

**CONTRACT BETWEEN CITY OF SAN DIEGO
AND HORTON PLAZA THEATRES FOUNDATION
FOR FISCAL YEAR 2023
ARTS AND CULTURE SERVICES**

This contract (Contract) is made and entered into between City of San Diego, a municipal corporation (City), and Horton Plaza Theatres Foundation, a California domestic nonprofit organization (Contractor), both sometimes generally referred to herein as "Party" or "Parties", for City to provide funding to Contractor for arts and culture services.

RECITALS

- A. City needs arts and culture services provided by the Contractor as further described in section 2.1. Contractor is a legally constituted private nonprofit organization operating in the field of arts and culture.
- B. Contractor has expertise, experience, equipment, and personnel necessary to provide the Services and City forces are presently unable to adequately provide the required Services.
- C. City and Contractor (collectively, the Parties) wish to enter into an agreement whereby City will retain Contractor to provide the services.
- D. 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.
- E. For good and valuable consideration, the sufficiency of which is acknowledged, City and Contractor agree as follows:

The parties agree as follows:

I – EFFECTIVE DATE: TERM OF CONTRACT

- 1.1 Upon execution of this Contract by the Parties and approval of this Contract by the City Attorney in accordance with Charter section 40, this Contract will be effective as of July 1, 2022, and will terminate upon City's receipt of Contractor's Fiscal Year 2023 Final Performance Report to City, unless terminated earlier in accordance with the terms of this Contract.

II – CONTRACTOR OBLIGATIONS

- 2.1 Scope of Services.
 - a. Contractor must conduct those program activities described in the Scope of Services attached hereto as **Exhibit A**, in accordance with the Budget Summary which is attached here to as **Exhibit B**
 - b. City reserves the right to amend this Contract, including, without limitations, the scope of services, should the City experience any revenue shortfalls in FY2023 which negatively impact the General Fund or the City's ability to fund basic City services. Contractor understands that the potential exists for this Contract to be terminated or for the funds committed as part of this

contract to be reprogrammed, re-appropriated in whole, or in part, upon recommendation of the Mayor and approval by City Council.

- c. Contractor acknowledges and agrees to fully perform the entire Scope of Services set forth in Exhibit A. In the event that Contractor is unable to perform any portion of the Scope of Services through no fault of Contractor, Contractor agrees to immediately inform the Contract Administrator in writing of such inability to perform. Within 30 calendar days of failing to perform any required portion of the Scope of Services, including any monthly or quarterly goals, the Contractor must contact the Contract Administrator and present a proposal regarding how Contractor intends to address this inability to perform. Contractor agrees that City retains full and complete discretion regarding any request to amend any portion of the Scope of Services under the Contract.

2.3 Mandatory Reporting.

2.3.1 Mid-Year Report. Contractor must submit a mid-year report in a format to be specified by City. City will not approve Contractor's final invoice, or release reimbursement for such invoice, until Contractor has submitted a mid-year report to City.

2.3.2 Final Performance Report. Contractor must submit a Final Performance Report in a format to be specified by City prior to submitting the final invoice by July 31, 2023, indicating the extent to which the program objectives contained in Exhibit A of this Contract were accomplished. The Final Performance Report must be accompanied by the final invoice and documentation evidencing credit to the City of San Diego for its financial support, including but not limited to copies of publicity. Contractor must also attach to the Final Performance Report a Statement of Compliance signed by the executive director or other chief executive officer of the Contractor, certifying that the Contractor has complied with the terms of the Contract. City will not make the final reimbursement unless Contractor submits the Final Performance Report with the final invoice.

2.4 Financial Disclosure. Contractor must submit copies of true, accurate, and complete financial disclosure documentation by July 31, 2023, evidencing the Contractor's financial status for the Contractor's fiscal year ending on or before June 30, 2023. These financial documents must include, but are not limited to the following:

- a. A statement of the expenditure of City funds by program to be identified in the same expenditure classifications as contained in the City funded final budget approved through the application process and compared with the budgeted amounts.
- b. A statement of revenues and expenditures and a balance sheet of all funds received by the Contractor.

2.5 Audits.

- a. Contractor must provide City audited financial statements, as well as a statement of revenues and expenditures with the balance sheet of all funds received by Contractor, that are i) prepared in accordance with generally accepted accounting principles (GAAP); ii) audited by an independent Certified Public Accountant in accordance with generally accepted auditing standards (GAAS); and iii) submitted to the Contract Administrator (described in Article IV below) within 150 calendar days of Contractor's fiscal year end. Upon written request by Contractor, and in the sole discretion of the Contract Administrator, Contractor may be granted up to thirty (30) additional calendar days to comply with this requirement.
- b. In accordance with the Single Audit Act of 1984 (PL 98-502) pertaining to recipients of federal funds, if expending \$500,000 or more (or the current federal threshold) in total federal funding

from all sources in a year, Contractor must have an Annual Single Audit conducted in accordance with Federal OMB Circular Nos. A-110 and A-133. Contractor must ensure that Single Audits are completed within 180 calendar days of completion of the audit. City, at its sole discretion, may conduct an annual review of any such third-party audit(s).

- 2.6 Acknowledgement of City. Contractor and all subcontractors must acknowledge City's financial support in all documents prepared pursuant to this Contract and on Contractor's website. Such acknowledgement must be prominently displayed on the Documents and website. When any such document expresses an opinion regarding a matter of public policy, the acknowledgement must note that the opinion(s) stated in the document does not necessarily reflect the policy of The City of San Diego. Contractor and all subcontractors must secure the review and approval from City of the content, form, and location of all acknowledgements on any documents, if other than the sample language provided below, which approval will not be unreasonably withheld. The following is an example of a credit line that might be used: "This program is (wholly or partially) funded by the City of San Diego".
- 2.7 Administrative Regulation 95.65. Contractor must comply with A.R. 95.65 regarding product endorsements. Contractor must not create any advertisement or writing that identifies or refers to the City as the user of a product or service, without first obtaining the prior written approval of City.

III – CITY RESPONSIBILITIES

- 3.1 City will monitor Contractor's activities under this Contract through the Contract Administrator and will compensate Contractor for expenditures incurred according to this Contract from the funds encumbered under this Contract

IV – CONTRACT ADMINISTRATOR

- 4.1 The City's designee identified in section 11.4 below, or their successor, is designated as the Contract Administrator of the subject of this Contract. The Contract Administrator will receive and process all reports and requests for payment. All correspondence and notices will be sent in accordance with the notice section herein.
- 4.2 Contractor must inform Contract Administrator, in writing, within ten days of the occurrence of any of the following changes:
- a. The resignation, retirement, or discharge of its executive director, chief executive officer, or other managing agent;
 - b. A majority change in the membership of the board of directors;
 - c. A change in programming that significantly deviates from Contractor's mission or overall purpose; and
 - d. A change in annual operating income such that the matching fund requirement will not be met by the end of the contract year.
- 4.3 Contractor, and any subcontractors employed by Contractor, are independent contractors, and not agents or employees of the City. Any provision of this Contract that may appear to give City a right to direct Contractor concerning the details of performing its obligations or duties under this Contract, or to exercise any control over such performance, means only that Contractor will follow the direction of City concerning the end results of the performance.

V – PAYMENTS

- 5.1 City will pay Contractor a sum not to exceed **\$325,000** to be used in support of Contractor's Program Objectives described in **Exhibit A**.
- 5.2 Contractor can only use City funds for those expenditures related to staffing, general operations, advertising, publicity, promotional activities, research activities, and any other reasonable and appropriate costs associated with Contractor's activities listed in **Exhibit A** and **Exhibit B**.
- 5.3 City will not make any reimbursement to Contractor if any of the following is not on file with City:
- a. The Final Performance Report, and any financial disclosure or audit required under any previous contract; and
 - b. Any other document required under this Contract, including proof of required insurance.
- 5.4 Contractor will not be reimbursed for any expenditure that has been, or should be, properly charged to a funding source other than City, nor for expenditures which are ineligible under applicable City Council Policies, waivers, or this Contract, unless approved, in writing, by City. A request for reimbursement that is not consistent with the Budget Summary (**Exhibit B**), except as provided in this Section, and is not supported with proper documentation will be considered an ineligible expenditure.
- 5.5 Reimbursements will be made in accordance with this Contract, and only upon written request to the Contract Administrator. Each written request must consist of a completed invoice form to be provided by Contract Administrator.
- 5.6 Invoices must be submitted as stated below unless written approval is secured in advance from the Contract Administrator. Invoices may be submitted according to the following schedule:
- After October 1, 2022, submit the first invoice, for expenses to be incurred on or between July 1, 2022, and December 31, 2022;
- After December 1, 2022, submit the second invoice, for expenses to be incurred on or between January 1, 2023, and March 15, 2023;
- After March 1, 2023, submit the third invoice, for expenses to be incurred on or between March 15, 2023, and May 30, 2023; and
- After May 1, 2023, submit the fourth invoice, for expenses to be incurred on or between June 1, 2023 and June 30, 2023.
- 5.7 The first invoice must be no more than 50% of the total amount of the Contract. The second request must be no more than 22% of the total amount of the Contract. The third request must be no more than 18% of the total amount of the Contract. The fourth request must be no more than 10% of the total amount of the Contract unless written approval stating otherwise is secured in advance from the Contract Administrator.
- 5.8 Contractor must submit reconciliation reports, as stated below, reflecting all expenditures paid, in whole or in part, with City funds from previous City reimbursements prior to submitting invoices for additional requests for reimbursement. Such reports must provide documentation of all funds spent, copies of checks, invoices, credit statements, receipts, payroll documentation, and bank statements.
- On November 30, 2022, submit reconciliation report for expenditures made from July 1, 2022, to September 1, 2022;
- On February 28, 2023, submit reconciliation report for expenditures made from September 2, 2022, to December 31, 2022 and a mid-year report;

On May 30, 2023, submit reconciliation report for expenditures made from January 1, 2023, to March 15, 2023;

On July 31, 2023, submit reconciliation report for expenditures made from March 16, 2023 to June 30, 2023 and a final performance report.

- 5.9 City reserves the right to temporarily withhold or adjust any reimbursement, subject to City's approval of the reconciliation reports, all financial disclosures, and any audits required of Contractor under this Contract. City's approval will not be withheld unreasonably.
- 5.10 Allocation reimbursements not claimed before July 31, 2023, will be forfeited.
- 5.11 City will not be responsible in any way for monetary losses of any type incurred by Contractor as a result of Contractor's conducting the Scope of Services. Contractor agrees that City's monetary contribution is limited to the amount provided for in this Contract, and that City will not be responsible for cash costs or support services other than as provided for in this Contract.

VI – TERMINATION

- 6.1 The City Council, based on the fiscal status of the General Fund may reallocate the funding of existing programs, activities, and organizations upon the recommendation of the Mayor, resulting in termination of this Contract.
- 6.2 City may, at its sole option and for its convenience, terminate all or any portion of the Contract by giving notice of such termination to Contractor. Such notice must be delivered to Contractor and will be effective pursuant to the date on the notice of termination. After termination of this Contract, Contractor must complete only that portion of the work which is necessary or required in City's sole opinion and judgment for the orderly filing of documents and closing of Contractor's services under this Contract. For services rendered in completing the work, Contractor will be entitled to fair and reasonable compensation for the services performed by Contractor before the effective date of termination.
- 6.3 If Contractor fails to satisfy any portion of this Contract, City reserves the right to suspend funding until Contractor complies with the terms of the Contract, and if Contractor fails to comply with the terms of the Contract, to reduce reimbursements to Contractor or to terminate this Contract.

VII – INDEMNITY

- 7.1 Indemnification. To the fullest extent permitted by law, Contractor must 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 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, litigation expenses, fees of expert consultants or expert witnesses, and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any performance of services under this Contract by Contractor, or any subcontractor, anyone directly or indirectly employed by either of them, anyone that either of them control, or any agent, volunteer, invitee, or representative of either of them. Contractor's duty to defend, indemnify, protect and hold harmless does not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

VIII – INSURANCE

8.1 Insurance. Contractor must procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property in connection with and which arise from the performance of the work by Contractor, his agents, representatives, employees, or subcontractors funded in whole or in part hereunder, and results of that work.

8.1.1 Required types of Insurance. Unless otherwise provided, Contractor must maintain the following insurance coverage at its own expense; if Contractor maintains broader coverage and/or higher limits than the minimums shown below, City requires and is entitled to the broader coverage and/or the higher limits maintained by Contractor; and any available insurance proceeds in excess of the specified minimum limits of insurance and coverage must be available to City.

8.1.1.1 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 must apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit must be twice the required occurrence limit.

8.1.1.2 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.

8.1.1.3 Worker's 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.

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

8.1.2.1 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).

8.1.2.2 Primary Coverage. For any claims related to this contract, Contractor's insurance coverage must 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 must be excess of Contractor's insurance and may not contribute with it.

8.1.2.3 Notice of Cancellation. Each of the Contractor's insurance policies required above must provide that coverage cannot be canceled, except with notice to City.

8.1.2.4 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.

- 8.1.3 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 must provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.
- 8.1.4 Acceptability of Insurers. Except for the State Compensation Insurance Fund, 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.
- 8.1.5 Verification of Coverage. Contractor must 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 will 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.
- 8.1.6 Reservation of Rights. 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.
- 8.1.7 Additional Insurance. Contractor may obtain additional insurance not required by this Contract.
- 8.1.8 Excess Insurance. All policies providing excess coverage to City must follow the form of the primary policy or policies including but not limited to all endorsements.
- 8.1.9 Subcontractors. Contractor must require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor must ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors must provide coverage with a format at least as broad as the CG 20 38 04 13 endorsement.
- 8.1.10 Modification. To assure protection from and against the kind and extent of risk existing with the Contract, City, at its discretion, may require the revision of amounts and coverage at any time during the term of this Contract by giving Contractor thirty (30) days prior written notice. Contractor must also obtain any additional insurance required by City for new improvements, changed circumstances, or City's reasonable re-evaluation of risk levels related to the Premises.

IX – DATA AND RECORDS; OWNERSHIP OF DOCUMENTS AND EQUIPMENT

- 9.1 General. Contractor must maintain, and require its subcontractors to maintain all administrative and financial records required in connection with the Scope of Services (including but not limited to, all books, accounting records, invoices, receipts, payroll records, personnel records, and any other data and records pertaining to all matters covered in this Contract) during the term of this Contract.
- 9.2 Accounting Records. Contractor must maintain, and require its subcontractors to maintain, complete and accurate accounting records, in accordance with Generally Accepted Accounting Practices (GAAP) in the industry, including a separate accounting for funds provided under this Contract from those funds provided from any other source. Within thirty calendar days of any written requires by City for such records, Contractor must make available to City, for review and audit, all accounting records, documents, and any

other financial data and records related to the Scope of Services. Upon City's request, Contractor must submit exact duplicates of the originals for all requested records to City.

- 9.3 Inspection and Photocopying. At any time during normal business hours and as often as City deems necessary, Contractor must permit, and require its subcontractors to permit, City, or their authorized agents, to inspect and photocopy, at a reasonable location within the county of San Diego (e.g., the offices of Contractor), all books, accounting records, invoices, receipts, payroll records, personnel records, and any other Scope of Services data and records pertaining to all matters covered in this Contract, for the purposes of auditing, monitoring, or evaluating Contractor's performance of its obligations and duties under this Contract. City may retain copies of the same, with appropriate safeguards, if such retention is deemed necessary by City in its sole discretion. City will keep all copies of Contractor's data and records in the strictest confidence required by law. If Contractor is unable to make all such data and records available for inspection within the county of San Diego, then Contractor must pay all of City's travel-related costs to inspect and audit the data and records at the location where the data and records are maintained.
- 9.4 Storage Period. Contractor must store, and require its subcontractors to store, all Scope of Services data and records for a period of not less than five years after submission of the final expenditure report for the contract period, or five years after submission of the final expenditure report upon earlier termination of this Contract, or until all audit findings have been resolved, whichever is longest. All such data and records must be kept at Contractor's (or relevant subcontractor's) regular place of business. At any time during the storage period, Contractor must permit, and require each of its subcontractors to permit, City, or their authorized agents to examine all such data and records. After the storage period has expired or all audit findings have been resolved, whichever is later, Contractor must provide City with thirty calendar days written notice of its intent to dispose of any Scope of Services data and records. Contractor must not take any action to dispose of such data and records without the prior written consent of City.
- 9.5 Original Documents. Notwithstanding the foregoing, upon the termination of this Contract, City may request that Contractor deliver, and Contractor must deliver, within fifteen calendar days of any such request by City, the originals of all such data and records to City. Contractor may retain copies of all data and records delivered to City.
- 9.6 Ownership of Documents. Once Contractor has received any reimbursement from City for Contractor's performance of its obligations and duties under this Contract, all data and records, including but not limited to, all documents, designs, plans, reports, investigations, videos, or other work product, prepared or acquired by Contractor pursuant to this Contract, including any duplicate copies, are the property of City. City's ownership of such data and records includes the use, reproduction, and reuse of such data and records, as well as all incidental rights, whether or not the work for which the data and records were prepared has been performed. All such data and records must not be shown to any other public or private person or entity, except as authorized by City in writing, or unless such documents are subject to the California Public Records Act. This Section applies whether the Contract is terminated by the completion of the Scope of Services, the expiration of this Contract, or upon termination of this Contract, if earlier, in accordance with the terms of this Contract.

X – COMPLIANCE WITH LAWS AND POLICIES

- 10.1 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.
- 10.1.1 California Public Records Act. Government Code Section 6250 et seq. Pursuant to the California Public Records Act, all documents related to the funding request, including, but not limited to, the contents of this Contract, application materials, expenditure documentation, and any documents pertaining to the performance of the contract are public records and, therefore, subject to public

disclosure unless a specific exemption in the California Public Records Act applies. Contractor acknowledges and will comply with the California Public Records Act.

- 10.1.2 Council Policy 100-17 Drug-Free Workplace/City Contractors. Contractor must comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952, and incorporated into this Contract by this reference.
- 10.1.3 Council Policy 100-04 Americans with Disabilities Act/City Contractors. Contractor must comply with City's Americans with Disabilities Act Compliance/City Contracts requirements set forth in Council Policy 100-04, adopted by San Diego Resolution R- 282153 and incorporated into this Contract by this reference. Contractor must comply with all accessibility requirements under the Americans with Disabilities Act (ADA) and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor must comply with the most restrictive requirement (i.e. that which provides the most access). Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this Contract must contain language which indicates the subcontractor's agreement to abide by the provisions of Council Policy I 00-04 and any applicable access laws and regulations.
- 10.1.4 Lobbying and Political Activities. Contractor must not use, and must require its subcontractors not to use, any of the funds, personnel, or materials received in connection with this Contract, to influence, or attempt to influence, any governmental decision or election in any manner, whatsoever. This prohibition applies to any decision of any kind to be made by any electorate, legislative body, agency, bureau, board, commission, district, or any other instrument of federal, state, or local government. The term, "influence or attempt to influence," means the making, with the intent to influence, any communication to, or appearance before, any officer, employee, or appointee of any governmental entity, as well as any communication made to any electorate, regarding any ballot measure or candidate election.
- 10.1.5 Contractor Standards, San Diego Municipal Code Section 22.3004 (c). Contractor must 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. Contractor must notify City within 15 calendar days upon receiving written notification that a government agency has begun an investigation of Contractor that may result in a finding that Contractor is or was, not in compliance with the law, or that there has been a finding by a government agency or court of competent jurisdiction of a violation of such law by Contractor. Initiation of an investigation is not, by itself, a basis for a determination of non-responsibility by City.
- 10.1.6 Non-Discrimination Requirements.
- 10.1.7.1 Compliance with City's Equal Opportunity Contracting Program (EOCP). Contractor must comply with City's EOCP Requirements. Contractor must not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor must provide equal opportunity in all employment practices. Contractor must ensure that their subcontractors comply with this program. Nothing in this Section can be interpreted to hold Contractor liable for any discriminatory practice of its subcontractors.
- 10.1.6.2 Nondiscrimination in Contracting, San Diego Municipal Code Section 22.3501 et seq. Contractor must 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 must provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause will be considered a material breach of the

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

10.1.6.3 Compliance Investigations. Upon City's request, Contractor agrees to provide to City, within thirty 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 will be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

10.1.6.4 Equal Benefits Ordinance. San Diego Municipal Code Section 22.4301 et seq. Unless an exception applies, contractor must comply with the Equal Pay Ordinance (EPO) codified in the San Diego Municipal Code (SDMC). Contractor must require all of its subconsultants to certify compliance with the EPO in their written subcontracts. Contractor must post a notice informing its employees of their rights under EPO in their workplace or job site. By EPO requirements and pledges ongoing compliance with the requirements of SDMC section 22.4801 et seq. throughout the Term of this Contract.

XI - MISCELLANEOUS

- 11.1 Compliance with Law. Contractor must comply with all laws, ordinances, regulations and policies of the Federal, state, and local governments applicable to this Contract. In addition, Contractor must comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California govern and control the terms and conditions of this Contract.
- 11.2 Conflicts of Interest. Contractor must comply with all Federal, state, and Local Conflict of Interest laws, regulations, and policies applicable to public contracts and procurement practices.
- 11.3 Certification of Good Standing. Prior to the award, Contractor must be in good standing with the Secretary of State and Franchise Tax Board. All required filings must be current, and the status of the corporation must be active throughout the Term of this Contract.
- 11.4 Notices. Any notice required or permitted to be given under this Contract must be in writing and may be served personally or sent via the United States Postal Service, postage prepaid, or overnight courier, addressed to the parties as follows:

If to Contractor:

Horton Plaza Theatres Foundation
PO Box 124734
San Diego, CA 92112-4734

If to City:

Jonathon Glus, Executive Director
Office of the City of San Diego Commission for Arts and Culture
1200 Third Avenue, Suite 924
San Diego, CA 92101

Any party entitled or required to receive notice under this Contract may, by like notice, designate a different address to which notices will be sent.

- 11.5 Unavoidable Delay. If the performance of any act required of City or Contractor is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform the act, the obligated party will be excused from performing that act for the period equal to the period of the prevention or delay. If Contractor or City claims the existence of a delay, the party claiming the delay must notify the other party in writing of the fact within ten days after the beginning of the claimed delay. Any delays in performance of Scope of Services caused by unforeseen events beyond the control of either party will not entitle Contractor to damages or additional compensation.
- 11.6 Severability. If any term, covenant, condition or provision of this Contract is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions remain in full force and effect.
- 11.7 Jurisdiction and Venue. The jurisdiction and applicable laws for any suit or proceeding concerning this Contract, the interpretation or application of any of its terms, or any related disputes must be in accordance with the laws of the State of California. The venue for any suit or proceeding concerning this Contract must be in the County of San Diego, State of California
- 11.8 Time of the Essence. Unless otherwise specified in this Contract, time is of the essence for each provision of this Contract.
- 11.9 Integrated Contract. This Contract, and **Exhibits A and B**, further incorporated by this reference into this Contract, fully express all understandings of the Parties, and controls over all prior negotiations or agreements, concerning the matters covered in this Contract.
- 11.10 Authority. Each individual executing this Contract on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Contract on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing Contract, and that this Contract is binding upon such person or entity in accordance with its terms.
- 11.11 Changes or Amendment to Contract. 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. Oral amendments have no force or effect.
- 11.12 Dispute Resolution: Mandatory Non-Binding Mediation. If a dispute arises out of or relates to this Contract or default thereof under Section 6.2 and cannot be settled and resolved through normal contract negotiations, Contractor and City must use non-binding mediation before having recourse in a court of law. A single mediator that is acceptable to both parties must be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Contract, if possible. Any such mediation must be held in San Diego, California and subject to California law pursuant to Section 11.7.
- 11.12.1 Expenses: The expenses of witnesses, or presenting evidence, for either side related to mediation must be paid by the party producing such witnesses or evidence. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any professional or expert advice produced at the direct request of the mediator, must be borne equally by the parties, unless they agree otherwise.
- 11.12.2 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

must 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.

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

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

11.13.1 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 to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, employees, and subcontractors, Contractor must reimburse City for all fees paid to Contractor, its agents, officers, employees, and subcontractors for Mandatory Assistance.

11.13.2 Attorneys' Fees Related to Mandatory Assistance. In providing City with Mandatory Assistance, Contractor or its agents, officers, employees, representatives, and subcontractors may incur expenses and costs. Contractor agrees that any attorney fees it or its agents, officers, employees, representatives, and subcontractors may incur as a result of providing Mandatory Assistance, are not reimbursable.

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

HORTON PLAZA THEATRES
FOUNDATION
A Nonprofit Corporation

CITY OF SAN DIEGO
A Municipal Corporation

By: 

By: 

Name: Sandra L. Simmons

Name: Claudia C. Abarca


Title: Executive Director

Director, Purchasing & Contracting

Date: April 4, 2023

Date: April 14, 2023

Approved as to form this 14th day of
April, 2023
MARA W. ELLIOTT, City Attorney

By: 
Deputy City Attorney

Ken So
Print Name

**City of San Diego
Scope of Services
Fiscal Year 2023**

Scope of Services should be an outline of the activities/services for the contract period July 1, 2022 to June 30, 2023. The outline should include narrative sections, a single paragraph stating each of the Agency's objectives for the year (including a quantitative indicator, which measures the output of the program objectives.)

1. Horton Plaza Theatres Foundation Objectives:

- **Objective #1: To administer and provide general stewardship of Lyceum Theatres infrastructure**
 - HPTF to collaborate with Civic Communities (acting on behalf of the City of San Diego Redevelopment Successor Agency) in the \$7.5 million dollar renovation of the Lyceum Theatres during FY23. Construction begins January 2023.
 - HPTF to collaborate with Stockdale on the renovation of the passenger elevator and facility entrance during FY23. Construction to be completed by first quarter 2023.
 - HPTF to fully utilize Recognized Obligation Payment Schedule (ROPS) \$250,000 funding for ordinary wear and tear and obsolescence of furniture, fixtures, and equipment, and code, life, and safety requirements by June 30, 2023.
- **Objective #2: To reenvision operations of the Lyceum Theatres**
 - HPTF to work with partners (Stockdale and City) to reenvision the operations of the Lyceum Theatres during FY23.

2. Personnel Expenses:

\$92,000 is wages and benefits for the management of Horton Plaza Theatres Foundation

3. Operational Expenses:

- \$210,500 for facility expenses, which includes annual property and liability premiums, property taxes, utilities, and facility maintenance
- \$10,000 for contract services to engage audio, lighting, and help to move assets
- \$4,000 for office expenses
- \$8,500 for other expenses – legal, audit, accounting

**Horton Plaza Theatres Foundation
FY2023 City Budget**

City Funding:

City of San Diego	\$	325,000
Total City Funding	\$	325,000

Expenses:

Insurance	\$	33,500
Property Taxes	\$	24,000
Facility	\$	58,000
Utilities	\$	95,000
Contract Work	\$	10,000
Office Expense	\$	4,000
Audit/Acct/Paychex	\$	8,500
Administration	\$	92,000
Total Expenses	\$	325,000



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 10th 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 (5th) 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 (5th) day of the subsequent month.

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

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

ARTICLE IV SUSPENSION AND TERMINATION

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

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

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

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

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

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

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

4.5 Contractor's Right to Payment Following Contract Termination.

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

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

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

ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE VI INTELLECTUAL PROPERTY RIGHTS

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

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

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

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

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

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

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

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

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

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

ARTICLE VII INDEMNIFICATION AND INSURANCE

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

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

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

Contractor shall provide, at a minimum, the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE VIII BONDS

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

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

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

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

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

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

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

ARTICLE IX CITY-MANDATED CLAUSES AND REQUIREMENTS

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

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

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

9.1.3 Non-Discrimination Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE X CONFLICT OF INTEREST AND VIOLATIONS OF LAW

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

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

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

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

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

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

ARTICLE XI DISPUTE RESOLUTION

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

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

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

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

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

ARTICLE XII MANDATORY ASSISTANCE

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

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

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

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

ARTICLE XIII MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

City of San Diego
CONTRACTOR STANDARDS
Pledge of Compliance

The City of San Diego has adopted a Contractor Standards Ordinance (CSO) codified in section 22.3004 of the San Diego Municipal Code (SDMC). The City of San Diego uses the criteria set forth in the CSO to determine whether a contractor (bidder or proposer) has the capacity to fully perform the contract requirements and the business integrity to justify the award of public funds. This completed Pledge of Compliance signed under penalty of perjury must be submitted with each bid and proposal. If an informal solicitation process is used, the bidder must submit this completed Pledge of Compliance to the City prior to execution of the contract. All responses must be typewritten or printed in ink. If an explanation is requested or additional space is required, Contractors must provide responses on Attachment A to the Pledge of Compliance and sign each page. Failure to submit a signed and completed Pledge of Compliance may render a bid or proposal non-responsive. In the case of an informal solicitation or cooperative procurement, the contract will not be awarded unless a signed and completed Pledge of Compliance is submitted. A submitted Pledge of Compliance is a public record and information contained within will be available for public review except to the extent that such information is exempt from disclosure pursuant to applicable law.

By signing and submitting this form, the contractor is certifying, to the best of their knowledge, that the contractor and any of its Principals have not within a five (5) year period – preceding this offer, been convicted of or had a civil judgement rendered against them for commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) contract or subcontract.

“Principal” means an officer, director, owner, partner or a person having primary management or supervisory responsibilities within the firm. The Contractor shall provide immediate written notice to the Procurement Contracting Officer handling the solicitation, at any time prior to award should they learn that this Representations and Certifications was inaccurate or incomplete.

This form contains 10 pages, additional information may be submitted as part of *Attachment A*.

A. BID/PROPOSAL/SOLICITATION TITLE:

_____ Funding for Lyceum Theatres _____

B. BIDDER/PROPOSER INFORMATION:

_____ Horton Plaza Theatres Foundation _____			
Legal Name		DBA	
_____ 500 Horton Plaza #100 _____	_____ San Diego _____	_____ CA _____	_____ 92101 _____
Street Address	City	State	Zip
_____ Sandra L. Simmons, Executive Director _____	_____ 619-238-8388 _____	_____ None _____	
Contact Person, Title	Phone	Fax	

Provide the name, identity, and precise nature of the interest* of all persons who are directly or indirectly involved** in this proposed transaction (SDMC § 21.0103). Use additional pages if necessary.

* The precise nature of the interest includes:

- the percentage ownership interest in a party to the transaction,
- the percentage ownership interest in any firm, corporation, or partnership that will receive funds from the transaction,
- the value of any financial interest in the transaction,
- any contingent interest in the transaction and the value of such interest should the contingency be satisfied, and
- any philanthropic, scientific, artistic, or property interest in the transaction.

** Directly or indirectly involved means pursuing the transaction by:

- communicating or negotiating with City officers or employees,
- submitting or preparing applications, bids, proposals or other documents for purposes of contracting with the City, or
- directing or supervising the actions of persons engaged in the above activity.

Sandra L. Simmons	Executive Director
Name	Title/Position
San Diego, CA	
City and State of Residence	Employer (if different than Bidder/Proposer)
0%	
Interest in the transaction	

Suzanne Varco	President
Name	Title/Position
Bonita, CA	
City and State of Residence	Varco & Associates Employer (if different than Bidder/Proposer)
0%	
Interest in the transaction	

Jennifer Gattey	Vice President
Name	Title/Position
San Diego, CA	Sentre
City and State of Residence	Employer (if different than Bidder/Proposer)
0%	
Interest in the transaction	

Patrick Stewart	Treasurer
Name	Title/Position
San Diego, CA	
City and State of Residence	San Diego Library Foundation Employer (if different than Bidder/Proposer)
0%	
Interest in the transaction	

D Candis Paule	Secretary
Name	Title/Position
San Diego, CA	
City and State of Residence	Candis Casting Employer (if different than Bidder/Proposer)
0%	
Interest in the transaction	

Jay L.Henslee	Director
Name	Title/Position
San Diego, CA	
City and State of Residence	U.S. Bank Employer (if different than Bidder/Proposer)
0%	
Interest in the transaction	

Leo Divinsky Director
 Name Title/Position
Los Angeles, CA Stockdale Capital
 City and State of Residence Employer (if different than Bidder/Proposer)
0%
 Interest in the transaction

Christie Kong Director
 Name Title/Position
San Diego, CA Stockdale Management
 City and State of Residence Employer (if different than Bidder/Proposer)
 Interest in the transaction

George Montoya Director
 Name Title/Position
San Diego CA Stockdale Management
 City and State of Residence Employer (if different than Bidder/Proposer)
0%
 Interest in the transaction

Jimmy Parker, Director, San Diego, CA, Director, 0%

C. OWNERSHIP AND NAME CHANGES:

1. In the past five (5) years, has your firm changed its name?
 Yes No NO

If **Yes**, use Attachment A to list all prior legal and DBA names, addresses, and dates each firm name was used. Explain the specific reasons for each name change.

2. Is your firm a non-profit?
 Yes No YES

If **Yes**, attach proof of status to this submission. Attached

3. In the past five (5) years, has a firm owner, partner, or officer operated a similar business?
 Yes No YES

If **Yes**, use Attachment A to list names and addresses of all businesses and the person who operated the business. Include information about a similar business only if an owner, partner, or officer of your firm holds or has held a similar position in another firm.

ED has operated HPTF for ten years; Suzanne Varco has been President for nine years, many directors have served over six years.

D. BUSINESS ORGANIZATION/STRUCTURE:

Indicate the organizational structure of your firm. Fill in only one section on this page. Use Attachment A if more space is required.

Corporation Date incorporated: 11-16-1983 State of incorporation: California
 List corporation's current officers: President: Suzanne Varco
 Vice Pres: Jennifer Gattley
 Secretary: D Candis Paule
 Treasurer: Patrick Stewart

Type of corporation: C Subchapter S Corporation C

Is the corporation authorized to do business in California: Yes No Yes

If **Yes**, after what date: 11-6-1983

Is your firm a publicly traded corporation? Yes No NO

If Yes, how and where is the stock traded? _____

If Yes, list the name, title and address of those who own ten percent (10 %) or more of the corporation's stocks:

Do the President, Vice President, Secretary and/or Treasurer of your corporation have a third party interest or other financial interests in a business/enterprise that performs similar work, services or provides similar goods? Yes No

If Yes, please use Attachment A to disclose. NO

Please list the following: Authorized Issued Outstanding

a. Number of voting shares:	_____	_____	_____
b. Number of nonvoting shares:	_____	_____	_____
c. Number of shareholders:			_____
d. Value per share of common stock:		Par	\$ _____
		Book	\$ _____
		Market	\$ _____

Limited Liability Company Date formed: _____ State of formation: _____

List the name, title and address of members who own ten percent (10%) or more of the company:

Partnership Date formed: _____ State of formation: _____

List names of all firm partners:

Sole Proprietorship Date started: _____

List all firms you have been an owner, partner or officer with during the past five (5) years. Do not include ownership of stock in a publicly traded company:

Joint Venture Date formed: _____

List each firm in the joint venture and its percentage of ownership:

Note: To be responsive, each member of a Joint Venture or Partnership must complete a separate *Contractor Standards form*.

E. FINANCIAL RESOURCES AND RESPONSIBILITY:

1. Is your firm preparing to be sold, in the process of being sold, or in negotiations to be sold?

Yes No NO

If **Yes**, use Attachment A to explain the circumstances, including the buyer's name and principal contact information.

2. In the past five (5) years, has your firm been denied bonding?

Yes No NO

If **Yes**, use Attachment A to explain specific circumstances; include bonding company name.

3. In the past five (5) years, has a bonding company made any payments to satisfy claims made against a bond issued on your firm's behalf or a firm where you were the principal?

Yes No NO

If **Yes**, use Attachment A to explain specific circumstances.

4. In the past five (5) years, has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?

Yes No NO

If **Yes**, use Attachment A to explain specific circumstances.

5. Within the last five years, has your firm filed a voluntary petition in bankruptcy, been adjudicated bankrupt, or made a general assignment for the benefit of creditors?

Yes No NO

If **Yes**, use Attachment A to explain specific circumstances.

6. Are there any claims, liens or judgements that are outstanding against your firm?

Yes No NO

If **Yes**, please use Attachment A to provide detailed information on the action.

7. Please provide the name of your principal financial institution for financial reference. By submitting a response to this Solicitation Contractor authorizes a release of credit information for verification of financial responsibility.

Name of Bank: US Bank

Point of Contact: _____

Address: _____

Phone Number: _____

8. By submitting a response to a City solicitation, Contractor certifies that he or she has sufficient operating capital and/or financial reserves to properly fund the requirements identified in the solicitation. At City's request, Contractor will promptly provide to City

Contact Name and Phone Number: Jonathon Glus, ED Commission of Arts & Culture

Contact Email: _____

Address: _____

Contract Date: _____

Contract Amount: _____

Requirements of Contract: _____

Company Name: _____

Contact Name and Phone Number: _____

Contact Email: _____

Address: _____

Contract Date: _____

Contract Amount: _____

Requirements of Contract: _____

Company Name: _____

Contact Name and Phone Number: _____

Contact Email: _____

Address: _____

Contract Date: _____

Contract Amount: _____

Requirements of Contract: _____

G. COMPLIANCE:

1. In the past five (5) years, has your firm or any firm owner, partner, officer, executive, or manager been criminally penalized or found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for violating any federal, state, or local law in performance of a contract, including but not limited to, laws regarding health and safety, labor and employment, permitting, and licensing laws?
 Yes No NO

If **Yes**, use Attachment A to explain specific circumstances surrounding each instance. Include the name of the entity involved, the specific infraction(s) or violation(s), dates of instances, and outcome with current status.

2. In the past five (5) years, has your firm been determined to be non-responsible by a public entity?
 Yes No NO

If **Yes**, use Attachment A to explain specific circumstances of each instance. Include the name of the entity involved, the specific infraction, dates, and outcome.

H. BUSINESS INTEGRITY:

1. In the past five (5) years, has your firm been convicted of or found liable in a civil suit for making a false claim or material misrepresentation to a private or public entity?

Yes **No** NO

If **Yes**, use Attachment A to explain specific circumstances of each instance. Include the entity involved, specific violation(s), dates, outcome and current status.

2. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a crime, including misdemeanors, or been found liable in a civil suit involving the bidding, awarding, or performance of a government contract?

Yes **No** NO

If **Yes**, use Attachment A to explain specific circumstances of each instance; include the entity involved, specific infraction(s), dates, outcome and current status.

3. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a federal, state, or local crime of fraud, theft, or any other act of dishonesty?

Yes **No** NO

If **Yes**, use Attachment A to explain specific circumstances of each instance; include the entity involved, specific infraction(s), dates, outcome and current status.

4. Do any of the Principals of your firm have relatives that are either currently employed by the City or were employed by the City in the past five (5) years?

Yes **No** NO

If **Yes**, please disclose the names of those relatives in Attachment A.

I. BUSINESS REPRESENTATION:

1. Are you a local business with a physical address within the County of San Diego?

Yes **No** YES

2. Are you a certified Small and Local Business Enterprise certified by the City of San Diego?

Yes **No**

Certification # _____ N/A

3. Are you certified as any of the following:

- a. Disabled Veteran Business Enterprise Certification # _____
- b. Woman or Minority Owned Business Enterprise Certification # _____
- c. Disadvantaged Business Enterprise Certification # _____

J. WAGE COMPLIANCE: NO

In the past five (5) years, has your firm been required to pay back wages or penalties for failure to comply with the federal, state or local **prevailing, minimum, or living wage laws**? **Yes** **No** If **Yes**, use Attachment A to explain the specific circumstances of each instance. Include the entity involved, the specific infraction(s), dates, outcome, and current status.

By signing this Pledge of Compliance, your firm is certifying to the City that you will comply with the requirements of the Equal Pay Ordinance set forth in SDMC sections 22.4801 through 22.4809.

K. STATEMENT OF SUBCONTRACTORS & SUPPLIERS:

Please provide the names and information for all subcontractors and suppliers used in the performance of the proposed contract, and what portion of work will be assigned to each subcontractor. Subcontractors may not be substituted without the written consent of the City. Use Attachment A if additional pages are necessary. If no subcontractors or suppliers will be used, please write "Not Applicable."

Company Name: _____

Address: _____

Contact Name: _____ Phone: _____ Email: _____

Contractor License No.: _____ DIR Registration No.: _____

Sub-Contract Dollar Amount: \$_____ (per year) \$_____ (total contract term)

Scope of work subcontractor will perform: _____

Identify whether company is a subcontractor or supplier: _____

Certification type (check all that apply): DBE DVBE ELBE MBE SLBE WBE Not Certified

Contractor must provide valid proof of certification with the response to the bid or proposal to receive participation credit.

Company Name: _____

Address: _____

Contact Name: _____ Phone: _____ Email: _____

Contractor License No.: _____ DIR Registration No.: _____

Sub-Contract Dollar Amount: \$_____ (per year) \$_____ (total contract term)

Scope of work subcontractor will perform: _____

Identify whether company is a subcontractor or supplier: _____

Certification type (check all that apply): DBE DVBE ELBE MBE SLBE WBE Not Certified

Contractor must provide valid proof of certification with the response to the bid or proposal to receive participation credit.

L. STATEMENT OF AVAILABLE EQUIPMENT:

A full inventoried list of all necessary equipment to complete the work specified may be a requirement of the bid/proposal submission.

By signing and submitting this form, the Contractor certifies that all required equipment included in this bid or proposal will be made available one week (7 days) before work shall commence. In instances where the required equipment is not owned by the Contractor, Contractor shall explain how the equipment will be made available before the commencement of work. The City of San

Diego reserves the right to reject any response, in its opinion, if the Contractor has not demonstrated he or she will be properly equipped to perform the work in an efficient, effective matter for the duration of the contract period.

M. TYPE OF SUBMISSION: This document is submitted as:

- Initial submission of *Contractor Standards Pledge of Compliance*
- Initial submission of *Contractor Standards Pledge of Compliance* as part of a Cooperative agreement
- Initial submission of *Contractor Standards Pledge of Compliance* as part of a Sole Source agreement
- Update of prior *Contractor Standards Pledge of Compliance* dated _____.

Complete all questions and sign below.

Under penalty of perjury under the laws of the State of California, I certify that I have read and understand the questions contained in this Pledge of Compliance, that I am responsible for completeness and accuracy of the responses contained herein, and that all information provided is true, full and complete to the best of my knowledge and belief. I agree to provide written notice to the Purchasing Agent within five (5) business days if, at any time, I learn that any portion of this Pledge of Compliance is inaccurate. Failure to timely provide the Purchasing Agent with written notice is grounds for Contract termination.

I, on behalf of the firm, further certify that I and my firm will comply with the following provisions of SDMC section 22.3004:

(a) I and my firm will comply with all applicable local, State and Federal laws, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.

(b) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of receiving notice that a government agency has begun an investigation of me or my firm that may result in a finding that I or my firm is or was not in compliance with laws stated in paragraph (a).

(c) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of a finding by a government agency or court of competent jurisdiction of a violation by the Contractor of laws stated in paragraph (a).

(d) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of becoming aware of an investigation or finding by a government agency or court of competent jurisdiction of a violation by a subcontractor of laws stated in paragraph (a).

(e) I and my firm will cooperate fully with the City during any investigation and to respond to a request for information within ten (10) working days.

Failure to sign and submit this form with the bid/proposal shall make the bid/proposal non-responsive. In the case of an informal solicitation, the contract will not be awarded unless a signed and completed *Pledge of Compliance* is submitted.

Sandra L. Simmons, Executive Director
Name and Title


Signature

4-5-2023
Date

**City of San Diego
CONTRACTOR STANDARDS
Attachment "A"**

Provide additional information in space below. Use additional Attachment "A" pages as needed. Each page must be signed. Print in ink or type responses and indicate question being answered.

Horton Plaza Theatres Foundation was established by the City of San Diego to operate one or more theatres in Downtown San Diego.

I have read the matters and statements made in this Contractor Standards Pledge of Compliance and attachments thereto and I know the same to be true of my own knowledge, except as to those matters stated upon information or belief and as to such matters, I believe the same to be true. I certify under penalty of perjury that the foregoing is true and correct.

<p>Sandra L. Simmons, Executive Director</p> <hr/>	 <hr/>	<p>4-5-2023</p> <hr/>
Print Name, Title	Signature	Date