

**AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND (Insert Name  
of Non-profit Corporation ) FOR THE  
MANAGEMENT AND MAINTENANCE OF THE  
[REDACTED] MAINTENANCE ASSESSMENT DISTRICT  
COMMENCING FISCAL YEAR 2017**

THIS MAINTENANCE AGREEMENT (Agreement) is made and entered into by and between the City of San Diego, a municipal corporation (City), and (Insert Name of Non-profit Corporation name), a non-profit corporation (Contractor).

**RECITALS**

WHEREAS, the City desires to retain the services of Contractor to administer all contracts necessary to provide the improvements and activities within the Name of District (District) as well as managing the day to day operations of the District; and

WHEREAS, the boundaries of the District are generally defined as follows:

XX  
XX  
XX  
XXXXXXXXXXXXXXXXXXXX; and

WHEREAS, a majority of the property owners in the District, weighted by the dollar amount of their assessments in the District, signed ballots in support of Contractor’s role to assume the responsibility to administer (as these terms are defined in San Diego Municipal Code 65.0202) the District in accordance with the San Diego Municipal Code section 65.0217; and

WHEREAS, every year the City Council approves an annual report that includes a budget for the services to be provided within the District for the applicable fiscal year;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and for other valuable consideration which is hereby acknowledged, City and Contractor hereby agree as follows:

**ARTICLE I  
SCOPE OF SERVICES**

**1.1 Services**

1.1.1 Contractor shall provide administration of all contracts necessary to provide the improvements and activities within the district, manage the day to day operations of the District, and prepare financial statements for the District in accordance with the “Maintenance Assessment Districts Procedural Ordinance” Chapter 6, Article 5, Division 2 of the San Diego Municipal Code and as set forth in the assessment engineer’s report approved by the City Council in connection with the formation of the District (Engineer’s Report).

- 1.1.2 Contractor shall perform all duties as reasonable and necessary to accomplish the intent of this Agreement in a manner consistent with the standards outlined in this Agreement and the Engineer's Report.

## **1.2 Specific Requirements**

- 1.2.1 Contractor, at a minimum, shall provide the maintenance standards described in the Scope of Services (Exhibit A) within the boundaries of the District and for any Zone within the District, consistent with the City Council-approved current fiscal year Engineer's Report and annual report afforded for improvements and activities.
- 1.2.2 Contractor shall conduct on-site inspections of all work done under this Agreement in the District and shall submit a report to the City indicating that such on-site inspections have been completed.
- 1.2.3 Contractor shall correct any deficiency reported by City staff pursuant to Section 5.2 of this Agreement within thirty calendar days.
- 1.2.4 Contractor shall be responsible for responding, in writing, to the City regarding District maintenance complaints received by the City.
- 1.2.5 Contractor shall conduct at least one noticed meeting per year which shall include the property owners, any applicable property owners' representatives pursuant to San Diego Municipal Code section 65.0212, and City staff, to discuss the budget, improvements and activities for the following fiscal year.
- 1.2.6 Contractor shall hold at least three other noticed meetings per year, in addition to the one required in San Diego Municipal Code section 65.0218(f), open to the public and property owners within the District to receive comments on all matters related to the District, including input on bids or proposals received by the Contractor for any contracts for improvements and activities of the District, evaluation of the performance of any contractor for the District, and advice to the Contractor regarding the improvements and activities for the District. With respect to any such meeting, Contractor shall use its best efforts to contact either orally or in writing the City, the relevant community planning group or designated property owners' representatives of the District, and provide notice in community newspapers, if available.
- 1.2.7 Contractor shall submit to the City a prospective annual report pursuant to section 65.0220 for the improvements and activities for the District, including a line item budget for the upcoming fiscal year, no later than April 1 of each year. Pursuant to Section V of the Maintenance Assessment District Council Policy 100-21, Contractor shall be required to budget District reserve. The proposed District budget for improvements and activities will be brought forward to City Council for consideration as part of the annual plan for the upcoming fiscal year.

- 1.2.8 Contractor shall maintain separate books and records of costs associated with Contractor's responsibilities under this Agreement, which shall be available for audit at any time during normal business hours and as often as the City deems necessary. All records shall be made available within the City of San Diego, and the City or its designee shall be allowed to audit, examine, and make excerpts from such data pertaining to all matters covered by the agreement. The Contractor shall maintain such books and records for a period of three years following completion of the agreement. The District shall pay for the costs of any audit performed by or at the direction of the City.

## **ARTICLE II SERVICES PROVIDED BY THE CITY**

### **2.1 Annual Report and District Budget**

- 2.1.1 The City will carry out all actions reasonably necessary for processing the annual report for the improvements, activities, administration and reserves for the District.
- 2.1.2 The City will review and consider the Contractor's prospective District annual report and budget for the improvements, activities, administration and reserves of the District.
- 2.1.3 The City may, at its sole discretion, amend line items in the District budget upon a written request from Contractor, provided the amendments would not increase the total amount authorized for reimbursement to Contractor.

### **2.2 Services**

- 2.2.1 The City reserves the right to deploy its public safety personnel in a manner which, in the City's sole discretion, best serves the needs of the public. Further, nothing in this Agreement shall be deemed to abrogate or waive the provisions of California Government Code section 845.
- 2.2.2 The City will coordinate the collection of assessments with the County of San Diego and provide administrative services, assistance, and information to Contractor.

## **ARTICLE III CONTRACT ADMINISTRATION, ROLES, AND DUTIES**

### **3.1 City's Contract Administrator**

City's Economic Development Department is the contract administrator for purposes of this Agreement. Contractor shall communicate with City Staff at the Department on all matters related to the administration of the Agreement and Contractor's performance of its obligations and duties rendered. The Mayor or designee (City Representative) shall be

the primary contact between the City and Contractor for purposes of this Agreement (see Exhibit C).

### **3.2 Contractor as Owners' Association**

Contractor shall serve as the Owners' Association for the District. As the Owners Association, Contractor shall comply with the Ralph M. Brown Act, California Government Code section 54950 et seq., at all times when matters within the subject matter of the District are heard, discussed, or deliberated, and with the California Public Records Act, California Government Code section 6250 et seq., for all documents relating to improvements and activities of the District.

### **3.3 Contractor's Representatives**

3.3.1 Contractor agrees that a designated officer of Contractor (Contractor Representative) shall be the primary contact between Contractor and the City for the purposes of this Agreement (see Exhibit C). The Contractor Representative shall coordinate Contractor's activities for the engagement and shall participate in all phases of the engagement. In order to simplify invoice processing, it is agreed by Contractor that the Contractor Representative shall act as billing agent for work provided by Contractor. Contractor shall notify the City within ten calendar days of replacement of the Contractor Representative and shall provide an amended Exhibit C to reflect the replacement.

3.3.2 Contractor's management of the services of this Agreement is of substantial concern and importance to the City, requiring coordination with City services. The quality of performance will reflect on the City and its management. Accordingly, the City requires Contractor to inform the City on a regular basis of any changes in the Officers of Contractor and of the identity of its subcontractors and their areas of responsibility.

3.3.3 In addition to compliance with all applicable laws, rules, regulations, ordinances, resolutions, and policies of the federal, state, and local governments as they pertain to this Agreement, Contractor shall comply immediately with any and all directives issued by the City, through its Administrator, or other authorized representatives, under authority of any law, rule, ordinance, or regulation.

### **3.4 Delegation of Duties**

Contractor is an independent contractor. Contractor shall administer the District improvements and activities and may engage one or more contractors to provide routine maintenance services including trash collection and disposal, graffiti removal, repair, landscaping, and lighting improvements or otherwise improvements and activities listed in within the District's Engineer Report and annual plan. Accordingly, Contractor's duties specified in this Agreement may not be delegated by Contractor without the prior written consent of the City.

**ARTICLE IV  
CONTRACTS AWARDED BY CONTRACTOR**

**4.1 Procurement Policy**

Contractor shall comply with the Conflict of Interest and Procurement Policy for Nonprofit Corporations Contracting with the City of San Diego, attached hereto as Exhibit D. Neither the Contractor nor any of its board members shall have a financial interest in any contract awarded for the District.

**4.2 Subcontractors Policy**

Contractor must ensure that all Subcontractors engaged for the purpose of providing improvements, activities, maintenance or service required of, or administered by, Contractor pursuant to this Agreement meet all obligations required in Article X.

**ARTICLE V  
COMPENSATION AND REIMBURSEMENT**

**5.1 Invoices**

5.1.1 Contractor shall submit monthly reimbursement requests to the City along with all supporting receipts, invoices, checks, payroll statements, bank statements, and all other records of services performed. Each expenditure submitted for reimbursement must show as cleared on the submitted bank statements. If Contractor is required to return funds to the District account in accordance with section 5.4.1, Contractor shall include, in a monthly reimbursement request, the amount to be returned and any supporting records. The reimbursement amount will be adjusted accordingly.

5.1.2 The City will reimburse Contractor from District assessment funds within thirty days of receipt of a proper reimbursement request. The request must include both a Trial Balance and Summary of Expenses as of the period claimed. The Summary of Expenses shall detail expenses by expenditure category and line item as reflected in the City Council-approved current fiscal year District Budget and in accordance with Exhibit B.

5.1.3 All invoices shall include the names and rates of pay for contracted personnel who have performed services on behalf of the District, the hours worked, and details of any reasonable and necessary out-of-pocket expenses. Reimbursement requests shall be signed by a representative of Contractor's board, not the Executive Director.

5.1.4 Contractor shall not request, nor shall it be entitled to, reimbursement under this Agreement for any expenditure that has been or will be properly charged to a funding source other than District assessment funds.

- 5.1.5 Contractor shall not request reimbursement under this Agreement for any expenditure that has been or will be properly charged to a funding agency other than the City.

## **5.2 Compensation**

- 5.2.1 Contractor shall be compensated for its services pursuant to this Agreement solely by the terms of this Section 5.2. In any given fiscal year, Contractor is entitled to receive an amount of up to 15 percent of budgeted annual expenditures, as reflected in the District annual report in order to pay for Administrative expenses as defined by San Diego Municipal Code section 65.0202. Contractor shall not be authorized to include charges for Administration on any amounts paid by Contractor that contain any administrative expense charges by the billing entity. If Contractor enters into any contracts with third parties for the performance of any of Contractor's duties under this Agreement and any such contract includes an administrative expenses charge, Contractor shall not be entitled to receive Administration reimbursements for its own administrative expense activities related to the work performed by third party contractors.
- 5.2.2 The Administrative expenses reimbursement to Contractor shall be limited to 15 percent of the budgeted annual expenditures in the District.
- 5.2.3 The City shall be compensated a flat rate of \$3,500 associated with the annual budget processing, property tax enrollment and collections, professional engineering services, and audit services from the District budget. The City reserves the right however, to amend this section, including, without limitation, the District budget, should the City experience revenue shortfalls in which negatively impact the General Fund and/or the City's ability to fund basic City services.
- 5.2.4 The City will not reimburse Contractor for any expenditure that has been or may be properly charged to, or reimbursed by, a City funding source other than District assessment funds.
- 5.2.5 The City will not reimburse Contractor for any expenditure that has been or may be properly charged to, or reimbursed by, a public agency other than the City.
- 5.2.6 Contractor agrees that the City's monetary contribution is limited to the amount provided for in this Agreement, and that the City shall not be responsible for cash costs or support services other than as provided for in this Agreement.

## **5.3 Advances**

- 5.3.1 Upon a written request from Contractor, the City may make an annual cash advance of three months of working capital to Contractor based on the District's monthly cash flow budget requirements related to the City Council-approved current fiscal year District annual report and budget. If the District reserves are

not adequate to cover the working capital advance request, an advance will be based on available cash at the time of the request.

- 5.3.2 The advance will be returned on or before the termination of this Agreement as either a reduction of the final reimbursement request or a transfer of funds from Contractor. Contractor shall indicate in writing, no later than six months prior to the termination of this Agreement, detailing how the advance shall be returned to the City.

#### **5.4 Other Revenue/ Non-Public Funds**

- 5.4.1 If the Contractor receives revenue directly generated by activities carried out with any district assessment funds, then a portion of that revenue must be returned to the District account based on the District's proportional monetary contribution toward the activity generating the revenue. All revenue owed to the District pursuant to this section must be returned in accordance with section 5.1.1 prior to the end of the fiscal year in which the revenue was generated.

- 5.4.2 In the event Contractor collects any funds other than District assessment funds ("Non-Public Funds"), such Non-Public Funds may be utilized or obligated by Contractor for activities and/or improvements and shall not be subject to the provisions in this Agreement, with the exception of Sections 10.2.1 and 3.3.3, so long as Contractor does not utilize or obligate any District assessment funds towards:

- 5.4.2.1 any portion of the proposed activity or improvement to which Contractor proposes the use of Non-Public Funds; and

- 5.4.2.2 any staff time or resources associated with the proposed activity or improvement to which Contractor proposes the use of Non-Public Funds, including but not limited to facilitating committee or board discussions, implementing the proposed activity or improvement, soliciting for goods or services necessary for implementation, and accounting or reporting on the proposed activity or improvement. Notwithstanding the foregoing sentence, Contractor's use of District assessment funds for purposes of generating reports pertaining to Non-Public Funds in accordance with the requirements set forth in Exhibit A of this Agreement shall not, by itself, subject such Non-Public Funds to the provisions in this Agreement.

### **ARTICLE VI SUSPENSION AND TERMINATION**

#### **6.1 City's Right to Suspend Payment**

If Contractor fails to perform any of its obligations as set forth in this Agreement, the City shall have the right to suspend the payment of Administration costs to Contractor

pursuant to Article III until such time as Contractor is in compliance with the terms of this Agreement. If, as a result of Contractor's failure to perform, the City elects to withhold payment, the City shall give Contractor written notice of its intention to suspend payment of Administration costs until Contractor has cured its noncompliance. Such notice shall provide Contractor with a description of the failure to perform upon which the City has based its suspension of payment hereunder. Upon the performance by Contractor of its obligations under this Agreement, the City shall resume payments of Administrative costs to Contractor in conformance with the terms of Article III set forth above. If the deficiency is not satisfactorily corrected within thirty calendar days, the Mayor or designee may use such findings as the basis for termination of this Agreement for cause pursuant to Article VI hereof and San Diego Municipal Code section 65.0218(n).

## **6.2 City's Right To Terminate**

Contractor's failure to comply with any terms or conditions of this Agreement may result in termination of the Agreement.

### **6.2.1 City's Right To Terminate For Default**

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

The Mayor or designee shall promptly give Contractor written notice of the occurrence of the default, and shall allow Contractor thirty (30) days thereafter to cure the default, or to submit a written plan of action to cure such a default. Failure to cure the default or timely submit the plan of action within the thirty-day period, or failure to adhere to the plan of action, shall entitle the Mayor or designee to terminate this Agreement for cause in accordance with San Diego Municipal Code section 65.0218(n).

Notwithstanding the foregoing, if the nature of the default could endanger the public's health and safety, Contractor shall cure the default within twenty-four hours of receipt of notice of the default. If Contractor fails to fully and timely cure the default, then the City Council may, in its sole and absolute discretion, terminate this Agreement.

### **6.2.2 City's Right to Terminate For Convenience**

Notwithstanding any other provision of this Agreement, the City Council may terminate this Agreement for any reason and at any time, provided the termination is carried out in accordance with San Diego Municipal Code section 65.0218(n) and Section 6.4 below.



6.2.3 City's Right to Terminate for Bankruptcy or Assignment for the Benefit of Creditors

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

**6.3 Remedies Cumulative**

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

**6.4 Notice of Termination**

The City Council may terminate this Agreement with Contractor at any time provided:

- 6.4.1 a public hearing is held on the City's intention to terminate this Agreement with Contractor;
- 6.4.2 Contractor is provided thirty (30) calendar days' notice of the public hearing on the City's intention to terminate this Agreement;
- 6.4.3 a notice of the public hearing is mailed at least fifteen calendar days prior to the public hearing to each property owner within the District; and
- 6.4.4 the City Council determines at the conclusion of the public hearing that it is in the best interests of the District to terminate this Agreement with Contractor.

**6.5 Contractor's Obligations and Rights Following Contract Termination**

- 6.5.1 Upon termination of this Agreement, the City shall assume administration of the District as defined in San Diego Municipal Code section 65.0202 and provide the improvements and activities for the District. Contractor shall transmit to the City all funds, books, records, data, equipment and other assets of the District no later than thirty calendar days after receipt of written notice of termination. Until the actual transfer of these assets is complete, Contractor shall continue to administer the contracts necessary to provide the improvements and activities for the District so that there is no interruption in or loss of service to property owners within the District.
- 6.5.2 Following a termination of this Agreement, Contractor may be entitled to permitted costs as set forth in Article V until the actual transfer of all District assets to the City is complete. By accepting payment for completion of

obligations as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Agreement with regard to the affected performance.

## **6.6 Contractor's Right To Terminate**

Contractor may terminate this agreement for any reason after providing ninety calendar days written notice of its intent to terminate to the City. Contractor shall transmit to the City all funds, books, records, data, equipment and other assets of the District no later than ninety calendar days of issuance of written notice of termination. Until the actual transfer of these assets is complete, Contractor shall continue to administer the contracts necessary to provide the improvements and activities for the District so that there is no interruption in or loss of service to property owners within the District.

## **ARTICLE VII EFFECTIVE DATE AND TERM**

Upon the execution of this Agreement by the parties and approval of this Agreement by the City Attorney in accordance with Charter Section 40, this Agreement shall be effective as of July 1, 2016 [Term], unless terminated earlier in accordance with the terms of this Agreement. The agreement shall have a term not to exceed five years. In no event shall the term of this Agreement extend beyond June 30, 2022.

## **ARTICLE VIII DOCUMENTS, RECORDS, AND REPORTS**

### **8.1 Ownership Of Documents**

8.1.1 Once Contractor has been compensated for services performed, all documents, including, but not limited to reports and maps prepared in connection with or related to the Scope of Services, shall be the property of the City.

8.1.2 The City's ownership of these documents includes all incidental rights, whether or not the work for which they were prepared has been performed.

8.1.3 This Section 8.1 shall apply whether the Agreement is terminated by the completion of the services, by the expiration of this Agreement under Article VII, or in accordance with any other provisions of this Agreement.

8.1.4 Notwithstanding the foregoing, Contractor shall have the right, at its sole cost, to make and retain separate copies of the documents.

### **8.2 Documents and Records**

8.2.1 At any time during normal business hours and as often as the City deems necessary, Contractor and all subcontractors shall make available to the City for auditing, examination and copying at reasonable locations within the City of

San Diego all data and records relating to all matters covered by this Agreement. Contractor and all subcontractors will permit the City to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered in this Agreement.

- 8.2.2 Contractor and subcontractors shall maintain such data and records for a period of three years following receipt of the final payment of this Agreement. With respect to receipts, invoices, checks, payroll statements, bank statements, and all other evidence of payments for which Contractor is reimbursed by the City pursuant to this Agreement, Contractor shall maintain such documentation at its principal place of business in the City of San Diego for the required period of time. With respect to all records covered by this Section 8.2, if Contractor does not make them available within the City of San Diego, then Contractor shall pay all City's travel related costs to audit records associated with this Agreement where records are maintained. The District shall pay for the costs of any audit performed by or at the direction of the City.
- 8.2.3 Contractor shall post all regular meeting agendas and any non-confidential back-up materials; approved meeting minutes; Contractor's Articles of Incorporation or Formation, including any and all amendments thereto; Contractor's Bylaws, including any and all amendments thereto; any annual audits or financial disclosures, the Annual Report; Contractor's tax returns, including any and all amendments thereto; any and all determinations of Contractor's tax-exempt status by the Internal Revenue Service or Franchise Tax Board; and any other information or materials required by this Agreement to be posted on a website. All such items shall be posted not more than ten business days after they become available. Social security numbers, employer identification numbers, and other confidential information must be redacted from the posted materials.

### **8.3 Financial Reports**

Contractor shall provide an audited financial statement of all reimbursements and working capital advances paid to Contractor with District funds within ninety days after the end of Contractor's fiscal year. The financial statements must be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and audited by an independent Certified Public Accountant (CPA) as selected or approved by the City in accordance with Generally Accepted Auditing Standards (GAAS). The statements must include a Statement of Expenditures of the District's funds identified in the same expenditure classifications as contained in the City Council-approved District Budget and show a comparison to the budgeted amounts, and a Statement of Compliance with the terms of this Agreement signed by Contractor. Failure to comply with these requirements could result in suspension of any current payments or possible future funding.

**ARTICLE IX  
ACCEPTABILITY OF WORK**

The City shall decide any and all questions that may arise as to the quality or acceptability of the services performed, the manner of performance, the interpretation of instructions to Contractor, the acceptable completion of this Agreement, and the amount of compensation due. In the event Contractor believes that any requirement of the City interferes with or affects the independence of Contractor, Contractor shall confer with the City in order to resolve any possible conflict. In the event Contractor and the City cannot agree as to the quality or acceptability of the work, the manner of performance and/or the compensation payable to Contractor in this Agreement, the City or Contractor shall give to the other written notice thereof. No later than ten calendar days thereafter, Contractor and the City shall each prepare a written report that supports its position and file the same with the other party. Thereafter, the City shall, with reasonable diligence, determine the quality or acceptability of the work, the manner of performance, and/or the compensation payable to Contractor. This is not intended to be in any arbitration dispute between the parties of this Agreement.

**ARTICLE X  
SUBCONTRACTORS**

**10.1 Subcontractors List and Subcontracts**

10.1.1 On or before the date this Agreement is executed by the Parties, Contractor shall provide the City with each of the following:

- 10.1.1.1 a completed Subcontractors List, listing the names and contact information of all Subcontractors it has hired or retained, or intends to hire or retain, in connection with this Agreement, which the City will forward to Equal Opportunity Contracting Program (EOCP); and
- 10.1.1.2 a copy of all subcontracts entered into in connection with this Agreement, including the scope of work, along with a written statement describing the justification for the Subcontractor services, and an itemization of all costs for the Subcontractor services.

10.1.2 If, during the term of this Agreement, Contractor identifies a need for additional Subcontractor services, Contractor shall, within ten calendar days of the date of any subcontract for such services, provide the City with each of the following:

- 10.1.2.1 a copy of the subcontract, including the scope of work, along with a written statement describing the justification for the additional Subcontractor services, and an itemization of all costs for the additional Subcontractor services; and
- 10.1.2.2 an updated Subcontractors List that includes the name and contact information of any new or substitute Subcontractor hired to provide

the additional Subcontractor services, which the City will forward to EOCP.

10.1.3 Contractor shall procure the services of all Subcontractors in conformance with the procedures set forth in Exhibit D. Contractor shall maintain documentation of the process used to procure any such Subcontractor services, and shall provide a copy of all such documentation to the City within ten calendar days of any written request by the City.

## **10.2 Required Language for Subcontracts**

10.2.1 Contractor shall ensure that all subcontracts entered into in connection with this Agreement contain language which requires Subcontractors to at all times comply with all applicable laws, statutes, ordinances, and regulations of City, county, state, and federal governments. Subcontractor shall also comply with all notices issued by the City under the authority of all current or future laws, statutes, ordinances, or regulations.

10.2.2 Subcontractor shall obtain all insurance coverage required of Contractor in this Agreement. Subcontractor shall maintain, in full force and effect, such insurance coverage during any and all work performed in connection with this Agreement. Subcontractor shall not begin work on a subcontract until all insurance required of the Subcontractor under this Section has been obtained.

10.2.3 If the City is made a party to any judicial or administrative proceeding to resolve the dispute between Contractor and Subcontractor, Contractor shall defend and indemnify the City as described herein.

## **10.3 Contract Activity Report.** Within ten calendar days of a written request by the City, Contractor shall provide the City:

10.3.1 statistical information (as described in the City's Contract Activity Report), including the amount of subcontracting provided by firms during the period covered by the Contract Activity Report; and

10.3.2 an invoice from each Subcontractor listed in the Contract Activity Report.

## **10.4 Prohibition on Use of Certain Subcontractors.** Contractor shall not employ, award any contract to, engage the services of, or fund any Subcontractor during any period of federal, state, or local debarment, suspension, or ineligibility of Subcontractor, when Contractor has been noticed of such debarment, suspension, or ineligibility.

## **10.5 Definition of Subcontractor.** For purposes of this Agreement, the term "Subcontractor" means any person or entity with which Contractor contracts for the performance of services or the supplying of materials that will be paid for in whole or in part with funds received by Contractor pursuant to this Agreement.

**ARTICLE XI  
INFORMAL DISPUTE RESOLUTION**

If Contractor and the City have any dispute as to their respective rights and obligations under this Agreement, or the meaning or interpretation of any provisions hereof, they shall first attempt to resolve such disputes by informal discussion between their respective representatives. Within five calendar days of determining the existence of any such dispute, the party determining there is such dispute shall give written notice of the existence of the dispute and the need to meet informally to resolve such dispute. The parties shall endeavor thereafter to meet within five days of the second party's receipt of such notice, or at such time thereafter as is reasonable under the circumstances.

**ARTICLE XII  
INDEMNIFICATION**

Contractor agrees to indemnify, defend, and hold the City free and harmless from and against any and all actions, suits, proceedings, liability, claims, demands, liens, or judgments for death of or injury to any person or damage to any property whatsoever alleged to be caused, or caused, by any act or omission of the Contractor or any officer, contractor, agent, or employee of the Contractor and all expenses of investigating and defending against same.

**ARTICLE XIII  
INSURANCE**

**13.1 Prerequisites To Commencement Of Work**

13.1.1 Prior to the execution of this Agreement by the Parties and approval by the City Attorney in accordance with Charter Section 40, and prior to Contractor's performance of its obligations and/or duties under this Agreement, Contractor shall complete all insurance requirements described in the General Terms and Provisions Applicable to Goods, Services, and Consulting Contracts, attached hereto as Exhibit F.

13.1.2 Contractor shall ensure that all Subcontractors used on work subject to this Agreement meet all insurance requirements described in Exhibit F. Contractor shall not allow any Subcontractor to commence work on public property, unless and until all insurance required of the subcontractor, as described in Exhibit f has been obtained.

13.1.3 There shall be no endorsement or modification of the policies limiting the scope of coverage for insured versus insured claims, or for contractual liability.

### **13.2 Endorsements**

All endorsements required under this Agreement shall be in full force and effect for the entire term of this Agreement.

### **13.3 City's Right To Request And Review Contractor's Insurance Policies**

The City reserves its right to request, and Contractor shall immediately submit to the City upon the City's request, copies of any policy required under this Agreement, including attachments, and its right to review, at any time, Contractor's insurance coverage, limits, deductibles, and self-insured retentions to determine if they are acceptable to the City. If the City determines that such insurance coverage, limits, deductibles, and/or self-insured retentions are unacceptable, the City and Contractor shall amend this Agreement to adjust such insurance coverage, limits, deductibles, and/or self-insured retentions to a level acceptable to the City, and Contractor shall comply with any such amendment.

### **13.4 Contractor's Liability Not Limited To Insurance Coverage**

Contractor's, or Subcontractor's, liability, including, but not limited to, Contractor's indemnity obligations under this Agreement, shall not be deemed limited in any way to the insurance coverage required in this Article.

### **13.5 Additional Insurance**

Contractor may obtain additional insurance not required by this Agreement. Contractor shall bear the cost of any additional insurance not required by this Agreement unless the reimbursement of such expense is expressly authorized by the City.

### **13.6 Expiration Of Policies**

At least thirty calendar days prior to the expiration of each insurance policy required herein, Contractor shall provide the City an insurance certificate, showing that a new or extended policy has been obtained which meets the requirements of this Agreement.

## **ARTICLE XIV CONFLICT OF INTEREST**

**14.1** Contractor shall make known to its board members, employees, and agents be aware of and are subject to all federal, state, and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq., and 81000, et. seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at sections 27.3501 to 27.3595.

**14.2** If, in performing the professional services set forth in this Agreement, Contractor makes, or participates in, a "governmental decision" as described in Title 2, Section 18701(a)(2)

of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the department's conflict of interest code, Contractor shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the Contractor's relevant financial interests.

- 14.3** If the City requires Contractor to file a Statement of Economic Interests as a result of the professional services performed, Contractor shall be considered a "City Official" subject to the provisions of the City of San Diego Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Agreement.
- 14.4** Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. Contractor shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that Contractor is subject to a conflict of interest code. Contractor shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which Contractor was subject to a conflict of interest code.
- 14.5** Contractor shall establish and make known to its board members, employees, and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships.

If Contractor violates any conflict of interest law, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects Contractor to liability to the City for attorneys' fees and all damages sustained as a result of the violation. It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of sections 1090 *et seq.* 87100 *et seq.* of the California Government Code relating to conflicts of interest for public officers and employees, as well as the conflict of interest codes of the City. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of the City relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, the City shall immediately terminate this Agreement by giving written notice thereof. Contractor agrees to abide by section 87100 *et seq.* of the California Government Code during the term of this Agreement. The City may determine that Contractor is subject to a conflict of interest code and is required to complete one or more statements of economic interest disclosing relevant financial interests. Upon the City's request, Contractor shall submit the necessary documentation.

- 14.6** Contractor's personnel, employed in performing the obligations and duties under this Agreement, shall not accept gratuities, or any other favors, from any subcontractor or potential subcontractor. Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational



interest or relationship that would violate conflict of interest laws, regulations, or policies.

- 14.7 If Contractor violates any conflict of interest law, or any of the provisions of this Article XIV, the violation shall be grounds for immediate termination of this Agreement, and/or the imposition of other remedies set forth in Exhibit F. Further, any such violation shall subject Contractor to liability to the City for attorney’s fees and all damages sustained as a result of the violation.

**ARTICLE XV  
NOTICE**

Unless otherwise provided in this Agreement, in all cases where written notice is required under this Agreement, service shall be deemed sufficient if said notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the Economic Development Department. Proper notice is effective on the date of personal delivery or five (5) days after the deposit in a United States postal mailbox unless provided otherwise in the Agreement. writing from the respective parties, notice shall be addressed as follows:

Notice to the City shall be addressed:

City of San Diego  
Economic Development Department  
1200 3<sup>rd</sup> Ave, 14<sup>th</sup> Floor, MS-56D  
San Diego, California 92101

Notice to Contractor shall be addressed:

XXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

**ARTICLE XVI  
WAGE REQUIREMENTS**

**16.1 Living Wages**

Contractor shall comply with Living Wage Ordinance starting July 1, 2016. This Agreement is subject to the City’s Living Wage Ordinance (LWO), codified at San Diego Municipal Code sections 22.4201 through 22.4245. The LWO requires payment of minimum hourly wage rates and other benefits unless an exemption applies. San Diego Municipal Code section 22.4225 requires each Contractor to fill out and file a living wage certification with the City Manager within thirty (30) days of Award of the Contract. LWO wage and health benefit rates are adjusted annually in accordance with San Diego Municipal Code section 22.4220(b) to reflect the Consumer Price Index.

Service contracts, financial assistance agreements, and City facilities agreements must include this upward adjustment of wage rates to covered employees on July 1 of each year. In addition, Contractor agrees to require all of its subcontractors, sublessees, and concessionaires subject to the LWO to comply with the LWO and all applicable regulations and rules.

## **16.2 Prevailing Wages**

Contractor shall ensure that all subcontracts entered into in connection with this Agreement contain language requiring Subcontractors to at all times comply with all applicable laws, statutes, ordinances, and regulations of City, county, state, and federal governments. Subcontractor shall also comply with all notices issued by the City under the authority of all current or future laws, statutes, ordinances, or regulations. Contractor's and Subcontractors' obligations to comply with all applicable law in performing this Agreement include, but are not limited to, San Diego Municipal Code section 22.3019 requiring the Contractor and each Subcontractor to comply with, and cause its Subcontractors to comply with, California Labor Code sections 1720 through 1861 (State of California prevailing wage law) for construction work performed or funded pursuant to this Agreement cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed or funded pursuant to this Agreement cumulatively exceeding \$15,000, all as further described in Exhibit E attached to this Agreement.

Pursuant to San Diego Municipal Code section 22.3019 ("PWO"), construction work performed or funded pursuant to this Agreement cumulatively exceeding \$25,000 and alteration, demolition, repair and maintenance work performed or funded pursuant to this Agreement cumulatively exceeding \$15,000 is subject to the State of California prevailing wage law set forth in California Labor Code sections 1720 through 1861 ("Prevailing Wage Law") and in undertaking any and all such work, the Contractor and its Subcontractors shall comply with Prevailing Wage Law, including, but not limited to, the requirements set forth in this Exhibit E. This requirement to comply with Prevailing Wage Law is in addition to any requirement to pay "living wage" pursuant to San Diego Municipal Code sections 22.4201 through 22.4245 ("LWO") and Section 14.4 of this Agreement.

## **16.3 Higher Wage Rate Applies**

If both Prevailing Wage Law and the LWO are applicable to particular work, the Contractor must determine which per diem rate is highest for each classification of work between the applicable prevailing wage rate and living wage rate, and pay the higher of the two rates to their employees. The LWO may apply to work that is not subject to Prevailing Wage Law.

**ARTICLE XVII  
MISCELLANEOUS PROVISIONS**

**17.1 Integrated Agreement**

This Agreement including Attachments and/or Exhibits contains all of the agreements of the parties and all prior negotiations and agreements are merged herein. This Agreement cannot be amended or modified except by written agreement, and mutually agreed upon by the City and Contractor.

**17.2 Attorneys' Fees**

If either party brings any action or proceeding to enforce, protect or establish any right or remedy arising out of or based upon this Agreement, including, but not limited to, the recovery of damages for its breach, the prevailing party in said action or proceeding shall be entitled to recovery of its costs and reasonable attorneys' fees.

**17.3 Political Activities**

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

**17.4 Counterparts**

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

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, this Agreement executed by City of San Diego acting by and through the Mayor or designee and by Contractor pursuant to Resolution No. R-XXXXXXXX.

THE CITY OF SAN DIEGO

NAME OF CONTRACTOR

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

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

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

I HEREBY APPROVE the form and legality of the foregoing Agreement this \_\_\_\_ day of \_\_\_\_\_, 2016.

JAN I. GOLDSMITH, City Attorney

By: \_\_\_\_\_

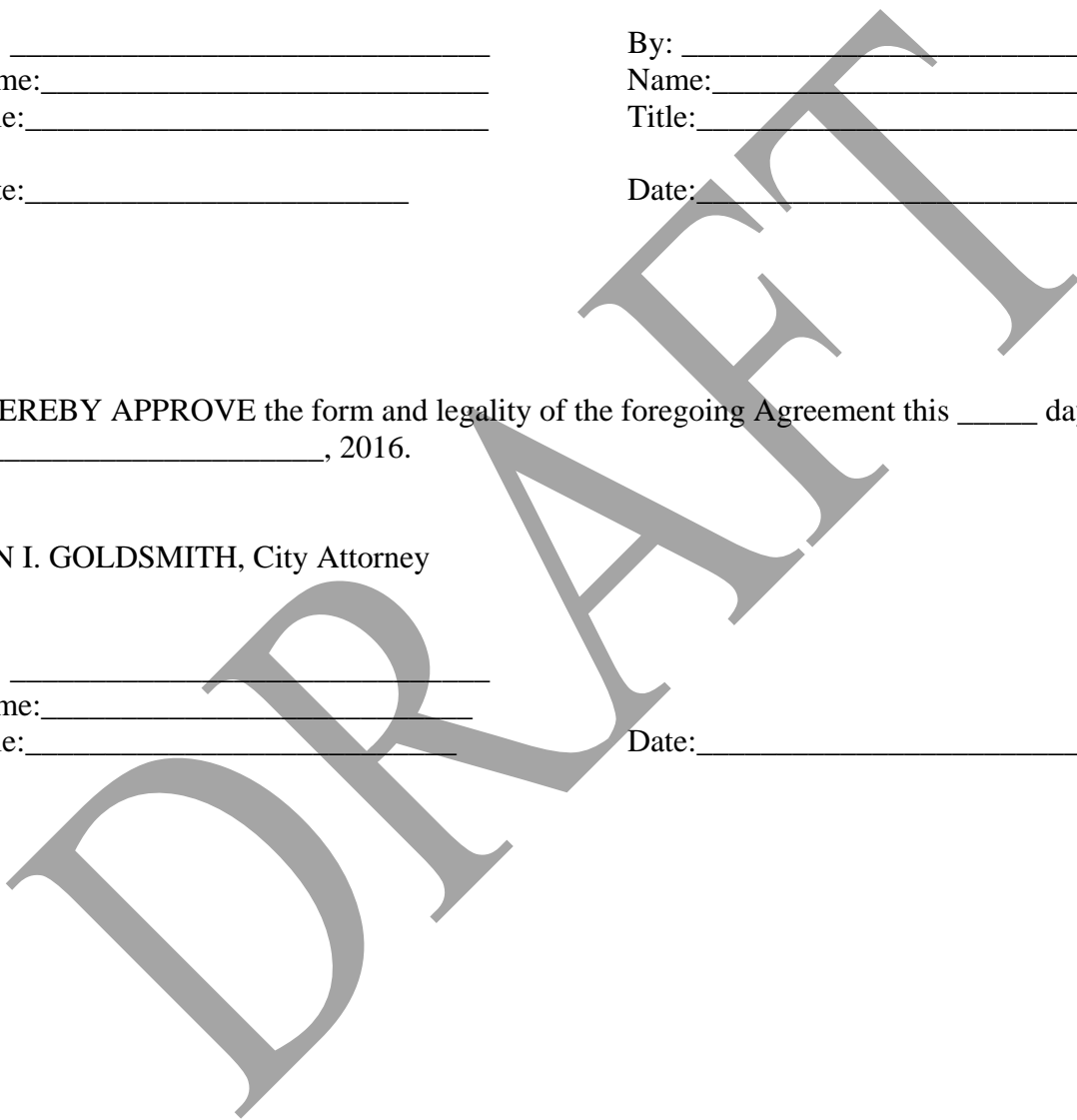
By: \_\_\_\_\_

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

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

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

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



# EXHIBIT A

SCOPE

# EXHIBIT B

BUDGET DETAIL FORM

# EXHIBIT C

CONTRACT ADMINISTRATION

# EXHIBIT D

CONFLICT OF INTEREST



**EXHIBIT D**  
**CONFLICT OF INTEREST AND PROCUREMENT POLICY**  
**FOR NONPROFIT CORPORATIONS CONTRACTING**  
**WITH THE CITY OF SAN DIEGO**  
**FOR ADMINISTRATION OF A MAINTENANCE ASSESSMENT DISTRICT**

Purpose

It is important for the City and its citizens to have confidence in the integrity of nonprofit corporations which contract with the City to administer programs, and which receive funding from or through the City.

This policy is not intended to supersede, negate or otherwise invalidate any statute, ordinance or policy, but is intended to supplement existing authorities governing these subjects.

Board Roster

All nonprofit corporations contracting with the City shall provide, within 30 days of execution of an agreement, a list of the names of all board members and their business affiliations. In the event that the board membership changes, the corporation shall provide the City with an updated list.

Procedures for Procurement of Goods and Services

All procurement of goods and services by nonprofit associations contracting with the City for administration of a Maintenance Assessment District shall comply with Divisions 30-36 of Article 2, Chapter 2, of the San Diego Municipal Code, and all other laws and policies applicable to the City's procurement of such goods and services.

When a *contract* provides for an expenditure greater than \$5,000, but equal to or less than \$10,000, the Nonprofit Corporation may award the *contract* but shall seek competitive prices either orally or in writing.

When a *contract* provides for an expenditure greater than \$10,000 but equal to or less than \$50,000, the Nonprofit Corporation may award the *contract* but shall solicit written price quotations from at least five potential sources.

When a *contract* provides for an expenditure greater than \$50,000 but equal to or less than \$1,000,000, the Nonprofit Corporation may award the *contract* only after advertising it for a minimum of one day in the City Official Newspaper.

Remedies

A violation of any provision of this policy shall be grounds for termination of the corporation's contract with the City. A contract or transaction entered into in violation of the conflict of interest and procurement provisions of this policy shall be void and unenforceable, and shall not entitle the corporation or the contractor to any reimbursement or payment for goods or services provided pursuant to the void contract.

# EXHIBIT E

PREVAILING WAGE REQUIREMENTS

## **EXHIBIT E**

### **PREVAILING WAGE REQUIREMENTS**

1. **PREVAILING WAGES.** Pursuant to San Diego Municipal Code section 22.3019 (“PWO”), construction work performed or funded pursuant to this Agreement cumulatively exceeding \$25,000 and alteration, demolition, repair and maintenance work performed or funded pursuant to this Agreement cumulatively exceeding \$15,000 is subject to the State of California prevailing wage law set forth in California Labor Code sections 1720 through 1861 (“Prevailing Wage Law”) and in undertaking any and all such work, the Contractor and its Subcontractors shall comply with Prevailing Wage Law, including, but not limited to, the requirements set forth in this Exhibit “D.” This requirement to comply with Prevailing Wage Law is in addition to any requirement to pay “living wage” pursuant to San Diego Municipal Code sections 22.4201 through 22.4245 (“LWO”) and Section 14.4 of this Agreement. If both Prevailing Wage Law and the LWO are applicable to particular work, the Contractor must determine which per diem rate is highest for each classification of work between the applicable prevailing wage rate and living wage rate, and pay the higher of the two rates to their employees. The LWO may apply to work that is not subject to Prevailing Wage Law.
  - A. Compliance with Prevailing Wage Requirements. Pursuant to Prevailing Wage Law, the Contractor and its Subcontractors shall ensure that all workers who perform work that is subject to Prevailing Wage Law 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), including work performed during the design and preconstruction phases of construction, which encompasses, without limitation, inspection and land surveying work.
    - 1) Copies of the 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>. Contractor and/or its Subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make this information available to any interested party upon request.
    - 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 term of this Agreement. 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 Agreement 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 Agreement, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration date of the previous

wage rate. If the last of such predetermined wage rates expires during the term of this Agreement, such wage rate shall apply to the balance of the term of this Agreement.

- B. Penalties for Violations. Contractor 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. Compliance with California Labor Code section 1775 shall be in addition to any other applicable penalties allowed under California Labor Code sections 1720-1861.
- C. Payroll Records. Contractor and its 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. Contractor shall, and shall require its Subcontractors to, comply with California Labor Code section 1776, including, without limitation, having provisions requiring such compliance in all contracts with Subcontractors. Any requirement to submit certified payroll records to DIR shall include, without limitation, submitting certified payroll records to DIR through its online system for submission of certified payroll records, as required by DIR. Contractor and its Subcontractors shall also submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Further, Contractor and its Subcontractors shall furnish the records specified in California Labor Code section 1776 directly to the Labor Commissioner in the manner required in California Labor Code section 1771.4. Contractor is responsible for ensuring that its Subcontractors submit certified payroll records to the City, the Labor Commissioner and DIR.
- D. Apprentices. Contractor and its Subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Contractor shall be held responsible for its compliance and the compliance of its Subcontractors with California Labor Code sections 1777.5, 1777.6 and 1777.7.
- E. Working Hours. Contractor and its Subcontractors shall comply with California Labor Code sections 1810 through 1815, including, but not limited to: (i) restricting 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) specifying 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. Contractor shall include, at a minimum, a copy of the following provisions in any contract it enters into with a Subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
- G. Labor Code Section 1861 Certification. In accordance with California Labor Code section 3700, Contractor and its Subcontractors are required to secure the payment of compensation of their respective employees and by signing this Agreement or any subcontract, respectively, Contractor and each of its Subcontractors 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." Contractor shall include this certification by each Subcontractor in each contract with a Subcontractor.

- 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. All work is subject to compliance monitoring and enforcement by DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal subject to the requirements of Public Contract Code section 4104, or engage in the performance of any contract for public work, as defined in Prevailing Wage Law, unless currently registered and qualified to perform the work pursuant to California Labor Code section 1725.5. In accordance with California 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."
- 1) A contractor's inadvertent error in listing a subcontractor who is not registered pursuant to California 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.
  - 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 Labor Code section 1725.5.
  - 3) By entering into this Agreement, Contractor is certifying that it has verified or will verify that all Subcontractors used on work subject to Prevailing Wage Law are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and shall provide proof of such Subcontractor registration to City.

- J. Filing of Form PWC-100. Contractor shall timely file a PWC-100 Form (or other form required by DIR) with DIR, as and when required by Prevailing Wage Law, and concurrently deliver a copy of such filed form to City.
  
- K. Filing of Notice of Completion. Contractor shall record a notice of completion in accordance with California Civil Code section 8182, et seq., with the Recorder for the County of San Diego, and concurrently deliver a copy of such recorded notice of completion to City.

# EXHIBIT F

GENERAL TERMS AND CONDITIONS



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



**ARTICLE I  
SCOPE AND TERM OF CONTRACT**

**1.1 Scope of Contract.** The scope of contract between the City and a provider of improvements and activities (Contractor) is described in the Contract Documents. The Contract Documents are comprised of the Maintenance Agreement, Assessment Engineer's Report, including any updates, and these General Contract Terms and Provisions.

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

**1.3 Contract Extension.** The City may, in its sole discretion, unilaterally exercise an option to extend the Contract as described in the Contract Documents. In addition, the City may, in its sole discretion, unilaterally extend the Contract on a month-to-month basis following contract expiration if authorized under Charter section 99 and the Contract Documents.

**ARTICLE II  
CONTRACT ADMINISTRATOR**

[RESERVED]

**ARTICLE III  
COMPENSATION**

[RESERVED]

**ARTICLE IV  
SUSPENSION AND TERMINATION**

[RESERVED]

**ARTICLE V  
ADDITIONAL CONTRACTOR OBLIGATIONS**

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

Modified from General Contract Terms and Conditions

Revised: October 1, 2015

OCA Document No. 845794\_4

Page 2 of 16

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

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

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

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

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

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

**5.7 Warranties.** All goods and/or services provided under the Contract must be warranted by Contractor or manufacturer for at least twelve (12) months after acceptance by City, except automotive equipment. Automotive equipment must be warranted for a minimum of 12,000 miles or 12 months, whichever occurs first, unless otherwise stated in the Contract. Contractor is responsible to City for all warranty service, parts, and labor. Contractor is required to ensure that

warranty work is performed at a facility acceptable to City and that services, parts, and labor are available and provided to meet City's schedules and deadlines. Contractor may establish a warranty service contract with an agency satisfactory to City instead of performing the warranty service itself. If Contractor is not an authorized service center and causes any damage to equipment being serviced, which results in the existing warranty being voided, Contractor will be liable for all costs of repairs to the equipment, or the costs of replacing the equipment with new equipment that meets City's operational needs.

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

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

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

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

address and correct such deficiencies. The total number of quality assurance meetings that may be required by City will depend upon Contractor's performance.

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE VI INTELLECTUAL PROPERTY RIGHTS**

[RESERVED]

## **ARTICLE VII INDEMNIFICATION AND INSURANCE**

**7.1 Indemnification.** To the fullest extent permitted by law, Contractor shall indemnify, defend (with legal counsel reasonably acceptable to City), and hold the City free and harmless from and against any and all claims, demands, liens, or judgments for death of or injury to any person or damage to any property whatsoever alleged to be caused, or caused, by any act or omission of the Contractor or any officer, subcontractor, agent, or employee of the Contractor. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

**7.2 Insurance.** Contractor shall not begin any performance under this Contract until it has (1) provided City insurance certificates and endorsements reflecting evidence of all insurance and endorsements required and described herein and in the Contract Documents; (2) obtained City approval of each insurance company or companies; and (3) confirmed that all policies contain the special provisions required herein and the Contract Documents. Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under this Contract, shall not be deemed limited in any way to the insurance coverage required herein or in the Contract Documents. Maintenance of specified insurance coverage is a material element of this Contract, and Contractor's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Contract may be treated by City as a material breach of contract. City reserves the right to require Contractor to submit copies of any policy upon reasonable request by City. The requirements of this section do not apply to contracts for goods, unless otherwise required in the Contract Documents.

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

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

Contractor shall maintain insurance coverage at its own expense as follows:

**7.2.1 Commercial General Liability.** Commercial General Liability (CGL) insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all bodily injury, personal injury, advertising injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate of \$2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

**7.2.2 Commercial Automobile Liability.** For all of Contractor's automobiles including owned, hired and non-owned automobiles, Contractor shall keep in full force and effect, 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. The insurance certificate shall reflect coverage for any automobile (any auto).

**7.2.3 Workers' Compensation.** For all of Contractor's employees who are subject to this Contract and to the extent required by the applicable state or federal law, Contractor shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employer's liability coverage, and Contractor shall provide an endorsement that the insurer waives the right of subrogation against City and its respective elected officials, officers, employees, agents, and representatives.

**7.2.4 Professional Liability.** For consultant contracts, Contractor shall obtain Professional Liability coverage with limits of at least \$1 million per occurrence and \$2 million aggregate, covering the risk of errors and omissions, negligent acts and costs of claims/litigation, including investigation and court costs. If the coverage is written on a "claims-made" form, Contractor must ensure that the policy retroactive date is before the date of the contract is awarded, that coverage is maintained during the duration of performance of the contract or the contract period (whichever is longer) and the policy has a reporting period or run-off provision of at least three (3) years following completion or termination of the performance of professional services under this Contract.

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

**7.4 Acceptability of Insurers.** Except for the State Compensation Insurance Fund, all insurance required by this Contract, shall only be carried by insurance companies with a current rating of at least “A-, VI” by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by City.

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

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

#### **7.5.1 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 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 City, its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by City, its elected officials, officers, employees, agents and representatives shall be in excess of Contractor’s insurance and shall not contribute to it.

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

#### **7.5.2 Automobile 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 City and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Contractor.

**Primary and Non-contributory Coverage.** The policy or policies must be endorsed to provide that the insurance afforded by the Automobile Liability policy or policies is primary to any

insurance or self-insurance of City, its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by City, its elected officials, officers, employees, agents and representatives shall be in excess of Contractor's insurance and shall not contribute to it.

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

### **7.5.3 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 City, its 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 City.

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

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

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

## **ARTICLE VIII BONDS**

[RESERVED]

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

**9.1.9 Product Endorsement.** Contractor shall comply with Council Policy 000-41 concerning product endorsement which requires that any advertisement referring to City as a user of a good or service will require the prior written approval of the Mayor.

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

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

**10.1 Conflict of Interest Laws.** Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, *et. seq.* and 81000, *et. seq.*, and the Ethics Ordinance, codified in the San Diego Municipal Code. City may determine

that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary documents to City.

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

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

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

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

## **ARTICLE XI DISPUTE RESOLUTION**

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

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

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

**11.4 Conduct of Mediation Sessions.** Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions

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

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

## **ARTICLE XII MANDATORY ASSISTANCE**

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

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

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

## **ARTICLE XIII MISCELLANEOUS**

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

**13.2 Non-Assignment.** Contractor may not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due under this Contract, without City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the City's

sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

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

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

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

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

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

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

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

**13.10 No Waiver.** No failure of either City or Contractor to insist upon the strict performance by the other of any covenant, term or condition of this Contract, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Contract, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Contract, and each and every covenant, condition, and term

hereof shall continue in full force and effect without respect to any existing or subsequent breach.

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

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

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

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

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

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

**13.17 Insolvency.** If Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the Purchasing Agent and the Contract Administrator responsible for administering the Contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to

bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of City contract numbers and contracting offices for all City contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Contract.

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

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