTICLE IX CITY-MANDATED CLAUSES AND REQUIREMENTS**

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

**9.1.1 Drug-Free Workplace Certification.** Contractor shall comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Contract by this reference.

**9.1.2 Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations:** Contractor shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City's ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor's agreement to abide by the provisions of the City's Council Policy and any applicable access laws and regulations.

### **9.1.3 Non-Discrimination Requirements.**

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

**9.1.3.2 Non-Discrimination Ordinance.** Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result

in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

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

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

**9.1.5 Contractor Standards.** Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

**9.1.6 Noise Abatement.** Contractor shall operate, conduct, or construct without violating the City's Noise Abatement Ordinance codified in the SDMC.

**9.1.7 Storm Water Pollution Prevention Program.** Contractor shall comply with the City's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of City regardless of location.

Contractor shall comply with the City's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended.

Contractor shall comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

**9.1.8 Service Worker Retention Ordinance.** If applicable, Contractor shall comply with the Service Worker Retention Ordinance (SWRO) codified in the SDMC.

**9.1.9 Product Endorsement.** Contractor shall comply with Council Policy 000-41 which requires that other than listing the City as a client and other limited endorsements, any advertisements, social media, promotions or other marketing referring to the City as a user of a product or service will require prior written approval of the Mayor or designee. Use of the City Seal or City logos is prohibited.

**9.1.10 Business Tax Certificate.** Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before a Contract is executed.

**9.1.11 Equal Pay Ordinance.** Unless an exception applies, Contractor shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. Contractor shall certify in writing that it will comply with the requirements of the EPO.

**9.1.11.1 Contractor and Subcontract Requirement.** The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of a Contractor to the same extent as it would apply to that Contractor. Any Contractor subject to the Equal Pay Ordinance shall require all of its subcontractors to certify compliance with the Equal Pay Ordinance in its written subcontracts.

## **ARTICLE X CONFLICT OF INTEREST AND VIOLATIONS OF LAW**

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

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

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

**10.4 Certification of Non-Collusion.** Contractor certifies that: (1) Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or

solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

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

## **ARTICLE XI DISPUTE RESOLUTION**

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

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

**11.3 Expenses.** The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

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

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

## **ARTICLE XII MANDATORY ASSISTANCE**

**12.1 Mandatory Assistance.** If a third party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the City under a Contract, Contractor, its agents, officers, and employees agree to assist in resolving the dispute or litigation upon City's request. Contractor's assistance includes, but is not limited to, providing professional consultations,

attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

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

**12.3 Attorneys' Fees Related to Mandatory Assistance.** In providing City with dispute or litigation assistance, Contractor or its agents, officers, and employees may incur expenses and/or costs. Contractor agrees that any attorney fees it may incur as a result of assistance provided under Section 12.2 are not reimbursable.

### **ARTICLE XIII MISCELLANEOUS**

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

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

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

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

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

**13.6 Compliance with Controlling Law.** Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract

termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

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

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

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

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

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

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

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

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



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

**13.16 Confidentiality of Services.** All services performed by Contractor, and any sub-contractor(s) if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Contractor, are for the sole use of City, its agents, and employees. Neither the documents nor their contents shall be released by Contractor or any subcontractor to any third party without the prior written consent of City. This provision does not apply to information that: (1) was publicly known, or otherwise known to Contractor, at the time it was disclosed to Contractor by City; (2) subsequently becomes publicly known through no act or omission of Contractor; or (3) otherwise becomes known to Contractor other than through disclosure by City.

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

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

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

**EXHIBIT C**  
**CITY REQUIRED FORMS**

Contractor Standards Pledge of Compliance

Business Tax Certificate

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

Taxpayer Identification Form W-9 (if not currently on file)