

# San Diego Convention Center Corporation

## Terms and Conditions – GENERAL GOODS AND SERVICES

### 1. Insurance

Contractor agrees to procure and maintain all insurances required by law at the time of contract award.

### 2. Period of Performance

Contractor shall commence performance of the contract promptly upon receipt of the purchase order or other contract document and shall complete delivery on or before the date specified on the purchase order or contract document unless extended in writing by an authorized representative of Corporation.

### 3. Inspection and Acceptance

3.1 All items delivered under the contract shall be subject to inspection and acceptance by an authorized representative of Corporation. Inspection and Acceptance of partial deliveries shall not relieve Contractor from any obligation to fulfill the contract in its entirety.

3.2 Corporation reserves the right to reject any and all items that (a) do not comply with the specifications provided or (b) are unacceptable due to defective materials or workmanship.

3.3 Any item determined to be unacceptable by Corporation shall be immediately repaired, replaced or reworked by Contractor at no additional cost to Corporation. Failure of Contractor to correct deficiencies shall be reason for termination in accordance with paragraph 9. below. All rejected items must be removed from Contractor's facilities promptly after notification of rejection at Contractor's cost. Should Contractor not remove rejected items with five (5) business days from notification, Corporation shall charge Contractor a storage fee in an amount to be determined by Corporation.

3.4 Corporation shall have no liability for loss or damage arising from any unforeseen obstacles or difficulties or from any action of the elements, or from any act or omission not authorized by the specifications prior to final acceptance by Corporation.

### 4. Warranty

4.1 Except as otherwise specified in the contract documents, all goods shall be warranted by Contractor against defects in material or workmanship for a period of one (1) year from the date of final acceptance by Corporation. Defects include, but are not limited to, the use of inferior materials or equipment or unskilled or underskilled labor in the product.

4.2 Final acceptance by an authorized representative of Corporation shall not relieve Contractor of obligations to correct latent defects in material or workmanship.

### 5. Corrections

The delivery of goods and acceptance of such deliveries by Corporation shall not relieve Contractor from any obligation to correct incomplete, inaccurate or defective deliveries at no additional cost to Corporation.

### 6. Payment

Payment shall be made within thirty (30) days after receipt of proper invoice for all items accepted under this Agreement. Corporation shall have no liability of payment for items not received or not accepted by Corporation.

### 7. Changes

Any changes to this Agreement shall be mutually agreed upon by and between Corporation and Contractor, shall be in writing and shall be incorporated into the contract document.

### 8. Termination for Default

It is agreed that time is of the essence under this Agreement. If Contractor fails or neglects to supply or deliver the goods, articles, or services at the prices named and at the times and places agreed upon, Corporation may, without further notice or demand, cancel and rescind this Agreement or may purchase said goods, supplies or services elsewhere and hold Contractor responsible and liable for all damages which may be sustained therein.

### 9. Assignability

Contractor shall not assign any interest in this Contract

and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of Corporation. Claims for money due or to become due to Contractor from Corporation under this Contract may be assigned to a bank, trust company, or other financial institutions, or to a Trustee in Bankruptcy, without prior approval. Notice of any such assignment or transfer shall be furnished promptly to Corporation.

### 10. Attorney's Fees and Costs

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

### 11. Entire Contract

This Contract represents the sole and entire agreement between Corporation and Contractor, and supersedes all prior negotiations, representations, agreements, arrangements or understandings, either oral or written, between or among the

parties hereto, relating to the subject matter of this Contract which are not fully expressed herein. No waiver, alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by a duly authorized representative of both Corporation and Contractor.

### 12. Partial Invalidity

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

### 13. Contract Governed by Law of State of California

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

# San Diego Convention Center Corporation

## Terms and Conditions - PROFESSIONAL SERVICES

### 1. Independent Contractor

1.1 Contractor is and shall remain an independent contractor. Neither Contractor nor its agents or employees shall act as officers, agents, or employees of Corporation. Contractor has no authority to assume or create any commitment or obligation on behalf of Corporation, or to bind Corporation in any respect whatsoever.

1.2 Corporation assumes no fiscal liability for Contractor's operations or actions, nor assumes such on its behalf. Fiscal liabilities include, but is not limited to, taxes, licenses, fees, funds, or any other commitment, implied or expressed, by or for Contractor.

### 2. Insurance

2.1 Prior to commencement of work under this Agreement, Contractor shall, at its sole cost and expense, procure and maintain all insurances required by law and good business practices at the time of contract award.

2.2 If Contractor is providing professional services under this Agreement, Contractor shall procure a **Professional Errors & Omissions** policy with a per-claim limit to be determined prior to contract award. Such insurance shall be maintained for a minimum of one (1) year following completion of the work. Corporation reserves the right to require the insurance to be maintained for a minimum of up to five (5) years following completion of the work. Depending on the type of professional services to be provided under this Agreement and its associated risks, Corporation may, at its sole discretion, deem this requirement not applicable.

### 3. Licensure

Contractor represents that it currently holds a valid State of California Contractor's License for any category of work to be performed hereunder, as required under the California Business and Professions Code. Contractor agrees that it shall maintain such valid license or licenses throughout the term of this Agreement. Contractor further agrees to provide notice to Corporation immediately upon the termination or non-renewal of said license or licenses, and in the event of termination or non-renewal, obtain a valid license before performing any further services under the terms of this Agreement. Failure of Contractor to obtain and present to Corporation sufficient proof that it holds a valid license or licenses shall constitute a material breach of this Agreement, which shall be subject to immediate termination.

### 4. Period of Performance

Contractor shall commence performance of the work promptly upon receipt of the purchase order or contract or upon receipt of written notice to proceed. The work shall be completed on or before the date specified on the contract document unless extended in writing by an authorized representative of Corporation.

### 5. Price and Payment

5.1 Unless otherwise provided under this Agreement, all costs for labor, materials, subcontractors, vendors, equipment and equipment rental, tools, utilities, transportation and services necessary for proper execution and completion of the work are included in the awarded price of the Agreement.

5.2 Contractor shall submit invoices for payment in

accordance with the approved milestone schedule, or if none specified, upon the successful completion and acceptance of the project.

5.3 All payments are subject to inspection and acceptance of work by Corporation. Acceptance shall be deemed upon payment of applicable invoices. However, acceptance of the work in part shall not constitute acceptance of the work as a whole.

5.4 Invoices are payable, net thirty (30) days after receipt of valid invoice.

### 6. Inspection and Acceptance

6.1 All services provided under this Contract are subject to inspection and acceptance by an authorized representative of Corporation. Inspection and Acceptance of partial deliveries shall not relieve Contractor from any obligation to fulfill the Contract in its entirety.

6.2 Corporation reserves the right to reject any and all services or work that (a) do not comply with the specifications provided or (b) are unacceptable due to defective materials or workmanship. Any item determined to be unacceptable by Corporation shall be immediately reworked by Contractor at no additional cost to Corporation. Failure of Contractor to correct deficiencies shall be reason for termination.

### 7. Warranty of Work

7.1 Except as otherwise specified, all work shall be warranted by the Contractor against defects in material or workmanship for a period of one (1) year from the date of final acceptance by Corporation. Defects include, but are not limited to, the use of inferior materials or equipment or unskilled or underskilled labor in the work performed.

7.2 If repairs or changes are required to correct defects during the warranty period, Contractor shall, at no cost to Corporation, promptly perform all work required to replace or repair defective work.

7.3 Final acceptance of work by an authorized representative of Corporation shall not relieve Contractor of obligations to correct latent defects in material or workmanship.

### 8. Compliance with Laws

8.1 Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of work as indicated and specified. If Contractor performs any work knowing it to be contrary to laws, ordinances, statutes, building codes, rules and regulations, Contractor shall assume full responsibility for such work and shall bear the attributable costs. Contractor shall promptly notify Corporation in writing of any known inconsistencies in the contract documents and governmental laws, rules and regulations.

8.2 Should Contractor take any actions deemed unlawful or unsafe in the State of California, such action shall constitute a material breach of this Agreement.

### 9. Subcontracting

No services covered by this Contract shall be subcontracted without the prior written consent of Corporation.

10. Changes

Material changes in the work may be accomplished by written modification to the agreement only. Material changes are identified as any change that affects contract price, terms of the Agreement or period of performance. Minor modifications in the work, within the general scope of the agreement not affecting price, terms or period of performance, may be directed by Corporation's technical representative.

11. Termination for Convenience

Corporation shall retain the right to terminate this Agreement, in whole or in part, for any reason if in the best interest of Corporation. Contractor shall be notified, in writing, thirty (30) days prior to any termination for convenience.

12. Equal Opportunity Contracting Program

12.1 Contractor acknowledges and agrees that it is aware of, and will comply with, the San Diego City Council Ordinance No. 18173, Section 22.2701, "Equal Employment Opportunity Outreach Program."

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

12.3 Upon request from Corporation, Contractor shall submit a current Work Force Analysis Report or a current Equal Employment Opportunity Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that the Contractor will take to achieve the Corporation's commitment to equal employment opportunities.

12.4 Contractor acknowledges that the Corporation seeks to promote employment and business opportunities for local residents and firms on all Corporation contracts. Contractor will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Agreement from local residents and firms as opportunities occur. Contractor agrees to hire qualified local residents and firms whenever feasible.

12.5 Contractor understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this Agreement, and/or suspension from participating in future contracts as a prime or subcontractor, for a period of not less than one (1) year. For additional or subsequent violation, the period of suspension may be extended for a period of up to three (3) years. Failure to satisfy penalties imposed pursuant to this section shall prohibit Contractor from participating in future Corporation contracts until all penalties have been satisfied.

13. Cost Records

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

up to three years following final acceptance of the work or termination of the Agreement

14. Assignability

14.1 Contractor shall not assign any interest in this Contract and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of Corporation.

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

15. Attorney's Fees and Costs

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

16. Entire Contract

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

17. Partial Invalidity

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

18. Contract Governed by Law of State of California

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

19. Availability of Funding

Obligation by Corporation for payment of any contract beyond the current fiscal year is contingent upon the availability of funding from which payment can be made. No legal liability on the part of Corporation shall arise for payment beyond June 30 of the calendar year unless funds are made available for such performance.

# San Diego Convention Center Corporation

## Terms and Conditions – CONSTRUCTION SERVICES

### 1. Independent Contractor

1.1 Contractor is and shall remain an independent contractor. Neither Contractor nor its agents or employees shall act as officers, agents, or employees of Corporation. Contractor has no authority to assume nor create any commitment or obligation on behalf of Corporation, nor to bind Corporation in any respect whatsoever.

1.2 Corporation assumes no fiscal liability for Contractor's operations or actions nor on its behalf. Fiscal liabilities include, but is not limited to, taxes, licenses, fees, funds, or any other commitment, implied or expressed, by or for Contractor.

### 2. Indemnification

Contractor shall indemnify, hold harmless and defend Corporation, the City of San Diego and the San Diego Unified Port District and their respective members, officers, directors, agents and employees from and against any and all liabilities, damages, actions, costs, losses, claims and expenses (including attorneys fees), in litigation commenced by or against Contractor, on account of personal injury, death or damage to or loss of property or profits resulting in whole or in part from any act, omission, negligence, fault or violation of law or ordinance, associated with the performance of services at the San Diego Convention Center ("Center") or San Diego Concourse ("Concourse") by Contractor, its employees, agents, subcontractors or any other person entering the Center or Concourse at the expressed or implied direction of Contractor. Such indemnification by Contractor shall apply unless such damage or injury results from the sole negligence, gross negligence or willful misconduct of Corporation, the City of San Diego or the San Diego Unified Port District and their respective members, officers, directors, agents and employees.

### 3. Insurance

Prior to commencement of work under this Agreement, Contractor shall, at its sole cost and expense, procure and maintain the following types and limits of insurance, containing the additional insured endorsements and cancellation clause set forth herein.

3.1.1 **Commercial General Liability** policy with coverage as broad and as encompassing as Commercial General Liability occurrence form (CG0001), providing coverage against claims for bodily injury or death and property damage arising out of the performance of work related to this Agreement. Such insurance shall be primary and non-contributory with any other coverage, including Corporation's, and such insurance shall afford immediate defense and indemnification of Corporation, City of San Diego and San Diego Unified Port District to the limits of not less than one million dollars.

3.1.2 The Commercial General Liability insurance policy described above must provide coverage to the following additional insureds, with an endorsement greater than or equal to the Commercial General Liability Endorsement, CG 2026, Additional Insured - Designated Person or Organization:

SAN DIEGO CONVENTION CENTER CORPORATION, INC.; CITY OF SAN DIEGO; SAN DIEGO UNIFIED PORT DISTRICT AND THE

MEMBERS, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES OF EACH OF THESE ENTITIES.

3.2 **Worker's Compensation Insurance** as required by the laws of the State of California.

3.3 **Employers' Liability Insurance** with the following limits:

Bodily Injury by Accident: \$1,000,000 per accident  
Bodily Injury by Disease: \$1,000,000 policy limit  
Bodily Injury by Disease: \$1,000,000 per employee

3.4 Should Contractor require the use of automobiles in support of the work to be performed under this Agreement, (other than transportation of employees only), **Commercial Automobile Liability**, or **Business Auto Liability** insurance, with limits not less than \$1,000,000 each occurrence, combined single limit for bodily injury and property damage, covering owned, non-owned and hired automobiles.

3.5.1 If Contractor is providing professional services under this Agreement, Contractor shall procure a **Professional Errors & Omissions** policy with a per-claim limit to be determined prior to contract award. Such insurance shall be maintained for a minimum of one (1) year following completion of the work. Corporation reserves the right to require the insurance to be maintained for a minimum of up to five (5) years following completion of the work.

3.5.2 Depending on the type of professional services to be provided under this Agreement and its associated risks, Corporation may, at its sole discretion, deem this requirement to be not applicable.

3.6 Within ten (10) calendar days of contract award, Contractor shall furnish to Corporation, a Certificate of Insurance evidencing the insurance carried in compliance with this Section. Failure to do so shall constitute a material breach of this Agreement.

### 4. Licensure

Contractor represents that it currently holds a valid State of California Contractor's License for any category of work to be performed hereunder, as required under the California Business and Professions Code. Contractor agrees that it shall maintain such valid license or licenses throughout the term of this Agreement. Contractor further agrees to provide notice to Corporation immediately upon the termination or non-renewal of said license or licenses, and in the event of termination or non-renewal, obtain a valid license before performing any further services under the terms of this Agreement. Failure of Contractor to obtain and present to Corporation sufficient proof that it holds a valid license or licenses shall constitute a material breach of this Agreement, which shall be subject to termination in accordance with paragraph 16. Termination for Default.

### 5. Period of Performance

Contractor shall commence performance of the work promptly upon receipt of the purchase order or contract or upon receipt of written notice to proceed. The work shall be completed

on or before the date specified on the contract document unless extended in writing by an authorized representative of Corporation.

## 6. Price and Payment

6.1 Unless otherwise provided under this Agreement, all costs for labor, materials, subcontractors, vendors, equipment and equipment rental, tools, utilities, transportation and services necessary for proper execution and completion of the work are included in the awarded price of the Agreement.

6.2 Contractor shall submit invoices for payment in accordance with the approved milestone schedule, or if none specified, upon the successful completion and acceptance of the project.

6.3 All payments are subject to inspection and acceptance of work by Corporation. Acceptance shall be deemed upon payment of applicable invoices. However, acceptance of the work in part shall not constitute acceptance of the work as a whole.

6.4 Invoices are payable, net thirty (30) days after receipt of valid invoice.

## 7. Specifications and Field Conditions

Contractor shall study all specifications and drawings, conduct field measurements and verify field conditions prior to commencing construction activities. Contractor shall compare specifications with information gained from field measurements and promptly notify Corporation of errors, inconsistencies or omissions discovered in the specifications or drawings.

## 8. Use of Site

8.1 Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the contract documents and Corporation.

8.2 Contractor shall insure that adjoining areas are adequately protected and that upon completion of all work, all surfaces and adjoining surfaces and areas that have been damaged as the result of the work completed under this agreement, are restored to their prior condition, or at least to an acceptable condition. Acceptability shall be determined by Corporation, which decision shall be final.

8.3 Contractor shall keep premises free from debris, such as waste, rubbish and excess materials and equipment. Debris shall be removed from premises at regular intervals at Contractor's expense.

8.4 All rubbish, debris and waste material shall be completely removed upon completion of the work under this Agreement. Contractor shall thoroughly clean all window sills and ledges, horizontal projections, floors and other surfaces where dirt and dust had collected as a result of the work. The entire area, including all fixed equipment, floors and hardware, shall be cleaned to remove spots caused by paint, glue or other materials. Should contractor fail to perform a thorough clean-up, Corporation shall have such services performed and shall charge Contractor the associated costs.

8.5 Upon completion of work under this Agreement, Contractor shall remove all Contractor-owned tools, machinery, material and articles from the premises. Should Contractor fail to take prompt action to this end within thirty (30) days after receipt of notice,

Corporation may treat articles remaining on the premises as abandoned property to be disposed of at Corporation's sole discretion.

## 9. Inspection and Acceptance

9.1 All services provided under this Contract are subject to inspection and acceptance by an authorized representative of Corporation. Inspection and Acceptance of partial deliveries shall not relieve Contractor from any obligation to fulfill the Contract in its entirety.

9.2 Corporation reserves the right to reject any and all services or work that (a) do not comply with the specifications provided or (b) are unacceptable due to defective materials or workmanship. Any item determined to be unacceptable by Corporation shall be immediately reworked by Contractor at no additional cost to Corporation. Failure of Contractor to correct deficiencies shall be reason for termination for default.

## 10. Warranty of Work

10.1 Except as otherwise specified, all work shall be warranted by the Contractor against defects in material or workmanship for a period of one (1) year from the date of final acceptance by Corporation. Defects include, but are not limited to, the use of inferior materials or equipment or unskilled or underskilled labor in the work performed.

10.2 If repairs or changes are required to correct defects during the warranty period, Contractor shall, at no cost to Corporation, promptly perform all work required to replace or repair defective work.

10.3 Final acceptance of work by an authorized representative of Corporation shall not relieve Contractor of obligations to correct latent defects in material or workmanship.

## 11. Compliance with Laws

11.1 Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of work as indicated and specified. If Contractor performs any work knowing it to be contrary to laws, ordinances, statutes, building codes, rules and regulations, Contractor shall assume full responsibility for such work and shall bear the attributable costs. Contractor shall promptly notify Corporation in writing of any know inconsistencies in the contract documents and governmental laws, rules and regulations.

11.2 Should Contractor take any actions deemed unlawful or unsafe in the State of California, such action shall constitute a material breach of this Agreement.

## 12. Permits and Inspections

Contractor shall obtain all permits, governmental licenses and inspections necessary for proper execution and completion of the work.

## 13. Safety Requirements

13.1 Contractor shall be solely and completely responsible for initiating, maintaining and supervising all health and safety precautions and programs, including all those required by law in connection with performance of the Agreement. This requirement

shall apply continuously and not be limited to normal work hours. Federal OSHA Standards 29 CFR part 1926 and 29 CFR part 1910 and California OSHA standards Title 8 shall apply.

13.2 Contractor shall provide all necessary and appropriate personnel protective equipment as determined by good business practice and normal operations of the specific discipline. If required, personnel protective equipment shall include, but is not limited to, masks, protective head covering, safety shoes, safety barricades, signs and signal lights.

13.3 Contractor shall be responsible for ensuring subcontractor's compliance of health and safety precaution standards.

13.4 Contractor's equipment and machinery shall comply with applicable requirements for motor vehicles and material-handling equipment as per the OSHA Construction Industry Standards, 29 CFR 1926, Subpart O. Heavy equipment will be operated only by those personnel that have received adequate training.

13.5 Contractor shall be responsible for daily inspections and routine maintenance of all heavy equipment to insure its safe working order. The inspections shall be documented in Contractor's site logs. Corporation reserves the right to review Contractor site logs at any time. If potentially hazardous deficiencies are found during such inspections, the job site is subject to be shut down at Contractor's expense until deficiencies are corrected and potential hazards eliminated.

13.6 Contractor shall comply with all laws, ordinances, rules and regulations of federal, state and local authorities regarding this Agreement. Submit matters pertinent to interpretation of standards to Corporation prior to initiation of work. Where specific requirements and reference documents vary, the more stringent requirements shall apply.

#### 14. Subcontracting

14.1 No services covered by this Contract shall be subcontracted without the prior written consent of Corporation.

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

14.3 Contractor shall be as fully responsible to Corporation for the acts and omissions of Contractor's subcontractors, including persons directly or indirectly employed by such subcontractors, as it is for acts and omissions of persons directly employed by it.

#### 15. Changes

Material changes in the work may be accomplished by written modification to the agreement only. Material changes are identified as any change which affects contract price, terms of the Agreement or period of performance. Minor modifications in the work, within the general scope of the agreement not affecting price, terms or period of performance, may be directed by Corporation's technical representative.

#### 16. Termination for Convenience

Corporation shall retain the right to terminate this Agreement, in whole or in part, if in the best interest of

Corporation. Contractor shall be notified, in writing, thirty (30) days prior to any termination for convenience.

#### 17. Notice of Default

Corporation shall issue a written Notice of Default (Notice) for Contractor's failure to provide services which meet and maintain reasonable standards of care and performance in the industry, failure to accurately and thoroughly maintain financial records, or failure to maintain other requirements of this Agreement. If such failure continues for a period of more than fifteen (15) days after delivery of such Notice, Corporation shall have the right to terminate the Agreement or any part thereof for cause immediately and without further notice.

#### 18. Termination for Default

18.1 This Agreement shall be terminated for good cause, immediately and without notice, for any action or inaction by Contractor that constitutes a material breach of the provisions and intent of this Agreement.

18.2 Actions which constitute a material breach shall include, but not be limited to Contractor's failure to perform services, or failure to obtain required licenses, insurance or certifications as set forth in this Agreement.

18.3 Contractor shall not be entitled to receive further payments for the Agreement after issuance of notice of Termination for Default.

18.4 If Corporation terminates the Agreement for default, Corporation may, without prejudice to any other rights or remedies of Corporation, take possession of the site and all materials thereon owned by Contractor, and finish the work by whatever reasonable method Corporation may deem expedient.

18.5 In case of Termination for Default, Corporation shall have no liability to Contractor for costs incurred by Contractor and shall have no liability for any damages brought against Contractor in connection with such termination. The rights and remedies of Corporation, as provided, are not exclusive and are in addition to any other rights and remedies provided at law or in equity.

#### 19. Equal Opportunity Contracting Program

19.1 Contractor acknowledges and agrees that it is aware of, and will comply with, the San Diego City Council Ordinance No. 18173, Section 22.2701, "Equal Employment Opportunity Outreach Program."

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

19.3 Upon request from Corporation, Contractor shall submit a current Work Force Analysis Report or a current Equal Employment Opportunity Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that the Contractor will take to achieve the Corporation's commitment to equal employment opportunities.

19.4 Contractor acknowledges that the Corporation seeks to promote employment and business opportunities for local residents and firms on all Corporation contracts. Contractor will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Agreement from local residents and firms as opportunities occur. Contractor agrees to hire qualified local residents and firms whenever feasible.

19.5 Contractor understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this Agreement, and/or suspension from participating in future contracts as a prime or subcontractor, for a period of not less than one (1) year. For additional or subsequent violation, the period of suspension may be extended for a period of up to three (3) years. Failure to satisfy penalties imposed pursuant to this section shall prohibit Contractor from participating in future Corporation contracts until all penalties have been satisfied.

#### 20. Cost Records

In accordance with generally accepted accounting practices, Contractor shall maintain full and complete records of the cost of services performed under this Contract. Such records shall be open to the inspection of Corporation or to the appropriate federal agencies after reasonable notice, and at reasonable times for up to three years following final acceptance of the work or termination of the Agreement

#### 21. Assignability

21.1 Contractor shall not assign any interest in this Contract and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of Corporation.

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

#### 22. Attorney's Fees and Costs

If any legal action or any arbitration or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection

with any of the provisions of this Contract, the successful or prevailing Party or Parties shall be entitled to recover reasonable attorney's fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

#### 23. Entire Contract

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

#### 24. Partial Invalidity

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

#### 25. Contract Governed by Law of State of California

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

#### 26. Availability of Funding

Obligation by Corporation for payment of any contract beyond the current fiscal year is contingent upon the availability of funding from which payment can be made. No legal liability on the part of Corporation shall arise for payment beyond June 30 of the calendar year unless funds are made available for such performance.