

DUPLICATE

ORIGINAL

MASTER SERVICES AGREEMENT  
BETWEEN  
CITY OF SAN DIEGO  
AND  
SAN DIEGO DATA PROCESSING CORPORATION  
FOR INFORMATION TECHNOLOGY SERVICES

v.1.00 (Rev. 03/25/2010)

R-305744

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**MASTER SERVICES AGREEMENT  
BETWEEN THE CITY OF SAN DIEGO  
AND SAN DIEGO DATA PROCESSING CORPORATION  
FOR INFORMATION TECHNOLOGY SERVICES**

This MASTER SERVICES AGREEMENT (hereinafter “Agreement”) is made by and between the CITY OF SAN DIEGO, a municipal corporation (hereinafter “City”) and SAN DIEGO DATA PROCESSING CORPORATION, INC. a California nonprofit public benefit corporation (hereinafter “SDDPC” or “Corporation”) (the City and SDDPC may each be referred to from time to time herein as the “Party” or together as the “Parties”).

**RECITALS**

WHEREAS, the City of San Diego created the San Diego Data Processing Corporation in 1979 as a 501(c)(3) nonprofit public benefit corporation, with the City as the sole member of the Corporation, for the purpose of providing information technology services to the City and to other public agencies as may be deemed appropriate by the SDDPC Board of Directors; and

WHEREAS, SDDPC provides to the City information technology services;

WHEREAS, the City and SDDPC have functioned under a prior Operating Agreement, as amended seven times since 1979 (the fifth and sixth amendments were erroneously numbered as the seventh and eighth amendments), with the seventh and most recent amendment being titled the “Amended and Restated Operating Agreement Between the City of San Diego and San Diego Data Processing Corporation for the Provision of Information Technology Services” dated as of September 14, 1999; and

WHEREAS, the City and SDDPC have agreed to execute this new Agreement to supersede and replace all prior agreements between them, including amendments; and

WHEREAS, the City and SDDPC have agreed that this shall be a non-exclusive Agreement and that the City shall not be required nor obligated to obtain its information technology services from SDDPC;

WHEREAS, SDDPC’s bylaws set forth certain compliance, reporting, and governance requirements that are separate from those contained in this Agreement;

NOW, THEREFORE, in consideration of the Recitals and mutual obligations of the Parties herein expressed, City and SDDPC agree as follows:

## **1. ARTICLE I: PURPOSE OF AGREEMENT**

The purpose of this Agreement is to establish the terms and conditions for SDDPC to provide the City with certain information technology (“IT”) services as further described herein, to define the roles and responsibilities of the Parties, and to describe a process for strategic sourcing of certain services.

## **2. ARTICLE II: ROLES AND RESPONSIBILITIES**

### **2.1. Primary Contact**

The City’s Director of Information Technology (“Director of IT”) shall act as the primary liaison and point of contact between the City and SDDPC’s Executive Director and shall have overall responsibility for day-to-day oversight of SDDPC’s performance under this Agreement. Notwithstanding the foregoing, the Director of IT may, in his or her sole discretion, delegate in writing any right or authority hereunder to other employees of the City.

### **2.2. Review and Approval of Information Technology Services**

The Director of IT, in coordination with the City’s Information Technology Business Leadership Group (“IT BLG”) under the City IT Governance Policy (as amended), shall be responsible for reviewing and approving Citywide IT services and baseline service levels to be included in the annual Service Level Agreement (as described herein), ensuring that basic requirements for City business operations are met, and communicating these to SDDPC as part of the annual IT budget development process. The Director of IT, in coordination with the IT BLG, shall also be responsible for reviewing and approving department-specific IT services and service levels that expand or extend beyond the Citywide services, and to ensure consistency of service offerings and service levels across multiple departments.

### **2.3. Information Technology Architecture and Infrastructure**

The Director of IT shall be responsible for developing and documenting enterprise IT architecture strategies, and for the review and approval of all IT architecture plans and standards, including those developed by SDDPC on the City’s behalf, through the City’s Infrastructure Manager or such other person as the Director of IT designates. The Director of IT shall have the right to designate which City-owned IT infrastructure equipment should be considered part of the enterprise infrastructure environment in relation to SDDPC’s Services, so that SDDPC can determine the related costs, as approved by the City in the annual SLA, for maintaining and supporting the designated enterprise infrastructure.

### **2.4. Information Technology Standards, Policies, and Strategic Planning**

The City shall have the exclusive right and authority to set the City’s IT and telecommunications strategy and to determine any or all of the City’s requirements or business processes. The Director of IT shall be responsible for developing and approving IT standards, policies, and strategic direction, with technical input from SDDPC and within the

requirements of the City's IT governance policies and practices. The City will work jointly with SDDPC to implement approved IT standards, policies, and strategies. The City will also work jointly with SDDPC to review IT standards, policies, and strategies at least annually.

## **2.5. Service Request Procedures**

During the Term (as defined in Article VI) of this Agreement, if the City wishes to have SDDPC purchase, add, change, or delete products, inventories, application access and Services, the City shall notify SDDPC by using the SDDPC online service request form ("Service Request Form"). SDDPC shall provide for the use of the City a Service Request Form which City personnel authorized by the employee's department director ("Authorized IT Purchasers") may access through the Customer Support login on the SDDPC web site (<http://www.sddpc.org/> – Customer Support) or other SDDPC designated websites. Service Requests shall be created by the City department initiating the request, but only after obtaining City defined approvals, and then submitted to SDDPC for action, which may include obtaining or providing a quote (cost estimate) for specified services or equipment. The Authorized IT Purchaser entering a Service Request is responsible for ensuring that all City governance approvals have been completed, and SDDPC should provide the quote or cost estimate when it is available. However, SDDPC shall not be obligated to proceed with procurement or fulfillment of a Service Request, where funds will be expended, until the proper City IT governance approval form(s) have been received. The Department of Information Technology will post on the City's Intranet site (CityNet) the list of Authorized IT Purchasers who may enter Service Requests, as well as posting the City's current IT governance approval process, and notify SDDPC of updates when posted.

Some service requests are only for obtaining cost estimates or quotes for good or services. Upon acceptance and approval of such estimate or quote for services, the Authorized IT Purchaser is responsible for ensuring budgetary funds are available for SDDPC to invoice against and for following the required Service Request procedures stated in this Section 2.5.

## **2.6. Relationship Management**

The Director of IT for the City, the SDDPC Board of Directors, and SDDPC's Executive Director, Chief Financial Officer, Director of Customer & Application Services (or an equivalent member of SDDPC's management team) and Corporate Counsel ("SDDPC Management"), shall meet on a monthly basis (as part of the SDDPC monthly Board meetings) to review and discuss the effectiveness and value of the Services provided to the City by SDDPC and to provide guidance to improve such effectiveness and value. Additionally, the Director of IT for the City shall discuss with the SDDPC Board the City's financial plans and operational plans related to this Agreement. SDDPC shall make available SDDPC Management to answer questions from the City's Director of IT regarding such plans and to discuss the general progress of the performance of this Agreement and their relationship.

## **2.7. Security Audits**

The City, or its authorized representatives, shall have the right, at any time, with the provision to SDDPC of no less than two (2) business days notice, to perform a security audit of SDDPC's information handling processes, account management practices, and computer access control procedures and systems to determine SDDPC's level of vulnerability to attacks or intrusions from unauthorized personnel or criminals. The advance notice by the City will include details about the nature and scope of the security audit, to the extent determined to be relevant and necessary, at the City's sole discretion. The City agrees to schedule the time of the audit to minimize impacts to SDDPC operations; however, exigent circumstances may dictate otherwise, to be in the best interests of the City. SDDPC agrees to fully cooperate with such security audits.

## **3. ARTICLE III: SERVICES**

### **3.1. Types of Services Provided by SDDPC**

#### 3.1.1. Overview of Services and Service Level Agreement

Except as otherwise described herein, and subject to the City's discretion as provided for in the terms of this Agreement, SDDPC shall perform the services described in this Section 2 and further detailed in the annual Service Level Agreement ("Services"), in a manner commensurate with best industry standards and practices. In general, the City defines these Services within the following categories:

##### 3.1.1.1. Help Desk Services and Desktop Support Services

Help Desk and Desktop Services include, but are not limited to, the following service areas: (a) centralized Help Desk (call center), (b) remote and onsite Desktop Support for PC systems and applications, (c) remote management of desktop software and configurations, (d) enterprise and desktop Anti-Virus and Anti-SPAM updates and management, and (e) hardware maintenance for desktop and laptop PC systems and printers.

##### 3.1.1.2. Data Center Services

Data Center Services include, but are not limited to, the following service areas: (a) mainframe, (b) storage device/server hosting (commonly known as collocation services), (c) application hosting, (d) enterprise database environment(s), (f) Interactive Voice Response system hosting, (g) Enterprise Resource Planning infrastructure support (for the City's "OneSD" system), (h) Internet and Intranet (Web) infrastructure, (i) enterprise document management environment, (j) enterprise messaging environment (electronic mail), and (k) enterprise file and print environment.

#### 3.1.1.3. Network and Telecommunications Services

Network and Telecommunications Services include, but are not limited to, the following service areas: (a) local area and wide area data network, (b) voice telecommunications network, (c) remote access capability into the City's network, and (d) integrated communications.

#### 3.1.1.4. Security Services

Security Services include the responsibility of protecting the City's Network Services, Firewalls, Computing Infrastructure, and applications developed and supported on behalf of the City, from intrusion by outside sources and from unauthorized activity by inside sources. Security Services include network management and maintenance applications and tools, and the use of appropriate encryption technologies, in concurrence and coordination with the Department of IT, to ensure SDDPC's best efforts, by all appropriate means, to monitor the City's network and systems for the prevention and detection of inappropriate use or access of systems and networks, which may include potential fraud or abuse of City data, systems or networks. SDDPC is responsible for notifying the Department of IT, as soon as practical, of any indications of security breaches.

SDDPC is responsible for monitoring and identifying potential security risks and making recommendations to mitigate them. The Department of IT is responsible for managing IT security services, including the decision for implementing any security recommendations from SDDPC and accepting the identified risks if recommendations are not implemented.

#### 3.1.1.5. Professional Services

Professional Services include, but are not limited to, application life-cycle management, program and project management, and information technology consulting services.

### 3.1.2. Procurement for City

SDDPC shall procure all goods and services for its own use in providing the services described in this Agreement. All assets procured for its own use in providing such services shall be the property of SDDPC. SDDPC may procure, as described herein, goods, software licenses and services on behalf of the City ("Procured Services"). All assets procured as Procured Services shall be the property of the City.

SDDPC's procurement responsibilities shall include: Procurement of goods and services; evaluation of vendor proposals, qualifications and independence; negotiation of price and terms; obtaining the most favorable rates and discounts available; contract execution, contract administration; and distribution and installation of procured items, as required.

All procurement activities shall be subject to SDDPC's Board approved Procurement Policies which will reflect best practices including the use of competitive bidding for cost quotations and proposals, where appropriate. SDDPC may procure IT goods and services as described in Section 3.1.3 of this MSA. SDDPC and the City shall coordinate procurements in order to obtain benefits from volume purchases and to promote compatibility of IT and telecommunications resources among departments.

### 3.1.3. City Approvals for Procurement through SDDPC

Upon a request from one of the City's Authorized IT Purchasers to procure goods and services, SDDPC shall, prior to the issuance of any contract or purchase order, confirm that request for Procured Services complies with the City's requirements for procurements made through SDDPC, as described in Council Policy \_\_\_\_\_. Once SDDPC confirms that the request is made by an Authorized IT Purchaser in compliance with the requirements of Council Policy \_\_\_\_\_, then any Procured Service contract that results from the City's procurement request will name SDDPC as a party to the contract and will not be deemed a City contract.

### 3.1.4. Contract Administration

The SDDPC Procurement Department will negotiate and prepare all of its contracts with appropriate legal review and proper Board approval, as required by SDDPC's Board approved Procurement Policies. SDDPC's responsibility for managing each of its contracts ("Contract Administration") shall include the following two primary duties: 1) ensure that the vendor is performing in accordance with the scope and terms of the contract; and 2) ensure invoices properly reflect the work performed and submit approved invoices to SDDPC's accounting department for vendor payment.

## **3.2. Method of Requesting Services from SDDPC**

### 3.2.1. Annual SLA

The Parties agree to negotiate and enter into an annual Service Level Agreement ("SLA") which shall consist of statements of work for each of the Services to be provided under this Agreement and shall also set forth the rates for Services. The timeline and process for negotiating and approving the SLA coincides with the City's annual budget process and the rate setting process between the City and SDDPC. Each of the Parties shall execute the SLA no later than July 1 of each Fiscal Year. If the annual SLA is not executed in a timely manner, then the Parties shall work in good faith to draft and execute a memorandum of agreement which will state the hourly rates and fixed cost allocations that will be paid for the Services. The memorandum of agreement must be executed by authorized representatives of each Party and upon execution by both Parties the memorandum of agreement will serve as proper authorization for payments to SDDPC (provided that any other applicable City laws, rules and regulations are satisfied) on a temporary basis until both Parties execute the SLA.

### 3.2.2. New Services

If the City requests that SDDPC implement new services during the Term of this Agreement (“New Services”), provision of the New Services may involve different SDDPC pricing structures than those contained in annual SLAs. When a City department or group of departments wishes to enter into an agreement with SDDPC for services using different pricing structures than those contained in the then current SLA, such New Services and any pricing structure not contained in the SLA must be approved pursuant to the City’s established IT governance process. Such additional agreements for New Services, if properly approved, will be considered an Addendum to the annual SLA. In order for these agreements to be valid or enforceable by either the City or SDDPC, they must be signed by an individual authorized by the Mayor to sign such agreements, and the City Council shall have appropriated funds necessary for such New Services.

## 3.3. **Manner of Providing Services**

### 3.3.1. Human Resources

#### 3.3.1.1. SDDPC personnel located at its facilities

The majority of SDDPC personnel will be located at its primary facility. The personnel are non-City personnel and employed “at-will” and managed by the SDDPC Management. The SDDPC Board of Directors provides direction to the Management through Board approved Human Resources and Management Policies. These Policies will be periodically reviewed by the Board and, when necessary to keep current with best practices, the Board will approve revised, updated Policies.

#### 3.3.1.2. SDDPC Management/Employment Policies

SDDPC is legally responsible for the management of its own employees. The Board’s approved Human Resource and Management Policies shall guide and direct the Management and includes such areas as EEOC, Termination, Discipline and Rules of Conduct, Time Reporting, Compensation and Benefits, Vacation, Holidays, Leaves of Absence and Employee Conduct.

#### 3.3.1.3. Personnel Information

SDDPC shall share personnel related information at the request of the City on a quarterly basis. Such information will be limited to position, title and costs to the City. However, confidential information which relates to company owned performance reviews, disciplinary actions or other personal information protected under Federal or State law shall not be provided.

#### 3.3.1.4. SDDPC personnel co-located or embedded at City Facilities

Some SDDPC personnel will perform their work and be co-located at or within City facilities.

(a) City Selection and Replacement of Personnel

SDDPC shall make available such personnel as both SDDPC and City deems necessary to properly perform all of SDDPC obligations under this Agreement. If any one of the SDDPC personnel are unable to perform the functions or responsibilities assigned to him or her in connection with this Agreement, or if he or she is asked to be replaced by the City, SDDPC shall promptly replace such person and reassign the functions or responsibilities to another person.

The Director of IT and the various representatives of City departments shall act as the primary liaisons between the City and the SDDPC management and shall have overall responsibility for day-to-day oversight of the City's business requirements under this Agreement.

3.3.1.5. Specialized Personnel

SDDPC agrees that as part of its provisions of Services, it shall ensure that all SDDPC personnel (and the personnel of any Subcontractors) are trained, qualified and available to perform all Services required in all work areas required under this Agreement.

3.3.1.6. Personnel Information

SDDPC shall share personnel related information at the request of the City. Such information will be limited to position, title and costs to the City. However, confidential information which relates to company owned performance reviews, disciplinary actions or other personal information protected under Federal or State law shall not be provided.

3.3.1.7. Office Space and Furnishings

Each City department shall make reasonably necessary office space, furnishings, storage space and safe work environment available to SDDPC's on-site personnel and equipment necessary to perform the required Services at all locations required under the Agreement. Office space, furnishings, storage space, and assets installed or operated on City's premises, and supplies allocated, are the exclusive financial responsibility of the City.

3.3.1.8. Training

SDDPC shall provide, and request that its subcontractors provide, all such training that supports the City's IT Standards to the employees of SDDPC and its subcontractors as may be necessary for them to perform all of SDDPC's duties under this Agreement and at levels of training equal to or greater than the average levels of training given to all SDDPC employees holding corresponding positions.

For training requirements on products and tools that are not City IT Standards, the City department will pay for that department specific training.

#### 3.3.1.9. Security and Access

##### (a) SDDPC Requirements

All SDDPC personnel must pass a standard background clearance check upon being hired or as soon thereafter as a background clearance check can reasonably be administered. All SDDPC personnel will be provided a personalized card key for access into SDDPC facilities. Access cards will be approved and terminated by the SDDPC Human Resources Department. All SDDPC Personnel will be subject to all Board approved Human Resources and Security related policies including the Code of Business Conduct and Ethics Policy and Complaint Procedures, Employee Conduct Policies, Company Property; Confidential and Proprietary Information and Technology Use and Privacy.

##### (b) City Requirements

SDDPC personnel that are located at City sites will be approved and attain security badges from the City. SDDPC will review all requested security related City requirements and respond after evaluation of company policies.

#### 3.3.1.10. SDDPC Employee Parking at Concourse Parkade

Unless otherwise prohibited by law, the City agrees to allow SDDPC employees to use the Concourse (Evan P. Jones) Parkade or other parking facilities used by the City for parking at the same rates as City employees and shall allow new SDDPC employees to apply for parking in the same manner and at the same rates as City employees, as long as the City has such an agreement at that facility.

### 3.3.2. Security and Protection of Information

#### 3.3.2.1. Protection of Sensitive Information and Data

SDDPC agrees to create and maintain a SDDPC Board approved Human Resources (“HR”) policy, intended to require that all applicable SDDPC employees protect the City’s sensitive information and data. This HR policy will require similar definitions, terms, and conditions as contained in City Administrative Regulation 90.64 regarding “Protection of Sensitive Information or Data” (“A.R. 90.64”). SDDPC further agrees to cause its employees, officers, directors, and agents to comply with such Board approved HR policy, where applicable to City computer systems which SDDPC staff manage, administer, monitor, update or otherwise support. This HR policy shall also require that SDDPC utilize its own related compliance form(s) for applicable SDDPC employees, to acknowledge compliance with this HR policy and protection of the City’s sensitive information or data. SDDPC further agrees to update its HR policy, from time to time, to maintain the same level of protections contained in City A.R. 90.64, as amended. SDDPC further agrees to include compliance by Subcontractors

in this HR policy, utilize its best efforts to include similar provisions in its contracts with Subcontractors, and execute a compliance form by individual Subcontractor employees, if applicable.

As described in City A.R. 90.64, the City Department of IT will conduct semi-annual validations of all employees, volunteers, and contractors, including SDDPC employees and its Subcontractors, who have been approved for access to the City's sensitive information or data. As part of this validation process, the City Department of IT will notify the SDDPC Human Resources Director of any updates required for SDDPC staff or Subcontractors relating to accessing the City's sensitive information or data and completion of the appropriate acknowledgement form.

#### 3.3.2.2. Confidential Information

SDDPC agrees that, except to the extent required under the provisions of the California Public Records Act (California Government Code section 6250 et seq.), it will not disclose, except to vendors or Subcontractors who are under a contractual obligation of confidentiality, and will maintain the confidentiality of all "Confidential Information" (as defined herein) in accordance with this Section 3.3.2. The term "Confidential Information" means all financial, technical, personnel and other information and all such copies which either Party hereto considers or designates as "Confidential Information" that may be furnished or disclosed to, or acquired by, SDDPC in connection with the Services, including information that is of a confidential and proprietary nature to third parties that intend to or that do business with SDDPC. For purposes of this Agreement, Confidential Information does not include, and the obligations herein shall not apply to, information that: (i) is now or subsequently becomes generally available to the public through no fault of SDDPC; (ii) SDDPC can demonstrate was rightfully in its possession prior to disclosure to SDDPC by the City; (iii) is independently developed by SDDPC without the use of any Confidential Information provided by the City; or (iv) is released or approved for release by the City without restriction. SDDPC agrees to use reasonable care, but in all events at least the same degree of care that it uses to protect its own confidential and proprietary information of similar importance, to prevent the unauthorized use, disclosure or availability of the Confidential Information and agrees the City may require employees of SDDPC with access to the Confidential Information to sign a non-disclosure agreement. SDDPC agrees that, without the prior written consent of the City, it will not to use the Confidential Information for any purpose other than the performance of the Services set forth in this Agreement.

#### 3.3.2.3. Additional Security Measures

At all times during the Term of this Agreement, SDDPC shall provide all Services, in a secure manner and in accordance with the City's security requirements, including network management and maintenance applications and tools, and the use of appropriate encryption technologies, to ensure the City of SDDPC's best efforts, by

all appropriate means, in the prevention and detection of fraud, abuse, or other inappropriate use or access of systems and networks.

#### 3.3.2.4. List of Personnel with Access

SDDPC will provide semi-annually, at no additional charge, a current list of SDDPC and Subcontractor personnel that have access to the City's systems, software, and data. Any City data or software accessed by SDDPC or Subcontractor personnel shall be used by SDDPC or Subcontractor personnel only in connection with SDDPC's obligations hereunder.

#### 3.3.2.5. Background Checks

SDDPC shall conduct a background check conducted as defined in Section 3.3.1.9 and in SDDPC's Human Resources policies.

### 3.3.3. Intellectual Property and Licensing

#### 3.3.3.1. Work for Hire

SDDPC agrees that all work product which SDDPC prepares for, or on behalf of, the City, including all original designs, plans, specifications, reports, documentation, and other informational materials, whether written or readable by machine, originated or prepared exclusively for the City pursuant to this Agreement ("Work Product") shall be "works for hire" within the meaning of the Copyright Act of 1976, as amended, and shall be the sole property of the City to the extent the "work for hire" doctrine may be applied thereto, and shall otherwise be treated in an analogous manner and be subject to analogous City ownership rights. SDDPC, its employees, officers, and directors, shall not assert any common law or statutory patent, copyright, trademark, or other intellectual property right in the Work Product. SDDPC agrees that it will use its commercially reasonable efforts to negotiate similar "work for hire" and analogous provisions in any contract for services with a consultant or Subcontractor where the consultant or Subcontractor is preparing Work Product as defined in this Section 3.3. SDDPC shall promptly and fully disclose and deliver all Work Product to the City, in writing and, with respect to computer programs, in both source code and object code form, and with all available user manuals and other documentation, as requested by the City, provided, however, that the City acknowledges that in some cases, the source code or object code for Work Product prepared by consultants or Subcontractors may, depending on the terms of the contract with the consultant or Subcontractor, be placed in an escrow account or may not be available to the City without approval from the consultant or Subcontractor. In order for City to accurately account for Work Product, SDDPC shall, upon request from the Director of IT, provide the City, at no charge, current, updated documentation on SDDPC batch applications and scheduling, program specifications, solution designs and technical documentation, and test results. The City shall at all times have reasonable access to all SDDPC materials, premises and computer files containing the Work Product. SDDPC, its employees, officers, directors, and independent consultants and

Subcontractor(s), shall not publish or use any Work Product for purposes unrelated to SDDPC's work on behalf of the City without the prior written consent of the City.

#### 3.3.3.2. Intellectual Property Rights Assignment

SDDPC, its employees, officers, and directors, agree to promptly execute and deliver, upon request by 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 Work Product, whether in the United States or a foreign country; and cooperate and assist in the prosecution of any action or opposition proceeding involving said rights and any adjudication of the same. SDDPC agrees that it will use its best efforts, where reasonable, to include language similar to the preceding sentence in any contract with its consultants or Subcontractors where the consultants or Subcontractors will prepare Work Product. The City shall have the sole right to prosecute such applications and to take all other action concerning the Work Product, and SDDPC shall cooperate, as part of the Services, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

#### 3.3.3.3. Subcontracting

For purposes of this Agreement, a subcontractor shall be defined as a secondary contractor who contracts with SDDPC to perform some or all of SDDPC's obligations under a prime contract with the City. In the event that SDDPC utilizes a Subcontractor or consultant for any portion of the Work Product, SDDPC agrees to use its best efforts, where reasonable, to have the agreement between SDDPC and the Subcontractor ("Subcontractor Agreement") include a statement that identifies that the Work Product is a "work-for hire" as defined in the Copyright Act of 1976, as amended, and that all intellectual property rights in the Work Product, whether arising in copyright, trademark, service mark or elsewhere, belongs to and shall vest solely with the City. Further, SDDPC also agrees to use its best efforts, where reasonable, to have the Subcontractor Agreement require that the Subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to the City, all title, rights and interests in and to the Work Product, including all copyrights and other intellectual property rights. City shall have the right to review any Subcontractor Agreement for compliance with this provision.

#### 3.3.3.4. License Grant to SDDPC

The City hereby grants to SDDPC a limited, non-exclusive, non-transferable, royalty-free right and license to use the Work Product during the Term of this Agreement to the extent necessary and appropriate for the sole purpose of SDDPC's performance of the services (as described in this Agreement), subject to the terms and conditions of

this Agreement. To the extent necessary for SDDPC to provide the Services, such license grant extends to Subcontractors and consultants designated by SDDPC provided that such Subcontractors or consultants first sign a written agreement to be bound by the terms contained herein applicable to the Work Product. SDDPC and its Subcontractors shall not (i) use any of the Work Product for the benefit of any person or entity other than the City or (ii) reverse assemble, reverse engineer, translate, disassemble, or decompile any portion of the Work Product without the prior written approval of the City, which may be withheld in the City's sole discretion.

#### 3.3.3.5. Third Party Software

The City acknowledges and agrees that Third Party Software identified and agreed to by the Parties in writing from time to time may be subject to the standard commercial terms for such Third Party Software. However, in all cases, SDDPC shall obtain all rights and licenses as may be necessary in order for the City, and its authorized representatives, to use, or receive the benefit of the use by SDDPC, of any Third Party Software in connection with the services. Further, SDDPC shall not embed any Third-Party Software in any Work Product, or create a derivative work of any Third-Party Software as Work Product, without the express, prior written consent of the City.

SDDPC agrees to use commercially reasonable efforts to secure for the City a perpetual, irrevocable, non-exclusive, royalty-free, fully paid-up, worldwide license to access, use, modify, copy, adapt, display, perform and create derivative works of, and otherwise receive the benefit of, such Third-Party Software as necessary and appropriate for the conduct of the City's business, administration and operations or for the City to receive the full benefit of the services.

#### 3.3.3.6. Rights and Licenses

SDDPC shall obtain from third parties all rights and licenses required to perform the services described in this Agreement. SDDPC hereby grants and agrees to grant to the City, or shall cause to be granted by the licensor thereof, as the case may be, without additional charge, such licenses as may be necessary in order for the City, and its authorized representatives (including third-party service providers), to use, or receive the benefit of the use by SDDPC of such technology as is necessary to perform or use the Services.

#### 3.3.3.7. Intellectual Property Warranty

SDDPC represents and warrants that all Work Product provided under this Agreement is original, not encumbered and does not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or is in the public domain. If Work Product provided hereunder becomes 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 SDDPC to produce, at SDDPC's own expense,

new non-infringing Work Product as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity.

#### 3.3.4. Independent Contractor

SDDPC shall at all times be an independent contractor under this Agreement. Nothing contained in this Agreement shall be construed to be or create a partnership or joint venture between the City and SDDPC or its successors or assigns.

### 3.4. **Payment for Services**

#### 3.4.1. Rate Setting Process, Authorizing Work, Invoicing, and Financial Records

##### 3.4.1.1. Rate Setting Process

The process for determining the rates and charges to the City from SDDPC for their services shall occur in the months of August to November for the following Fiscal Year. The City will identify a core rate-setting team to negotiate the rates and charges. The rate-setting team will be comprised of the following individuals: two or three (at the discretion of the Director of IT) high-level representatives from the Department of IT (including the Director of IT), one representative from the City's Information Technology Business Leadership Group ("IT BLG"), one representative from the Financial Management Department, and optionally, one representative from the Comptroller's office. SDDPC representatives on the rate-setting team will be designated by SDDPC's Executive Director (or, in the absence of the Executive Director, by SDDPC's Board of Directors), and shall include the CFO and senior level operational management. Another outcome of the rate setting process is an agreement on the method by which the specific services are billed to the City (i.e. fixed-price, time-and-materials).

##### 3.4.1.2. Joint Responsibilities

###### (a) IT Strategic Direction

The Department of IT and SDDPC agree that, at the beginning of the rate setting process, they will work together to develop a joint IT strategic plan for the upcoming Fiscal Year that aligns with the City's business direction. Such plan shall define overall IT direction and initiatives to be incorporated into the rate setting process.

##### 3.4.1.3. City Responsibilities

The City will initiate this process no later than the end of August and will provide a Project Manager to facilitate the process. The City will coordinate the projection of service requirements from City departments and identify the service and associated service level metrics anticipated for the upcoming Fiscal Year.

(a) Establish volume projections

The City will coordinate the inventory update process. The City will direct, via the Department of IT, that the departments will work with their corresponding SDDPC client contacts to establish the anticipated volumes for such things as labor, infrastructure usage, and other discretionary services. The inventory updates and the anticipated labor and infrastructure volumes will be completed no later than October 31<sup>st</sup> of each year.

(b) Annual Commitment

The establishment of rates for the upcoming Fiscal Year is based upon a commitment from the City to execute in accordance with the services and their associated volumes as established through the rate setting process. Commitment is subject to change at any time by the City, based on economic or other factors, and requires the City to provide notice of such change to SDDPC at least sixty (60) days in advance. Changes to these services or volumes will trigger negotiations for a change in the rates for the services identified during this process.

(c) Allocation Methodology

The City Comptroller and Financial Management Director are responsible for approving the allocation methodology to be used to distribute SDDPC's cost for services.

In addition, the costs for certain services have been designated by the Department of IT to be accumulated and charged on an allocation basis rather than the owning department because benefit is realized by all City departments. For changes to the components of cost to be included in this centralized approach, those changes must be vetted and approved by the Director of IT, the Financial Management Director, and the City Comptroller.

(d) Ensure Budget Funds

Upon agreement between the City and SDDPC of the amount and the distribution of fixed price services to be provided by SDDPC, the Department of IT is responsible for providing to SDDPC the allocations by specific accounting structure. In addition, the Department of IT, working in conjunction with the Financial Management Department, is responsible for ensuring that allocated funds are budgeted in the City accounts as provided.

(e) Ensure Inventory Accuracy

Each department within the City is responsible for confirming the accuracy of their respective inventory records that are maintained by SDDPC and used by the Department of IT for allocating fixed costs. City departments are to provide

SDDPC with inventory updates via the service request process. SDDPC is responsible for posting updated on-line inventory records on a monthly basis.

#### 3.4.1.4. SDDPC Responsibilities

(a) Establish Cost to deliver services by service area

Upon agreement between the City and SDDPC of the services that SDDPC will provide to the City for the upcoming Fiscal Year, SDDPC will determine the cost to provision such services by specific category. SDDPC is solely responsible for the determination of the cost to provision each service and to establish rates to recover those projected costs. SDDPC will provide to the Department of IT the key cost components and staffing for each specific service to be provided and anticipated major capital investments by service category.

(b) Facilitate the development of the work plan

As part of the annual rate setting process, the Department of IT will direct the individual City departments to work with their SDDPC point of contact and develop their anticipated ongoing service requirements (maintenance and support) for the upcoming Fiscal Year. New initiatives and enhancements must be requested and approved separately through the City's IT BLG. The Department of IT will establish the information format to be used and the due date that the information must be submitted, provided that such information is to be completed no later than October 31<sup>st</sup> of each year. SDDPC client contacts will work with the department representatives to develop detailed work plans for the upcoming Fiscal Year. Upon completion, SDDPC will summarize and provide the information to the Department of IT, in a mutually agreed upon format.

Upon approval of the Fiscal Year budget, City departments will be responsible for approving their respective work plans. Such work plan approval shall be deemed as authorization for SDDPC to perform the activities identified in the work plan.

(c) Service Rate Schedules

SDDPC is responsible for providing to the Department of IT a schedule showing the specific services to be provided in the upcoming year, their associated pricing, and the billing methodology to be used (i.e., rate per hour, rate per week, annual fixed price, etc.).

(d) Professional Service Rates

SDDPC is responsible for establishing the categories or billing tiers for professional services to be charged to the City on a time and material basis. Such categories will be determined by SDDPC based on industry standard job classification system, such as Hay, and the grouping of similarly ranked positions into billing tiers. As part of the rate setting process, SDDPC is responsible for

providing to the Department of IT a list of job titles, their respective tiers, and the billing rate to be charged.

(e) Fixed price services

As part of the annual rate setting process, the City and SDDPC will jointly determine the services that will be provided at a fixed price for the year rather than on a variable pricing structure based on specific usage. Services shall be fully described in the annual Service Level Agreement to be executed by the City and SDDPC no later than July 1 of each year.

3.4.2. Authorization of Work

3.4.2.1. City responsibilities

The City is responsible for obtaining all appropriate approvals within the City's governance structure prior to requesting services from SDDPC. In addition, the City is responsible for ensuring adequate budgeted funds exist to pay for such services. No enhancement tasks shall be performed without the City department first completing the required IT BLG approval process (including Form 1399). The SDDPC service request process or other system approved by the City shall be utilized to obtain services from SDDPC. The City shall designate to SDDPC the City personnel authorized to order goods and services from SDDPC.

3.4.3. Invoicing

3.4.3.1. Billing requirements

For fixed-price services, SDDPC will invoice the City semi-annually in the months of July and January. For non-fixed price services, SDDPC will invoice the City on a monthly basis to align with the City's accounting periods. SDDPC agrees to provide the invoices in an electronic form and post the charges electronically to the City's accounting system. Invoices will also be posted on the SDDPC website for viewing by City departments. Paper invoices will be provided upon request.

3.4.3.2. Payment terms will be Net 5 days

The City agrees to pay invoices within five (5) days of posting to the City's accounting system.

3.4.3.3. Dispute Resolution – 60 days

City departments will be responsible for reviewing SDDPC invoices on a timely basis and notifying SDDPC of any concerns or questions within ninety (90) days of the posting of the invoice. Inquiries are to be made in writing via the SDDPC Billing Inquiry mailbox at [SDDPCBillingInquiry@sddpc.org](mailto:SDDPCBillingInquiry@sddpc.org). SDDPC is responsible for addressing all inquiries within five (5) working days. Items not resolved within thirty (30) days of submission to SDDPC will be referred to the department's IT manager or

equivalent department contact and SDDPC's Director to negotiate a resolution. Items not resolved within sixty (60) days will be sent to the Director of IT and SDDPC's Executive Director for final resolution, in accordance with the dispute resolution process described in Article VI, Section 6.3.

Except in cases of fraud or for billing disputes that have been submitted in accordance with this Section 3.4.3, no changes will be made to SDDPC charges for concerns or questions made after ninety (90) days of the posting of the invoice.

#### 3.4.3.4. City Budget shortfalls resolution

SDDPC acknowledges that budgeted funds must be available in the fund and general ledger account in order for charges to post to the City's accounting system. The City acknowledges that it is the responsibility of the City's Authorized IT Purchaser making a service request to ensure budgeted funds exist prior to requesting service from SDDPC. In the event that an SDDPC charge is rejected due to lack of budgeted funds, the City department that requested the service is responsible for initiating a budget transfer request within twenty-four (24) hours of notification of shortfall by SDDPC. The City agrees to prioritize the approval of such requested transfer and complete the budget adjustment within ten (10) business days of initial notification from SDDPC.

#### 3.4.3.5. Financial Records

SDDPC shall maintain complete and accurate records and books of account with respect to this Agreement utilizing generally accepted accounting principles ("GAAP"), consistently applied and complying in all respects with all applicable City, State, or federal laws or regulations. Such records and books, and the accounting controls related thereto, shall be sufficient to provide reasonable assurance that: (a) transactions are recorded so as to allow the preparation of SDDPC's financial statements in accordance with GAAP and to maintain accountability for its assets; and (b) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Such records and books of account of SDDPC's business shall be maintained by SDDPC at its primary business office with access to such records and books of account to be provided from SDDPC's business office in San Diego, California and the City may examine and make extracts of information and copy any part thereof at any reasonable time during normal business hours. SDDPC shall retain and maintain accurate records and documents relating to performance of Services under this Agreement until the latest of (i) six (6) years after the final payment by the City to SDDPC hereunder; (ii) one (1) year following the final resolution of all audits or the conclusion of any litigation with respect to this Agreement; or (iii) such longer time period as may be required by applicable law or regulation.

### **3.5. Requests for Proposals and Transitions**

#### **3.5.1. Initial and Potential Requests for Proposals and Related Processes**

The City and SDDPC acknowledge that the City has issued and may, during the Term of this Agreement, issue requests for proposals (“RFPs”) for specific Services historically provided to the City by SDDPC and described in Section 3.1 of this Agreement. The City and SDDPC acknowledge that there are operational and financial risks to both of them associated with this process, including the continuity of critical technical services to the City and retention of key SDDPC staff. To mitigate this risk, the Parties acknowledge the need, while maintaining the integrity of the RFP process, to communicate and coordinate their efforts during this process. When the City has decided to issue a RFP for Services being provided by SDDPC, then, two (2) business days prior to the public release of such RFP, and provided that such notice will not constitute a material competitive advantage to SDDPC, the City COO will provide the Chair of the SDDPC Board of Directors with a confidential notification of the City’s intent to release such an RFP. SDDPC’s Chair may share notice of the intent to issue an RFP with SDDPC’s Executive Director, Chief Financial Officer, Corporate Counsel, Director of Human Resources and Director of Customer and Applications Services, provided that the Chair and such personnel agree to keep the notice of an intent to issue an RFP confidential until the RFP is released to the public.

The City and SDDPC acknowledge that the preparation of an RFP will require the sharing of operational and financial data by SDDPC. In all cases, SDDPC shall have the right, but not the obligation, to respond to an RFP and be allowed to participate in the RFP process on a fair basis. To the extent permissible under applicable law, operational and financial data of SDDPC will not be shared with other proposers during the RFP process. The City and SDDPC acknowledge that the City members (who are City employees) of the SDDPC Board of Directors will recuse themselves from participating as SDDPC Board members on all issues related to a City RFP while the RFP is pending, as further provided in this Section 3.5 of the Agreement. Further, the City employee members of the SDDPC Board shall not participate, in any way, on behalf of SDDPC, in the RFP preparation process.

#### **3.5.2. Identified Areas of Initial RFPs**

The City has announced preliminary plans to issue RFPs for various components of the Services currently being provided by SDDPC, including [a] Help Desk and Desktop Support (RFP issued September 9, 2009); [b] Telecommunications, including voice and data networks; [c] Data Center; and [d] Application Support. Other than the RFP for the Help Desk and Desktop Support, no firm dates have been set for the issuance of other RFPs.

#### **3.5.3. Release of RFP and Information Sharing**

Once an RFP is issued by the City, the City shall, to the extent permissible under applicable law, maintain in confidence any information previously provided by SDDPC to the City that is proprietary in nature as it relates to the Services that are the subject of

an RFP. During the period of time from issuance of an RFP until the selection of a winning proposer, SDDPC shall have no obligation to share any information with the City related to the City's consideration of the RFP responses and selection of the winning proposer, except for that information the City would be able to obtain during the normal course of business operations as generally described in the existing SLA (as amended), related to the services provided by SDDPC or information that could otherwise be requested of any proposer during the RFP process. The City shall follow its approved RFP processes for the evaluation of proposals and selection of a winning proposer and the RFP evaluation committee will submit its recommendations to the City Council for their approval of the selected service provider.

#### 3.5.4. Transition Plan and Financial Impact

If the City awards all or part of the Services to a service provider other than SDDPC in connection with an RFP, the City and SDDPC shall, within ten (10) days of the public announcement of such a decision, hold a meeting with representatives of the Department of IT, SDDPC senior management, and the Chair or an ad hoc committee of the SDDPC Board, to prepare a transition plan. SDDPC and the City will mutually identify key employees and, as part of the transition plan, SDDPC will develop a retention plan to keep those eligible employees in place during the transition period. SDDPC must get concurrence of the eligible employees for the retention plan with the City's Director of IT. The retention plan should identify key expectations and deliverables by the individuals that must be met before any retention payment. The transition plan shall also address service impacts, roles and responsibilities of the City and SDDPC during the transition, roles and responsibilities of SDDPC and the selected new service provider, key projects milestone, transition costs and shut down costs.

##### 3.5.4.1. SDDPC Selected

If SDDPC is awarded the contract or a portion thereof under an RFP, it shall continue to provide the Services, as described in the RFP, but shall provide those Services under the terms and conditions set forth in the RFP response and accepted by the City when selecting the winning proposal and as negotiated by the Parties to the RFP. Such RFP response, as may be modified through the RFP award process, shall constitute a new and separate contract between SDDPC and the City. Both SDDPC and the City acknowledge and agree that, as of the effective date of any contract awarded under the RFP process described in this Section 3.5, any provisions of such a contract that are inconsistent or conflict with the provisions of either this Agreement or an existing SLA will supersede and govern over the conflicting provisions of this Agreement or an existing SLA.

##### 3.5.4.2. Other Service Provider Selected

If a service provider other than SDDPC is awarded a contract for all or a portion of the Services described in an RFP, the City shall pay SDDPC for all Services rendered prior to the award and shall continue to pay the negotiated fiscal year rates for the

Services during the transition period. The transition period will run from the date of award of a contract to a service provider other than SDDPC until the effective date for the start of that contract. After the effective date for the start of the contract with the new service provider, the City shall no longer be obligated to pay SDDPC for additional work performed pursuant to the SLA for the Services described in the RFP, and SDDPC will no longer perform such services. The City and SDDPC agree to modify the existing SLA, as necessary to make such changes related to the contract Services. Any mutually agreed upon, reasonable transition costs, including unrealized capital depreciation and key employee retention payments, if any, shall be billed by SDDPC and paid by the City in accordance with the billing practices described in this Agreement or as the Parties otherwise mutually agree. Any reasonable shut down costs to which the Parties mutually agree shall be billed by SDDPC and paid by the City at the end of the transition period, or in accordance with a payment schedule to which the Parties otherwise agree. If the City disputes any such shut down costs, such dispute shall be resolved in accordance with the dispute resolution procedures contained in Section 6.3 of this Agreement. SDDPC shall, in good faith, use its best efforts, and direct its employees to use their best efforts, to coordinate with the successful proposer to provide for an orderly transition of the services from SDDPC to the new provider.

#### **4. ARTICLE IV: SDDPC BUDGET & FISCAL RESPONSIBILITY**

##### **4.1. Authorization of City's IT Expenditures with SDDPC**

The City acknowledges that separate components of the annual proposed budget for City IT expenditures are submitted to the Department of Financial Management by each City department and are included (with appropriate modifications) as part of the Mayor's budget that is proposed to the City Council. Except as otherwise specified in the approved City budget policy or other applicable City policy, the Financial Management Director and the Director of IT are responsible for presenting the proposed citywide IT expenditures to the City Council for the upcoming year, including:

- (a) City IT Personnel and Non Personnel expenses,
- (b) SDDPC costs for services to provided to City departments,
- (c) Purchases to be procured through SDDPC, and
- (d) Services to be obtained from other sources.

The Financial Management Director will notify the Director of IT, SDDPC's Executive Director, and SDDPC's CFO of any changes within the citywide IT budget for the upcoming fiscal year to proposed City expenditures for SDDPC services.

##### **4.2. Approval of SDDPC's Budget**

The SDDPC annual budget shall be developed based on the estimated services to be provided to City and non-City customers, and the costs to deliver those services. The SDDPC ad hoc Budget Committee shall review the proposed SDDPC budget, and upon agreement, direct the

SDDPC CFO to send the proposed budget to the City CFO for review. The SDDPC ad hoc Budget Committee will consider the City CFO input and direct changes to be made, if any. The SDDPC Board of Directors shall approve the SDDPC Budget in accordance with Article VIII, Section 1 (b) of the SDDPC Bylaws. SDDPC shall submit its Board-approved budget to the City CFO, or designee, as part of the Mayor's budget process (including City Council review), for information only, as part of the overall City budget.

#### **4.3. Financial Reporting**

SDDPC shall provide monthly financial reports to the City CFO in a format as directed by the City CFO. In addition, a monthly financial report will be provided to the SDDPC Board of Directors with copies distributed to the City Council and the City's CFO.

#### **4.4. Annual Financial Audit**

A financial audit shall be performed on an annual basis by the same audit firm as is used by the City of San Diego for its external audits. A completed audit shall be submitted by October 31<sup>st</sup> of each year to the Mayor, City Council, Chief Operating Officer, Chief Financial Officer, City Auditor, City Attorney, and Independent Budget Analyst. As part of the submission of the annual audit to the City, SDDPC's Executive Director and Chief Financial Officer shall acknowledge, in writing, their responsibility for the completeness and reliability of the information contained in the report.

#### **4.5. Taxes**

All fees payable by the City to SDDPC hereunder shall be inclusive of all taxes imposed as of the Effective Date by any domestic or foreign taxing authority in respect of the provision of the Services hereunder, including any sales, use, excise, value-added, services, consumption, or other tax (collectively, "Sales Taxes"); provided, however, that the City shall not be responsible for, and such fees shall not include, any personal property taxes on property SDDPC owns or leases, for franchise taxes on SDDPC's business, and for any income taxes based on SDDPC's unrelated business taxable income, if any.

#### **4.6. Only Payments**

The fees set forth in this Article IV are the only payments to be made by the City to SDDPC under this Agreement. The City shall not pay SDDPC any additional fees, assessments, or reimbursements, and SDDPC shall be solely responsible for, and shall indemnify the City against, all costs and expenses incurred by SDDPC in meeting SDDPC's obligations under this Agreement, including labor expenses, hardware and software costs, and general business expenses (including travel, meals, entertainment, and overhead expenses).

#### **4.7. Mid-Year Rate Adjustment**

The Fiscal Year for SDDPC is July 1 to June 30 ("Fiscal Year"). In January of each year, SDDPC will provide a forecast of the expected financial results for the Fiscal Year. The

forecast will be based on the first six months of actual performance and estimated revenues and expenses for the second half of the Fiscal Year, taking into account SDDPC's available net assets. "Net Assets" is defined as the difference between total assets and total liabilities. "Available Net Assets" is defined as the amount of Net Assets that "exceed 110% of the net book value of capital assets."

If the forecast indicates that operating revenues will exceed operating expenses by \$500,000 or more, or that operating expenses will be greater than operating revenue by \$500,000 or more, then SDDPC shall recalculate the current year rates with the goal of achieving a break-even financial position for the Fiscal Year. The Executive Director and CFO will meet with the Director of IT and the Financial Management Director to agree upon revised rates for the services to be provided in the remaining months of the Fiscal Year. The revised rates may potentially impact both fixed price and variable rate services provided by SDDPC.

#### **4.8. Year-End Rate Adjustment**

Any excess revenues or expenses remaining at the end of a fiscal year will result in an increase or decrease of SDDPC's net assets as of the end of that fiscal year. After SDDPC has closed its accounting records for that fiscal year, such excess revenues or expenses will be incorporated into a rate adjustment as part of the next Mid-Year Rate Adjustment process, provided there are Available Net Assets as described above.

#### **4.9. Audit Rights**

##### **4.9.1. Performance Audits**

The City's Auditor, or its authorized representative or a third-party audit consultant, shall have the right, at any time, and with reasonable notice, to perform an audit with respect to SDDPC's performance hereunder. SDDPC shall grant City, or its authorized representative, the right to conduct an audit of SDDPC and (as authorized under its subcontracts) its Subcontractors' practices, the facilities used by SDDPC or its Subcontractors (as authorized under the relevant subcontract) to provide the Services, and related operational matters in order to verify compliance with the terms of this Agreement. Any such audit shall be conducted in a reasonable manner and after reasonable advance notice. For purposes of such audit, SDDPC shall, and shall cause its Subcontractors (where authorized under a relevant subcontract) to, provide the City and its representatives such information and assistance as requested in order to perform such an audit including full and complete access to personnel, and to all books, records, documents, data, or information as may be required in order for the City to ascertain any facts relevant to SDDPC's and its Subcontractor's operational and security obligations hereunder. If any such audit reveals an inadequacy or deficiency in SDDPC's performance as set forth in this Agreement, including performance in connection with any security obligations of SDDPC as set forth in this Agreement, then SDDPC shall immediately develop and provide to the City a reasonable and detailed corrective action plan for the City's approval, and immediately thereafter implement such plan. Upon the City's request, SDDPC shall provide the City with copies of all documents, data, or

information in the possession or control of SDDPC that pertain to the Services. SDDPC shall provide such documents, data or information on such media as the City requests, including hard copy, optical or magnetic disk, CD, DVD, hard drive, flash drive, or tape. SDDPC shall use its best efforts to include this paragraph, with appropriate language substitution to reflect the correct identity of the Parties, in any Agreement into which it enters with any Subcontractor providing Services under this Agreement.

## **5. ARTICLE V: PARTIES REPRESENTATIONS, WARRANTIES, AND RELATED COVENANTS**

### **5.1. SDDPC Representations, Warranties, and Related Covenants**

#### 5.1.1. Organization, Corporate Power and Tax Filings

SDDPC represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of California with full power and authority to carry on the business in which it is engaged and to execute and deliver and carry out the provisions of this Agreement. SDDPC has filed, in accordance with applicable law, all federal and California state tax returns and filings including those filings required by the Attorney General of the State of California for nonprofit charitable corporations (“Filings”). During the term of this Agreement, SDDPC agrees that it shall timely file in accordance with applicable law all such tax returns and Filings.

#### 5.1.2. Due Authorization and Effect of Agreement

SDDPC represents and warrants that no provisions of its Articles of Incorporation or Bylaws, or of any agreement, instrument, understanding, or judgment, decree, rule or regulation to which SDDPC is a party or by which SDDPC is bound, has been, or to the knowledge of SDDPC, will be, violated by the execution and delivery of this Agreement or the performance or satisfaction of any agreement or condition herein contained upon its part to be performed or satisfied, and all requisite corporate and other authorizations for such execution, delivery, performance and satisfaction have been duly obtained. Upon execution and delivery, this Agreement will be a legal, valid and binding obligation of SDDPC, enforceable in accordance with its terms.

#### 5.1.3. No Conflict

SDDPC represents and warrants that the execution and delivery of this Agreement and the consummation of the transactions set forth herein are not events that, of themselves or with the giving of notice or the passage of time or both, could constitute on the part of the SDDPC a violation of or conflict with, or result in any breach of, or default under the terms, conditions or provisions of any judgment, law, regulation or of the Articles of Incorporation or Bylaws of SDDPC, or of any agreement or instrument to which SDDPC is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature on the assets of the SDDPC or on any of the issued and outstanding debt of the SDDPC, if any, as of the date of execution of this Agreement.

#### 5.1.4. Performance of the Services

SDDPC represents and warrants that that all Services provided under this Agreement shall be provided in a timely, professional, and workmanlike manner consistent with the highest standards of quality and integrity and shall meet the performance standards required under this Agreement.

#### 5.1.5. City Access and Availability of Records

SDDPC represents and warrants that it agrees to allow complete access, and shall make available to the City, all Corporation operational, and financial records and data pertaining to the Services provided pursuant to this Agreement as outlined in the annual SLA. Such access shall normally occur during regular business hours; however, with five (5) calendar days' advance written notice by the City, SDDPC shall make requested records or data available. SDDPC further agrees to provide to the City, in the manner and within the time limit requested by the Director of IT or designee, any reports or data deemed necessary by the City in connection with any of the IT services provided pursuant to this Agreement or the annual SLA. The City agrees to set reasonable time limits for such requests based on the volume and complexity of the data requested from SDDPC.

#### 5.1.6. Accuracy of Information

SDDPC represents and warrants that all financial statements, reports, and other information furnished by SDDPC to the City in connection with the award of this Agreement fairly and accurately represent the business, properties, financial condition, operations of SDDPC and contains no untrue statement of a material fact or omits any material fact necessary to make such information not misleading. Since the respective dates or periods covered by such financial statements, reports, or other information, there has been no material adverse change in the business, properties, financial condition, or results of operations of SDDPC.

#### 5.1.7. Litigation and Service of Process

SDDPC represents and warrants that it shall notify the City Attorney, within fifteen (15) business days after it receives notice, of any such pending civil or criminal litigation. SDDPC shall notify the City Attorney, within five (5) business days in the event process is served on SDDPC in connection with this Agreement, including any subpoena of SDDPC's records, and shall send a written notice of the service together with a copy of the same to the City Attorney within seven (7) business days after such service.

#### 5.1.8. Public Records Requests

SDDPC represents and warrants that it shall comply with any California Public Records Act ("CPRA") requests that SDDPC receives directly from the City which requests City information, data or documents. SDDPC shall cooperate timely and fully with the City and respond directly to the City. If SDDPC receives a CPRA request directly from a

third party and such request is for City information, data or documents, it shall notify timely the City Attorney in writing and forward such CPRA request to the City Attorney. If SDDPC receives a CPRA request, and such request is for SDDPC information, data or documents, it shall determine through its own legal counsel its own appropriate legal response.

#### 5.1.9. Compliance with Controlling Law

SDDPC represents and warrants that it shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement. In addition, SDDPC shall comply within a reasonable period with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations, if applicable.

#### 5.1.10. Drug-Free Workplace

SDDPC represents and warrants that it shall comply with the City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference, if applicable.

#### 5.1.11. ADA Compliance and Certification

SDDPC represents and warrants that it shall comply with the City's Americans with Disabilities Act Compliance/City Contracts requirements as set forth in City Council Policy 100-04, adopted by San Diego Resolution R-282153 and incorporated into this Agreement by this reference, if applicable.

#### 5.1.12. Non-Discrimination Requirements

SDDPC shall comply with the non-discrimination requirements listed in this Section 5.1 of Article V, if applicable.

##### 5.1.12.1. Compliance with the City's Equal Opportunity Contracting Program

SDDPC shall comply with the City's Equal Opportunity Contracting Program Requirements [attached hereto as Exhibit #1]. SDDPC shall not discriminate against any employee or applicant for employment on any basis prohibited by law. SDDPC shall provide equal opportunity in all employment practices. SDDPC shall ensure that its Subcontractors comply with the City's Equal Opportunity Contracting Program Requirements. Nothing in this Section shall be interpreted to hold SDDPC liable for any discriminatory practice of its Subcontractors.

##### 5.1.12.2. Non-Discrimination Ordinance

SDDPC shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or

treatment of Subcontractors, vendors or suppliers. SDDPC shall provide equal opportunity for Subcontractors to participate in subcontracting opportunities. SDDPC 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. This language shall be in contracts between SDDPC and any Subcontractors, vendors and suppliers.

#### 5.1.12.3. Compliance Investigations

SDDPC agrees to provide to the City, within sixty calendar days of a request from the City, a truthful and complete list of the names of all Subcontractors, vendors, and suppliers that SDDPC 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 SDDPC for each subcontract or supply contract. SDDPC further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517.] SDDPC understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the SDDPC up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. SDDPC further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

#### 5.1.13. Conflict of Interest

SDDPC represents and warrants that it shall comply with all applicable federal, state and local conflict of interest laws, regulations, and policies, including but not limited to California Government Code sections 1090, et. seq. and 81000, et. seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at sections 27.3501 to 27.3595.

### **5.2. City Representations, Warranties and related Covenants**

#### 5.2.1. Legal Authority

The City represents and warrants that it has all necessary rights, powers, and authority to enter into and perform this Agreement; that the execution, delivery, and performance of this Agreement by the City has been duly authorized by all necessary action of the City Council.

#### 5.2.2. Timely Payments

City covenants to provide timely payment to SDDPC in connection with services to be rendered hereunder. The total of such payments shall not in any event exceed the approved budget amounts.

### 5.2.3. Budget

City covenants that it shall, to the extent possible, act promptly in considering SDDPC's proposed annual budget and shall take action deemed appropriate with regard thereto.

### 5.2.4. Filling of Vacancies

City represents and warrants that it will timely fill vacancies on the SDDPC's Board or take other actions required by SDDPC's Articles of Incorporation, SDDPC's Bylaws, this Agreement or applicable law.

## **6. ARTICLE VI: TERM, TERMINATION AND REMEDIES**

### **6.1. Term**

#### 6.1.1. Initial Term

This Agreement shall commence on the Effective Date and shall end on the third anniversary of the Effective Date (the "Initial Term"), subject to annual appropriation by the City Council of funds for this Agreement during the Initial Term. The "Effective Date" shall be the date upon which the Agreement has been executed by duly authorized representatives of both Parties, approved by the City Attorney in accordance with San Diego Charter Section 40 and properly approved by City Council.

#### 6.1.2. Extension of Term

This Agreement shall automatically renew for two, one-year extensions unless, no less than one hundred and twenty (120) days prior to expiration of either the Initial Term or the first one year renewal term (if an initial one year renewal has occurred), either Party serves written notice on the other of its desire to terminate, modify or amend this Agreement. If such notice is served, the term of this Agreement shall only be extended upon mutual written agreement by authorized representatives of the City and SDDPC prior to the expiration of the Initial Term or, if an automatic one-year renewal has occurred, this Agreement shall only be extended upon mutual written agreement by authorized representatives of the City and SDDPC prior to the expiration of the second one year renewal term.

Any renewal or extension of the Term of this Agreement shall be subject to the City Council's appropriation of funds. Under no circumstances shall the total Term of this Agreement be more than five (5) years unless such an extension is approved by the City Council and complies with all requirements of the City Charter, Municipal Code, and any other applicable laws, regulations, or policies. For purposes of this Agreement, references to the "Term" shall mean the Initial Term and any extension allowed and authorized under the provisions of this Agreement.

## **6.2. Termination**

### **6.2.1. City's Right to Terminate for Convenience**

The City may, at its sole option and for its convenience, terminate all or any portion of the Services agreed to pursuant to this Agreement by giving one hundred twenty (120) days' prior written notice of such termination to SDDPC. Such notice shall be delivered by certified mail with return receipt for delivery to the City. The termination of the Services shall be effective upon 120 days from receipt of the notice to SDDPC. After termination of this Agreement, SDDPC shall complete any and all additional work necessary for the orderly filing of documents and closing of SDDPC's Services under this Agreement. For Services satisfactorily rendered in completing the work, SDDPC shall be entitled to fair and reasonable compensation for the Services it performed before the effective date of termination. After filing of documents and completion of performance, SDDPC shall deliver to the City all documents or records related to SDDPC's Services. By accepting payment for completion, filing and delivering documents as called for in this paragraph, SDDPC discharges the City of all of the City's payment obligations and liabilities under this Agreement.

### **6.2.2. City's Right to Terminate for Cause**

Any material breach by SDDPC of the terms, conditions, representation, warranties, agreements or covenants of SDDPC herein contained shall be grounds for termination of this Agreement. Once a material breach has occurred the City shall first provide a written notice to SDDPC of the specific breach and allow SDDPC a thirty (30) day cure period from the date the notice is received by SDDPC to correct the specific breach prior to the City terminating this Agreement. If SDDPC is not able to cure or correct the breach within the thirty (30) day cure period, then the City may, in its sole discretion, either waive the specific breach or terminate this Agreement in accordance with the terms of this Agreement.

### **6.2.3. Termination for Lack of Budgeted or Appropriated Funds**

In the event that either no funds or insufficient funds are appropriated and budgeted in any Fiscal Year for payments to be made under this Agreement, the City shall notify SDDPC at least one hundred twenty (120) days in advance of such occurrence and the Term of this Agreement shall terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted.

### **6.2.4. Additional Remedies**

The foregoing remedies of City are in addition to and not exclusive of any other remedy recognized by law.

#### 6.2.5. Partial Termination

If the City elects to terminate a portion of the Services but not all Services, SDDPC shall perform its Transition obligations hereunder to the extent applicable to such terminated Services.

#### 6.2.6. SDDPC's Right to Withhold Services

Notwithstanding the provisions of Section 6.3.2 below, SDDPC may temporarily refuse to perform its obligations hereunder if the City fails to provide SDDPC with payments under this Agreement, excluding items under dispute and excluding pre-paid items that are part of semi-annual fixed cost allocation payments, that constitute more than two million dollars (\$2,000,000) of properly invoiced amounts.

### **6.3. Dispute Resolution**

#### 6.3.1. Procedures

If a dispute between the Parties arises, representatives of each Party designated, respectively, by the Director of IT and SDDPC's Executive Director, shall immediately meet and negotiate in good faith the resolution of such dispute. If such dispute cannot be promptly resolved, the Director of IT and SDDPC's Executive Director shall meet and negotiate in good faith in order to resolve such dispute within ten (10) days after the date that written notice of dispute is delivered by the disputing Party to the other Party. If the Director of IT and SDDPC's Executive Director resolve the dispute, they shall reduce the resolution to writing and each Party shall commence the resolution of the dispute in accordance therewith. In the event the Director of IT and SDDPC's Executive Director fail to resolve the dispute within ten (10) days after the referral of the dispute to them, the Parties shall refer the dispute to the City's IT BLG and the Chair of the SDDPC Board of Directors ("Chair") for discussion and resolution at the IT BLG's next regularly scheduled meeting. In the event that the IT BLG and Chair fail to resolve the dispute within ten (10) days after the scheduled meeting, then the Chair shall call a Special Board Meeting of SDDPC within twenty (20) days after the meeting of the IT BLG and the Chair. Notice of such Special Board Meeting shall be provided to the Mayor of the City, and the Mayor or the Mayor's designee may appear at the Special Board Meeting to discuss a potential resolution of the dispute. If the Board and the Mayor or the Mayor's designee fail to agree on a resolution of the dispute, the dispute may be resolved through any form of alternative dispute resolution as the Parties mutually agree, or referred to a court of competent jurisdiction in the County of San Diego, State of California.

#### 6.3.2. No Termination or Suspension of Services

Notwithstanding anything to the contrary contained herein, if any dispute arises between the Parties and regardless of whether or not it requires at any time the use of any dispute resolution procedures established by the Parties in writing, in no event nor for any reason shall SDDPC interrupt the provision of Services to the City, disable any hardware or software used to provide Services, or perform any other action that prevents, impedes, or

reduces in any way the provision of Services or the City's ability to conduct its activities, unless: (i) authority to do so is granted by the City or conferred by a court of competent jurisdiction; (ii) the Term of this Agreement has been terminated or has expired as provided for herein; or (iii) as specified in Section 6.2.6 of this Article.

## **7. ARTICLE VII: INDEMNIFICATION; LIMITATIONS OF LIABILITY; INSURANCE**

### **7.1. Indemnification**

#### 7.1.1. SDDPC Indemnification of City

SDDPC shall indemnify and hold harmless the City and its respective officers, officials, agents, attorneys and employees from and against any and all claims, damages, losses, liabilities costs and expenses of every kind and description, contingent or otherwise, excluding attorney fees, arising out of, related to, or resulting from, the business or operations of SDDPC and the performance by SDDPC of the Services provided to City as set forth in this Agreement which are caused by any negligent act or omission of SDDPC

#### 7.1.2. City Indemnification of SDDPC

City shall indemnify and hold harmless SDDPC and its officers, directors, agents, attorneys and employees from and against any and all claims damages, losses, liabilities costs and expenses of every kind and description, contingent or otherwise, excluding attorney fees, arising out of, related to or resulting from the performance by the City of its obligations to SDDPC set forth in this Agreement caused by any negligent act or omission of City, or by any contractor or subcontractor of City, or anyone directly or indirectly employed by City or its consultants, contractors or subcontractors.

### **7.2. Insurance**

At its own expense, SDDPC shall take out and maintain in full force and effect at all times during the Term of this Agreement the following policies of insurance:

(a) Commercial general liability insurance for personal for personal injury, bodily injury, and property damage, with limits of two million dollars (\$2,000,000) per occurrence, subject to an annual aggregate of two million dollars (\$2,000,000) for general liability, completed operations, and personal injury.

(b) For all of SDDPC's employees who are subject to this Agreement, Workers= Compensation Insurance as required by the State of California and Employers' Liability Coverage in an amount of not less than one million dollars (\$1,000,000) per occurrence.

(c) Automobile insurance for all of SDDPC's automobiles, including owned, hired, and non-owned automobiles, for bodily injury, and property damage providing coverage to a combined single limit of one million dollars (\$1,000,000) per occurrence.

(d) Errors and omissions insurance in an amount not less than two million dollars (\$2,000,000) per claim with an annual aggregate of two million dollars (\$2,000,000).

All insurance required by this Agreement shall be issued only by insurers rated “A-, VII” or better in the most recent edition of the AM Best Key Rating Guide, which are licensed to do business in the State of California.

## **8. ARTICLE VIII: GENERAL PROVISIONS**

### **8.1. Law Governing the Agreement**

This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California. Any action or suit brought by the Parties relating to this Agreement shall be brought and conducted solely and exclusively in the courts of the County of San Diego. SDDPC hereby consents to the *in personam* jurisdiction of such court, waives any objection to venue in such court, and waives any claim that such forum is an inconvenient forum.

### **8.2. Headings**

Article and section headings contained in this Agreement are included for convenience and ease in understanding this document. The Parties hereto intend that the terms of this Agreement, exclusive of such headings, be liberally construed to affect its purpose. Except insofar as they indicate an entirely contradictory construction not intended by the Parties, article and section headings are not to be considered in construing the terms of this Agreement.

### **8.3. Counterparts**

This Agreement may be executed in any number of copies all of which, whether taken severally or collectively, shall be treated as a single original of this Agreement.

### **8.4. Waivers**

Failure of either Party to object to any default or to any other act or omission of the other which is in violation of the terms of this Agreement shall not be deemed to be a waiver of the right to object to any subsequent default, act or omission, whether similar or dissimilar.

### **8.5. Notice**

All notices, demands or other communications required by this Agreement shall be made in writing and will be deemed to have been duly given when: i) delivered by hand with written confirmation of receipt; ii) sent by facsimile transmission with a facsimile confirmation receipt, iii) when received by addressee, if sent by a nationally recognized overnight delivery service (receipt requested) in each case to the appropriate address set forth herein, or iv) deposited in the United States mail, postage prepaid. Any notice, demand or other

communication made solely by mail in the manner prescribed in this paragraph shall be deemed to have been given and to be effective three (3) business days after the date of mailing the notice. Every notice shall be addressed to the party to whom they are directed at the following addresses, or at such other addresses as may be designated by notice from such party:

**To City:**

Naresh Lachmandas, Director of Information Technology  
City of San Diego  
Department of Information Technology  
1010 Second Avenue, Suite 500E  
San Diego, CA 92101-4998

**With a Copy to:**

Mary Jo Lanzafame, Assistant City Attorney  
City of San Diego  
Office of the San Diego City Attorney  
1200 Third Avenue, 16th Floor  
San Diego, CA 92101

**To SDDPC:**

Executive Director  
San Diego Data Processing Corporation  
5975 Santa Fe Street  
San Diego, CA 92109

**With a Copy to:**

Don Del Rio, General Counsel  
San Diego Data Processing Corporation  
5975 Santa Fe Street  
San Diego, CA 92109

**8.6. Existence of Collateral Agreements**

This Agreement states the entire understanding of the Parties, and they have entered into no collateral contracts, agreements, warranties or understandings.

### **8.7. Assignment**

SDDPC shall not assign this Agreement or any rights accruing to SDDPC hereunder without the written consent of City. Consent to any one assignment shall not be considered to be a waiver of City's right to consent to any subsequent assignment.

### **8.8. Severability**

In case any one or more of the provisions in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof. This Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

### **8.9. Amendment**

This Agreement may not be amended except by a written instrument executed by both Parties. No waiver, change, modification, consent or discharge shall be affected, except by an instrument in writing executed by or on behalf of the Party against whom enforcement of any waiver, change, modification, consent or discharge is sought.

### **8.10. Further Assurances**

The Parties hereto agree that they shall prepare and deliver all further documents and do all further acts necessary and desirable to accomplish the purposes of this Agreement.

### **8.11. Interpretation**

The Parties agree and acknowledge that they have participated jointly in the negotiation and drafting of this Agreement. Any rule of construction or interpretation otherwise requiring this Agreement to be construed against any Party by virtue of the authorship of this Agreement shall not apply to the construction or interpretation of this Agreement.

### **8.12. Force Majeure**

Neither Party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections or any other cause beyond the reasonable control of the Party whose performance is affected.

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**Exhibits**

1. City Equal Opportunity Contracting Program Requirements

RESOLUTION NUMBER R- 305744  
DATE OF FINAL PASSAGE APR 13 2010

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SAN DIEGO AUTHORIZING THE MASTER SERVICES  
AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND  
SAN DIEGO DATA PROCESSING CORPORATION, INC.

WHEREAS, the San Diego Data Processing Corporation, Inc. [SDDPC] was created by the City of San Diego [City] in 1979 to provide Information Technology [IT] services to the City and to other public agencies as deemed appropriate by the SDDPC Board of Directors; and

WHEREAS, the City and SDDPC have functioned under an Operating Agreement which has been amended seven times since 1979, with the seventh and most recent amended version titled the "Amended and Restated Operating Agreement Between the City of San Diego and San Diego Data Processing Corporation for the Provision of Information Technology Services" dated as of September 14, 1999 [Operating Agreement]; and

WHEREAS, in April 2009, the City and SDDPC formed a joint team to review the Operating Agreement and other documents governing the provision of IT services to the City through SDDPC; and

WHEREAS, between July and September 2009, the joint team met with representatives from the City Council, the Mayor's Office, the IT Business Leadership Group, the City's Chief Operating Officer, the City's Chief Financial Officer, the SDDPC Board of Directors, the SDDPC management team, the City Attorney's Office, the City Auditor and the Independent Budget Analyst's Office to gather input on provisions that should be addressed and held an initial briefing before the Rules Committee on September 2, 2009; and

WHEREAS, from September through December 2009, the team worked to incorporate the combined input into an updated set of documents that include not only the Master Services Agreement but also amended SDDPC Bylaws, new or amended SDDPC policies, and the creation of internal City operating policies and procedures related to IT governance; and

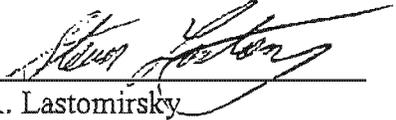
WHEREAS, this updated set of documents, including the Master Services Agreement, was presented to the Rules Committee on January 13, 2010, with a Committee recommendation that a final set of documents be sent forward to the full City Council once SDDPC had approved the Master Services Agreement; and

WHEREAS, the new Master Services Agreement is intended to supersede and replace the Operating Agreement, including all prior amendments; NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it approves the Master Services Agreement between the City of San Diego and San Diego Data Processing Corporation, Inc., and authorizes the Mayor or his designee to execute the Agreement.

APPROVED: JAN I. GOLDSMITH, City Attorney

By

  
\_\_\_\_\_  
Steven R. Lastomirsky  
Deputy City Attorney

SL:sc

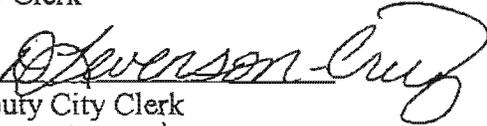
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Or.Dept:IT

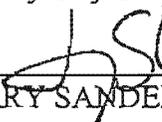
R-2010-684

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of APR 8 2010.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 4-13-10  
(date)

  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Passed by the Council of The City of San Diego on April 6, 2010, by the following vote:

YEAS: LIGHTNER, FAULCONER, GLORIA, YOUNG, DEMAIO, & HUESO.  
NAYS: FRYE & EMERALD.  
NOT PRESENT: NONE.  
RECUSED: NONE.

AUTHENTICATED BY:

**JERRY SANDERS**

Mayor of The City of San Diego, California

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

(Seal)

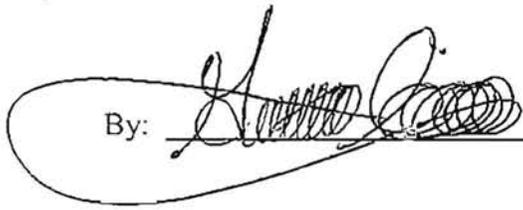
By: GIL SANCHEZ, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. R-305744, approved by the Mayor of The City of San Diego, California on April 13, 2010.

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

(SEAL)

By:  Deputy