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**City of San Diego**

**AGREEMENT FOR TRANSITIONAL STORAGE CENTER**

**WITH**

**MENTAL HEALTH SYSTEMS, INC.**

THIS AGREEMENT, entered into this \_\_\_ day of 2019,

between the City:

CITY OF SAN DIEGO  
202 C Street  
San Diego, California 92101

and the Contractor:

MENTAL HEALTH SYSTEMS, INC.  
9465 Farnham Street  
San Diego, California 92123

is as follows:

**101. DESCRIPTION OF WORK**

Contractor is a nonprofit organization under Section 501(c)(3) of the U.S. Internal Revenue Code shall operate a Transitional Storage Center for homeless individuals to store their belongings as generally described in the Specifications/Scope of Work attached hereto. Pursuant to SDMC section 22.3210, the Purchasing Agent has certified that this Contract is exempt from competitive bidding requirements because this Contract furthers a specific public policy, is in the public interest, and does not exceed the threshold set forth in the SDMC.

**102. CONTRACT ATTACHMENTS**

The above services shall be performed in accordance with the following listed documents which are attached hereto and made a part hereof by this reference:

1. General Provisions, Contract Attachment No. 1
2. Specifications/Scope of Work, Contract Attachment No. 2
3. Compensation Schedule, Contract Attachment No. 3
4. Homeless Emergency Aid Program (HEAP) Agreement, Contract Attachment No. 4
5. City of San Diego General Contract Terms and Provisions, Contract Attachment No. 5

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### 103. TIME OF PERFORMANCE

#### a. Initial Term

All services required pursuant to this Agreement shall commence November 18, 2019 through November 18, 2020. This Agreement is effective on the last date that the Agreement is signed by the parties and approved by the City Attorney in accordance with Charter section 40. Unless otherwise terminated, this Agreement is effective until it is completed or as otherwise agreed upon in writing by the parties, whichever is earliest. This Agreement term cannot exceed five (5) years unless approved by the City Council by ordinance.

### 104. COMPENSATION AND METHOD OF PAYMENT

#### a. Rates

For services performed under this Agreement, the City shall pay the Contractor at the rates set forth in Contract Attachment No. 3, "Compensation Schedule," attached hereto and made a part hereof.

#### b. Maximum Compensation

The total compensation for all services performed pursuant to this Agreement shall not exceed the sum of SEVEN HUNDRED TWENTY THOUSAND SIX HUNDRED SIXTY-FOUR AND NO/100 Dollars (\$720,664.00). Contractor acknowledges that the City is under no obligation to compensate Contractor for services rendered or expenses accrued under this Agreement in excess of the maximum compensation specified above. It shall be the responsibility of the Contractor to monitor its activities to ensure that the scope of services specified in Contract Attachment No. 2 (Specifications/Scope of Work) may be completed and no charges accrued in excess of the maximum compensation during the term of this Agreement. In the event that the work required cannot be completed within the amount specified, or it appears that the maximum compensation provided may be exceeded before the term of the Agreement expires, Contractor shall promptly notify the City.

Further, the City may cancel the Agreement, without cause, by written notice to the Contractor at any time during the term of the Agreement, or any extension thereto, in the event that the City fails to appropriate funds for the rendition of services set forth in this Agreement. This right to cancel is in addition to the rights of the City to terminate the Agreement as set forth in Contract Attachment No. 1. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by City Council.

### 105. NOTICES

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Notices to the parties shall, unless otherwise requested in writing, be sent to the City and the Contractor at the addresses given above.

#### 106. WAGE REQUIREMENTS

By signing this Agreement, Contractor certifies that he or she is aware of the wage provisions described herein and shall comply with such provisions before commencing services.

a. **Prevailing Wages.** Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Agreement is subject to State prevailing wage laws. For construction work performed under this Agreement cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Agreement cumulatively exceeding \$15,000, the bidder and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below. This requirement is in addition to the requirement to pay Living Wage pursuant to San Diego Municipal Code sections 22.4201 through 22.4245. Bidder must determine which per diem rate is highest for each classification of work (i.e. Prevailing Wage Rate or Living Wage Rate) and pay the highest of the two rates to their employees. Living Wage applies to workers who are not subject to Prevailing Wage Rates.

**(i) Compliance with Prevailing Wage Requirements.** Pursuant to sections 1720 through 1861 of the California Labor Code, the bidder and its subcontractors shall ensure that all workers who perform work under this Contract are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

(i) Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRI/DPreWageDetermination.htm>. Bidder and its subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

(ii) The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Contract. 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 Contract 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

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additional predetermined wage rates, which expiration dates occur during the life of this Contract, each successive predetermined wage rate shall apply to this Contract on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Contract, such wage rate shall apply to the balance of the Contract.

**(2) Penalties for Violations.** Bidder and its subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 - 1861.

**(3) Payroll Records.** Bidder 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. Bidder shall require its subcontractors to also comply with section 1776. Bidder and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Bidder is responsible for ensuring its subcontractors submit certified payroll records to the City. Contractor and their subcontractor shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

**(4) Apprentices.** Bidder and its subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Bidder shall be held responsible for their compliance as well as the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.

**(5) Working Hours.** Bidder and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

**(6) Required Provisions for Subcontracts.** Bidder shall include at a minimum a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

**(7) Labor Code Section 1861 Certification.** Bidder in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Contract, bidder 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."

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**(8) 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.

**(9) Contractor and Subcontractor Registration Requirements.** This project is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Section 1725.5. In accordance with Labor Code section 1771.1(a), "[j]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 2103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

**(i)** A Contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

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

**(iii)** By submitting a bid or proposal to the City, Contractor is certifying that he or she has verified that all subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of subcontractor registration to the City upon request.

**B. Living Wages.** This Contract is subject to the City's Living Wage Ordinance (LWO), codified at SDMC sections 22.4201 through 22.4245. The LWO requires payment of minimum hourly wage rates and other benefits unless an exemption applies. SDMC section 22.4225 requires each Bidder 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 SDMC 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,

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Bidder 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.

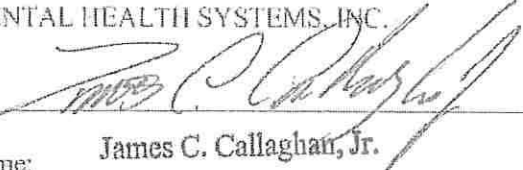
- I. Exemption from Living Wage Ordinance.** Pursuant to SDMC section 22.4215, this Contract may be exempt from the LWO. For a determination on this exemption, Contractor must complete the Living Wage Ordinance Application for Exemption.
  
- C. Highest Wage Rate Applies.** Contractor is required to pay the highest applicable wage rate where more than one wage rate applies.

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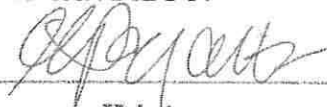
Signature Page to Agreement for Transitional Storage Center with Mental Health Systems, Inc.  
(Contract No. HHI-18-18):

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and  
year first above written.

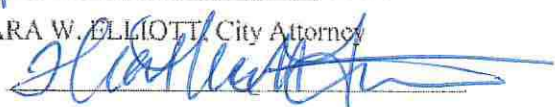
**CONTRACTOR:**  
MENTAL HEALTH SYSTEMS, INC.

By:  Date: 10-18-19  
Name: James C. Callaghan, Jr.  
Title: President & CEO

**CITY OF SAN DIEGO:**

By:  Date: 23 MAR 2020  
Name: Kristina Peralta  
          Director  
Title: Purchasing & Contracting

APPROVED AS TO FORM this day of  
April 3, 2020

MARA W. ELLIOTT, City Attorney  
By:   
Heather Ferbert  
Deputy City Attorney

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## CONTRACT ATTACHMENT NO. 1

### 200. GENERAL PROVISIONS

#### 201. Status of Contractor

This Agreement calls for the performance of the services of the Contractor as an independent contractor. Contractor will not be considered an employee of the City for any purpose.

#### 202. Ownership of Materials and Documents

Any and all sketches, drawings and other materials and documents prepared by the Contractor shall be the property of the City from the moment of their preparation, and the Contractor shall deliver such materials and documents to the City whenever requested to do so by the City. However, the Contractor shall have the right to make duplicate copies of such materials and documents for his own file, or for other purposes as may be authorized in writing by the City.

#### 203. Non-Disclosure

The designs, plans, reports, investigations, materials, and documents prepared or acquired by the Contractor pursuant to this Agreement (including any duplicate copies kept by the Contractor) shall not be shown or disclosed to any other public or private person or entity directly or indirectly, except as authorized by the City. The Contractor shall not disclose to any other public or private person or entity directly or indirectly, any information regarding the activities of the City during the term of this Agreement or at any time thereafter except as authorized by the City.

#### 204. Conflict of Interest

(a) For the duration of this Agreement, the Contractor will not act as a consultant or perform services of any kind for any person or entity which would conflict with the services to be provided herein, without the written consent of the City.

(b) A conflict occurs when circumstances, known to the Contractor, place the City and the Contractor's new client in adverse, hostile or incompatible positions wherein the interests of the City may be jeopardized. Contractor shall promptly notify the City in the event that such a conflict occurs.

(c) In the event of such a conflict, Contractor shall meet and confer with the City to agree upon modifications of its relationship with said new client or City in order to continue to perform services for said client and/or City without compromising the interests of either. Should no agreement regarding modification be reached, City may terminate this Agreement with Contractor.

(d) When consent has been given, Contractor shall endeavor to avoid involvement on behalf of said new client which would in any manner undermine the effective performance of services by Contractor for City. Under no circumstances may Contractor convey, utilize, or permit to be utilized, confidential information gained through its association with City for the benefit of any other



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client.

(e) Contractor agrees to alert every client for whom consent is required, to the existence of this conflict of interest provision and to include language in its agreement with said client which would enable Contractor to comply fully with its terms. This last paragraph shall not apply to existing clients of the Contractor for which Contractor has previously received the City's consent.

(f) This Agreement may be unilaterally and immediately terminated by the City if Contractor employs an individual who, within twelve (12) months immediately preceding such employment, in their capacity as a City employee, participated in negotiations with or otherwise had an influence on the selection of the Contractor.

205. Contractor's Liability

Contractor agrees to and shall indemnify, hold harmless, and defend, with counsel of the Indemnitee's choosing, at Indemnitor's sole cost and expense, the City, and all officers, employees, members, council members and agents of each public agency (hereinafter collectively referred to as the "Indemnitees" or individually as an "Indemnitee") from and against any and all damages, liabilities, claims, fines, fees, costs, penalties, judgments, complaints, causes of action, actions, and demands, including, without limitation, demands arising from injuries to or death of persons (Contractor's employees included) and damage to real or personal property, or any other losses, damages or expenses, arising directly or indirectly out of the acts, failure to act or negligence of the Contractor, all obligations of this Agreement, or out of the operations conducted by Contractor including those in part due to the negligence of any of the Indemnitees save and except for liabilities, claims, judgments or demands arising through the sole negligence or willful misconduct of such Indemnitee.

206. Insurance

(a) Contractor shall not commence work until Contractor has obtained, at its sole cost and expense, all insurance required under this Section. The insurance obtained must be approved by the City. Contractor shall obtain a single limit general liability insurance and automobile liability insurance in the minimum amount checked and initialed below. If nothing is checked or indicated below, the limit shall be Two Million Dollars (\$2,000,000.00):

		Initials		Initials
<input checked="" type="checkbox"/>	General Liability \$2,000,000.00	_____	<input checked="" type="checkbox"/>	Workers Compensation \$1,000,000.00 _____
<input checked="" type="checkbox"/>	Automobile Liability \$500,000.00	_____	<input checked="" type="checkbox"/>	Other: Fidelity Bond \$500,000 _____

(b) This coverage is in addition to workers compensation insurance and other insurance coverages required by law. The City, shall be named as certificate holders on all insurance policies and shall be named as additional insured on all general liability and automobile policies. The policies shall provide that coverage on all policies may not be canceled, amended, terminated or

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otherwise modified without thirty (30) days advance written notice to the City. Coverage shall remain in full force and effect during the entire term of the policy and for such term thereafter as the City shall determine.

(c) If the box shown below, marked "Errors and Omissions" is checked and initialed, then professional errors and omissions liability coverage is also required in the amount stated below:

<input type="checkbox"/>	Errors and Omissions \$1,000,000.00	Initials _____
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(d) For any claims arising out of or in connection with Contractor's performance under this Agreement, the insurance required to be purchased and maintained by the Contractor shall be primary and non-contributory to any insurance carried by the City.

(e) All insurance required to be purchased and maintained by the Contractor shall be endorsed with a waiver of subrogation. Contractor's insurers, in their endorsements, agree to waive all rights of subrogation against the City, and their employees and agents for losses paid by Contractor's insurers that arise out of or in connection with Contractor's performance under this Agreement.

207. Correction of Work

The performance of services by the Contractor shall not relieve the Contractor from any obligation to correct any incomplete, inaccurate or defective work at no further cost to the City, when such inaccuracies are due to the negligence of the Contractor, provided such work has not been accepted in writing by an authorized representative of the City.

208. Equal Opportunity Programs

During the performance of this Agreement, the Contractor agrees as follows:

(a) Contractor shall comply with all applicable local, state and federal Equal Opportunity Programs, as well as any other applicable local, state and federal law. Each month, the Contractor will report to the project manager, payments made to all vendors by month, contract to date and percentage of overall contract value.

(b) Contractor and each subcontractor, if any, shall fully comply with and shall submit a Report of San Diego County Work Force Report and Certificate of Compliance with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal and State law and regulations hereinafter enacted.

(c) Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, gender, disability or national origin or any other basis

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prohibited by law. Contractor shall ensure that applicants for employment and employees are treated equally without regard to their race, color, religion, ancestry, gender, disability or national origin or any other basis prohibited by law.

(d) If any underrepresentation is found after submission of Contractor's workforce report, the City may request an Equal Employment Opportunity Plan (EEOP). An acceptable plan to correct the identified underrepresented categories must be submitted within thirty (30) days. Once the EEOP has been approved by the City, the Contractor must adhere to said plan. In the case of multi-year contracts, the Contractor will be required to submit annual workforce reports and EEOP updates as requested.

(e) Contractor understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in penalties provided for in State and Federal law. In addition, the Contractor may, at the election of the City, be disbarred from participating in City projects for not less than one (1) year.

#### 209. Cost Records

In accordance with generally accepted accounting principles, the Contractor shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to the inspection of the City or to the appropriate federal agencies after reasonable notice, and at reasonable times.

#### 210. Subcontracting

(a) No services covered by this Agreement shall be subcontracted without the prior written consent of the City.

(b) In order to obtain consent, Contractor shall submit a list of all potential subcontractors, and a description of work to be performed by each subcontractor, to the City. Once this list has been approved, no changes to the list will be allowed except by written approval of the City.

(c) The Contractor shall be as fully responsible to the City for the acts and omissions of his subcontractors, and of persons directly or indirectly employed by them, as he is for acts and omissions of persons directly employed by him.

(d) Consistent with Presidential Executive Orders 11625, 12138, and 12432, City requires Contractor to take positive steps to ensure that small and minority-owned businesses, women's business enterprises, and other individuals and firms located in or owned in substantial part by persons residing in the area of the City and/or labor surplus areas are used whenever possible, if the subcontracting of services or work covered by this Agreement is anticipated. Such efforts shall include, but shall not be limited to: (i) including such firms, when qualified, on solicitation mailing lists; (ii) encouraging their participation through direct solicitation of proposals whenever they are a potential source; (iii) dividing total subcontract requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms; (iv) establishing delivery schedules, where the requirement permits, which encourages

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participation by such firms; and (v) using the services and assistance of the Small Business Commerce.

(i) A small business is defined as a business that is independently owned, not dominant in its field of operation and not an affiliate or subsidiary of a business dominant in its field of operation.

(ii) A minority-owned business is defined as a business which is at least 51% owned by one or more minority groups; or in the case of a publicly owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operation are controlled by one or more such individuals. Minority group members include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.

(iii) A women's business enterprise is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.

(iv) A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the U.S. Department of Labor in 20 CFR Part 654, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration.

#### 211. Assignability

(a) The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of the City.

(b) Claims for money due or to become due to the Contractor from the City under this Agreement may be assigned to a bank, trust company, or other financial institutions, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

#### 212. Changes

The City may, from time to time, request changes in the Specifications/Scope of Work of the Agreement to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon, by and between the City and the Contractor, shall be incorporated into this Agreement.

#### 213. Documents and Written Reports

The Contractor, when preparing any document or written report for or under the direction of the City, shall comply with the provisions of Government Code Section 7550; to wit,

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(a) Any document or written report prepared for or under the direction of a state or local agency, which is prepared in whole or in part by non-employees of such agency, shall contain the numbers and dollar amounts of such contracts and subcontracts relating to the preparation of such document or written report; provided, however, if the total cost for work performed by non-employees of the agency exceeds five thousand dollars (\$5,000). The contract and subcontract numbers and dollar amounts shall be contained in a separate section of such document or written report.

(b) When multiple documents or written reports are the subject or product of the contract, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

#### 214. Termination

For lack of funding, this Agreement may be terminated by the City on thirty (30) days' written notice to the Contractor, the effective date of cancellation being the 30th day of said written notice with no further action required by either party.

This Agreement may be terminated for convenience by the City on ninety (90) days' written notice to the Contractor, the effective date of cancellation being the 90<sup>th</sup> day of said written notice with no further action required by either party.

#### 215. Attorneys' Fees and Costs

If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing Party or Parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

#### 216. Entire Agreement

This Agreement represents the sole and entire agreement between the City and Contractor and supersedes all prior negotiations, representations, agreements, arrangements or understandings, either oral or written, between or among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed herein. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of both the City and Contractor.

#### 217. Partial Invalidity

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

#### 218. Contract Governed by Laws of State of California

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This Agreement and its performance and all suits and special proceedings under this Agreement shall be construed in accordance with the laws of the State of California. In any action, special proceeding, or other proceeding that may be brought arising out of, under, or because of this Agreement, the laws of the State of California shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which the action or special proceeding may be instituted.

219. Interest of Member of Congress

No member or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

220. Interest of Current or Former Members, Officers, Employees

No member, officer or employee of the City, no member of the governing body of the locality in which the work is situated, no member of the governing body in which the City was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the assignment of work, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this Agreement or the proceeds thereof. Any violation of this section shall result in unilateral and immediate termination of this Agreement by the City.

221. Drug-free Workplace

Contractor shall certify to the City that it will provide a drug-free workplace and do each of the following:

(a) Publish a statement notifying its employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance as defined in schedules I-V of Section 202 of the Controlled Substance Act (21 U.S.C. 812) is prohibited in Contractor's workplace and specify the actions that will be taken against employees for violation of the prohibition.

(b) Establish a drug-free awareness program to inform employees about all of the following:

- (i) The dangers of drug abuse in the workplace.
- (ii) The Contractor's policy of maintaining a drug-free workplace.
- (iii) Any available drug counseling, rehabilitation and employee assistance programs.
- (iv) The penalties that may be imposed upon employees for drug abuse violations.

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(c) Post the statement required by subdivision 221(a) in a prominent place at Contractor's main office and at any job site large enough to necessitate an on-site office.

222. Plan of Operation

The Contractor shall submit to the Contracting Officer a complete plan of operations. The Contractor is responsible for notifying the Contracting Officer of any changes to the plan of operations.

223. Labor Provisions

It is the responsibility of the Contractor and the Contractor shall be fully aware of and shall comply with each and every requirement of State, Federal and Local law concerning the provision of labor concerning this Agreement, including but not limited to, the payment of applicable wage rates, if any.

If checked, additional state prevailing wage terms are contained in Attachment No. 6.

If checked, additional federal prevailing wage terms are contained in Attachment No. 6.

224. Contract Work Hours and Safety Standards Act

In the event Contractor's performance of this Agreement entails the use of laborers or mechanics, and the Agreement is for more than the sum of \$100,000, and uses Federal funds, then Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 et seq.) as supplemented by Department of Labor regulations (29 CFR Part 5).

225. Extension of Contract Term

(a) Provided, that the Contractor is not in default under the terms of this Agreement, the City, may extend the terms of the Agreement for a period, not to exceed ninety (90) days, on the same payment schedule, terms and conditions, in effect on the date that the Agreement would otherwise have terminated, including the option period, if any. The option to extend the Agreement shall be at the City's discretion only, and may not be exercised by the Contractor.

(b) The Agreement may not be extended for an aggregate period of more than ninety (90) days, but may be exercised in multiple "Notices of Extension", of not less than seven (7) days in duration, for each such notice. The Agreement may be extended by the City by delivery of a Notice of Extension in writing to the Contractor and that the stated terms and conditions of the Agreement shall be adhered to by the Contractor and the City during the term of the extension.

(c) Nothing contained herein, however, shall require the City to exercise any option to extend the Agreement. During the extension of the Agreement, the Contractor shall provide the City with additional certificates of insurance, if necessary, covering the term(s) of the extension.

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(d) Notice of Extension may be served by the City upon the Contractor not earlier than sixty (60) days before the original termination date of the Agreement and not later than eighty-three (83) days after the original termination date of the Agreement. Nothing contained herein shall be construed as granting the Contractor a right to compel the City to exercise the option to extend the Agreement.

226. Intentionally omitted.

227. Conflict between Agreement and Attachments

To the extent that the provisions of the Agreement and the Attachments and Schedules conflict, the following order of construction shall apply:

(a) To the extent that the Agreement and any Attachments or Schedules conflict, the terms and conditions of the Agreement shall prevail; and,

(b) To the extent that any Contract Attachment and any Schedule conflicts, the Contract Attachment shall prevail.

229. Audit Requirements

Where this Agreement is funded by federal funding, 24 CFR 84.26 requires that nonprofit institutions and institutions of higher education shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996, and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." All entities other than non-profit institutions shall be subject to the audit requirements of HUD or the prime recipient as incorporated into the award document.

Where this Agreement is funded by non-federal funds, Contractor shall be subject to audit requirements as set forth in the award document, if it exists. Otherwise Contractor shall adhere to those requirements as set forth in the Single Audit Act Amendments of 1996 and revised OMB Circular A-133.

230. Lobbying Provisions

Contractor hereby certifies to the City, under penalty of perjury, under the terms of applicable federal law, that at all applicable times before, during and after the term of the agreement, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid to any person for



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influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions;

(c) Contractor will require that the above stated language be included in the award documents for all subawards at all tiers, including subcontracts, subgrants, loans, contracts, and cooperative agreements concerning the subject matter of this Agreement; and

(d) Further, Contractor and all subrecipients, at all times, shall certify compliance with the provisions of 31 U.S.C. 1352 and any and all terms and conditions of the Byrd Anti-Lobbying Amendment, as amended from time to time.

231. Energy Conservation.

Provided this Agreement uses Federal funds, Contractor hereby certifies compliance with the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

232. Disputes.

Provided that any source of funds for this Agreement is obtained from Federal sources, then this Agreement shall be subject to the Contract Disputes Act of 1978, as amended, (41 USC 601-613), and except as expressly otherwise provided in the Act, all disputes arising under or relating to this Agreement shall be resolved under the terms of this clause by litigation in State Court. If this Agreement is solely funded from Non-Federal funds, then all disputes shall be resolved by litigation in San Diego County Superior Court, Downtown Branch, after first attempting resolution of the dispute through non-binding mediation.

233. Remedies Upon Default

The failure of the Contractor to perform each and every, covenant of the Contractor, in a timely manner, and in a good and workmanlike manner, and in strict compliance with the requirements of the scope of work, shall constitute a breach under the terms of the Agreement. For any breach that does not jeopardize health, safety or the general welfare of the clients of the Contractor and/or members of the public, the City shall give seven (7) day-notice written to cure any breach to the Contractor. In the event that a breach is not timely cured, the City shall have all remedies available at law or in equity, including, without limitation, termination, the right to cancel the Contractor's right to proceed and to cause another contractor or the City to take over the duties under the terms of the contract, to sue for damages, specific performance and/or to seek an injunction, among other remedies. In determining whether there is a breach by Contractor concerning Program and Goal Outcomes as contained in Contract Attachment No. 2 to this Agreement, good faith efforts as reasonably determined by the City shall not constitute a breach. In the event of life, safety and/or general welfare of the clients of the Contractor or the general public arises, the City shall have the right to terminate the Contractor's right to continue to proceed

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with without a notice to cure. In addition, the City shall have the right to recoup any and all monies that may have been advanced to the Contractor and that have not been earned.

The failure of the City to make a timely payment to Contractor under this Agreement shall constitute a breach under the terms of the Agreement. The Contractor shall give seven (7) days written notice to cure any breach to the City. In the event that the breach is not cured, Contractor shall have the right to terminate this Agreement.

Click here to enter text.

## **CONTRACT ATTACHMENT NO. 2 SPECIFICATIONS/SCOPE OF WORK**

### **OVERVIEW**

Contractor will operate a Transitional Storage Center ("Facility") for homeless individuals ("Clients") to store their belongings at the site located at the Lea Street Terminus, San Diego, California 92105 ("Premises").

### **THE PROGRAM**

The purpose of this Facility is to have secure, protected space for Clients in the City of San Diego to store their personal belongings on an ongoing basis, and have access to their belongings during hours of operation. Each Client of the Facility will have access to one storage container free of charge.

Staff operating the Facility will provide Clients with access to their belongings in a staging area under supervision. Facility staff will need to develop a system for intake of Clients and inventory of their belongings to provide secure storage and access to those belongings while they are stored at the Facility.

As part of the ramp-up process, the City will provide 50 lockable storage containers with a combination of large rolling storage containers to be placed on the ground. Contractor will be responsible for the safety and security of the storage containers and the contents thereof. Contractor will need to develop appropriate protocol for Client placement and retrieval of belongings. The City reserves the right to retain all items purchased under the Agreement including, but not limited to, lockable storage containers, at the conclusion of the Facility's operations.

Operation will also require reporting of basic outcomes: number of daily use by Clients, total number of people served, number and percent of storage containers used.

### **LOCATION**

Contractor shall manage the Facility at the Premises located at the Lea Street Terminus, San Diego, California 92105.

### **HOURS OF OPERATION**

Beginning November 18, 2019, the Facility must be available to Clients Monday through Friday from 8:00am to 5:00pm, Saturday and Sunday from 8:00am to 11:00am. Hours of operation must be posted at the entrance to the Premises. The hours of operation are subject to change at the sole discretion of the City, and as based upon Client need. Contractor will be compensated accordingly for any changes in hours of operation.

### **TARGET POPULATION**

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The Facility's target population consists of homeless individuals and families residing in the City.

Each Client shall be Homeless as defined by the U.S. Department of Housing and Urban Development (HUD). All Clients will self-certify as homeless as part of the intake process.

The following criteria may not be used to determine usage of the storage center service:

- Access may not be denied to those expressing signs of inebriation, drug use or mental health issues, as long as the behaviors/actions do not pose a danger or threat to others
- Payment or ability to pay
- Identification

### **PROGRAM START UP**

Prior to opening on November 18, 2019, Contractor shall:

Purchase Office Supplies and begin necessary staff development/training.

Prior to opening on November 18, 2019, the City shall:

- Reimburse Contractor for the purchase of office supplies and begin necessary staff development/training prior to opening

### **PROGRAM REQUIREMENTS**

Contractor shall:

- Provide storage to Clients and limit that storage to no more than one storage container per Client at any one time.
- Provide a service delivery system that effectively serves the target population in a safe, secure, and welcoming Client-centric environment.
- Maintain an inventory system which tracks the location of stored items in such manner that enables accurate retrieval as requested.
- Devise and maintain an inventory system to log items stored by Clients.
- Make efforts to ensure Clients do not queue, litter or loiter within a one-block radius of the Facility. Contractor will report all suspected criminal activity to law enforcement and notify City's Environmental Services Department to mitigate related issues.
- Enter and maintain basic intake data into the regional Homeless Management Information System (HMIS), in accordance with the Regional Task Force on Homelessness (RTFH) data standards. [<http://www.rtfhsd.org/hmis/>].
- Coordinate with the San Diego Police Department to implement a comprehensive strategy for Client outreach.
- Provide presence, visibility, and assistance to individuals who are experiencing homelessness in the vicinity of the Facility.
- Employ a strategy of proactive engagement of Clients within the community to place belongings in storage as an alternative to in the public right of way or on private property.
- Further, work with City departments and community service agencies to:

Click here to enter text.

- Provide Clients basic information on locations where Clients can gain access to other homeless services.
- Coordinate with San Diego Police Department (SDPD) and the City's Environmental Services Department to devise a system for intake of property with unknown owners which provides for: intake, inventory, tagging with a unique identifier, and storing of the property for a prescribed amount of time. Verify and restore belongings to claimants and provide opportunity for ongoing storage.
- Provide a point of contact representative who shall coordinate security and accessibility issues with the SDPD, the City, and the community.
- Ensure regular exterior clean-up of the Premises by the Environmental Services Department.
- Conduct intake, review the Rules and Regulations and Terms of Service of the Facility with Clients; Rules and Regulations and Terms of Service may be developed by the Contractor as reasonably necessary to ensure operational effectiveness, but shall include the minimum standards contained herein and shall be subject to review and approval by the City.
- Require Clients to sign an agreement acknowledging compliance with the Terms of Service set forth herein, and certifying they are not in violation of those requirements.
- At every check in/check out, require Clients to sign an agreement acknowledging compliance with the Terms of Service set forth herein, and certifying they are not in violation of those requirements.
- Create a "Terms of Service" to include the following at minimum:
  - One locking storage container per person aged 18 years or older or an emancipated minor
  - Storage containers are assigned to individuals only; no joint ownership permitted
  - An assigned container may only be accessed by the Client it is assigned to
    - Only site attendants or authorized volunteers may retrieve storage containers from storage area
  - Storage containers may not contain the following items:
    - Food or beverages
    - Perishables
    - Alcohol, drugs, or drug paraphernalia
    - Medication
    - Weapons
    - Hazardous, combustible, or chemical materials
    - Animals or living things
    - Items showing signs of infestation
      - Any illegal items, including stolen items, contraband, or any item that is not legally in the Client's possession
      - Shopping carts, bicycles, carts, or other wheeled devices, except privately owned shopping carts which fit in the storage container

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- All property must fit securely within the storage container and lids must be able to close;
  - Contractor shall inform Clients that abandoned items will be discarded. The Contractor shall track the dates that the Clients access the containers. If 90 days elapse from the date a Client last accesses the Client's container, the items in the container will be considered abandoned, and the Contractor shall discard them at that time.
  - When storage containers are no longer needed by a Client, the Facility office must be notified;
  - A release of liability for damage to items stored at the Facility, not including damage from the City's sole negligence or willful misconduct, as approved by the City along with a warning that Clients should not store valuable items at the Facility;
- The Premises shall maintain a list of rules and regulations on site, including but not limited to the following:
  - Prohibiting anyone from engaging in the below conduct, any violation of these rules will result in the loss of storage privileges:
    - Commercial activity;
    - Recreational activity;
    - Watching television;
    - Religious activity;
    - Distributing food or water;
    - Making loud noises;
  - No smoking or drinking alcohol or illegal drug use allowed on the Premises;
  - No unruly or threatening behavior allowed on the Premises;
  - No urinating, defecating, or spitting allowed on the Premises; and
  - Violation of terms of service may result in loss of access to the Facility.
  - Only Clients and Facility Staff are allowed to be on the Premises. Clients are only allowed to conduct storage-related business on the Premises. Once such business is completed, Clients must leave the Premises. Loitering shall be prohibited.
    - No animals or pets of any kind are allowed on the Premises, except for service, signal, or trained guide dogs that are otherwise allowed in public places under California state law.
- Provide a plan for outreach in the vicinity of the Facility to inform people of the availability of storage units, explain how the Facility operates, and direct them to the Facility.
- Attend meetings quarterly with community and other respective neighborhood groups, as directed by City.

## **PROGRAM OUTCOMES**

- a. The Contractor agrees to enter all HUD UDEs and program-specific data elements (PSDEs), as applicable, into the RTEH-approved HMIS for data collection and analytics.

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All program progress will be documented to the City through monthly and term-end reports in a form and format determined by the City. All monthly reporting is due to the City within 15 calendar days of the end of the reporting period. Failure to submit monthly reports within 15 calendar days of the end of the reporting period may result in an action of noncompliance.

- b. If stated benchmarks are not met, Contractor may be required to submit a performance improvement plan in a form and format determined by the City.
- c. For the Agreement term, the Contractor will ensure the following primary program outputs and standards:

PERFORMANCE OUTPUTS & STANDARDS	MEASURE	STANDARD
Efficient Number of Persons Served	Persons Served	500
Data Quality	RTFH Performance Standards and Requirements for HMIS	100%
Efficient and Effective Use of Community Resources	Program Participants Self-Certified as Homeless at Intake	100%
	Utilization Rate	Reporting Only
	Average Length of Use	
	Number of Individuals on Program Waitlist	
	Abandoned Containers	
	Monthly New Intakes	
	Daily Check-Ins	
System Coordination	Referrals from City Departments and Community Providers	Reporting Only
	Referrals to Resources	
	Critical Incident Reports	

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## **GENERAL STANDARDS**

Contractor will ensure:

- Service delivery will be Client-focused. Staff and all persons that interact with Clients will be trained on homeless population service provision, positive engagement and general customer service standards that addresses the needs of the target population.
- Adequate staffing with appropriate on-going training for service delivery and data collection and analysis;
- 24-hour security cameras to ensure a safe environment at the Facility for Clients, volunteers, and others who may come in contact with the Facility.
- Designated point-of-contact who is available at all times to address issues that may arise at the Facility and coordinate security issues with the SDPD.
- Compliance with Fire Marshal inspections and recertifications as needed.
- Development of appropriate Rules and Regulations for Facility operations including low barrier Terms of Service, which will be displayed on site at all times, and various means for Clients to provide input into the Facility.
- Data entry, analysis and reporting in the RTFH-approved HMIS of all Facility activities; Contractor will maintain all appropriate documentation, including but not limited to number of individuals or families served.
- That the Facility is operated in compliance with the Americans with Disabilities Act (ADA) and all other applicable rules and regulations.
- Ensure all elements of the "Good Neighbor Obligations" are implemented effectively, including, but not limited to:
  - Conduct homeless outreach in the surrounding community;
  - Take measures to prevent Client queuing and loitering;
  - Prevent litter, debris, and graffiti on the Premises;
  - Notify City's Environmental Services Department to mitigate related issues;
  - Zero tolerance enforcement for alcohol or illegal or recreational drug use on site; and
  - Report criminal activity to law enforcement.

## **PROPERTY MANAGEMENT**

Contractor will:

- Maintain a secure and healthful environment for delivery of all services.
- Provide for:
  - Operating supplies;
  - Site control;
  - Prompt maintenance and repair;
  - Utilities;
  - Security Cameras



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- Janitorial services;
  - Waste removal and disposal; and
  - Other program related items.
- Provide secure entry/exit for Clients and others to be monitored by staff.
- Maintain a fire escape emergency plan.
- Maintain a written drug and alcohol-free policy for staff that is posted/displayed at the Premises at all times; the written policy shall include and describe the disciplinary action to result from the illegal use, consumption, distribution, and/or possession of drugs and/or alcohol.
- Maintain the Facility, at all times, in an orderly and vermin-free condition.
- Provide design specification for proposed design of intake area. Contractor will not be responsible for the construction of intake area improvements or initial improvements relating to ADA compliance.
- The Premises is to be used as a storage facility only. Operation of the storage facility shall not create any conditions that amount to a public nuisance and shall not be detrimental to the residential neighborhood by causing increased noise, traffic, lighting, odor, or by violating any applicable ordinance or laws.
- Enter into a sub-lease agreement with the City for the Facility setting forth all maintenance and repair obligations.

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### CONTRACT ATTACHMENT NO. 3 COMPENSATION SCHEDULE

Position	Year 1 Start-up Costs	Year 1 Ongoing Costs	Total Proposed Budget
Program Manager, 1.00 FTE		\$ 78,624.00	\$ 78,624.00
Program (Site) Supervisor, 1.00 FTE		\$ 58,240.00	\$ 58,240.00
Administrative Assistant, 1.00 FTE		\$ 43,580.00	\$ 43,580.00
Homeless Outreach Worker (Bilingual), 1.00 FTE		\$ 45,760.00	\$ 45,760.00
Inventory Specialist (Bilingual), 1.00 FTE		\$ 45,760.00	\$ 45,760.00
Inventory Specialist (Bilingual), 1.00 FTE		\$ 45,760.00	\$ 45,760.00
Inventory Specialist, 1.00 FTE		\$ 43,580.00	\$ 43,580.00
Custodian, 1.00 FTE		\$ 41,500.00	\$ 41,500.00
Vice President of Clinical Services, 0.15 FTE		\$ 15,500.00	\$ 15,500.00
Vice President of Supportive Housing, 0.10 FTE		\$ 10,800.00	\$ 10,800.00
Program Financial Analyst, 0.07 FTE		\$ 4,550.00	\$ 4,550.00
<b>Total Salaries</b>	\$ -	\$ 433,654.00	\$ 433,654.00
Payroll Taxes @ 7.55%		\$ 33,175.00	\$ 33,175.00
Retirement @ 8.00%		\$ 40,547.00	\$ 40,547.00
Health, Dental, Vision @ 9.95%		\$ 34,582.00	\$ 34,582.00
<b>Total Benefits @ 25.00% of Salaries</b>	\$ -	\$ 108,314.00	\$ 108,314.00
<b>TOTAL SALARIES AND BENEFITS</b>	\$ -	\$ 542,668.00	\$ 542,668.00
<b>Line Item</b>	<b>Year 1 Startup Costs</b>	<b>Year 1 Ongoing Costs</b>	<b>Total Proposed Budget</b>
Site Repairs/Maintenance	\$ 2,250.00	\$ 2,340.00	\$ 4,590.00
Equipment Repairs/Maintenance	\$ -	\$ 344.00	\$ 344.00
Telephone & Utilities	\$ -	\$ 9,160.00	\$ 9,160.00
Supplies & Minor Equipment	\$ 84,888.00	\$ 1,500.00	\$ 86,388.00
Office Supplies	\$ 2,680.00	\$ 4,310.00	\$ 7,000.00
Housekeeping Supplies	\$ 1,500.00	\$ 2,800.00	\$ 4,300.00
Printing	\$ 700.00	\$ 250.00	\$ 950.00
Insurance	\$ -	\$ 14,811.00	\$ 14,811.00
Staff Development/Training	\$ 1,125.00	\$ 949.00	\$ 2,074.00
Accounting/Auditing/Legal Fees	\$ -	\$ 200.00	\$ 200.00
Other Business Services	\$ 1,352.00	\$ 1,170.00	\$ 2,522.00
Gas and Mileage	\$ -	\$ 1,150.00	\$ 1,150.00
Tax/Licenses/Banking Fees	\$ 500.00	\$ 1,343.00	\$ 1,843.00
<b>TOTAL OPERATING COSTS</b>	\$ 44,505.00	\$ 40,837.00	\$ 85,342.00
<b>TOTAL DIRECT COSTS</b>	\$ 44,505.00	\$ 582,705.00	\$ 627,210.00
Indirect Costs @ 14.90%	\$ 6,631.25	\$ 85,823.05	\$ 92,454.00
<b>TOTAL PROJECT COSTS</b>	\$ 51,136.25	\$ 668,528.05	\$ 720,664.00

NOTE: (\*) Contractor is entitled to an indirect cost rate of 14.9% from the effective date of this Agreement. The parties agree to amend the Agreement upon written notification and proof that the Contractor has secured a higher indirect cost rate agreement with HUD. Contractor acknowledges that the City is under no obligation to compensate Contractor for an indirect cost rate in excess of 14.9%.

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## CONTRACT ATTACHMENT NO. 4

### ADDITIONAL PREVAILING WAGE TERMS

Contractors are required to verify the applicable California Wage Determination in effect at the bid advertised date, January 26, 2018 at, [www.dir.ca.gov](http://www.dir.ca.gov).

All rates applied must be for San Diego County. The following wage determination applies:

**General Prevailing Wage Determination: 2017-2 effective August 22, 2017**

A. Contractor shall comply with the prevailing wage requirements and restrictions, obligations, requirements, and penalties of Section 1770 et seq. of the Labor Code, which requires the payment of prevailing wages to appropriate work classifications in all bid specifications and subcontracts.

B. Contractor shall furnish all subcontractors/employees a copy of the Department of Industrial Relations prevailing wage rates, which Contractor will post at the job site in a visible location in accordance with Labor Code Section 1773.2

C. Contractor shall comply with the payroll record keeping and availability requirement of Section 1776 of the Labor Code.

D. Contractor shall make travel and subsistence payments and follow holiday schedule in accordance with Section 1773.2 of the Labor Code.

E. Contractor must employ registered apprentice on all public works projects in accordance with Labor Code 1777.5.

F. Contractor is prohibited from accepting or extracting kickbacks from employees' wages under Labor Code 1778.

G. Upon work completion, Contractor will be required to sign and notarize an Affidavit of Compliance with California Prevailing Law, California Labor Codes Sections 1720-1815, which will be provided by the San Diego Housing Commission.

H. If discrepancies are discovered by either an audit of certified payroll records and/or employee interviews, payment may be withheld until such actions are corrected.

I. The following requirements apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into or after April 1, 2015:

Section 1725.5 requires that Contractor and its subcontractors register and qualify with the State of California Department of Industrial Relations ("DIR") in order to bid on, be listed in a bid proposal for, or engage in the performance of any contract for a public work. In order to register with the DIR, Contractor and its subcontractors must pay an initial nonrefundable registration fee of \$300, pay an annual renewal fee each July 1 thereafter, and provide the specified information

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to establish eligibility. Contractor and its subcontractors must register with the DIR at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>.

Contractor or its subcontractors shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work as defined in Labor Code § 1720, unless currently registered and qualified to perform public work pursuant to Section 1725.5 of the Labor Code. It is not a violation of this section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform Public Work pursuant to Labor Code § 1725.5 at the time the contract is awarded. A contract entered into with a Contractor or subcontractors who failed to register as required herein shall be subject to cancellation as set forth in Labor Code § 1771.1.

The project is subject to compliance monitoring and enforcement by the DIR and Commission, as set forth in Section 1771.4 of the Labor Code. On a weekly basis, the Contractor and its subcontractors shall furnish records, in a format prescribed by the Labor Commission and as specified in Labor Code § 1776, to the Commission and California Labor Commissioner for the following:

- a. Projects for which the initial contract is awarded on or after April 1, 2015. (Labor Code § 1771.4(c)(2)(B))
- b. All projects, whether new or ongoing, on or after January 1, 2016. (Labor Code § 1771.4(c)(2)(D))
- c. Any other ongoing project in which the Labor Commissioner directs the contractors or subcontractors on the project to furnish records. (Labor Code § 1771.4(c)(2)(C))
- d. Projects that were subject to a requirement to furnish records to the Compliance Monitoring Unit pursuant to Section 16461 of Title 8 of the California Code of Regulations, prior to June 20, 2014. (Labor Code § 1771.4(c)(2)(A))

Contractor shall post job site notices as prescribed by Labor Code § 1771.4(a)(2).

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**CONTRACT ATTACHMENT NO. 5**  
**Homeless Emergency Aid Program (HEAP) Agreement**

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**CONTRACT ATTACHMENT NO. 6**  
City of San Diego General Terms and Provisions

BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY  
 HOMELESS COORDINATING AND FINANCING COUNCIL (HEAP) 9/18  
 915 Capitol Mall, Suite 350-A  
 Sacramento, CA 95814  
 Phone: (916) 631-1090  
 Fax: (916) 631-3817



## HOMELESS EMERGENCY AID PROGRAM REQUEST FOR FUNDS FORM

Contract Number: **19-HEAP-00002**

Grantee Name: **The City of San Diego**  
 Address: **202 C Street MS 8A**  
 City: **San Diego**  
 State & Zip: **CA, 92101**

Expiration Date: **10/31/2021**  
 Contact Person: **Kealy Halsey**  
 Contact Person Title: **Chief of Homelessness Strategies & Housing Liaison**  
 E-mail: **khalsey@sandiego.gov**  
 Phone No.: **(619) 236-6213**

### HOMELESS EMERGENCY AID EXPENDITURES BREAKDOWN

BUDGET BREAKDOWN		REQUEST
Proposed Activities	Approved Budget	Draw Amount
Services	\$5,871,000.00	\$5,871,000.00
Rental Assistance or Subsidies	\$5,228,356.16	\$5,228,356.16
Capital Improvements	\$1,600,000.00	\$1,600,000.00
Homeless Youth Set-Aside	\$705,521.90	\$705,521.90
Administrative Costs	\$705,519.89	\$705,519.89
Other: _____	\$0.00	\$0.00
Other: _____	\$0.00	\$0.00
<b>TOTAL:</b>	<b>\$14,110,397.95</b>	<b>\$14,110,397.95</b>

#### CERTIFICATION

*\*By signing this form, I certify to the best of my knowledge and belief that the form is true, complete, and accurate, and the activities and budget are for the purposes and objectives set forth in the terms and conditions of the HEAP Standard Agreement. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise.*

Kealy Halsey **ROBERT VACCHI** 12/21/18  
 Name of Authorized Person Date:

**[Signature]** Date:  
 Signature of Authorized Person

#### BCSH USE ONLY

\_\_\_\_\_  
 Grant Management Representative Signature Date:

State of California  
 Financial Information System for California (FI\$Cal)  
**GOVERNMENT AGENCY TAXPAYER ID FORM**  
 2000 Evergreen Street, Suite 216  
 Sacramento, CA 95815  
 www.fiscal.ca.gov  
 1-855-347-2250



The principal purpose of the information provided is to establish the unique identification of the government entity.

**Instructions:** You may submit one form for the principal government agency and all subsidiaries sharing the same TIN. Subsidiaries with a different TIN must submit a separate form. Fields bordered in red are required. Hover over fields to view help information. Please print the form to sign prior to submittal. You may email the form to: vendors@fiscal.ca.gov, or fax it to (916) 576-5200, or mail it to the address above.

Principal Government Agency Name:

Remit-To Address (Street or PO Box):

City:  State:  Zip Code+4:

Government Type:  City  County  Special District  Federal  Other (Specify)

Federal Employer Identification Number (FEIN):

List other subsidiary Departments, Divisions or Units under your principal agency's jurisdiction who share the same FEIN and receives payment from the State of California.

Dept/Division/Unit Name	<input type="text"/>	Complete Address	<input type="text"/>
Dept/Division/Unit Name	<input type="text"/>	Complete Address	<input type="text"/>
Dept/Division/Unit Name	<input type="text"/>	Complete Address	<input type="text"/>
Dept/Division/Unit Name	<input type="text"/>	Complete Address	<input type="text"/>

Contact Person:  Title:

Phone number:  E-mail address:

Signature:  Date:





# CALIFORNIA HOMELESS COORDINATING AND FINANCING COUNCIL

Business, Consumer Services and Housing Agency  
Edmund G. Brown Jr., Governor | Alexis Podesta, Chair

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September 27, 2018

Keely Halsey  
Chief of Homelessness Strategies & Housing Liaison  
City of San Diego  
202 C Street, MS 9A  
San Diego, CA 92101

**RE: Award Announcement – City of San Diego  
Agreement #18-HEAP-00002: App#LC-CA-601-M6UNXKLLIF**

Dear Ms. Halsey,

The Business, Consumer Services and Housing Agency (Agency) Homeless Coordinating and Financing Council (HCFC) is pleased to announce that the City of San Diego has been awarded a Homeless Emergency Aid Program (HEAP) grant in the amount of \$14,110,397.95. This letter constitutes notice of the award of HEAP funds for use in San Diego.

The City of San Diego will receive its full disbursement of funds after the Standard Agreement is fully executed, and the enclosed Request for Funds form has been signed and returned. *Please note that the Request for Funds form must be signed at a date at least one day after the City of San Diego has signed the Standard Agreement.* In addition, grant expenditures may not be incurred prior to the execution of the Standard Agreement and receipt by the City of San Diego of HEAP funds.

Please be advised that this award is subject to the terms and conditions of the Standard Agreement, *which must be fully executed within thirty days of the date of this award letter.* Failure by the City of San Diego and to sign and return the Standard Agreement upon receipt from Agency within this timeframe may result in a delay of disbursement of funds.

Congratulations on your successful application. For further information, please contact Daniel Castillo, HEAP Grant Manager at 916-651-2788 or [daniel.castillo@bcsh.ca.gov](mailto:daniel.castillo@bcsh.ca.gov).

Sincerely,

  
Secretary Alexis Podesta  
Council Chair

915 Capitol Mall, Suite 350-A | Sacramento, CA 95814 | (916) 653-4090  
[www.besh.ca.gov/hcfc](http://www.besh.ca.gov/hcfc)



# CALIFORNIA HOMELESS COORDINATING AND FINANCING COUNCIL

Business, Consumer Services and Housing Agency  
Edmund G. Brown Jr., Governor | Alexis Podesta, Chair

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Keely Halsey  
Chief of Homelessness Strategies & Housing Liaison  
City of San Diego  
202 C Street, MS 9A  
San Diego, CA 92101

Dear Ms. Halsey,

RE: City of San Diego -18-HEAP-00002 - App#LC-CA-601-M6UNXKLLIF

Congratulations on your Homeless Emergency Aid Program (HEAP) award. Attached is a copy of the HEAP Standard Agreement with Exhibits A through D.

**A. Standard Agreement (STD 213 and Exhibits A through D)**

**STD 213 – Cover page**

**Exhibit A – Authority, Purpose and Scope of Work**

**Exhibit B – Budget Detail and Payment Provisions**

**Exhibit C – Terms and Conditions**

**Exhibit D – Special Terms and Conditions**

**B. For expeditious handling of the contract, please complete the following:**

1. Review the entire Agreement thoroughly and, if necessary, discuss the requirements with your legal and financial advisors. Changes to the Agreement will not be accepted unless approved in writing by the Agency.
2. BCSH has provided four signed copies of the Standard Agreement, STD 213. The Grantee shall counter sign the four copies of the first page of the Standard Agreement, STD 213, and initial the first page of Exhibits A through D.
3. The person(s) authorized in the Authorized Signatory Form must provide an **original signature, printed name, title and date** on the lower left-hand section entitled "Contractor" on each of the four

915 Capitol Mall, Suite 350-A | Sacramento, CA 95814 | (916) 653-4090  
[www.bcsb.ca.gov/hefc](http://www.bcsb.ca.gov/hefc)

copies of the STD 213, and provide an original Initial in the space provided on the cover of each copy of Exhibits A through D

4. The person authorized in the Authorized Signatory Form must provide a printed name, signature, and date on the attached Request for Funds (RFF) form. The date of the signature must be at least one day after the date of the signed STD 213.
5. Do not send photo copies of signatures. All must be original signatures with wet ink.
6. Return the four signed copies of the STD 213 with all initialed Exhibits and the signed RFF form within 30 days via certified mail.
7. Insert a signed copy of either the STD 204 or GovTIN form that was submitted along with application documents.
8. Maintain a complete electronic version of the STD 213 and Exhibits A through D for your pending file. Note: The contract is not effective until it is signed by the Grantee's designated official and the Agency.

The Agency reserves the right to cancel a pending Standard Agreement in its entirety if not returned within the required 30-day period. Furthermore, no changes may be made to the Standard Agreement or Exhibits A through D without prior written approve from the Agency.

Please accept my best wishes for a successful program. Please contact me at (916) 651-2788 or [Daniel.Castillo@bcsh.ca.gov](mailto:Daniel.Castillo@bcsh.ca.gov) or Local Government Liaison Lahela Mattox at (916) 651-2770 or [Lahela.Mattox@bcsh.ca.gov](mailto:Lahela.Mattox@bcsh.ca.gov) if you have any questions regarding the Standard Agreement or the provisions therein.

Sincerely,



Daniel Castillo  
Grant Manager

STATE OF CALIFORNIA  
**STANDARD AGREEMENT**  
 STD 213 (Rev 06/03)

AGREEMENT NUMBER <b>18-HEAP-00002</b>
REGISTRATION NUMBER

- This Agreement is entered into between the State Agency and the Contractor named below:  
 STATE AGENCY'S NAME  
**BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY**  
 CONTRACTOR'S NAME  
**City of San Diego**
- The term of this Agreement is: **Upon BCSH Approval** through **10/31/2021**
- The maximum amount of this Agreement is: **\$ 14,110,397.95**
- The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

Exhibit A - Authority, Purpose and Scope of Work	3
Exhibit B - Budget Detail and Payment Provisions	3
Exhibit C - Terms and Conditions	9
Exhibit D - Special Terms and Conditions	1
<b>TOTAL NUMBER OF PAGES ATTACHED:</b>	<b>16</b>

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

<b>CONTRACTOR</b>		California Department of General Services Use Only  <div style="border: 1px solid black; padding: 5px; display: inline-block;">SIGN</div>
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.) <b>City of San Diego</b>		
BY (Authorized Signature) <i>[Signature]</i> <b>DEPUTY CHIEF OPERATING OFF.</b> <b>ROBERT VACCHI</b>	DATE SIGNED (Do not type) <b>12/21/18</b>	
PRINTED NAME AND TITLE OF PERSON SIGNING <b>Keely Halsey, Chief of Homelessness Strategies &amp; Housing Liaison</b>		
ADDRESS <b>202 C Street, MS 9A San Diego, CA 92101</b>		
<b>STATE OF CALIFORNIA</b>		
AGENCY NAME <b>BUSINESS, CONSUMERS SERVICES AND HOUSING AGENCY</b>		<input type="checkbox"/> Exempt per:
BY (Authorized Signature) <i>[Signature]</i> <b>Ser.</b>	DATE SIGNED (Do not type) <b>9.28.18</b>	
PRINTED NAME AND TITLE OF PERSON SIGNING <b>Alexis Podesta, Secretary Business, Consumer Services and Housing Agency</b>		
ADDRESS <b>915 Capitol Mall, Suite 350-A, Sacramento, CA 95814</b>		

STATE OF CALIFORNIA  
**STANDARD AGREEMENT**  
 STD 213 (Rev 06/03)


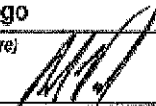

AGREEMENT NUMBER <b>18-HEAP-00002</b>
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CONTRACTOR'S NAME	City of San Diego		
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<b>CONTRACTOR</b>		California Department of General Services Use Only  
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) City of San Diego		
BY (Authorized Signature)  RS	DATE SIGNED (Do not type) 12/21/18	
PRINTED NAME AND TITLE OF PERSON SIGNING Keely Halsey, Chief of Homelessness Strategies & Housing Liaison		
ADDRESS 202 C Street, MS 9A San Diego, CA 92101		
<b>STATE OF CALIFORNIA</b>		<input type="checkbox"/> Exempt per:
AGENCY NAME <b>BUSINESS, CONSUMERS SERVICES AND HOUSING AGENCY</b>		
BY (Authorized Signature)  for:	DATE SIGNED (Do not type) 9.28.18	
PRINTED NAME AND TITLE OF PERSON SIGNING Alexis Podesta, Secretary Business, Consumer Services and Housing Agency		
ADDRESS 915 Capitol Mall, Suite 350-A, Sacramento, CA 95814		


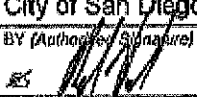

STATE OF CALIFORNIA  
**STANDARD AGREEMENT**  
 STD 213 (Rev 06/03)

AGREEMENT NUMBER <b>18-HEAP-00002</b>
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<b>TOTAL NUMBER OF PAGES ATTACHED:</b>	<b>16</b>

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

<b>CONTRACTOR</b>		California Department of General Services Use Only  
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) <b>City of San Diego</b>		
BY (Authorized Signature)  <b>ROBERT VACCARI DCDO</b>	DATE SIGNED (Do not type) <b>12/11/18</b>	
PRINTED NAME AND TITLE OF PERSON SIGNING <b>Keely Halsey, Chief of Homelessness Strategies &amp; Housing Liaison</b>		
ADDRESS <b>202 C Street, MS 9A San Diego, CA 92101</b>		
<b>STATE OF CALIFORNIA</b>		
AGENCY NAME <b>BUSINESS, CONSUMERS SERVICES AND HOUSING AGENCY</b>		<input type="checkbox"/> Exempt per:
BY (Authorized Signature)  <b>Alexis Podesta</b>	DATE SIGNED (Do not type) <b>9.28.18</b>	
PRINTED NAME AND TITLE OF PERSON SIGNING <b>Alexis Podesta, Secretary Business, Consumer Services and Housing Agency</b>		
ADDRESS <b>915 Capitol Mall, Suite 350-A, Sacramento, CA 95814</b>		

STATE OF CALIFORNIA  
**STANDARD AGREEMENT**  
 STD 213 (Rev 06/03)

AGREEMENT NUMBER <b>18-HEAP-00002</b>
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<b>CONTRACTOR</b>		California Department of General Services Use Only  
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.) <b>City of San Diego</b>		
BY (Authorized Signature) 	DATE SIGNED (Do not type) <b>12/21/18</b>	
PRINTED NAME AND TITLE OF PERSON SIGNING <b>Keely Halsey, Chief of Homelessness Strategies &amp; Housing Liaison</b>		
ADDRESS <b>202 C Street, MS 9A San Diego, CA 92101</b>		
<b>STATE OF CALIFORNIA</b>		
AGENCY NAME <b>BUSINESS, CONSUMERS SERVICES AND HOUSING AGENCY</b>		<input type="checkbox"/> Exempt per:
BY (Authorized Signature) 	DATE SIGNED (Do not type) <b>9-28-18</b>	
PRINTED NAME AND TITLE OF PERSON SIGNING <b>Alexis Podesta, Secretary Business, Consumer Services and Housing Agency</b>		
ADDRESS <b>915 Capitol Mall, Suite 350-A, Sacramento, CA 95814</b>		

Standard Agreement  
EXHIBIT A

**AUTHORITY, PURPOSE AND SCOPE OF WORK**

**Homeless Emergency Aid Program (HEAP)**

**1. Authority**

Pursuant to Chapter 5 (commencing with Section 50210) of Part 1 of Division 31 of the Health and Safety Code, and all other relevant provisions established under SB 850 (Chapter 48, Statutes of 2018), the State has established the Homeless Emergency Aid Program ("HEAP" or "the Program" or "the grant"). The Program is administered by the California Homeless Coordinating and Financing Council ("Council") in the Business, Consumer Services and Housing Agency ("Agency"). HEAP provides one-time flexible block grant funds to Administrative Entities as defined in the September 5, 2018 HEAP Notice of Funding Availability (NOFA) and Large Cities to address their immediate homelessness challenges. This Standard Agreement along with all its exhibits ("Agreement") is entered into by the Agency and an Administrative Entity or Large City ("Contractor") under the authority of, and in furtherance of the purpose of, the Program. In signing this Agreement and thereby accepting this award of funds, the Contractor agrees to comply with the terms and conditions of the Agreement, the Notice of Funding Availability ("NOFA") under which the Contractor applied, the representations contained in the Contractor's application, and the requirements of the authority cited above.

**2. Purpose**

The general purpose of the Program is to provide one-time block grant funding to address the immediate emergency needs of homeless individuals and individuals at imminent risk of homelessness in the service area of each Contractor. In accordance with the authority cited above, an application was made by the Contractor for HEAP funds to be allocated for eligible uses under the grant, which include, but are not limited to, the following: services, rental assistance or subsidies, capital improvements and homeless youth activities.

**3. Definitions**

Terms herein shall have the same meaning as the definitions set forth in the HEAP NOFA.

**4. Scope of Work**

The Scope of Work ("Work") for this Agreement shall include one-time uses that are consistent with Chapter 5 (commencing with Section 50210) of Part 1 of Division 31 of the Health and Safety Code, and all other relevant provisions established under SB 850 (Chapter 48, Statutes of 2018), for eligible uses, which include, but are not limited to, one or more of the following:



Standard Agreement  
EXHIBIT A

- A. Services,
- B. Rental Assistance or Subsidies,
- C. Capital Improvements,
- D. Homeless Youth Set-Aside,
- E. Administrative Costs, and
- F. Other

4. Agency Contract Coordinator

The Agency's Contract Coordinator for this Agreement is the Council's HEAP Grant Manager or the Grant Manager's designee. Unless otherwise instructed, any notice, report, or other communication requiring Contractor signature for this Agreement shall be mailed by first class mail to the Agency Contract Coordinator at the following address:

Business, Consumer Services and Housing Agency  
Attn: Homeless Emergency Aid Program Grant Manager  
915 Capitol Mall, Suite 350-A  
Sacramento, CA 95814

5. Contractor's Contract Coordinator

The Contractor's Contract Coordinator ("Authorized Representative") for this Agreement is listed below. Unless otherwise informed, any notice, report or other communication required by this Agreement will be mailed by first class mail to the Contractor's Contract Coordinator at the following address:

Contractor's Authorized Representative Name:	Keely Halsey Chief of Homelessness Strategies & Housing Liaison City of San Diego
Address:	202 C Street MS 9A San Diego, CA 92101
Phone:	(619) 236-6213
Email:	khalsey@sandiego.gov

**Standard Agreement  
EXHIBIT A**

**6. Effective Date, Term of Agreement, and Deadlines**

- A. This Agreement is effective upon approval by the Agency. (indicated by the signature provided by Agency in the lower left section of page one, Standard Agreement, STD. 213), when signed by all parties.
- B. All HEAP grant funds must be at least fifty percent contractually obligated by January 1, 2020. One hundred percent of Program funds must be expended by June 30, 2021. Any funds not expended by that date shall be returned to the Agency and will revert to the General Fund (See Health and Safety Code Section 50215).

**7. Special Conditions**

Agency reserves the right to add any special conditions to this Agreement it deems necessary to ensure the goals of the Program are achieved.

**Standard Agreement  
EXHIBIT B**

**BUDGET DETAIL AND PAYMENT PROVISIONS**

**Homeless Emergency Aid Program (HEAP)**

**1. Budget Detail**

The Contractor agrees that HEAP funds shall be expended on one-time uses that address immediate homelessness challenges.

Consistent with the application submitted by the Contractor on September 5, 2018, the Business, Consumer Services and Housing Agency ("Agency") shall award funds in the form of a grant for the following eligible activities:

A. Capital Improvements:	\$1,600,000.00
B. Services:	\$5,871,000.00
C. Rental Assistance or Subsidies:	\$5,228,356.16
D. Homeless Youth Set-Aside:	\$ 705,521.90
E. Administrative Costs:	\$ 705,519.89
Total HEAP Award Amount:	\$14,110,397.95

**2. General Conditions Prior to Disbursement**

General Requirements – All Contractors must submit the following forms prior to HEAP funds being released:

- A. Request for Funds Form (RFF),
- B. Four original copies of the signed STD. 213 form and initialed Exhibits A through D, and
- C. Any other documents, certifications, or evidence requested by Agency as part of the HEAP application.

**3. Expenditure of Funds**

Specific requirements and deadlines for contractually obligating and expending awarded funds are defined in the HEAP statutes. Health and Safety Code Sections 50214 and 50215 mandate the following:

- A. No more than five (5) percent of HEAP funds may be used for administrative costs related to the execution of eligible activities.
- B. No less than five (5) percent of HEAP funds shall be used to establish or expand services meeting the needs of homeless youth or youth at risk of homelessness.
- C. No less than 50 percent of HEAP funds shall be contractually obligated by January 1, 2020.
- D. One hundred percent of HEAP funds shall be expended by June 30, 2021.
- E. Any funds not expended by June 30, 2021 shall be returned to Agency and will revert to the General Fund.

**Standard Agreement  
EXHIBIT B**

Homeless Coordinating and Financing Council ("Council") staff will provide ongoing technical assistance and training to support Contractors in successfully complying with these requirements and deadlines.

HEAP funds may not be obligated and expended prior to the effective date of this Agreement or prior to Contractor's receipt of HEAP funds, whichever date is later, even if it is for an eligible use under the statute. Program funds shall be expended in compliance with the requirements set forth in Chapter 5 of Part 1 of Division 31 of the Health and Safety Code and all other relevant provisions established under SB 850, the NOFA, and this Agreement.

**4. Disbursement of Funds**

HEAP funds will be disbursed to the Contractor upon receipt, review and approval of the completed RFF by Agency, which will then forward the RFF to the State Controller's Office ("SCO") for a check to be issued. The RFF must include the proposed activities and amount of funds proposed for expenditure under each eligible use. HEAP funds will be disbursed in a single allocation once the RFF has been received by the SCO.

**5. Budget Changes**

After the effective date of this Agreement, the Contractor agrees that no changes shall be made to the Contractor's HEAP budget, funded homeless service providers ("subrecipients"), or eligible activities listed in the RFF without first obtaining approval from Agency. Any changes to this Agreement must be requested by the Contractor in writing through submission of a Change Request Form. Changes must be approved in writing by Agency.

**6. Ineligible Costs**

HEAP funds shall not be used for costs associated with activities in violation of any law or for any activities not consistent with the intent of the Program and the eligible uses identified in Health and Safety Code Section 50214.

Agency reserves the right to request additional information and clarification to determine the reasonableness and eligibility of all costs to be paid with funds made available by this Agreement. If the Contractor or its funded subrecipients use HEAP funds to pay for ineligible activities, the Contractor shall be required to reimburse these funds to Agency.

- A. An expenditure which is not authorized by this Agreement, or which cannot be adequately documented, shall be disallowed and must be reimbursed to Agency by the Contractor.
- B. Expenditures for activities not described in Exhibit A or Paragraph 1 above shall be deemed authorized if the activities are consistent with Health and Safety Code

**Standard Agreement  
EXHIBIT B**

Section 50214 and such activities are included in the approved RFF or are approved in writing by Agency prior to the expenditure of funds for those activities.

- C. Agency, at its sole and reasonable discretion, shall make the final determination regarding the allowability of expenditures of HEAP funds.
- D. Program funds shall not be used for overhead or planning activities, including Homeless Management Information Systems or Homelessness Plans.

**7. Administrative Costs**

The Contractor must comply with Health and Safety Code Section 50214, which limits administrative costs related to the execution of eligible activities to no more than five percent of HEAP funds. For purposes of this Program, "administrative costs" does not include staff costs directly related to carrying out the eligible activities described in Paragraph 1 of this Exhibit.

Standard Agreement  
EXHIBIT C

TERMS AND CONDITIONS

Homeless Emergency Aid Program (HEAP)

1. Effective Date, Commencement of Work and Completion Dates

- A. This Agreement is effective upon approval by Agency, which is indicated by the signature provided by Agency in the lower left-hand corner of page one, Standard Agreement, STD. 213, when signed by all parties. Contractor agrees that the work shall not commence, nor any costs to be paid with HEAP funds be incurred or obligated by any party, prior to execution of this Agreement by Agency and the Contractor, or prior to Contractor's receipt of HEAP funds, whichever date is later. Contractor agrees that the work shall be completed by the expenditure date specified in Exhibit A, Paragraph 6.
- B. Contractor must contractually obligate no less than 50 percent of HEAP funds by January 1, 2020. One hundred percent of HEAP funds shall be expended by June 30, 2021. Any funds not expended by June 30, 2021 shall be returned to Agency and revert to the General Fund. "Obligate" means that the Contractor has placed orders, awarded contracts, received services, or entered similar transactions that require payment from the grant amount. In the case of an award made to a general purpose local government that subcontracts with private nonprofit organizations via letters of awards and Service Provider Agreements, the Subcontractors are required to obligate the funds by the same statutory deadlines. "Expended" means all HEAP funds obligated under contract or subcontract have been fully paid and receipted, and no invoices remain outstanding.
- C. Contractor and its Subcontractors agree that the work shall be completed by the expiration date specified in Exhibit A, Paragraph 6 and that the Scope of Work will be provided for the full term of this Agreement.

2. Sufficiency of Funds and Termination

- A. Agency may terminate this Agreement at any time for cause by giving a minimum of 14 days' notice of termination, in writing, to the Contractor. Cause shall consist of: violations of any terms or conditions of this Agreement, or any breach of contract as described in Paragraph 7; violation of any Federal or State Laws or Regulations; or withdrawal of Agency's expenditure authority. Upon termination of this Agreement, unless otherwise approved in writing by Agency, any unexpended funds received by the Contractor shall be returned to Agency within thirty days of the Notice of Termination.
- B. This Agreement is valid and enforceable only if sufficient funds are made available to Agency by legislative appropriation. In addition, this Agreement is subject to any additional restrictions, limitations or conditions, or statutes, regulations or any other

**Standard Agreement  
EXHIBIT C**

laws, whether federal or those of the State of California, or of any agency, department, or any political subdivision of the federal or State of California governments, which may affect the provisions, terms or funding of this Agreement in any manner.

**3. Transfers**

Contractor may not transfer or assign by subcontract or novation, or by any other means, the rights, duties, or performance of this Agreement or any part thereof, except with the prior written approval of Agency and a formal amendment to this Agreement to affect such subcontract or novation.

**4. Contractor's Application for Funds**

Contractor has submitted to Agency an application for HEAP funds to provide urgently needed emergency assistance to homeless people in communities with a declared shelter-crisis or applicable waiver as authorized by Health and Safety Code Section 50212(b). Agency is entering into this Agreement on the basis of, and in substantial reliance upon, Contractor's facts, information, assertions and representations contained in that Application, and in any subsequent modifications or additions thereto approved by Agency. The Application and any approved modifications and additions thereto are hereby incorporated into this Agreement.

Contractor warrants that all information, facts, assertions and representations contained in the Application and approved modifications and additions thereto are true, correct, and complete to the best of Contractor's knowledge. In the event that any part of the Application and any approved modification and addition thereto is untrue, incorrect, incomplete, or misleading in such a manner that would substantially affect Agency approval, disbursement, or monitoring of the funding and the grants or activities governed by this Agreement, then Agency may declare a breach hereof and take such action or pursue such remedies as are provided for breach hereof.

**5. Reporting/Audits**

A. The Contractor shall submit an annual report to Agency on forms provided by Agency, by January 1, 2020 and January 1, 2021. If the Contractor fails to provide such documentation, Agency may disencumber any portion of the amount authorized by this Agreement with a 14-day written notification. The Contractor shall also submit a final report by September 30, 2021.

B. The annual report shall contain a detailed report containing the following:

1. Amounts awarded to subrecipients with activity(ies) identified.
2. Contract expenditures.
3. Unduplicated number of homeless persons or persons at imminent risk of homelessness served.

Standard Agreement  
EXHIBIT C

4. Number of instances of service (defined in September 5, 2018 HEAP NOFA.
5. Increases in capacity for new and existing programs.
6. The number of unsheltered homeless persons becoming sheltered.
7. The number of homeless persons entering permanent housing.

Breakdowns will be expected for each activity (i.e. services, capital improvements, rental assistance, etc.) and program type (i.e. emergency shelter, rapid re-housing, outreach, etc.) for the supplemental reporting requirements listed above, when applicable. The same information will also be requested specifically for the following subpopulations, based on priorities defined by the U.S. Department of Housing and Urban Development (HUD):

1. Chronically homeless
2. Homeless veterans
3. Unaccompanied homeless youth
4. Homeless persons in families with children

Counts by subpopulation will not be required in cases where that information is unavailable, but it is expected in cases where client information is entered in a Homeless Management Information System (HMIS). Additional breakdowns for other subgroups (e.g. race, ethnicity, disability status, etc.) are optional, if the Contractor chooses to include them.

The Contractor will also be asked to comment on the following:

1. Progress made toward local homelessness goals.
2. The alignment between HEAP funding priorities and "Housing First" principles adopted by the Homeless Coordinating and Financing Council
3. Any other effects from HEAP funding that the CoC or large city would like to share (optional).

C. Agency reserves the right to perform or cause to be performed a financial audit. At Agency request, the Contractor shall provide, at its own expense, a financial audit prepared by a certified public accountant. HEAP administrative funds may be used to fund this expense.

1. If a financial audit is required by Agency, the audit shall be performed by an independent certified public accountant.
2. The Contractor shall notify Agency of the auditor's name and address immediately after the selection has been made. The contract for the audit shall allow access by Agency to the independent auditor's working papers.
3. The Contractor is responsible for the completion of audits and all costs of preparing audits.
4. If there are audit findings, the Contractor must submit a detailed response acceptable to Agency for each audit finding within 90 days from the date of the



Standard Agreement  
EXHIBIT C

audit finding report.

**6. Retention and Inspection of Records**

- A. The Contractor agrees that Agency or its designee shall have the right to review, obtain, and copy all records and supporting documentation pertaining to performance of this Agreement. The Contractor agrees to provide Agency or its designee, with any relevant information requested. The Contractor agrees to permit Agency or its designee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees who might reasonably have information related to such records and inspecting and copying such books, records, accounts, and other materials that may be relevant to a matter under investigation for the purpose of determining compliance with the Chapter 5 of Part 1 of Division 31 of the Health and Safety Code and all other applicable requirements established under SB 850, HEAP program guidance document published on the website, and this Agreement.
- B. The Contractor further agrees to retain all records described in Paragraph A for a minimum period of five (5) years after the termination of this Agreement.
1. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been commenced before the expiration of the required record retention period, all records must be retained until completion of the action and resolution of all issues which arise from it.

**7. Breach and Remedies**

- A. The following shall each constitute a breach of this Agreement:
1. Contractor's failure to comply with the terms or conditions of this Agreement.
  2. Use of, or permitting the use of, HEAP funds provided under this Agreement for any ineligible activities.
  3. Any failure to comply with the deadlines set forth in this Agreement.
- B. In addition to any other remedies that may be available to Agency in law or equity for breach of this Agreement, Agency may:
1. Bar the Contractor from applying for future HEAP funds;
  2. Revoke any other existing HEAP award(s) to the Contractor;
  3. Require the return of any unexpended HEAP funds disbursed under this Agreement;
  4. Require repayment of HEAP funds disbursed and expended under this Agreement;
  5. Require the immediate return to Agency of all funds derived from the use of HEAP funds including, but not limited to recaptured funds and returned funds;

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6. Seek, in a court of competent jurisdiction, an order for specific performance of the defaulted obligation or the appointment of a receiver to complete the technical assistance in accordance with HEAP requirements; and
7. Seek such other remedies as may be available under this Agreement or any law.
8. All remedies available to Agency are cumulative and not exclusive.
9. Agency may give written notice to the Contractor to cure the breach or violation within a period of not less than 15 days.

8. Waivers

No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The failure of Agency to enforce at any time the provisions of this Agreement, or to require at any time, performance by the Contractor of these provisions, shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of Agency to enforce these provisions.

9. Nondiscrimination

During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, gender identity, gender expression, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), genetic information, marital status, military and veteran status, and denial of medical and family care leave or pregnancy disability leave. Contractors and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor or subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

10. Conflict of Interest

All participants are subject to State and Federal conflict of interest laws. Failure to comply with these laws, including business and financial disclosure provisions, will result in the application being rejected and any subsequent contract being declared void. Other legal action may also be taken. Applicable statutes include, but are not

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limited to, Government Code section 1090 and Public Contract Code, sections 10410 and 10411, for State conflict of interest requirements.

- A. **Current State Employees:** No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest, and which is sponsored or funded by any State agency, unless the employment, activity, or enterprise is required as a condition of regular State employment. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
- B. **Former State Employees:** For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.
- C. **Employees of the Contractor:** Employees of the Contractor shall comply with all applicable provisions of law pertaining to conflicts of interest, including but not limited to any applicable conflict of interest provisions of the California Political Reform Act, Government Code section 87100 et seq.

**11. Drug-Free Workplace Certification**

**Certification of Compliance:** By signing this Agreement, Contractor, and its subcontractors, hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code 8350 et seq.) and have or will provide a drug-free workplace by taking the following actions:

- A. Publish a statement notifying employees and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code section 8355(a)(1).
- B. Establish a Drug-Free Awareness Program, as required by Government Code section 8355(a)(2) to inform employees, contractors, or subcontractors about all of the following:
  - 1. The dangers of drug abuse in the workplace,

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2. Contractor's policy of maintaining a drug-free workplace,
  3. Any available counseling, rehabilitation, and employee assistance programs, and
  4. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.
- C. Provide, as required by Government Code section 8355(a)(3), that every employee and/or subcontractor who works under this Agreement:
1. Will receive a copy of Contractor's drug-free policy statement, and
  2. Will agree to abide by terms of Contractor's condition of employment or subcontract.

**12. Child Support Compliance Act**

For any Contract Agreement in excess of \$100,000, the Contractor acknowledges in accordance with Public Contract Code 7110, that:

- A. The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- B. The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

**13. Special Conditions – Contractors/Subcontractor**

The Contractor agrees to comply with all conditions of this Agreement including the Special Conditions set forth in Exhibit D. These conditions shall be met to the satisfaction of Agency prior to disbursement of funds. The Contractor shall ensure that all Subcontractors are made aware of and agree to comply with all the conditions of this Agreement and the applicable State requirements governing the use of HEAP funds. Failure to comply with these conditions may result in termination of this Agreement.

- A. The Agreement between the Contractor and any Subcontractor shall require the Contractor and its Subcontractors, if any, to:
  1. Perform the work in accordance with Federal, State and Local housing and building codes, as applicable.
  2. Maintain at least the minimum State-required worker's compensation for those employees who will perform the work or any part of it.

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3. Maintain, as required by law, unemployment insurance, disability insurance, and liability insurance in an amount that is reasonable to compensate any person, firm or corporation who may be injured or damaged by the Contractor or any Subcontractor in performing the Work or any part of it.
4. Agree to include all the terms of this Agreement in each subcontract.

**14. Compliance with State and Federal Laws, Rules, Guidelines and Regulations**

The Contractor agrees to comply with all State and Federal laws, rules and regulations that pertain to construction, health and safety, labor, fair employment practices, environmental protection, equal opportunity, fair housing, and all other matters applicable and/or related to the HEAP program, the Contractor, its Subcontractors, and all eligible activities.

Contractor shall also be responsible for obtaining any and all permits, licenses, and approvals required for performing any activities under this Agreement, including those necessary to perform design, construction, or operation and maintenance of the activities. Contractor shall be responsible for observing and complying with any applicable federal, state, and local laws, rules or regulations affecting any such work, specifically those including, but not limited to, environmental protection, procurement, and safety laws, rules, regulations, and ordinances. Contractor shall provide copies of permits and approvals to Agency upon request.

**15. Inspections**

- A. Contractor shall inspect any work performed hereunder to ensure that the work is being and has been performed in accordance with the applicable Federal, State and/or local requirements, and this Agreement.
- B. Agency reserves the right to inspect any work performed hereunder to ensure that the work is being and has been performed in accordance with the applicable Federal, State and/or local requirements, and this Agreement.
- C. Contractor agrees to require that all work that is determined based on such inspections not to conform to the applicable requirements be corrected and to withhold payments to the subrecipient or Subcontractor until it is corrected.

**16. Litigation**

- A. If any provision of this Agreement, or an underlying obligation, is held invalid by a court of competent jurisdiction, such invalidity, at the sole discretion of Agency, shall not affect any other provisions of this Agreement and the remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this Agreement are and shall be deemed severable.

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- B. The Contractor shall notify Agency immediately of any claim or action undertaken by or against it, which affects or may affect this Agreement or Agency, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of Agency.

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Exhibit D**

**SPECIAL TERMS AND CONDITIONS**

**Homeless Emergency Aid Program (HEAP)**

1. All proceeds from any interest-bearing account established by the Contractor for the deposit of HEAP funds, along with any interest-bearing accounts opened by Subrecipients to the Contractor for the deposit of HEAP funds, must be used for HEAP-eligible activities. Consistent with Health and Safety Code Section 50214 (b), no more than five (5) percent of these proceeds may be used for general administrative purposes. At least five (5) percent of these proceeds must be allocated to establishing or expanding services for homeless youth, as defined in HEAP Program documents.
2. Any housing-related activities funded with HEAP funds, including but not limited to, emergency shelter, rapid-rehousing, rental assistance, transitional housing and permanent supportive housing must be in compliance or otherwise aligned with the Core Components of Housing First, pursuant to Welfare and Institution Code Section 8255(b).







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

**ARTICLE I**  
**SCOPE AND TERM OF CONTRACT**

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

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

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

**ARTICLE II**  
**CONTRACT ADMINISTRATOR**

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

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

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

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

### ARTICLE III COMPENSATION

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

**3.2 Invoices.**

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

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

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

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

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

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

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

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

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

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

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

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

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

otherwise); and (2) complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's affected performance under the Contract. After filing of documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or received by Contractor in performing this Contract, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Contract with regard to the affected performance.

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

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

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

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

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

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

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

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

## **ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

## **ARTICLE VI INTELLECTUAL PROPERTY RIGHTS**

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

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

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

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

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

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

proprietary rights of any third party (Third Party Claim of Infringement). If a Third Party Claim of Infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

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

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

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

## **ARTICLE VII INDEMNIFICATION AND INSURANCE**

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

**7.2 Insurance.** Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors.

Contractor shall provide, at a minimum, the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

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

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

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

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

## **ARTICLE VIII BONDS**

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

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

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

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

**8.1.4 Non-Renewal or Cancellation.** The Bond must provide that City and Contractor shall be provided with sixty (60) days' advance written notice in the event of non-renewal, cancellation, or material change to its terms. In the event of non-renewal, cancellation, or

material change to the Bond terms, Contractor shall provide City with evidence of the new source of surety within twenty-one (21) calendar days after the date of the notice of non-renewal, cancellation, or material change. Failure to maintain the Bond, as required herein, in full force and effect as required under this Contract, will be a material breach of the Contract subject to termination of the Contract.

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

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

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

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

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

**9.1.3 Non-Discrimination Requirements.**

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

**9.1.3.2 Non-Discrimination Ordinance.** Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of

subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

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

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

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

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

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

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

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



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

**9.1.9 Product Endorsement.** Contractor shall comply with Council Policy 000-41 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.

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

**9.1.11.1 Contractor and Subcontract Requirement.** The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of a Contractor to the same extent as it would apply to that Contractor. Contractor shall require subcontractors performing work for contractor under their contract with the City to certify compliance with the Equal Pay Ordinance in their written subcontracts.

**9.1.11.2 Notice Requirement.** Contractor must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.

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

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

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

**10.3 Contractor's Financial or Organizational Interests.** In connection with any task, Contractor shall not recommend or specify any product, supplier, or contractor with whom

Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

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

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

## **ARTICLE XI DISPUTE RESOLUTION**

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

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

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

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

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

## **ARTICLE XII MANDATORY ASSISTANCE**

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

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

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

## **ARTICLE XIII MISCELLANEOUS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**13.16 Confidentiality of Services.** All services performed by Contractor, and any subcontractor(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.

