



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

REQUEST FOR PROPOSALS (RFP) COVER SHEET

Solicitation Type: Development, Operation and Lease of the City-owned Property, at Torrey Hills Neighborhood Park located at 4262 Calle Mejillones, San Diego, California 92130

Solicitation Number: RFP No. 4262

Solicitation Issue Date: August 29, 2016

Proposal Due Date and Time (Closing Date): October 25, 2016 at 4:00 p.m. Pacific Time

City Contact: Aurora Brown, Property Agent - Ph. (619) 236-6124
Email - aibrown@sandiego.gov

Recommended Site Inspection: September 21, 2016 from 10:00 a.m.-11:00 a.m. at 4262 Calle Mejillones, San Diego, CA 92130 and October 12, 2016 from 10:00 a.m.-11:00 a.m. at 4262 Calle Mejillones, San Diego, CA 92130.

Contact City contact by September 15, 2016 at aibrown@sandiego.gov or (619) 236-6124, if you are planning to attend.

Questions and Comments Due: No later than October 13, 2016 at 5:00 p.m. Pacific Time

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

Signature of Proposer's Authorized Representative:

Signature Proposer Name
Print Name Street Address
Title City, State, Zip
Date Telephone No./E-Mail

**PROPOSER'S AUTHORIZED REPRESENTATIVE.** Proposer is required to sign this document and return five (5) originals of their proposal in sealed envelopes or cartons to the City Contact. Proposer shall also include an electronic copy of their proposal. Proposer agrees to [develop/rehabilitate, operate and] and lease the Premises as set forth or otherwise identified above subject to the terms and conditions specified herein. An original signature below is required. By signing below, the signer declares under penalty of perjury that she/he is authorized to submit and sign this proposal.

Signature of Proposer's Authorized  
Representative

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Print Name

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Title

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Signature

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Date

The City of San Diego (City) is inviting proposals from qualified firms or individuals, hereafter referred to as Proposers, to develop, construct, lease, operate, and maintain a recreational facility on a portion of the City owned property located at 4262 Calle Mejillones, San Diego, California, 92130, Assessor's Parcel Number 307-451-57 within Torrey Hills Neighborhood Park (Property). The City is seeking proposals to provide facilities and other amenities in the undeveloped portion of the park (Premises) that will complement the existing park amenities and serve the recreational, social and cultural needs of the local community. Development, operation and maintenance of the Premises shall be in accordance with the terms and conditions of this Request for Proposals (RFP), and, if awarded, pursuant to a lease agreement (Lease) to be negotiated with the City and subject to San Diego City Council approval.

A. BACKGROUND

The Premises consists of approximately 3.57 acres located within Torrey Hills Neighborhood Park (see attached **Exhibit A**). The existing Torrey Hills Neighborhood Park facility consists of 12 acres of developed parkland, including two multi-use playing fields, two baseball backstops, a restroom, a tot lot, basketball courts and a 90 space paved parking lot. There is an existing access road to the park from Calle Mejillones. A new access road from Carmel Mountain Road to the Premises may be required, depending on the scope of the development and the nature of the proposed use. Proposers are responsible for determining prior to submitting their proposals whether an access road may be required as part of the proposed development of the Premises. If a new access road will be required in order to obtain the necessary development and/or building permits, or if Proposer desires to have a separate access road to the Premises, plans for that new access must be included as part of the proposal. There are no City funds identified to analyze or develop a new access road to the facility, and any Proposer whose proposal requires or contemplates including a new access road shall be responsible for all of the costs and expenses associated with developing, constructing and maintaining said access road for the term of the Lease.

B. TYPE OF PROPOSALS SOUGHT

The City's Real Estate Assets Department, acting on behalf of the City's Park and Recreation Department, is seeking proposals to develop, operate, maintain, and lease the Premises for park and recreation purposes.

Proposals should reflect the City's desire to have an operator who provides a high level of service to the public while operating, managing and maintaining the Premises and related activities in a fiscally responsible manner that preserves and improves the Premises as a recreational resource for the benefit of the general public and community. The Proposal should also reflect a level of service and amenities consistent with the recreation elements of the Community Plan (see attached **Exhibit B**) and in compliance with the General Development Plan for Torrey Hills Park (GDP) (see attached **Exhibit C**).

### C. DEVELOPMENT/OPERATING PLAN

The City is seeking a Proposer to develop, operate, maintain, and lease the Premises. Each Proposer should demonstrate the ability to support the City's desire to develop the Premises for the benefit of the general public, users and visitors of the Property and the surrounding community.

Proposals must include a conceptual development plan for the Premises, along with any proposed changes or additions to the existing facilities. Proposals should identify the services to be provided at the Premises. Proposals should include, at a minimum, detailed responses for the following requirements (Development/Operating Plan):

1. A preliminary site and floor plan showing the general location of all of the proposed capital improvements and/or major equipment on the Premises, including a development schedule and projection of construction costs. Drawings do not need to be detailed construction drawings, but should be drawings to a consistent scale in sufficient detail to clearly show the types, dimensions and locations of all proposed improvements and facilities.
2. The necessary trade fixtures and equipment to be provided, if any, by the Proposer to provide the level of service to be required under the Lease. Proposer shall be responsible for maintaining all fixtures and equipment during the term of the Lease. Title to those fixtures and equipment would remain vested in the selected Proposer until the end of the Lease, unless negotiated otherwise.
3. A proposed operating plan, which shall include at a minimum the following: a program plan providing a detailed description of the various types of programs; activities and services proposed to be offered at the Premises ("Proposed Uses"); hours of operation; fees and charges, if any; qualifications that will be required of on-site personnel in charge of conducting and operating the facilities when the Premises is open to the public; and any benefit to the community.
4. A proposed lease term and a statement justifying the proposed lease term, which shall include a statement of annual gross revenue projections from all operations for the proposed term of the Lease.
5. A financing plan, if applicable.
6. Description of how the organization will operate, the community need that is being met and the anticipated number of clients that will be served.

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

Proposals shall consider all applicable laws and available industry guidelines as they apply to liability, public health standards, recreational operations, Americans with Disabilities Act (ADA) access, and the highest standards of maintenance of all facilities and equipment. All proposed improvements shall be consistent with the Design Guidelines in the Torrey Hills Community Plan and the applicable City Standards. Proposals must address any required off-site improvements, including but not limited to, curbs, gutters, sidewalks, utilities, landscaping, and ADA compliance for the Premises.

D. LEASE TERMS

The City anticipates entering into a Lease with the selected Proposer to memorialize in detail the elements of the selected proposal. The following terms and conditions will be incorporated into the Lease, to be negotiated and executed between the selected Proposer and the City. A “Form of” Lease, which is subject to modification, deletion, and additional terms and conditions as determined by the City, in the City’s sole discretion is attached hereto (See **Exhibit D**) and should be reviewed by all Proposers. If the Proposer intends to request a deviation from the terms and conditions of the Lease in **Exhibit D**, the proposal must specifically identify the requirements being deviated from and address the requested deviation(s). The City is not obligated to accept any proposal, whether conforming or non-conforming. Proposers must include a proposal for each of the following terms of the Lease.

1. Uses. The Proposer’s primary use of the Premises will be the development of the premises, operation and maintenance of a recreational facility providing services and programs to the general public. Proposals shall include specific types of uses that the Proposer intends to engage in on the Premises, as well as any uses that may be incidental to the operating of a recreational facility, that the Proposer desires to incorporate.
2. Term. The proposed term of the Lease must be justified by the Proposer on the basis of possible capital investment in equipment, facilities and in promoting the Premises and services to the general public. A twenty-five (25) year term is anticipated, but shorter and longer terms will be considered depending on the proposal, including any capital improvements contemplated for the leased premises.
3. Rent. Proposer shall offer an initial annual rental rate. The initial rent shall be adjusted annually. The City shall determine the appropriate method of adjustment based on the selected proposal. Non-Profit Proposers should include the value of the public benefit to the community and the City in a brief narrative description. In no event shall the adjusted rent be less than the rent in existence immediately preceding the adjustment.
4. Utilities. Proposals shall identify any utilities that are required for the Proposer’s proposed uses of the Premises. The selected Proposer shall order,

obtain and pay for all utilities, including service and installation charges in connection with the Premises. Proposers shall be responsible for subject to obtaining all applicable approvals and permits at Proposers sole costs and expense. Any new utilities installed shall be installed underground.

E. DEVELOPMENT REQUIREMENTS

By signing this RFP and submitting a proposal, the Proposer certifies that he or she is aware of the following development requirements.

1. Construction Requirements. The selected Proposer will construct all improvements in accordance with all federal, state and local laws, rules and regulations, including, but not limited to, the California Environmental Quality Act and ADA.
2. Prevailing Wages. If a proposal, and/or during Lease negotiations, a Proposer, seeks any of the following: (1) the payment of money or the equivalent of money from the City directly to or on behalf of the Proposer; (2) transfer from the City of an asset of value for less than fair market price; (3) the payment, reduction, to be charged at less than fair market value, waiver or forgiveness of fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the Lease; (4) money loaned by the City that is to be repaid on a contingent basis; or (5) credits that are applied by the City against repayment obligations to the City, then pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Lease is subject to State prevailing wage laws. For construction work performed under the Lease cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under the Lease cumulatively exceeding \$15,000, the selected Proposer and its contractors and subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.
  - a. Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, the selected Proposer and its contractors and subcontractors shall ensure that all workers who perform work under the Lease are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.
    - (i) Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. The

selected Proposer and its contractors and subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

- (ii) The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of the Lease. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to the Lease in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of the Lease, each successive predetermined wage rate shall apply to the Lease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of the Lease, such wage rate shall apply to the balance of the Lease.
- b. Penalties for Violations. The selected Proposer and its contractors and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 - 1861.
  - c. Payroll Records. The selected Proposer and its contractors and subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. The selected Proposer shall require its contractors and subcontractors to also comply with section 1776. The selected Proposer and its contractors and subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. The selected Proposer is responsible for ensuring its contractors and subcontractors submit certified payroll records to the City. The selected Proposer, its contractors and subcontractor shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.
  - d. Apprentices. The selected Proposer and its contractors and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. The selected Proposer shall be held responsible for their compliance as well as the

compliance of their contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.

- e. Working Hours. The selected Proposer and its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.
- f. Required Provisions for Subcontracts. The selected Proposer shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
- g. Labor Code Section 1861 Certification. The selected Proposer in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing the Lease, the selected Proposer will certify that “I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Lease.”
- h. Labor Compliance Program. The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.
- i. Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Labor Code section 1725.5. In accordance with Labor Code section 1771.1(a), “[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 2103.5 of the

Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.”

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

Prior to the commencement of any work on the Premises, the selected Proposer shall deliver to City a payment bond (materials and labor bond) in an amount not less than one hundred percent (100%) of the total amount payable under the contract(s) for construction on the Premises to satisfy claims of material suppliers and of mechanics and laborers employed on the contract(s) for construction on the Premises. The bond shall be provided in compliance with California Civil Code sections 9550-9566. The bond shall be executed by an

admitted surety, consistent with California Code of Civil Procedure section 995.670, that is authorized by the State of California Department of Insurance to transact surety insurance in the State. The selected Proposer shall maintain the bond in full force and effect until all improvements for the construction on the Premises are accepted by City and until all claims for materials and labor are paid, and must otherwise comply with the Government Code. Should the bond become insufficient, the selected Proposer shall renew, or cause the renewal of, the bond within ten (10) calendar days after receiving notice from City.

4. Community Meetings. The recommended Proposer may be required to appear before the City Council and any of its committees, as well as the local Recreation Council and/or other community groups, to answer questions and for award of the Lease.
5. Environmental Documents. The selected Proposer shall be responsible for preparing all required environmental documents to the satisfaction of the City. All costs relating to the site inspections and remediation shall be the sole and complete responsibility of the selected Proposer.
6. Site Inspections. It is the responsibility of the Proposer to become familiar with the scope of the City's requirements prior to submitting a proposal. Two pre-proposal site inspections have been scheduled as set forth in the Request for Proposal (RFP) Cover Sheet. Attendance is not mandatory, but is strongly recommended.
7. Ownership of Improvements. All improvements, except trade fixtures and equipment installed by the selected Proposer, shall become the property of the City, at the City's option, upon termination of the Lease. If the City elects, all improvements shall be removed from the Premises at the termination or expiration of the Lease, at the selected Proposer's sole cost and expense. If the City elects to retain the improvements, the selected Proposer must remove all trade fixtures and personal property upon termination without cost to the City or damage to the Premises.

#### F. RESPONSIBILITY OF PROPOSERS

1. Proposers are responsible for carefully examining this RFP and all documents incorporated into this RFP by reference before submitting a proposal. If selected for award of a lease, the selected Proposer shall be bound by same unless the City has accepted Proposer's exceptions, if any, in writing.
2. Each Proposer is responsible for making all investigations and examinations necessary for formulating proposals and developing and operating the Premises. The submission of a proposal will be considered evidence that the Proposer has familiarized themselves with the nature and extent of the requirements and has made such investigations and examinations.

3. The selected Proposer shall be responsible for obtaining all necessary approvals and permits to the satisfaction of the City, at the Proposer's sole costs and expense.
4. Proposers may withdraw their proposals at any time prior to the selection of a Proposer upon written notice to the Contact Person.

G. PROPOSAL CONTENTS

All proposals must include at a minimum the information specified below. Failure to include this information shall be cause to deem the proposal non-responsive and result in its complete rejection. The inclusion of any additional information that will assist the City in the evaluation is encouraged. The adequacy, depth and clarity of the proposal will influence, to a considerable degree, its evaluation as stated in Section K. The proposal submitted must be complete and evaluation and selection of proposals shall be strictly based on the material contained in the proposals alone. Proposers are advised to submit thorough, complete proposals, since there will be no auction or competitive negotiation and the City reserves the right to make a selection based solely on the information contained in submitted proposals.

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

1. Cover Sheet. Proposer shall submit with its proposal, the signed Request for Proposal (RFP) Cover Sheet.
2. Experience. A summary of the Proposer's experience and qualifications for the proposed type of enterprise. If the Proposer is not going to be involved in the day-to-day operation of the Premises, then the Proposer must include qualifications and verification that the persons employed in a management capacity at the Premises are sufficiently qualified to satisfy the requirements of this RFP.
3. Financial Statements. The Proposer must submit either: (a) financial statements for the preceding three years that were audited or prepared by a certified public accountant; or (b) tax returns for the preceding three years. Each Proposer shall submit a full and detailed statement of their true financial condition as of July 1, 2015, or as recent as possible if that date is not available. The statement shall include the Proposer's assets, liabilities and net worth, including the availability of operation capital and its source. If the Proposer plans to use borrowed capital, then the amount of borrowed capital proposed for the improvements and operations at the Premises, and its source and terms of repayment, must be included in the financial statement.
4. Proposed Term. Proposed term of the Lease and the justification therefore in terms of the amount of investment.

5. Rental Offer. Proposed initial annual rental rate.
6. Development/Operations Plan. Proposer must submit a Development/Operating Plan as set forth in Section C, above.
7. Proposed Waiver Form. All participants in recreational activities shall be required to execute a waiver and indemnification agreement as a condition of being permitted to use the Premises. The Lessee shall use and obtain waiver and indemnification agreements for all such use of the Premises, and said agreements shall be in form and content acceptable to the City. Also, all participants must sign a statement certifying that they have read and understand the Rules and Regulations.
8. Work Force Report. Proposer must submit a completed Work Force Report, attached as **Exhibit E**.
9. Lessee Questionnaire. Proposer must submit a completed Lessee Questionnaire, attached as **Exhibit F**.
10. Credit Information Request. Proposer must submit a completed Credit Information Request, attached as **Exhibit G**.
11. Tax Exempt Organizations. All Proposers who claim tax exempt or non-profit status shall submit the following in addition to the information set forth above, if the Proposer's proposal involves below market rate rent or other subsidy from the City:
  - a. Tax Exempt Status. A Certification of Good Standing documenting the Proposer's tax exempt status from the Proposer's home state and the California Secretary of State.
  - b. Financial Statements. Submittal of an income and expense budget for the past 12 months with sufficient detail to indicate how figures were derived and current financial statements listing all assets and liabilities.
  - c. Estimated Operating Expenses. Provide a detailed estimate of operating expenses for the first three (3) years of full operation under the proposal.
  - d. Evidence of Organization Structure. Provide copies of all organizational documents filed with the Proposer's home state and all licenses and/or certificates evidencing recognition of the Proposer's right to do business in San Diego, California.
  - e. Board Members. A list of current board members.

- f. Establishment of a Quorum. Certification that the organization requires a minimum of four (4) directors to establish a quorum to conduct business.
  - g. Certification of Quarterly Board Meetings. Certification that regular board meetings are held at least once a quarter, evidenced by properly recorded, approved and executed minutes.
  - h. Certification Regarding Voting Board Members. Certification that the Executive Director or any other paid staff does not also serve as a voting board member.
  - i. Identification of Staff. Current list of staff, paid and non-paid.
  - j. Organization Background. A summary of how the organization began, what types of community services or benefits it has provided in the past, and what communities the organization has served.
  - k. Organization's Mission Statement. Provide organization's purpose, goals and priorities and how the organization benefits the community and City.
12. Certification. By submission of a proposal, the Proposer certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal, state or local departments or agencies. Proposer shall submit with its proposal a completed Certification regarding Debarment, Suspension, Proposed Debarment, and other Responsibility Matters, attached as **Exhibit H**.
13. Business Tax Certificate. Proposer shall submit with its proposal a copy of its business tax certificate, or a copy of its application receipt.

#### H. NONCONFORMING PROPOSALS

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

#### I. PRE-PROPOSAL INSPECTION

To give prospective Proposers an opportunity to view the Premises, two (2) pre-proposal inspections of the Premises have been scheduled as set forth in the Request for Proposals (RFP) Cover Sheet. It is strongly suggested that all Proposers attend a pre-proposal inspection. Attendance is not mandatory. It is the sole responsibility of the Proposer to become familiar with the scope of City's requirements prior to submitting a proposal.

J. PROPOSAL SUBMISSION

1. Due Date

**Proposals must be received at the address listed below no later than 4:00 p.m. on the date set forth in the Request for Proposals (RFP) Cover Sheet.**

Proposals received after that time will not be considered.

2. Place of Delivery

All proposals should be delivered to:

City of San Diego  
Real Estate Assets Department  
1200 Third Avenue, Suite 1700  
San Diego, CA 92101  
ATTN: Aurora Brown, Property Agent

3. Faithful Performance Deposits

All proposals MUST include a cashier's check or certified check in the amount of Five Thousand Dollars (\$5,000) payable to City Treasurer as a faithful performance deposit to assure that if the proposal is selected by the City, that the Proposer will enter in good faith into a lease agreement containing substantially the same terms and conditions as set out in this RFP and in the selected proposal. No personal checks will be accepted and no interest will be paid on deposits.

4. Number of Copies

Proposers are required to submit their proposals as set forth in the Request for Proposals (RFP) Cover Sheet. All materials submitted by Proposers become the property of the City of San Diego and may not be returned.

5. Questions and Comments

Written questions and comments must be electronically mailed (e-mailed) to the City Contact no later than the date specified on the Request for Proposals (RFP) Cover Sheet. Only written communications relative to the RFP shall be considered. E-mail is the only acceptable method for submission of questions. It is incumbent upon proposers to verify that the City has received their questions and/or comments. All questions will be answered in writing. The City will post the questions and answers, without identification of the inquirer(s), same on the City's website at (<https://www.sandiego.gov/real-estate-assets>). No oral communications can be relied upon for this RFP. Addenda will

be issued addressing questions or comments that are determined by the City to cause a change to any part of this RFP.

K. PROPOSAL EVALUATION AND SELECTION

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

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

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

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

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

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

If one or more proposals score within ten (10) points of the highest scoring proposal,

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

If the committee is satisfied that the first-ranked Proposer resulting from Step Two is sufficient for recommendation, it will be recommended to the City Council for award. The recommended Proposer may be required to appear before the City Council and any of its committees to answer questions.

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

1. **Responsiveness (Maximum 25 points):**

The extent to which a proposal clearly addresses the elements of this RFP, including: quality, attractiveness, and thoroughness of the proposal; responsiveness to the requirements described in the RFP; quality, extent and diversity of recreational programming; conformance with community needs and objectives; and understanding the needs, goals and objectives of the City and the General Development Plan for Torrey Hills Park (GDP) while providing highest and best use of the Premises.

2. **Development/Operating Plan (Maximum 20 points):**

The Development/Operating Plan should include a preliminary plot plan showing the general location of all existing and proposed improvements on the Premises; identify and describe the project components for any indoor and outdoor facilities (site plan); and present schematic drawings showing the proposed improvements and alterations to the Premises and facilities thereon.

The extent to which a Proposer clearly addresses the operating elements of this RFP, including: the quality and professionalism of the proposal; responsiveness to requirements described in the RFP, including the proposed development and operation of the Premises; demonstrating an understanding of the needs, goals and objectives of the City while providing the highest and best use of the Premises; the overall quality and attractiveness of the terms of the proposal;

the types of programs to be offered; the overall quality of such programs; and the affordability of the programs to the community and general public.

3. **Professional Experience and Qualifications (Maximum 20 points):**

The extent to which a proposal demonstrates, among other things, the following: the Proposer's experience and qualifications in developing, constructing, and operating varied recreational programs and facilities. The Proposer should include verification that the organization's employees are well qualified to conduct the business of the type contemplated in this RFP and should describe in detail the Proposer's ability to implement the components of the Proposal. The Proposer should have at a minimum three (3) years experience in the past five (5) years conducting similar operations.

4. **Rental Offer and Financial Capability (Maximum 25 points):**

City will consider the amount of rent offered by the Proposer and the overall financial benefit of the proposal to the City. The proposal should provide a detailed description of the Proposer's break even analysis, setting forth the point at which the business will generate enough income to cover its expenses. The proposal will be evaluated on the attractiveness of, and demonstrated ability to achieve, the revenue projections for the proposed term of the Lease and the likelihood of exceeding the breakeven point.

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

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

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

**Total Points: 100**

6. **Oral Presentation (Maximum 11 points)**

If the City elects to proceed to Step Two, the Proposers will be evaluated on responses to questions related to the RFP, including clarification on Proposal and Evaluation documentation submitted as part of the proposal package.

L. ANNOUNCEMENT OF INTENT TO AWARD

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

M. ADDITIONAL INFORMATION FROM PROPOSERS

The City reserves the right to request additional information from Proposers to clarify information contained in proposals submitted in response to this RFP.

N. INCURRED COSTS

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

O. CONTACT WITH CITY STAFF

Unless otherwise authorized herein, Proposers who are considering submitting a proposal in response to this RFP, or who submit a proposal in response to this RFP, are prohibited from communicating with City staff or evaluation committee members about this RFP from the date this RFP is issued until the City has informed all of proposers of its intent to award a Lease, subject to negotiation and approval by City Council, in writing.

P. ADDENDA

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

Q. PUBLIC RECORDS

All proposals, and all contents thereof, received shall be considered confidential until the City's Real Estate Assets Department recommends a proposal to the City Council. By signing this RFP and submitting a proposal, the Proposer acknowledges that any information submitted in response to this RFP is a public record subject to disclosure

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

R. CITY'S RIGHT TO REJECT ALL PROPOSALS

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

S. QUALIFICATION OF PROPOSAL

**THIS IS NOT A BID SOLICITATION AND THE CITY IS NOT OBLIGATED TO ACCEPT ANY PROPOSAL OR TO NEGOTIATE WITH ANY PROPOSER. THE CITY COUNCIL RESERVES THE RIGHT TO REJECT ANY OR ALL PROPOSALS WITHOUT CAUSE OR LIABILITY. ALL TRANSACTIONS DISCUSSED, REFERENCED, OR IMPLIED HEREIN ARE SUBJECT TO FINAL APPROVAL BY THE CITY COUNCIL.**

T. NON-DISCRIMINATION NOTICE

It is the policy of the City not to discriminate against the disabled in employment or

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

U. COMPLIANCE WITH CITY'S EQUAL OPPORTUNITY CONTRACTING PROGRAM

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

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

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

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

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

2. Equal Benefits. Proposer shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with

domestic partners. Proposer shall certify that it will maintain such equal benefits throughout the term of the lease.

3. Local Business and Employment. Proposer acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms in all City contracts. Proposer shall, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with the proposal from local residents and firms as opportunities occur. Proposer shall hire qualified local residents and firms whenever feasible.

V. RETURN OF FAITHFUL PERFORMANCE DEPOSIT

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

W. PROTESTS

The City's protest procedures are codified in Chapter 2, Article 2, Division 30 of the San Diego Municipal Code (SDMC) and San Diego Council Policy 000-29, as amended from time to time. These procedures shall apply to this RFP and provide unsuccessful Proposers with the opportunity to challenge the City's determination on legal and factual grounds. The City will not consider or otherwise act upon an untimely protest.

X. ASBESTOS DISCLOSURE

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

Y. REAL ESTATE BROKER'S COMMISSION

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

Z. SCHEDULE OF EXHIBITS

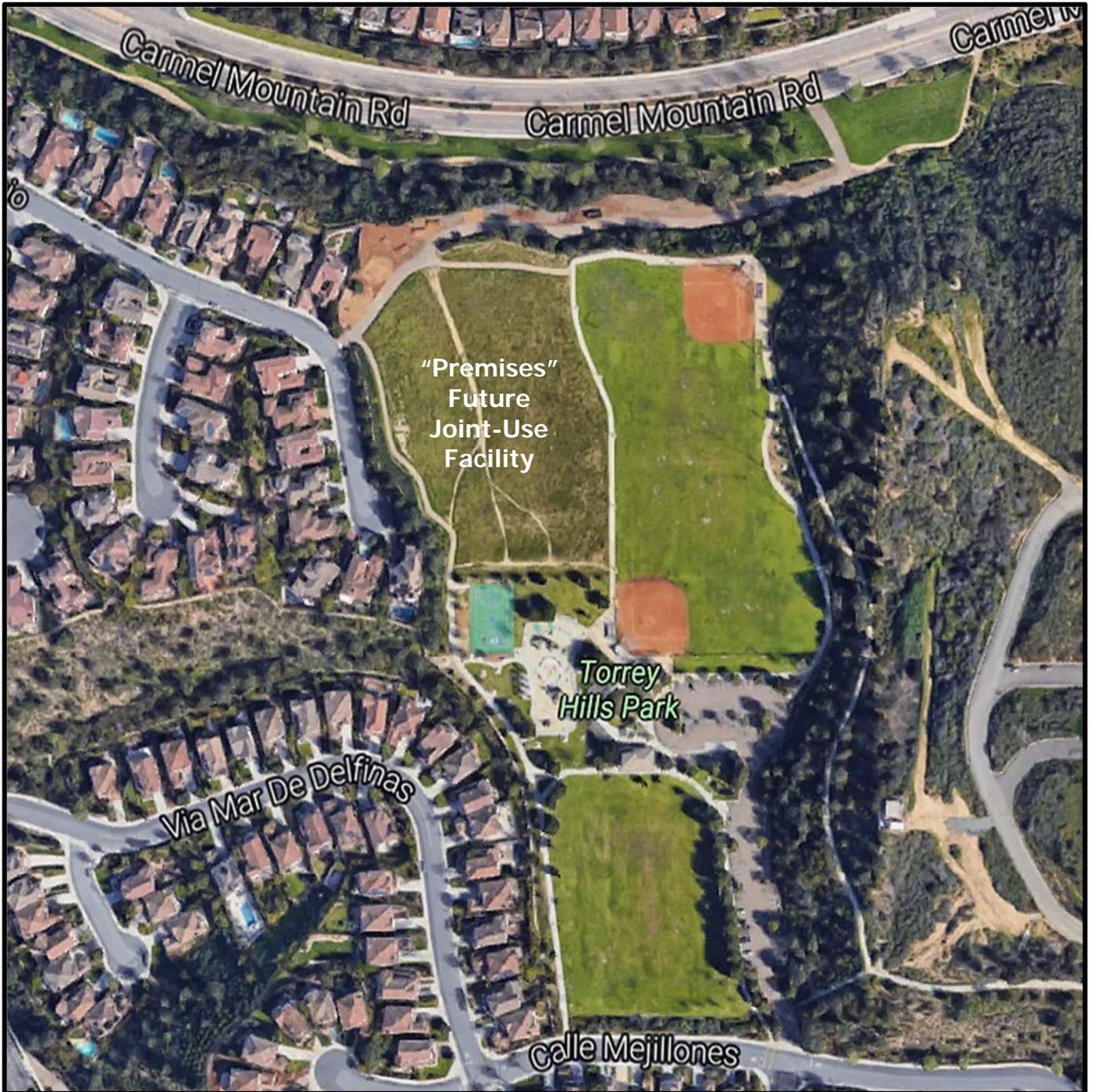
1. Exhibit A - Aerial View of the Property
2. Exhibit B - Torrey Hills Community Plan Link

3. Exhibit C - General Development Plan for Torrey Hills Park
4. Exhibit D - Form of Lease
5. Exhibit E - Work Force Report
6. Exhibit F - Lessee's Questionnaire
7. Exhibit G - Credit Information Request
8. Exhibit H - Certification

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

EXHIBIT A

AERIAL VIEWS OF THE PROPERTY



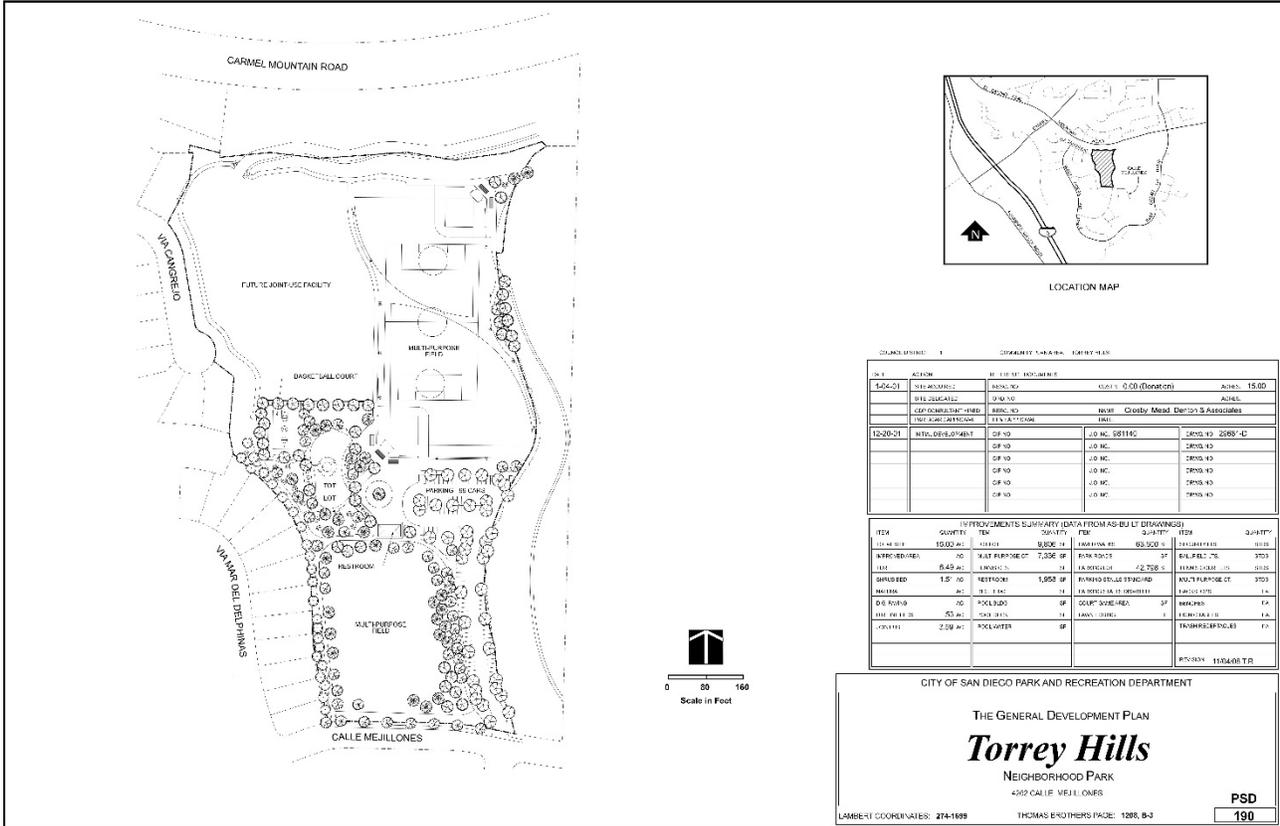
**EXHIBIT B**

**TORREY HILLS COMMUNITY PLAN LINK**

<https://www.sandiego.gov/planning/community/profiles/torreyhills/plan>

# EXHIBIT C

## GENERAL DEVELOPMENT PLAN FOR TORREY HILLS PARK



**EXHIBIT D**  
**“FORM OF” LEASE**

**CITY OF SAN DIEGO GROUND LEASE**

THIS CITY OF SAN DIEGO GROUND LEASE (“Lease”) is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation (“CITY”), as LESSOR, and as LESSEE, to be effective as of \_\_\_\_\_ (the “Effective Date”), when signed by the parties and approved by the San Diego City Attorney.

RECITALS

- A. CITY is the owner of a 15-acre parcel known as Torrey Hills Neighborhood Park (the “Property”), which was dedicated as parkland by Ordinance-18985, (September 24, 2001), for park and recreation purposes; and
- B. CITY desires to develop approximately 3.57 acres of the Property, as more specifically described in and depicted on Exhibit A (the “Premises”), to provide low-cost recreational facilities in Torrey Hills and other communities in the City of San Diego, which will benefit the general public and complement publicly owned recreational facilities; and

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

- 1. Premises. Under the terms and conditions of this Lease, CITY leases the Premises to LESSEE and LESSEE leases the Premises from CITY.
- 2. Allowed Uses. The Premises are leased to LESSEE, and LESSEE covenants and agrees to use the Premises for the purposes of leasing, constructing, operating and maintaining the Premises as a \_\_\_\_\_ (TBD) (the “Allowed Uses”). LESSEE shall diligently pursue the use of the Premises solely for the Allowed Uses and for no other purpose whatsoever without CITY’s prior written consent throughout the term of this Lease. The use of the Premises for any unauthorized purpose shall subject this Lease to termination at the sole discretion of the CITY.
- 3. City Council Action Requires. LESSEE acknowledges that this Lease is expressly conditioned on the San Diego City Council’s (the “City Council’s”) prior authorization to enter into and execute this Lease (“Council Authorization”), which may or may not be granted in the City Council’s sole discretion. CITY shall not be liable or obligated for any burden or loss, financial or otherwise, incurred by LESSEE as a result of the City Council’s modification of the final terms and conditions of this Lease, or the City Council’s failure to grant the Council Authorization.
- 4. Competent Management. LESSEE shall provide competent management of the Allowed Uses to CITY’s reasonable satisfaction. "Competent management" shall mean management practices generally considered acceptable for the management

and operation of activities substantially similar to the Allowed Uses and in compliance with all applicable local, state and federal laws, rules and regulations, and in a fiscally responsible manner. "Fiscally responsible manner" shall mean in accordance with generally accepted accounting principles consistently applied and absent financial malfeasance.

5. CITY's Consent, Discretion. CITY's consent or approval under this Lease shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise expressly provided herein. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided herein.
6. Quiet Enjoyment. LESSEE, performing the covenants and agreements in this Lease, shall at all times during the term of this Lease peaceably and quietly have, hold, and enjoy the Premises. If CITY for any reason cannot deliver possession of the Premises to LESSEE at commencement of the term, or if LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or resulting damages.
7. Reservation of Rights.
  - 7.1. Mineral Rights. CITY reserves all rights, title, and interest in and to any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
  - 7.2. Easements. CITY reserves the right to grant, establish, and use easements and rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good at no cost or liability to CITY.
  - 7.3. Repairs. CITY may at all reasonable times enter the Premises for the purpose of making repairs to or developing municipal resources and services.
  - 7.4. Noninterference. CITY shall not substantially or unreasonably interfere with LESSEE's use of the Premises, and shall repair or reimburse LESSEE for reasonable costs incurred by LESSEE to repair any physical damages to Premises or LESSEE's personal property directly caused by CITY's exercising of its rights reserved in this section. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.
8. Political Activities. LESSEE shall not use the Premises to promote, endorse, or campaign for the nomination or election of any individual to any public office, be it partisan or nonpartisan; however, LESSEE may allow the use of the Premises as a forum for open public debate by two or more candidates of different political parties, such as occurs at a candidate forum and similar events.

9. Public Use. The general public shall have access to the Premises for the uses allowed under this Lease during LESSEE's hours of operation.
10. Signs. LESSEE shall not erect or display any other banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without CITY's prior written consent. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter summarily remove the item at LESSEE's cost.
11. Changes. CITY may, in CITY'S sole discretion and from time to time, make changes to the common areas of the Premises, including without limitation making changes in the location, size, shape and number of driveways, entrances, parking spaces, parking area, loading and unloading areas, ingress and egress, direction of traffic, landscaped areas, walkways and utility raceways. CITY may temporarily close any common area of the Premises and/or Property for maintenance purposes, provided reasonable access to the Premises remains available. CITY may make improvements to the common areas of the Premises and use the common areas of the Premises while making improvements, alterations or repairs to any part of the building, and do and perform such other acts and make other changes in, to or with respect to the building as CITY may deem appropriate.
12. Term. The term of this Lease ("Term") shall be \_\_\_\_\_ (TBD) years, commencing on the Effective Date.
13. Holdover. Any holding over by LESSEE after the expiration or earlier termination of this Lease shall not be considered a renewal or extension of this Lease. The occupancy of the Premises after the expiration or earlier termination of this Lease shall constitute a month-to-month tenancy at will, and all other terms and conditions of this Lease shall continue in full force and effect, except that LESSEE shall then pay to CITY the then current market rent for the Premises as determined by qualified staff of CITY's Real Estate Assets Department, however, in no event shall the rent be reduced below the Rent in effect at the expiration or earlier termination of this Lease.
14. Surrender of Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall vacate the Premises and surrender it to CITY free and clear of all liens and encumbrances, and in a decent, safe, and sanitary condition. At any time after the expiration or earlier termination of this Lease, LESSEE shall execute, acknowledge, and deliver to CITY, but in no event later than thirty (30) days after CITY's demand, a valid and recordable quitclaim deed covering all of the Premises. If LESSEE fails or refuses to deliver the required quitclaim deed, CITY may prepare and record a notice reciting LESSEE's failure to perform this Lease provision, and the notice shall be deemed conclusive evidence of the termination of this Lease and of all of LESSEE's rights in and to the Premises.

15. **Rent.** LESSEE shall pay to City rent in the amount of \_\_\_\_\_ (TBD) per year, paid annually in advance. LESSEE shall pay the rent for the first Lease year within thirty (30) days after the Effective Date, and thereafter on each anniversary of the Effective Date. The rent shall be adjusted annually, upward only, as described below, however, in no event shall the adjusted annual rent be less than the annual rent in the preceding year.

15.1. **Method of Adjustment.** (TBD)

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

15.3. **Time and Place of Payment.** All payments to be paid by LESSEE under this Lease shall be made payable to the City Treasurer and be mailed to:

San Diego City Treasurer  
P.O. Box 129030  
San Diego, California 92112-9030

*or hand delivered to:*

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

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

15.4. **Invoicing Courtesy.** CITY may invoice LESSEE for amounts due under this Lease. However, any such invoicing shall be deemed a courtesy only; LESSEE shall make all payments under this Lease on or before each applicable due date, regardless of being invoiced. No grace period shall apply to any amount due under this lease.

16. Unauthorized Use Charge. LESSEE shall pay CITY one hundred (100%) of the gross receipts from any use of the Premises that is not allowed by this Lease and of which CITY has not given its prior written consent, regardless of any related penalties charged LESSEE by competent governmental authorities. Such unauthorized use charge shall be payable to CITY within thirty (30) days after LESSEE receives such gross receipts. The unauthorized use charge shall be considered “rent” under this Lease. The existence of such unauthorized use charge and CITY’s acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of CITY’s rights under this Lease.
17. Maintenance. Throughout the Term, LESSEE shall assume full responsibility and cost for the operation and maintenance of the Premises and all improvements located thereon. LESSEE shall, at LESSEE’s sole cost, make or cause all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all laws.
18. Prevailing Wages (If applicable). By signing this Lease, LESSEE certifies that he or she is aware of the wage provisions described herein and shall comply with such provisions before entering onto the Lease Area, or allowing any contractors or subcontractors to perform work within the Premises. Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Lease is subject to State prevailing wage laws. For construction work performed under this Lease cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Lease cumulatively exceeding \$15,000, the LESSEE and its contractors and subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.
  - 18.1. Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, the LESSEE, its contractors and subcontractors, shall ensure that all workers who perform work under this Lease are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.
    - 18.1.1. Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. LESSEE shall require its contractors and subcontractors to post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.
    - 18.1.2. The wage rates determined by the DIR refer to expiration dates. If the

published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Lease. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Lease in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Lease, each successive predetermined wage rate shall apply to this Lease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Lease, such wage rate shall apply to the balance of the contract.

- 18.2. Penalties for Violations. LESSEE and its contractors and its subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720-1861.
- 18.3. Payroll Records. LESSEE and its contractors and subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. LESSEE shall require its contractors and subcontractors to also comply with section 1776. LESSEE'S contractors and subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. LESSEE is responsible for ensuring its contractors and subcontractors submit certified payroll records to the City.
  - 18.3.1. In addition to submitting weekly certified payroll records to the City, LESSEE'S contractors and their subcontractors shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.
- 18.4. Apprentices. LESSEE and its contractors and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. LESSEE shall be held responsible for the compliance of their contractors as well as the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.
- 18.5. Working Hours. LESSEE and its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours

a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1 1/2 time the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

- 18.6. Required Provisions for Subcontracts. LESSEE, and its contractors, shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor or subcontractor: California Labor Code sections 1771, 1771.4, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
- 18.7. Labor Code Section 1861 Certification. LESSEE in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its contractors' and subcontractors' employees and by signing this Lease, LESSEE certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract."
- 18.8. Labor Compliance Program. The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will notify LESSEE to withhold or cause to be withheld contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at (619) 236-6000.
- 18.9. LESSEE'S Contractor and Subcontractors Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform public work pursuant to Section 1725.5. In accordance with the Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."
- 18.9.1. A Contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in response to a solicitation shall not be grounds for filing a bid protest or grounds

for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

18.9.2. A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of section 1725.5 or this section.

18.9.3. By entering into this Lease, Lessee is certifying that it will verify that all contractors and subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5 and Contractor shall provide proof of registration to the City upon request.

19. Assignment and Subletting. LESSEE shall not assign or sublease any rights granted by this Lease or any interest in this Lease without CITY's prior written consent in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any assignment or subletting without CITY's consent shall be void and shall, at the option of CITY, terminate this Lease. This Lease shall not, nor shall any interest in this Lease be assignable as to the interest of LESSEE by operation of law without the written consent of CITY. LESSEE shall pay all reasonable fees required by CITY for processing requests for consent. As a condition to any consent to an assignment, sublease or other grant of rights related to the use and occupancy of the Premises, CITY may require that this Lease be revised to comply with then-current standard CITY lease requirements.

19.1. Assignment for the purposes of this section shall include any transfer of any ownership interest in this Lease by LESSEE, and if LESSEE is other than a natural person, the transfer of a controlling interest in LESSEE or any of LESSEE'S general partners, principals, or controlling shareholders.

19.2. Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this Lease which are applicable to the rights acquired. Further, each sublessee shall agree that its sublease shall be subject and subordinate to each and every provision of this Lease. Pursuant

to City Charter section 225, CITY must review and approve every person or entity which will have an interest in this Lease as a sublessee or assignee.

19.3. Sublease Income. Subject to CITY's prior consent to any sublease of the Premises or part thereof, in addition to any rent and fees set forth above, LESSEE shall pay monthly to CITY a sum of money equal to fifty percent (50%) of the gross revenue from all sublease income earned by LESSEE from such subletting regardless of actual receipt by LESSEE.

20. Encumbrance. LESSEE shall not encumber this Lease, its leasehold estate, or any improvements on the Premises by deed of trust, mortgage, chattel mortgage, or other security instrument without CITY's prior written consent, which consent shall be in CITY'S sole discretion.

21. Default and Remedies.

21.1. Default. LESSEE shall be in default of this Lease if any of the following occurs:

21.1.1. LESSEE fails to make any payment required under this Lease when due and fails to cure the default within five (5) days following written notice thereof from CITY;

21.1.2. LESSEE defaults in the performance of any covenant, term or condition required by this Lease, other than those requiring payment to CITY, to be performed by LESSEE and fails to cure the default within thirty (30) days following written notice thereof from CITY, or if any such default is not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) calendar days and to diligently pursue the cure to completion;

21.1.3. LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;

21.1.4. LESSEE is adjudicated as bankrupt;

21.1.5. LESSEE makes a general assignment for the benefit of creditors; or

21.1.6. LESSEE uses the Premises for any unauthorized purpose.

21.2. Remedies.

21.2.1. General. Upon LESSEE'S default under this Lease, CITY may pursue any one or more of the remedies listed in this section in addition to any other remedies now or later available to City, in law or equity. Such remedies shall be cumulative and not exclusive.

21.2.2. For Monetary Default. Upon LESSEE'S default for nonpayment under Section 21.1.1 of this Lease, CITY may in its sole discretion, either give LESSEE or any person, claiming rights through LESSEE, a written Five-Day Notice to Pay or Quit, or CITY may terminate this Lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the Premises or to possession of the Premises, and CITY may enter and take possession of the Premises and may recover the amount set forth below.

21.2.3. For Non-Monetary Default. Upon LESSEE'S default based upon Sections 21.1.2-21.1.6 of this Lease, CITY may, in its sole discretion, terminate this Lease, and all rights of LESSEE and of all persons claiming rights through LESSEE to the Premises or possession of the Premises, and CITY may enter and take possession of the Premises and may recover from LESSEE the amount set further below. If any default described in Sections 21.1.2-21.1.6 of this Lease is not curable within thirty (30) calendar days after notice to LESSEE, CITY will not terminate this Lease pursuant to the default, if LESSEE immediately commences to cure the default and diligently pursues the cure to completion.

21.2.4. CITY'S Recovery Upon Termination. Upon termination, CITY may enter and take possession of the Premises, and may recover from LESSEE the sum of:

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

As used in clauses 21.2.4 (i)-(ii), above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause 21.2.4 (iii), above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent and any other amounts payable by LESSEE under this Lease.

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

21.3.1. CITY may correct the default and charge the costs to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after CITY's notice of such costs to LESSEE, and mortgagee or beneficiary;

21.3.2. CITY may correct the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the costs of correction performed by or at the direction of CITY; and

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

If the default is incurable by LESSEE, then any lender holding a beneficial interest in the Premises, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this Lease. If the mortgagee or beneficiary gives notice in writing of its election to substitute itself within the thirty (30) day period after receiving CITY's written notice of

a default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Lease will not terminate pursuant to the default. In that event, CITY consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease with all the rights, privileges, and obligations of LESSEE, subject to the curing of the default, if possible, by mortgagee or beneficiary. In that event, LESSEE shall assign to mortgagee or beneficiary all of its interest in and to the leasehold estate under this Lease.

21.4. Abandonment by LESSEE. If LESSEE breaches the Lease and abandons the Premises, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all of its rights and remedies under this Lease, including but not limited to the right to recover the rent as it becomes due, plus damages.

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

22. Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

22.1. Full Taking. If the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs, and any advance rents paid to CITY shall be prorated based upon the actual number of calendar days the Premises was held by LESSEE.

22.2. Partial Taking - Remainder Unusable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises are unsuitable for the Lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

22.3. Partial Taking – Remainder Usable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises are suitable for continued Lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that LESSEE's operations are reduced or impaired.

22.4. Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both. LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE's then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.

22.5. Transfer. CITY has the right to transfer CITY's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this Lease.

22.6. No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

23. Indemnification & Hold Harmless. LESSEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with the granting of this Lease, LESSEE's acts or omissions in the performance of its obligations under this Lease, and all expenses of investigating and defending against same, including without limitation attorneys' fees and costs; provided, however, that LESSEE's duty to indemnify and hold CITY harmless shall not include any established liability arising from the established sole negligence or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents. CITY may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If the City elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay the City for all costs related thereto, including, without limitation, attorneys' fees and costs.

24. Insurance. LESSEE shall not begin any work under Agreement until it has: (a) obtained, and upon the City's request provided to the City, insurance certificates reflecting evidence of all insurance required in below; however, the City reserves the

right to request, and the LESSEE shall submit, copies of any policy upon reasonable request by the City; (b) obtained City approval of each insurance company or companies; and (c) confirmed that all policies contain the specific provisions required below. LESSEE's liabilities, including but not limited to LESSEE's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and LESSEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by the City. The LESSEE shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement.

24.1. Types of Insurance. At all times during the term of this Agreement, the LESSEE shall maintain insurance coverage as follows:

24.1.1. Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$2 million per occurrence and subject to an annual aggregate of \$4 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

24.1.2. Commercial Automobile Liability. For all of the LESSEE's automobiles including owned, hired and non-owned automobiles, the LESSEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

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

24.1.4. Workers' Compensation. For all of the LESSEE 's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the LESSEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and the LESSEE shall

provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

- 24.2. Deductibles. All deductibles on any policy shall be the responsibility of the LESSEE and shall be disclosed to the City at the time the evidence of insurance is provided.
- 24.3. Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this PERMIT or in the Special General Conditions shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the City. The City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.
- 24.4. Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses.
- 24.5. Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed Uses. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 24.6. Required Endorsements. The following endorsements to the policies of insurance are required to be provided to the City before any work is initiated under this Agreement.

24.6.1. Commercial General Liability Insurance Endorsements:

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

products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

**PRIMARY AND NON-CONTRIBUTORY COVERAGE.** The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of Contractor's insurance and shall not contribute to it.

#### 24.6.2. Worker's Compensation Insurance Endorsements:

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

25. **Waste, Damage, or Destruction.** LESSEE shall not commit or allow to be committed any waste or any public or private nuisance on the Premises, shall keep the Premises clean and clear of refuse and obstructions at all times, and shall dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Premises are put into a condition which is not decent, safe, healthy, and sanitary, LESSEE shall restore the Premises at LESSEE's sole cost and expense to its prior condition within a reasonable time.
26. **Acceptance of Premises.** LESSEE acknowledges that the Premises are in good order and condition and shall take possession of the Premises "as is." CITY has not made and makes no representation or warranty as to the condition or suitability of the Premises for LESSEE's intended use, and assumes no obligation to alter or improve the Premises. LESSEE has relied solely on its own independent investigations of the condition and suitability of the Premises, and is satisfied with the condition thereof. LESSEE further acknowledges that the Premises are in the condition called for by this Lease and that LESSEE does not hold CITY responsible for any defects, whether apparent or latent, in the Premises, including the presence of any Hazardous Substances as defined in this Lease.
27. **Entry and Inspection.** LESSEE may quietly enjoy the Premises, free from unreasonable interference by CITY, except as reasonably required in emergency situations. During such an emergency, CITY may at all times enter and inspect the Premises and the operations conducted on the Premises. For all non-emergency

situations, CITY may at all reasonable times, but only upon reasonable prior notice to LESSEE, enter and inspect the Premises and the operations conducted on the Premises. If entry or inspection by CITY discloses that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, but not the obligation, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done at the sole expense of LESSEE, and LESSEE shall pay promptly any and all costs incurred by CITY in having necessary maintenance work done in order to keep the Premises in a decent, safe, healthy, and sanitary condition. If at any time CITY determines that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY may, at its sole option, without additional notice, require LESSEE to file a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. The bond shall be in an amount adequate in the opinion of CITY to correct the unsatisfactory condition. LESSEE shall pay the cost of the bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Lease imposed on CITY.

28. Utilities. LESSEE shall order, obtain, and pay for all utilities, including installation and service charges, in connection with/for the operation of the Premises. All utilities on the Premises shall be installed underground and shall be used for LESSEE'S operations only.
29. Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered, by LESSEE without CITY's prior written approval. Additionally, once completed, LESSEE shall not make any structural or architectural design alterations to approved improvements, structures, or installations on the Premises without CITY's additional prior written approval. This provision shall not relieve LESSEE of any maintenance obligation under this Lease. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises.
30. Construction Bond. CITY shall require LESSEE to deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY.
31. Performance and Payment Bond. CITY shall require LESSEE to deposit with CITY, prior to commencement of any construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated design and construction costs of the work to be performed. The bond may be in cash or may be a corporate

surety bond or other security satisfactory to City. The bond shall insure that the construction to be commenced by the LESSEE shall be completed in accordance with the plans approved by City or, at the option of City that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to City. The bond or cash shall be held in trust by City for the purpose specified above, or at City's option may be placed in an escrow approved by City. This requirement is not intended to be duplicative of a construction bond otherwise required of the LESSEE.

Prior to the commencement of any work on the Premises, the LESSEE shall deliver to City a payment bond (materials and labor bond) in an amount not less than one hundred percent (100%) of the total amount payable under the contract(s) for construction on the Premises to satisfy claims of material suppliers and of mechanics and laborers employed on the contract(s) for construction on the Premises. The bond shall be provided in compliance with California Civil Code sections 9550-9566. The bond shall be executed by an admitted surety, consistent with California Code of Civil Procedure section 995.670, that is authorized by the State of California Department of Insurance to transact surety insurance in the State. LESSEE shall maintain the bond in full force and effect until all improvements for the construction on the Premises are accepted by City and until all claims for materials and labor are paid, and must otherwise comply with the Government Code. Should the bond become insufficient, LESSEE shall renew, or cause the renewal of, the bond within ten (10) calendar days after receiving notice from City.

32. **Liens.** LESSEE shall protect, defend, indemnify, and hold CITY harmless from and against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against such claims, including without limitation reasonable attorneys' fees. If LESSEE causes improvements, alterations, or repairs to be made to the Premises, and a lien or notice of lien is filed against the property, LESSEE shall notify CITY of the lien within five (5) days after LESSEE first becomes aware of the existence of the lien, and within thirty (30) days after the filing either: (a) take all actions necessary to record a valid release of the lien; or (b) file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.
33. **Taxes.** LESSEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon the Premises or upon LESSEE's use and occupancy of the Premises, including without limitation licenses and permits, and including the land and any improvements or fixtures installed or maintained by LESSEE thereon. LESSEE acknowledges that this Lease may create a possessory interest subject to property taxation and that LESSEE may be subject to the payment of taxes levied on that possessory interest. LESSEE shall pay all such possessory interest taxes. LESSEE's payment of taxes, fees and assessments shall not reduce any rent due to the CITY. CITY shall not assume any responsibility for any taxes whatsoever resulting from LESSEE's possession, use or occupancy of the Premises.

### 34. Development Plan.

- 34.1. Development Plan. LESSEE shall develop the Premises in accordance with a development plan (the "Development Plan") that shall include, at a minimum, \_\_\_\_\_ (TBD) consistent with the Development Plan Summary attached here to as **Exhibit B**, approved by CITY, in its reasonable discretion as lessor under this Lease. LESSEE shall provide a copy of signed plan sheets to the CITY prior to approval of the Development Plan, and shall not make any alterations to the Development Plan thereafter, without CITY's consent. CITY, in its sole discretion, may grant an extension of up to one (1) year for completion of the development contemplated by the Development Plan. Lessee shall notify CITY if construction is stopped for thirty (30) days or more, and again when construction resumes.
- 34.2. Permits. LESSEE shall, at its sole cost and expense, seek and obtain all necessary development permits, construction permits, and any other approvals required for developing the Premises pursuant to the Development Plan.
- 34.3. Contractor Requirements. All work shall be performed only by competent and qualified contractors duly licensed under the laws of the State of California pursuant to written contracts with such contractors. LESSEE further warrants and represents that it will require any contractor or subcontractor to maintain his or her license in an active status and in good standing for the term of any contract related to work subject to this Lease. CITY shall have the right to demand production of and to inspect the contractor's or subcontractor's license, and LESSEE agrees to produce said documentation within 48 hours of such a request. LESSEE shall notify CITY immediately upon determining that a contractor or subcontractor is unlicensed, or that said license has been suspended or revoked, and LESSEE further represents and warrants that it will not allow said contractor or subcontractor to enter onto the Premises or perform work subject to the Lease until LESSEE has demonstrated to CITY's satisfaction that the license is active and in good standing.
- 34.4. Notices of Nonresponsibility. CITY shall, at any and all times during the Term, have the right to post and maintain on the Premises and to record as required by law any notice or notices of nonresponsibility provided for by the mechanics' lien laws of the State of California. LESSEE shall give CITY not less than thirty (30) days' written notice prior to the commencement of any work (including site preparation work) or the delivery of building materials to the Premises.
- 34.5. Failure of Development Plan. Failure to comply with the timelines set forth below may be treated as a material default of the Lease. Notwithstanding any

provision of this Lease to the contrary, CITY may, in its sole discretion, terminate this Lease if any of the following occurs:

34.5.1. LESSEE fails to provide CITY with, and obtain CITY's approval of, the plan sheets and obtains all required development permits within one (1) year from the Effective Date of this Lease;

34.5.2. LESSEE fails to commence construction pursuant to the Development Plan within two (2) months after obtaining all necessary permits and approvals thereof;

34.5.3. LESSEE fails to complete construction and obtain a Certificate of Occupancy within one (1) year after obtaining all necessary permits and approvals of the Development Plan, unless CITY consented, in writing, to an extension of that time, in which case, LESSEE fails to complete construction and obtain a Certificate of Occupancy by the date required by the extension; or

34.5.4. after commencement of construction, the construction is stopped for more than three (3) months, unless such work stoppage is caused by a force majeure.

34.6. Liquidated Damages. The parties agree that the damages to CITY resulting from LESSEE'S failure to comply with the timelines set forth in Section 34.5.1-34.5.3 would be extremely difficult to determine. Therefore, if LESSEE fails to comply with any of the timelines set forth in Section 34.5.1-34.5.3 as required by this Lease, LESSEE shall pay to CITY liquidated damages in the amount of seventy-five dollars (\$75.00) per day until completion. Such liquidated damages shall be deemed additional rent due and payable upon CITY'S demand therefor.

### 35. Ownership of Improvements; Removal of Improvements and Personal Property.

35.1. Improvements. During the Term of this Lease, LESSEE shall own all improvements, fixtures, structures, and installations or additions to the Premises constructed or installed on the Premises by LESSEE. Upon expiration or termination of this Lease, all such improvements, fixtures, structures, and installations or additions shall be deemed a part of the Premises and shall thereafter be owned by CITY. Notwithstanding the foregoing, CITY may, upon notice to LESSEE at Lease termination or at any time prior to the expiration of the Term, elect to have part or all of such improvements, fixtures, structures, and installations or additions removed by LESSEE at the end of the Term. In that case, LESSEE shall, at LESSEE's sole cost and expense, remove those items designated for removal in CITY's notice and restore the Premises to CITY's reasonable satisfaction as soon as practicable, but in no event later than sixty (60) days after the expiration or

earlier termination of this Lease. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such items. If LESSEE fails to remove the items as required herein, CITY may, at its option, remove them at LESSEE's sole cost and expense.

35.2. Personal Property. LESSEE shall remove LESSEE-owned machines, appliances, equipment, trade fixtures, and other items of personal property upon the expiration of the Term, or as soon as practicable after termination, but in no event later than thirty (30) days after the expiration or earlier termination of this Lease. Subject to applicable California law, any such items which LESSEE fails to so remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at LESSEE's sole cost and expense. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Premises.

35.3. Late Removal. Notwithstanding any provision of this Lease to the contrary, LESSEE shall pay rent to CITY for any period of time after the expiration or termination of this Lease needed to remove improvements or personal property as required by this Lease, whether by CITY or LESSEE. Such rent shall be calculated on a per diem basis using the then-current fair market rental rate as determined by qualified CITY staff.

35.4. CITY's Right to Acquire Personal Property. If LESSEE wants to dispose of any of its personal property used in its operations on the Premises upon expiration or termination of this Lease, CITY shall have the first right to acquire such personal property.

36. Unavoidable Delay. If the performance of an act required of CITY or LESSEE by this Lease is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, that party shall be excused from performing the act for a period equal to the period of the prevention or delay. This provision shall not apply to LESSEE's obligations to pay Rent. The party claiming a delay shall notify the other party in writing within ten (10) calendar days after the beginning of any claimed delay.

37. Restriction on Plastic Food Containers. The LESSEE shall not provide to its customers any prepared, takeout, or supplied/resale food in polystyrene foam packaging, nor shall the LESSEE obtain or keep any such customer food packaging at or on the Premises. The LESSEE's food packaging for all foods shall be recyclable plastic or recyclable paper, and the LESSEE shall deliver to the City, upon request, evidence of such in the form of paid invoices for the purchase of recyclable plastic or recyclable paper containers in amounts sufficient to indicate compliance with this section. Post-consumer recycled plastic or recycled paper is preferred for all

customer food packing related to the use and operation of the Premises. No biodegradable or compostable packaging is to be used by the LESSEE in lieu of recyclable plastic or recyclable paper unless with the prior written approval of the City's Environmental Services Department. "Prepared food" means all food or beverage prepared on the Reservoirs for immediate consumption at the Premises or elsewhere on the Premises. "Takeout food" means all food or beverage to be consumed off of the Premises or elsewhere in the Premises. "Supplied/Resale food" means foods or beverages which are supplied by a third party to the LESSEE for either preparing food or beverages onsite or direct sell. "Food packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws and lids which are not intended for reuse, and on or in which any prepared food or takeout food is provided on or from the Premises. The LESSEE should also limit its distribution of plastic bags to its customers.

38. Hazardous Substances. LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of hazardous or otherwise regulated substances in, on, under, or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate, or sell any Hazardous Substance on the Premises without CITY's prior written consent. LESSEE shall obtain and maintain all required licenses and permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a hazardous substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment, or device which holds or incorporates a Hazardous Substance or hazardous waste.

38.1. Release. For the purposes of this provision, a release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances.

38.2. Hazardous Substance. Shall mean any hazardous liquid, solid, or gaseous material substances listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents.

38.3. Remediation. If LESSEE's occupancy, use, development, maintenance, or restoration of the Premises results in a release of a Hazardous Substance, LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules, and regulations of governmental authorities.

- 38.4. Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring hazardous materials or hazardous wastes to the Premises, LESSEE and/or LESSEE's contractor or agent shall remove all Hazardous Substances and hazardous wastes in any type of container, equipment, or device from the Premises immediately upon, the expiration of the said approval or permit, or prior to the expiration or earlier termination of this Lease whichever occurs first. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment, or devices from the Premises. LESSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment, or device requiring disposal or removal as required by this provision.
- 38.5. Indemnity. LESSEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE's occupancy, use, development, maintenance, or restoration of the Premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- 38.6. Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from, or beneath the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Administrative Code Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.
- 38.7. Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, development, maintenance, or restoration of the Premises ("LESSEE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the Premises, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or

Registered Civil Engineer. The environmental assessment shall be obtained at LESSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LESSEE's Operations on, in, from or under the Premises, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with environmental law and regulations are achieved, and LESSEE shall pay all costs and expenses therefor.

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

If to LESSEE:

If to CITY:

THE CITY OF SAN DIEGO

Attention: Director, Real Estate Assets Department

1200 Third Avenue, Suite 1700, MS 51A

San Diego, California 92101

40. Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, restoration and operation of the Premises comply with all applicable laws, rules, regulations, and requirements of competent legal authority at LESSEE's sole cost and expense. LESSEE shall promptly deliver to City copies of all documentary evidence of such compliance received by or otherwise available to LESSEE (e.g., validation of periodic inspection of LESSEE's fire-suppression equipment in the Premises). In addition, LESSEE shall comply with any and all notices issued by the Mayor or designee under the authority of any law, statute, ordinance, or regulation.
41. California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE pursuant to this Lease is or is not a public record subject to disclosure under the California Public Records Act. LESSEE shall hold CITY, its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the CPRA.

42. Equal Opportunity and Contracting. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and all other laws, rules and regulations of competent governmental authority. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. LESSEE shall cause the foregoing provisions, as well as the mandatory language required by San Diego Municipal Code section 22.2704, to be inserted in all commercial subleases and all contracts for any work covered by this Lease so that such provisions will be binding upon each commercial sublessee and contractor. LESSEE shall fully cooperate with any investigation conducted by the City of San Diego, in its governmental capacity, pursuant to its Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time], and upon CITY's request, LESSEE shall submit a current Workforce Report. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.
43. Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require lessees of City-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE shall certify that it will maintain such equal benefits throughout the term of this Lease. LESSEE's failure to maintain equal benefits shall be a default of this Lease.
44. Disabled Access Compliance. LESSEE shall, as applicable to the Premises and LESSEE's possession, use and occupancy thereof, comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE's compliance shall include but not necessarily be limited to the following:
- 44.1. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
  - 44.2. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
  - 44.3. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.

44.4. Where required by law, any improvements made to the Premises by LESSEE shall comply with municipal disabled access requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All improvements and alterations shall be at the sole cost of LESSEE.

44.4.1. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.

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

45. Accessibility Assessment. In accordance with California Civil Code Section 1938, CITY hereby states that the Premises has not been inspected by a Certified Access Specialist (CAS).

46. Drug-free Workplace. LESSEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

46.1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition; and

46.2. Establish a drug-free awareness program to inform employees about all of the following:

46.2.1. The dangers of drug abuse in the workplace;

46.2.2. LESSEE's policy of maintaining a drug-free workplace;

46.2.3. Any available drug counseling, rehabilitation, and employee assistance programs; and

46.2.4. The penalties that may be imposed upon employees for drug abuse violations.

46.3. LESSEE shall include in each of its sublicenses and contracts related to this Lease language obligating each sublicensee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sub-licensees and contractors, shall be individually responsible for their own drug-free workplace program.

47. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Lease if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of LESSEE for this Lease. It is not the intent of this policy that these provisions apply to members of the City Council.

48. Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Lease and to the extent legally possible, LESSEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. LESSEE shall use its best efforts to hire qualified local residents and firms whenever practicable.

49. Water Quality Assurances. The CITY and LESSEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the premises in a manner which aids in the protection of the City of San Diego's precious water resources. It is the LESSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code Sections 43.0301 to 43.0312),

Therefore, LESSEE shall, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs for industrial and commercial facilities adopted under the San Diego Municipal Code Section 43.0307(a).

It is ultimately the LESSEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, the LESSEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

50. Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, which shall run with the land, that LESSEE or any person claiming under or through LESSEE shall not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, gender identity, gender expression, disability, sexual orientation, marital status, national origin, ancestry, familial status, or source of income in the possession, use and occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees in the Premises.

51. Cumulative Remedies. CITY's rights and remedies under this Lease are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
52. Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.
53. Joint and Several Liability. If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Lease.
54. No Affiliation. Nothing contained in this Lease shall be deemed or construed to create a partnership, joint venture, or other affiliation between CITY and LESSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LESSEE or any other party or entity.
55. Entire Agreement and Understanding. This Lease constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties, and agreements between them pertaining to this Lease and LESSEE's occupancy, use, development, maintenance, and restoration of the Premises. Any modification, alteration, or amendment of this Lease shall be in writing and signed by all the parties hereto. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each of the parties to this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Lease. The failure or refusal of any party to read the Lease or other documents, inspect the Premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions.
56. Partial Invalidity. If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
57. Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner, as determined by CITY in its sole reasonable discretion.
58. Conformity. The policies established by LESSEE for the operation of the Premises shall conform to the general policies established by CITY for the use and operation of similar CITY-owned properties.
59. Use of Proceeds. LESSEE shall use all revenue received from the operation of the Premises in a fiscally responsible manner, relative to other organizations performing work reasonably similar to the Allowed Uses and the operation,

maintenance, and improvement of the Premises as set forth in this Lease. LESSEE's compliance with this requirement shall be certified in LESSEE's annual financial report as required herein.

59.1. Annual Report. LESSEE shall deliver to CITY an annual financial report for each of LESSEE's fiscal years during the Term, certified by an independent certified public accountant. LESSEE shall deliver each such financial report within one hundred twenty (120) days after its fiscal year end. The financial report shall include an operating statement and a report of net worth, shall be in a form reasonably satisfactory to CITY, and shall be subject to CITY's review and audit. Within one hundred twenty (120) days after the expiration or earlier termination of this Lease, LESSEE shall deliver to CITY a final financial report that complies with the above requirements for an annual financial report, and covering the period between the last annual report and the expiration or termination date of this Lease.

59.2. Financial Records. LESSEE shall keep or cause to be kept true, accurate, and complete accounting records using generally accepted accounting principles consistently applied, including double-entry books, a profit-and-loss statement, and a balance sheet, making it possible at all times to determine the nature and amount of revenue and expenditures. All of LESSEE's expenditures and transactions shall be supported by documents of original entry such as sales slips, cash register tapes, purchase invoices, and receipts. LESSEE shall retain documents supporting its profit-and-loss statements for a minimum period of five (5) years.

59.3. Inspection of Records and Audit. LESSEE shall make all of its books, statements, documents, records, and financial data open at all reasonable times for CITY's inspection and audit upon reasonable notice at the Premises or other suitable location mutually agreed upon by the parties. LESSEE shall maintain all records and accounts for a minimum period of five (5) years. This section shall survive expiration or earlier termination of this Lease. LESSEE's failure to keep and maintain records and make them available for inspection by CITY is a breach of this Lease and cause for termination. CITY may conduct an audit of LESSEE's books, statements, documents, records, and financial data, or demand and receive from LESSEE the results of a complete audit as conducted by an independent certified public accountant in the event that: (i) LESSEE's chief executive officer, executive director, or other such manager resigns, retires, or is discharged; (ii) a majority in the membership of LESSEE's governing body changes; or (iii) the purposes for which LESSEE was created are materially or substantially changed.

59.4. Proposed Budget. At least forty-five (45) days prior to each Lease year during the Term, LESSEE shall deliver to CITY one (1) copy of documents evidencing LESSEE's proposed programs, business plan, and fiscal status of LESSEE for the next year. Without limiting the generality of the foregoing, these

documents shall include (i) a copy of LESSEE's proposed programs; (ii) a copy of a detailed operating budget showing expected sources of revenue and the nature of all proposed expenditures, including compensation for the director and each staff member of LESSEE; and (iii) an adequate reserve account for maintenance of the Premises. Such documents shall be in form and content reasonably satisfactory to CITY.

59.5. Activities and Inventory. LESSEE shall deliver to CITY once a year during each Lease term an annual report of LESSEE's programs on the Premises.

60. Related Governmental Actions and Approvals. By entering into this Lease, the CITY is not obligating itself to any other government agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes, but is not limited to, rezoning, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the Premises. LESSEE shall be solely responsible for processing all land use, development, and construction approvals required for the use and occupancy of the Premises. This Lease shall not be interpreted by any decision-maker on any CITY-issued permit or approval to override or dictate the outcome of any findings required for any permit or development approval.

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

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

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

THE CITY OF SAN DIEGO, a California municipal corporation

BY: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Environmental Analysis Section Environmental Clearance:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

San Diego City Council Authorizing Resolution No. R. \_\_\_\_\_ Date of Final passage.

Approved as to form this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

JAN I. GOLDSMITH, City Attorney

BY: \_\_\_\_\_

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

Title: \_\_\_\_\_

**Exhibit A: Aerial View of Premises**

**Exhibit B: Development Plan Summary**

**EXHIBIT E**  
**WORK FORCE REPORT**



City of San Diego

**EQUAL OPPORTUNITY CONTRACTING (EOC)**

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

Phone: (619) 236-6000 • Fax: (619) 236-5904

**WORK FORCE REPORT**

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

**NO OTHER FORMS WILL BE ACCEPTED  
CONTRACTOR IDENTIFICATION**

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

Name of Company: \_\_\_\_\_

ADA/DBA: \_\_\_\_\_

Address (Corporate Headquarters, where applicable): \_\_\_\_\_

City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_ Fax Number: ( ) \_\_\_\_\_

Name of Company CEO: \_\_\_\_\_

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

Address: \_\_\_\_\_

City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_ Fax Number: ( ) \_\_\_\_\_ Email: \_\_\_\_\_

Type of Business: \_\_\_\_\_ Type of License: \_\_\_\_\_

The Company has appointed: \_\_\_\_\_

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

Address: \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_ Fax Number: ( ) \_\_\_\_\_ Email: \_\_\_\_\_

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

*Check the box above that applies to this WFR.*

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

I, the undersigned representative of \_\_\_\_\_

(Firm Name)

\_\_\_\_\_ hereby certify that information provided

(County)

(State)

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

(Authorized Signature)

(Print Authorized Signature Name)

**WORK FORCE REPORT – Page 2**

NAME OF FIRM: \_\_\_\_\_ DATE: \_\_\_\_\_

OFFICE(S) or BRANCH(ES): \_\_\_\_\_ COUNTY: \_\_\_\_\_

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

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

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

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

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

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

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

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

Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

**WORK FORCE REPORT – Page 3**

NAME OF FIRM: \_\_\_\_\_ DATE: \_\_\_\_\_

OFFICE(S) or BRANCH(ES): \_\_\_\_\_ COUNTY: \_\_\_\_\_

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

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

TRADE OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Brick, Block or Stone Masons														
Carpenters														
Carpet, Floor & Tile Installers Finishers														
Cement Masons, Concrete Finishers														
Construction Laborers														
Drywall Installers, Ceiling Tile Inst														
Electricians														
Elevator Installers														
First-Line Supervisors/Managers														
Glaziers														
Helpers; Construction Trade														
Millwrights														
Misc. Const. Equipment Operators														
Painters, Const. & Maintenance														
Pipelayers, Plumbers, Pipe & Steam Fitters														
Plasterers & Stucco Masons														
Roofers														
Security Guards & Surveillance Officers														
Sheet Metal Workers														
Structural Metal Fabricators & Fitters														
Welding, Soldering & Brazing Workers														
Workers, Extractive Crafts, Miners														
Totals Each Column														
Grand Total All Employees	<div style="border: 1px solid black; width: 100px; height: 20px; display: inline-block;"></div>													
Indicate By Gender and Ethnicity the Number of Above Employees Who Are Disabled:														
Disabled														



# CITY OF SAN DIEGO WORK FORCE REPORT

## HISTORY

The Work Force Report (WFR) is the document that allows the City of San Diego to analyze the work forces of all firms wishing to do business with the City. We are able to compare the firm's work force data to County Labor Force Availability (CLFA) data derived from the United States Census. CLFA data is a compilation of lists of occupations and includes the percentage of each ethnicity we track (Black, Hispanic, Asian, American Indian, Filipino) for each occupation. Currently, our CLFA data is taken from the 2010 Census. In order to compare one firm to another, it is important that the data we receive from the consultant firm is accurate and organized in the manner that allows for this fair comparison.

## WORK FORCE & BRANCH WORK FORCE REPORTS

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

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

## MANAGING OFFICE WORK FORCE

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

## TYPES OF WORK FORCE REPORTS:

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

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

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

## **Exhibit A: Work Force Report Job categories-Administration**

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

### **Management & Financial**

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

### **Professional**

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

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

**Architecture & Engineering, Science, Computer**

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

**Technical**

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

**Sales**

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

**Administrative Support**

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

**Services**

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

**Crafts**

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

**Operative Workers**

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

**Transportation**

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

**Laborers**

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

**Exhibit B: Work Force Report Job categories-Trade**

**Brick, Block or Stone Masons**

Brickmasons and Blockmasons
Stonemasons

**Carpenters**

**Carpet, floor and Tile Installers and Finishers**

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

**Cement Masons, Concrete Finishers**

Cement Masons and Concrete Finishers
Terrazzo Workers and Finishers

**Construction Laborers**

**Drywall Installers, Ceiling Tile Inst**

Drywall and Ceiling Tile Installers
Tapers

**Electricians**

**Elevator Installers and Repairers**

**First-Line Supervisors/Managers**

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

**Helpers, Construction Trade**

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

**Millwrights**

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

**Misc. Const. Equipment Operators**

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

**Painters, Const. Maintenance**

Painters, Construction and Maintenance
Paperhangers

**Pipelayers and Plumbers**

Pipelayers
Plumbers, Pipefitters and Steamfitters

**Plasterers and Stucco Masons**

**Roofers**

**Security Guards & Surveillance Officers**

**Sheet Metal Workers**

**Structural Iron and Steel Workers**

**Welding, Soldering and Brazing Workers**

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

**Workers, Extractive Crafts, Miners**

**EXHIBIT F**  
**LESSEE QUESTIONNAIRE**

**CITY OF SAN DIEGO**

**LESSEE'S AND SUBLESSEE'S QUESTIONNAIRE  
FOR ALL LEASES, ASSIGNMENTS AND SUBLEASES**

Pursuant to the City of San Diego City Charter Section 225: "Mandatory Disclosure of Business Interests," before the City will process requests to (Sub)Lease, all information requested in this Questionnaire must be completed by the proposed (Sub)Lessee. Even though a proposed Sublessee may complete the Questionnaire, the Questionnaire must be delivered or mailed to the City with a cover letter signed by the City Lessee or proposed Lessee. **THE CITY WILL NOT ACCEPT THE QUESTIONNAIRE, DOCUMENTS, OR OTHER INFORMATION DIRECTLY FROM A SUBLESSEE.**

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

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

Exact name of existing Lessee (always complete):

\_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_

Date this Questionnaire completed: \_\_\_\_\_, \_\_.

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

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

Title: \_\_\_\_\_

**This Questionnaire contains 15 pages.**

**PROPOSED (SUB)LESSEE**

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone No.: \_\_\_\_\_ Fax. No.: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone No.: \_\_\_\_\_ Fax. No.: \_\_\_\_\_

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

Sole Proprietorship (  ); Partnership (  ); Corporation (  );  
Limited Liability Company (  ); Other \_\_\_\_\_

Explain if necessary:

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

**PARTNERSHIP STATEMENT**

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

1. Date of Organization: \_\_\_\_\_

2. General Partnership ( ) Limited Partnership ( )  
Other ( ) Explain \_\_\_\_\_  
\_\_\_\_\_

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

Date	Book	Page	County

4. Has the partnership conducted business in San Diego County?

Yes ( ) No ( ) If so, when? \_\_\_\_\_

If so, where? \_\_\_\_\_

5. Name, address, and partnership share of each general and limited partner. If a general partner is another partnership, a corporation, or a limited liability company (LLC), please complete separate pages 3; or 4 and 5; or 6, as appropriate for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page for identification purposes). If a limited partner holding a 10% or greater interest is another partnership, a corporation, or an LLC, pages 3; or 4 and 5; or 6 must also be completed for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page).

General/Limited	Name	Address	Share %

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

**CORPORATION STATEMENT**

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

- 1. Type of corporation: C ( ) Subchapter S ( )
- 2. When incorporated? \_\_\_\_\_
- 3. Where incorporated? \_\_\_\_\_
- 4. Is the corporation authorized to do business in California? Yes ( ) No ( )  
If so, as of what date? \_\_\_\_\_

- 5. The corporation is held:
  - a. Publicly ( ) Privately ( )
  - b. If publicly held, how and where is the stock traded?  
\_\_\_\_\_

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

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

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
No. of Shares \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

No. of Shares \_\_\_\_\_

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

Title: \_\_\_\_\_

Address: \_\_\_\_\_

No. of Shares: \_\_\_\_\_

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

Title: \_\_\_\_\_

Address: \_\_\_\_\_

No. of Shares: \_\_\_\_\_

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

Title: \_\_\_\_\_

Address: \_\_\_\_\_

No. of Shares: \_\_\_\_\_

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

8. Attach complete copies of the Articles of Incorporation (and any Certificate(s) of Amendment thereto, as the case may be) of the Corporation, and the Bylaws of the Corporation (and any Amended and Restated Bylaws, as the case may be), and any other applicable Corporate documents.

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

**LIMITED LIABILITY COMPANY STATEMENT**

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

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

Manager/Officer/ Member	Name	Address	Share %

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

## **FINANCIAL AND OTHER BACKGROUND INFORMATION**

### **FINANCIAL STATEMENT**

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

### **OTHER INFORMATION**

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

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

**REFERENCES FOR PROPOSED (SUB)LESSEE**

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

**REFERENCE NO. 1**

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

Firm: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

**REFERENCE NO. 2**

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

Firm: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

**REFERENCE NO. 3**

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

Firm: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

**REFERENCE NO. 4**

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

Firm: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

**CITY OF SAN DIEGO PERSONAL DESCRIPTION AND RELEASE**

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

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

First, Middle, & Last Name	_____
Date of Birth	_____
Place of Birth	_____
Social Security Number	_____
Driver's License Number/State	_____
Home Address	_____ _____
Previous Address	_____ _____
Home Telephone No.	_____
Employer	_____
Occupation	_____
Business Address	_____ _____
Business Telephone No.	_____
Business Fax No.	_____

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

Date \_\_\_\_\_ Signed \_\_\_\_\_

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

\_\_\_\_\_

## **METHOD OF OPERATION**

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

**PROPOSED METHOD OF FINANCING  
DEVELOPMENT OR LEASEHOLD PURCHASE**

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

**ESTIMATE OF GROSS RECEIPTS**

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

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

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

## **EXPERIENCE STATEMENT**

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

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

(NOTE: Complete this page only if the transaction involves a Lease assignment.)

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

**EXHIBIT G**

**CREDIT INFORMATION REQUEST**

I/We hereby request and authorize you to release to the City of San Diego for verification purposes, personal and business credit reports and information concerning the company/corporation/partnership and/or the officers and individuals listed below. That information may include but is not limited to:

- 1) Employment history dates, titles, income, hours worked.
- 2) Banking (checking and savings) accounts of record.
- 3) Mortgage loan rating (open date, high credit, payment amount, loan balance, and payment).
- 4) Any information deemed necessary concerning a consumer credit report for my loan application.
- 5) This information is for the confidential use in compiling a credit report.
- 6) A facsimile, photographic or carbon copy of this authorization (being a facsimile, photographic or carbon copy of the signature(s) of the undersigned), may be deemed to be equivalent of the original and may be used as a duplicate original.

1. Name of Applicant:
(Please print or type)
Name of Business:
(If different from "applicant")
Telephone:
Name of Affiliated Business:
Telephone:
2. Name of Officer/Owner:
Address for the last two years:
Social Security Number:
Signature:
3. Name of Officer/Owner:
Address for the last two years:
Social Security Number:

Signature:

**EXHIBIT H**

**CERTIFICATION  
Contractor Standards – Pledge of Compliance**