

SERVICES AGREEMENT

BETWEEN THE

CITY OF SAN DIEGO



AND

NEWPORT PACIFIC CAPITAL COMPANY, INC.

**TO PROVIDE MANAGEMENT SERVICES FOR THE
RECREATIONAL VEHICLE (RV) PARK LOCATED AT
2727 DE ANZA ROAD, SAN DIEGO, CA**

SERVICES AGREEMENT

This Services Agreement ("Agreement") is entered into by and between the City of San Diego, a municipal corporation ("City"), and Newport Pacific Capital Company, Inc., a California corporation ("Contractor").

RECITALS

- A. City wishes to retain Contractor to continue to provide property management services as further described in the Scope of Services ("Services"), attached hereto as Exhibit A.
- B. Contractor has the expertise, experience, and personnel necessary to provide the Services.
- C. The City and Contractor (collectively, the "Parties") wish to enter into an agreement whereby City will retain Contractor to provide the Services.
- D. This Agreement is exempt from competitive bidding requirements. The Purchasing Agent has certified that the award of a sole source contract is necessary under SDMC Section 22.3016(a).

For good and valuable consideration, the sufficiency of which is acknowledged, the City and the Contractor agree, as follows:

ARTICLE I CONTRACTOR SERVICES

- 1.1 **Scope of Services.** Contractor shall provide the Services to City as described in Exhibit A, Scope of Services, which is incorporated herein by reference.
- 1.2 **Contract Administrator.** The Real Estate Assets Department ("Department") is the Contract Administrator for this Agreement. A copy of all Notices pursuant to this Agreement shall be provided to the Contract Administrator. Contractor shall provide the Services under the direction of the below designated representative of the Department, or such designated representative's successor:

Pierre Saladin, Supervising Property Agent
Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS-51A)
San Diego, CA 92101
(619) 236-6123
psaladin@sandiego.gov

- 1.3 **General Contract Terms and Provisions.** This Agreement incorporates by reference the General Contract Terms and Provisions, attached hereto as Exhibit C. The Parties acknowledge that in the event of a conflict between the terms of Exhibit C and the terms

of this Services Agreement, including Exhibits A or F, , the provisions of this Services Agreement, including Exhibit A and Exhibit F shall control.

- 1.4 **Submittals Required with the Agreement.** Contractor shall have submitted to the City all forms and information delineated in Exhibit D before the Agreement is executed.

ARTICLE II DURATION OF AGREEMENT

- 2.1 **Term.** This Agreement shall be for a period of one (1) year beginning on the Effective Date. City may, in its sole discretion, extend this Agreement for four (4) additional one (1) year periods. The term of this Agreement shall not exceed five (5) years unless approved by the City Council by ordinance.
- 2.2 **Effective Date.** This Agreement shall be effective between the Parties as of July 1, 2018, at such time as it is executed by the last Party to sign the Agreement and approved by the City Attorney in accordance with San Diego Charter Section 40.

ARTICLE III COMPENSATION

- 3.1 **Amount of Compensation.** City shall pay Contractor a base management fee for the services performed in accordance with Section B.1 of Exhibit A of this Agreement which fee shall be the greater of (i) 4% of Gross Revenue or (ii) \$5,000 per month (Base Fee). The Base Fee is in addition to any fees charged by Contractor, for additional services described in B.18 on Exhibit A, as approved, in advance, by the City. City's payments to Contractor for performance of all Services performed under this Agreement shall not exceed Three Million Dollars (\$3,000,000) unless the Agreement is approved by the City Council.

Gross Revenue shall include all revenue and income of any kind derived from operation and management of the Property, including income from space fees, but specifically excluding:

- i. Federal, State, and Municipal excise, sales and use taxes collected directly from residents and/or guests;
- ii. Any proceeds arising from the sale or other disposition of Capital assets including City's mobile home coaches;
- iii. Amounts received for utility charges (water, electricity, gas and sewer), trash and cable television service, government mandated fees, and any park owned mobile home principal and interest;
- iv. Insurance Proceeds; and

v. Proceeds of any financing or refinancing pertaining to the Property.

- 3.2 **Replenishment.** City has provided Contractor with a working advance as described in Exhibit A. In addition to the Base Fee, described in Paragraph 3.1, the City shall replenish Contractor's Operating Account (defined in Section 14 of Exhibit A) for expenses associated with the Property pursuant to the process described in Exhibit A. These expenses shall include, but not be limited to, maintenance, payroll costs, utilities including water, gas, electric, internet service, cable TV, Phone, sewer, and rubbish removal, utility maintenance, general administrative and legal fees landscaping, pest control, catering vehicle, advertising/signage/promotion, security, insurance premiums for insurance coverage described in this Agreement, and in Article VII of the General Contract Terms and Provisions, attached hereto as Exhibit C, and taxes actually charged for the Property. Replenishment for these expenses shall not exceed the amounts established in the approved Annual Operating Budget, unless otherwise approved, in advance and in writing, by the Contract Administrator. Any unforeseen circumstances that arise throughout the year that are not included in the approved Annual Operating Budget must be requested in writing by the Contractor and preapproved in writing by the City.
- 3.3 **Expiration or Early Termination.** At the expiration or early termination of this Agreement, Contractor shall remit to City any advanced funds not expended as authorized by this Agreement within fifteen (15) days of such expiration or early termination. The bank accounts referenced in Exhibit A, Section 14, shall be in the City's name, and Contractor has been designated as the City's nominee and agent. Said bank accounts shall be liquidated and remitted to the City upon termination or expiration of this Agreement.
- 3.4 **Cost of Audit.** On audits commenced on or after the Effective Date, the full cost of the City's audit is borne by the City unless one or both of the following conditions exists, in which the Contractor agrees to pay the City's cost of audit(s):
- The audit(s) reveal the Contractor overcharged the City by more than five (5) percent on an annual basis for any Agreement Year.
 - Contractor has failed to properly maintain complete and true books, records, accounts, and supporting documents.

ARTICLE IV INSURANCE AND INDEMNIFICATION

- 4.1 **Contractor's Insurance.** Contractor's insurance and indemnification obligations are established in Article VII of the General Contract Terms and Provisions attached hereto as Exhibit C, for insurance to be acquired for the benefit of, and at the cost of, the City. Nothing in this Article IV is intended to reduce or alter Contractor's insurance obligations established in Article VII of the General Contract Terms and Provisions.
- 4.2 **City's Insurance.** City shall maintain the following insurance during the term:
- 4.2.1 **Commercial General Liability insurance.** City shall provide Contractor a letter of self-insurance evidencing its self-insurance status. Such letter of self-insurance shall

confirm that Contractor shall be insured and indemnified (according to Paragraph 4.2 hereof), to the extent that Contractor would have been named as an additional insured under a policy of Comprehensive General Liability Insurance, which coverage shall not be less than \$1,000,000 single limit each occurrence; and \$2,000,000 aggregate for bodily injury, property damage or personal injury.

- 4.3 **Indemnification.** Only in the event and to the extent that any insurance acquired by Contractor at the cost of, and for the benefit of, the City and the Property, does not cover activities undertaken by Contractor at the direction of the City and such activities result in established liability of Contractor (other than Contractor's gross negligence, willful misconduct, or activities in breach of this Agreement as set forth in more detail below), the City agrees, to the maximum extent permitted by law, to indemnify, hold harmless and defend (at City's sole expense and with legal counsel acceptable to Contractor) Contractor and its representatives, agents, employees and affiliates from and against any and all claims for bodily injury, death, damage to property, demands, damages (including consequential and incidental damages), losses, obligations, liabilities, debts, judgments, costs (including costs of suit, expenses, attorneys' fees, expert witness fees, investigative and repair costs), suit, actions, causes of actions of every nature, character, type and description, in law or in equity, which arise out of or are in any way connected with Contractor's obligations and services under this Agreement.

The indemnity and defense obligations set forth in this Paragraph shall apply to any passive acts, omissions or negligence of Contractor and its representatives, agents, employees and affiliates. Said indemnity and defense obligations shall further apply, whether or not said claims arise out of the concurrent act, omission, or negligence of Contractor and/or its representatives, agents, employees and affiliates, whether active or passive.

Such indemnity and defense obligations shall also include any action or claims alleged against Contractor any cause of action or claims specifically not related to Contractor's services under this Agreement; or which claims or actions which arise solely as a result of or in connection with the actions of City and/or its authorized representatives.

City's indemnity and defense obligations under this Paragraph shall survive the termination of this Agreement and shall continue until it is finally adjudicated that any and all actions against Contractor and its representatives, agents, employees and affiliates for such matters which are indemnified hereunder are fully and finally barred by applicable law.

City shall not indemnify and defend Contractor and its representatives, agents, employees and affiliates for claims found to be due to the gross negligence or willful misconduct of Contractor and/or its representatives, agents, employees and affiliates. Notwithstanding anything to the contrary, the indemnification set forth in this Paragraph 4.2, does not apply to any actions which are a result of any acts by Contractor which are not authorized by the City or which are not taken in accordance with the terms of this Agreement.

- 4.4 **Indemnification by Contractor.** This Section 4.4 replaces Paragraph 7.1 of the General Contract Terms and Provisions in Exhibit C with respect to Contractor's duty to indemnify City. Contractor shall indemnify, defend and hold City, its officers, directors, members,

employees and agents harmless from and against any and all losses, claims, costs (including, without limitation, attorney's fees, court costs, arbitration or mediation expenses), liabilities, fees, judgments paid or incurred, penalties, differences and damages (collectively "Liabilities"), incurred directly or indirectly, resulting or arising from or in any way connected to: (i) the performance of any action or act by Contractor or its employees, officers, directors or other agents (collectively "Contractor Agents"), which are not authorized by the City, are not in accordance with the terms of this Agreement or are contrary to California law; (ii) the breach of any contract or condition by Contractor or the Contractor's Agents contained in this Agreement; and (iii) the gross negligence, willful misconduct, or intentional acts of Contractor and the Contractor's Agents. The provisions of this Paragraph shall survive the termination of this Agreement.

- 4.5 **Additional City Insurance Obligations.** The City shall also be responsible for the cost of the following insurance, which is reasonably allocable to the personnel providing services to the Property, on behalf of the City and to the extent set forth in any approved Annual Budget. The cost of any insurance, which is not reasonably allocable to personnel providing services to the Property or to the City, shall be the obligation of Contractor. Those coverages include: (i) automobile liability insurance, in an amount of not less than \$1,000,000 combined single limit per occurrence, for vehicles and mobile equipment used at the Property in connection with Contractor services under this Agreement; (ii) workers compensation and employers liability insurance, relative to all employees and agents of Contractor, engaged in performing services under this Agreement, with coverages as required by the laws of the State of California; (iii) EPLI insurance coverage for employment practices, crime, tenant discrimination and employee theft, with endorsements, including Third Party Discrimination; and (iv) a Professional Errors and Omissions Policy, in the amount of \$1,000,000. All such coverages shall be provided by carriers with a minimum A.M. Best Rating Requirement of A- or better.

ARTICLE V WAGE REQUIREMENTS

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

- 5.1 **Prevailing Wages.** Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Agreement is subject to State prevailing wage laws. For construction work performed under this Agreement cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Agreement cumulatively exceeding \$15,000, Contractor and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below. This requirement is in addition to the requirement to pay Living Wage pursuant to San Diego Municipal Code Chapter 2, Article 2, Division 42. Contractor must determine which per diem rate is highest for each classification of work (i.e. Prevailing Wage Rate or Living Wage Rate), and pay the highest of the two rates to their employees. Living Wage applies to workers who are not subject to Prevailing Wage Rates.

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

5.1.1.1 Copies of such prevailing rate of per diem wages are on file at the City of San Diego's Equal Opportunity Contracting Department and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at www.dir.ca.gov/OPRL/DPreWageDetermination.htm. Contractor and its subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

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

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

5.1.3 Payroll Records. Contractor and its subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Contractor shall require its subcontractors to also comply with section 1776. Contractor and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Contractor is responsible for ensuring its subcontractors submit certified payroll records to the

City. Contractor and its subcontractor shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

- 5.1.4 **Apprentices.** Contractor and its subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Contractor shall be held responsible for their compliance as well as the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.
- 5.1.5 **Working Hours.** Contractor and its subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.
- 5.1.6 **Required Provisions for Subcontracts.** Contractor shall include at a minimum a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
- 5.1.7 **Labor Code Section 1861 Certification.** Contractor in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Agreement, Contractor certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Agreement."
- 5.1.8 **Labor Compliance Program.** The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.
- 5.1.9 **Contractor and Subcontractor Registration Requirements.** This project is subject to compliance monitoring and enforcement by the DIR. A Contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or enter into any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Section 1725.5. In accordance with Labor Code section 1771.1(a), "[i]t is not a violation of this

section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the Contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

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

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

5.1.9.3 By submitting a bid or proposal to the City, Contractor is certifying that he or she has verified that all subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration for themselves and all listed subcontractors to the City at the time of bid or proposal due date or upon request.

5.1.10 **Stop Order.** For Contractor or its subcontractor(s) engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered Contractor or unregistered subcontractor(s) on ALL public works until the unregistered Contractor or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor

5.1.11 **List of all Subcontractors.** The City may ask Contractor for the most current list of subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this Agreement at any time during performance of this Agreement, and Contractor shall provide the list within ten (10) working days of the City's request. Additionally, Contractor shall provide the City with a complete list of all subcontractors utilized on this Agreement (regardless of tier), within ten working days of the completion of the contract, along with their DIR registration numbers. The City shall withhold final payment to Contractor until at least 30 days after this information is provided to the City.

5.1.12 Exemptions for Small Projects. There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. The Contractor shall still comply with Labor Code sections 1720 et. seq. The only recognized exemptions are listed below:

5.1.12.1 Registration. The Contractor will not be required to register with the DIR for small projects. (Labor Code section 1771.1).

5.1.12.2 Certified Payroll Records. The records required in Labor Code section 1776 shall be required to be kept and submitted to the City of San Diego, but will not be required to be submitted online with the DIR directly. The Contractor will need to keep those records for at least three years following the completion of the contract. (Labor Code section 1771.4).

5.1.12.3 List of all Subcontractors. The Contractor shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in section 5.1.11 above. (Labor Code section 1173.3).

5.2 Living Wages. This Agreement is subject to the City's Living Wage Ordinance (LWO), codified in San Diego Municipal Code Chapter 2, Article 2, Division 42. Contractor agrees to require all of its subcontractors, sublessees, and concessionaires subject to the LWO to comply with the LWO and all applicable regulations and rules.

5.2.1 Payment of Living Wages. Pursuant to San Diego Municipal Code section 22.4220(a), Contractor and its subcontractors shall ensure that all workers who perform work under this Agreement are paid not less than the required minimum hourly wage rates and health benefits rate unless an exemption applies.

5.2.1.1 Copies of such living wage rates are available on the City website at <https://www.sandiego.gov/purchasing/programs/livingwage/>. Contractor and its subcontractors shall post a notice informing workers of their rights at each job site or a site frequently accessed by covered employees in a prominent and accessible place in accordance with San Diego Municipal Code section 22.4225(e).

5.2.1.2 LWO wage and health benefit rates are adjusted annually in accordance with San Diego Municipal Code section 22.4220 (b) to reflect the Consumer Price Index. Service contracts, financial assistance agreements, and City facilities agreements must include this upward adjustment of wage rates to covered employees on July 1 of each year.

5.2.2 Compensated Leave. Pursuant to San Diego Municipal Code section 22.4220(c), Contractor and its subcontractors shall provide a minimum of eighty (80) hours per year of compensated leave. Part-time employees must accrue compensated leave at a rate proportional to full-time employees.

5.2.3 Uncompensated Leave. Contractor and its subcontractors must also permit workers to take a minimum of eighty (80) hours of uncompensated leave per year to be

used for the illness of the worker or a member of his or her immediate family when the worker has exhausted all accrued compensated leave.

5.2.4 Enforcement and Remedies. City will take any one or more of the actions listed in San Diego Municipal Code section 22.4230 should Contractor or its subcontractors are found to be in violation of any of the provisions of the LWO.

5.2.5 Payroll Records. Contractor and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Contractor is responsible for ensuring its subcontractors submit certified payroll records to the City.

5.2.5.1 For contracts subject to both living wage and prevailing wage requirements, only one submittal will be required. Submittals by a Contractor and all subcontractors must comply with ordinance requirements.

5.2.6 Certification of Compliance. San Diego Municipal Code section 22.4225 requires each Contractor to fill out and file a living wage certification with the Living Wage Program Manager within thirty (30) days of Award of the Contract.

5.2.7 Annual Compliance Report. Contractor and its subcontractors must file an annual report documenting compliance with the LWO pursuant to San Diego Municipal Code section 22.4225(d). Records documenting compliance must be maintained for a minimum of three (3) years after the City's final payment on the service contract or agreement.

5.2.8 Exemption from Living Wage Ordinance. Pursuant to San Diego Municipal Code section 22.4215, this Agreement may be exempt from the LWO. For a determination on this exemption, Contractor must complete the Living Wage Ordinance Application for Exemption.

5.3 Highest Wage Rate Applies. Contractor is required to pay the highest applicable wage rate where more than one wage rate applies.

ARTICLE VI PAYMENT CARD INDUSTRY DATA SECURITY STANDARDS

6.1 PCI Compliance. Contractor acknowledges and agrees that to the extent that credit card data is collected, processed, stored or transmitted, Contractor must adhere to the Payment Card Industry Data Security Standards (PCI DSS) and must specifically comply with the City PCI requirements described in this Section 6.

6.2 Contractor Compliance with Payment Card Industry Security Standards Council Standards. Contractor must maintain full compliance with all current and applicable Payment Card Industry Security Standards Council Standards (PCI SSC), for all Services performed under this Agreement or other contracts managed by Contractor. Contractor acknowledges and agrees that it will ensure that any subcontractors or other service providers that it uses to assist with performance of this Agreement will also maintain full compliance with all current and applicable PCI SSC standards.

- 6.3 **Attestation of PCI Compliance.** Contractor must, upon request of the City annually on the anniversary of the Effective Date, provide the City with a copy of the Service Provider attestation of compliance ((Level 1, which must be approved and signed by a qualified security assessor (QSA) company recognized by the PCI SSC or Level 2)) depending on Contractor's validation level. Any deficiencies noted in an annual assessment must be communicated to City, in writing, within thirty (30) days of the report, and include a remediation date in accordance with the PCI SSC's prioritized approach. Any deficiencies noted in an annual assessment must be remediated at Contractor's sole cost and expense.
- 6.4 **Contractor Remediation.** Contractor must remediate, in a timely manner and at Contractor's sole cost and expense, any outstanding audit finding by Contractor or City's QSA as it relates to Contractor's provision of PCI related hardware or services in compliance with the most current PCI DSS and PCI SSC.
- 6.5 **Service Provider Responsibility Matrix.** Contractor must complete a Service Provider Responsibility Matrix (Matrix) in either the form provided by City, or in a format approved by City, and account for all management services that will be supplied to the City as they relate to cardholder data that is stored, processed, or transmitted on behalf of City. The Matrix shall be updated in regularly and in a timely manner to reflect any changes in the provision of such management services. Upon its completion, the Matrix is hereby incorporated into the Agreement and any updates or revisions to the Matrix will also be incorporated into this Agreement without need for an amendment.
- 6.6 **Contractor Hardware Inspections, Checklist and Notice of Unauthorized Access.** Contractor must physically inspect all kiosk devices, merchant terminals, and related payment hardware, accessible to Contractor, used in the acceptance, transmission, or storage of credit card data, at a frequency determined by the City. Contractor must document all hardware inspections using a checklist in accordance with PCI DSS requirement 9.9 (Checklist), located at

https://www.pcisecuritystandards.org/document_library?category=pcidss&document=pci_dss

or located at such other website as the PCI SSC may describe from time to time.

6.6.1 Contractor must report immediately to the City, via email and phone call, any known device tampering or other breach, intrusion, or unauthorized access to cardholder data stored by or on behalf of Contractor. For purposes of this subsection a, reporting to the City's Information Security Officer (CISO) and the Office of the City Treasurer will be deemed sufficient for notifying the City. Contractor also agrees to assume responsibility for informing all affected individuals in accordance with applicable law.

6.6.2 Upon the City's request, Contractor must provide to City a copy of the Checklist.

**ARTICLE VII
CONTRACT DOCUMENTS**

- 7.1 **Contract Documents.** This Agreement and its Exhibits constitute the Contract Documents. The Contract Documents completely describes the goods and services to be provided.
- 7.2 **Counterparts.** This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

**ARTICLE VIII
Entire Agreement**

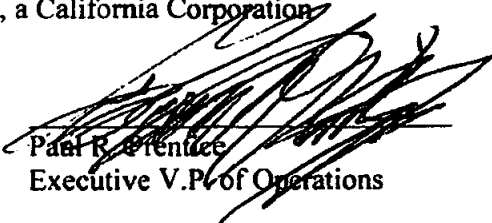
- 8.1 **Entire Agreement.** This Agreement, including all exhibits attached hereto, integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement, and supersedes all negotiations or previous agreements between the Parties with respect to the subject matter of this Agreement or operations on the Property; however, this Agreement does not supersede or waive any rights or obligations of either Party, including any money that may be owed a Party, arising out of operation and use of the Property, up to and through June 30, 2018; as a result of, and in connection, with the current audit being conducted by the City Treasurer's Office; which audit commenced on or about June 8, 2018.

[SIGNATURE PAGE TO FOLLOW]

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

NEWPORT PACIFIC CAPITAL COMPANY,
INC., a California Corporation

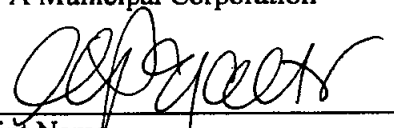
BY:


Paul R. Bientres
Executive V.P. of Operations

9-27-18
DATE SIGNED

THE CITY OF SAN DIEGO,
A Municipal Corporation

BY:


Print Name Kristina Peralta
Director
Purchasing & Contracting
Director Purchasing & Contracting
Department

9/27/2018
DATE SIGNED

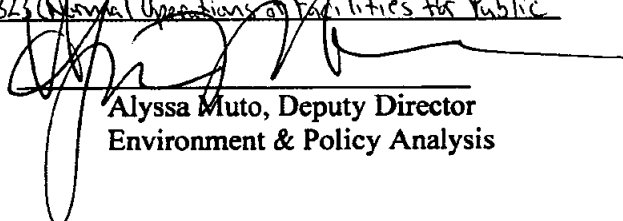
Environmental Analysis Section Environmental Clearance:

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities), Section 15302 (Replacement or Reconstruction), Section 15304 (Minor Alterations to Land), Section 15311 (Accessory Structures), and 15323 (Normal Operations of Facilities for Public Gatherings).

Date:

10/11/18

By:


Alyssa Muto, Deputy Director
Environment & Policy Analysis

Approved as to form this 11th day of
October, 2018.

MARA W. ELLIOTT, City Attorney

By:

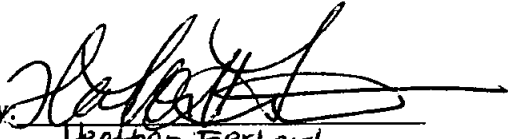

Heather Ferbert
Deputy City Attorney

EXHIBIT A SCOPE OF SERVICES

A. BACKGROUND

Contractor was engaged by the City for the services related to the RV Park pursuant to that certain Management Services Agreement (the "Original Agreement") between the Parties, dated effective as of January 30, 2006. The City wishes to retain Contractor to provide property management services, for and on behalf of the City, at the RV Park. Contractor shall oversee: (i) the operation, and management of, RV Park, located at 2727 De Anza Road, San Diego, California, formally known as Mission Bay RV Resort (Property), as depicted in Exhibit B (the "Park" and/or the "Property"), and (ii) to secure the Property; as further described in this Agreement and Scope of Services.

The Property consists of 260 RV sites, located at De Anza Point within City's Mission Bay Regional Park. The Property is dedicated park land and is located on tidelands granted by the State of California to City for park and recreational use.

The City is currently conducting public outreach for the De Anza Revitalization Plan to determine potential future use of the Property. Once the future use of the Property is determined, the Mission Bay Park Master Plan will be amended to incorporate that use and the City may issue an RFP for potential redevelopment and lease of the Property.

B. REQUIREMENTS AND TASKS

1. **Property Management.** City hereby retains Contractor and Contractor agrees to operate, manage, and secure the Property ("Management Services") at the direction of City. 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 and regulations applicable to Contractor's performance. This includes, but is not limited to, any laws or regulations requiring the use of licensed contractors to perform any services required pursuant to this Agreement. Contractor agrees to devote all necessary time and effort to management and operation of the Property pursuant to this Agreement.

Management Services of the Property shall include, all aspects of the operation, management, and security of the Property as a working RV Park, but are not limited to, the following services, the cost of which are included in Base Fee:

- 1.1 Manage, supervise and provide security to ensure that the Property is kept safe and to prevent any unauthorized use or individuals from entering onto the Property.
- 1.2 Manage revenue subject to Accounting and Reconciliation Procedures and Guidelines, including the creation of associated paperwork.
- 1.3 Manage all billing and collection.

- 1.4 Manage all payment of expenses.
- 1.5 Maintain the overall health and safety of the Property.
- 1.6 Manage marketing, to ensure maximum use of the Property.
- 1.7 Ensure that guests do not exceed the maximum amount of stay days.
- 1.8 Manage the Property using the same protocol as with other similar type of properties.
- 1.9 Supervise personnel.
- 1.10 Manage subcontractors and vendors.
- 1.11 Manage basic public relations.
- 1.12 Oversee and remove debris and hazards within four (4) hours of discovery unless the debris or hazard cannot reasonably be removed within that time frame, then as soon as removal can be reasonably accomplished, with the understanding that the costs related to any such removal outside of the basic scope of services, shall be at the expense of the City provided Contractor has notified, or reasonably attempted to notify, City of such expenses.
- 1.13 Manage all accounting, bookkeeping, forecasting, and financial reporting.
- 1.14 Remit timely and accurate Transient Occupancy Tax returns and Sales Tax returns to appropriate Agencies.
2. Emergencies. In the event of an emergency, Contractor shall make a reasonable effort to secure City's approval before undertaking any necessary repairs.
3. Property Interest. This Agreement shall not be deemed at any time to be an interest in real estate or a lien or security interest of any nature against the Property including, without limitation any furniture and equipment; inventory, motor vehicles, contracts, documents, accounts, notes, drafts, acceptances, instruments, chattel papers, general intangibles or other personal property existing or that may be hereafter acquired or entered into with respect to the Property or the construction or development or operation thereof. This Agreement is for the operation of the Property only and does not create in Contractor any possessory interest.
4. Non-Exclusive Rights. This Agreement does not convey any property interest or exclusive rights to Contractor with respect to the Property. City may, during the term, enter the Property and may allow its contractors, subcontractors and agents to access and use the Property for any purpose, at City's sole discretion. City will use reasonable efforts to notify Contractor prior to any such access or use.

5. Service Contracts. Contractor may, with prior authority from City, negotiate and enter into service subcontracts required in the ordinary course of business in operating the Property, including, without limitation, pest control, water heater maintenance, sanitary sewer maintenance, landscaping and grounds keeping, security services, preventive and corrective maintenance services, emergency repairs and all other maintenance contractors that Contractor deems advisable. Contractor shall also ensure that all subcontractors are properly and adequately licensed and insured and comply with the wage requirements as outlined in Article V of the Services Agreement.
6. Payment of Utilities. Contractor shall pay before delinquency all costs actually incurred for utilities on the Property including water, gas, electric, internet service, cable TV, phone, and sewer. City will replenish Contractor, without surcharge or mark-up.
7. Payment of Taxes. Contractor shall pay before delinquency all taxes, if any, due for the Property. City will replenish Contractor for all actual taxes paid by Contractor without surcharge or mark-up, excluding sales taxes and Transient Occupancy Tax (TOT).
8. Licenses and Permits. Contractor shall apply for, obtain, and maintain all licenses and permits required in connection with the management, repair, and maintenance of the Property pursuant to this Agreement. Contractor shall maintain, at Contractor's sole cost, all applicable licenses and permits and is responsible for updating said information with the governing authorities, institutions and agencies.
9. Laws and Ordinances. Contractor and any subcontractor shall comply with all applicable laws, rules, regulations, requirements and ordinances of any federal, state or municipal authority including any orders issued by any Court pertaining to the management of the Property, and those of any insurance companies covering any of the risks against which the Property is insured.
10. Books and Records. Contractor shall maintain, at Contractor's principal place of business, a comprehensive system of records concerning the Property consistent with general prevailing practices, as described in Exhibit C, under Records Retention and Examination. Contractor's records shall be subject to examination by City, and its authorized agents during normal business hours and upon reasonable notice, in a format required by the City. If any examination reveals that the accounting records are understated in error, Contractor shall promptly reimburse City for any monies owed City. All such records are and shall remain the property of City.
11. Reports. Contractor will deliver to City monthly statements and reports as outlined in Exhibit E, under "Reporting Requirements" electronically and in hard copy on or before the fifteen (15th) day of the month following the reporting period.
12. Internal Control. Contractor shall establish in accordance with best practices proper review and approval of financial transactions, segregation of duties, cash reconciliations, controls over cash handling, and any other control necessary to implement and maintain an effective system of internal control. City shall have the right to review the system of internal control

at any time during the term of the Agreement, during normal business hours and upon reasonable notice. Should significant or material internal control deficiencies be identified by City, Contractor shall, within 30 days of City's written request, submit a remediation plan to City, including a date for implementation of the plan. The remediation plan shall be subject to City's written approval, in the City's sole discretion.

In addition, Contractor shall be responsible for adhering to the system of internal control in the areas outlined in Exhibit F to minimize risk of fraud, asset loss, ensure the reliability of financial information, and compliance, with applicable laws, rules and regulations. The Accounting and Reconciliation Procedures and Guidelines may need to be amended from time to time in writing by mutual agreement by both parties.

13. Annual Operating Budget. Contractor shall submit to City on an annual basis a budget on a form acceptable to the City, itemizing all operating expenses for the Property estimated by Contractor for the forthcoming Operating Year ("Operating Budget"). For each line item, Contractor shall provide detail sufficient to the City to determine how the budgeted amount was derived. The Operating Budget for the partial first year of this Agreement is due to City prior to execution of this Agreement. If the options are exercised by City, Contractor shall submit the annual Operating Budget by April 1 of each year, for the period of July 1 through June 30 thereafter. The City shall review each Operating Budget with Contractor, and both parties shall endeavor to resolve any differences so that a mutually satisfactory budget can be agreed upon. City shall make every effort to approve a budget (either in writing or electronically) by July 1 for the following Operating Year. Should City fail to approve a new Operating Budget prior to its implementation on July 1 of that year, City shall continue to replenish Contractor's Working Advance (as defined below) for reasonable expenditures consistent with the prior years' Operating Budget approved by City.

The various expense categories in the approved Operating Budget shall be reviewed by City and Contractor monthly for possible revision upward or downward. Any revisions shall be mutually agreed upon in writing by the parties.

14. Bank Accounts. City shall provide a working capital lump sum advance (Working Advance) based on the approved Operating Budget equal to three months of the Yearly Budget. Contractor shall open and maintain, in such bank selected by City, a non-interest bearing, non-money market operating account (the "Operating Account") in Contractor's name and tax identification number ("TIN"), as City's nominee and agent, so that at all times the funds deposited into such account shall be the sole and exclusive property of City. Such account shall be styled in a manner acceptable to City. City acknowledges that only employees of Contractor or Contractor's affiliate shall be signatories for the Operating Account.

Contractor shall track all City sales. All revenue collected on behalf of City shall be deposited and recorded in accordance with the City Treasurer's depositing and recording requirements as set forth in the San Diego Municipal Code. The Contractor shall maintain

reconciliation and depositing procedures that will be reviewed and approved in writing by City's Real Estate Assets Department and reviewed by City's Office of the City Treasurer.

Upon receipt of Contractor's monthly statement and reports outlined in Exhibit E and requests for funding or upon Contractor's reasonable written request, in the event of any actual or projected insufficiency, City shall promptly fund into the Operating Account an amount sufficient to pay the estimated expenses of the Property for the following month in order to eliminate such actual or projected insufficiency. Such request for additional monies shall be accompanied by an explanation of expenses and insufficiencies which require such funding. Contractor is authorized to draw on the Operating Account in payment, as and when required in connection with the operation or maintenance of the Property only for the purpose of paying expenses of the Property in accordance with this Agreement, including paying operating expenses in compliance with the current City-approved Annual Operating Budget and any other charge, item of cost, or expense City directs to be paid ("Property Activity(ies)").

No payment shall be made by Contractor out of the Operating Account for expenses, except expenses relating to the Property, payment of which by Contractor is authorized by the terms of this Agreement. Expenses incurred by Contractor without authorization hereunder are not and shall not be deemed costs of Property Activities. In no event shall Property Activity costs and expenses include any amounts paid by Contractor to affiliates of Contractor which are in excess of a market rate for the applicable services or goods required for the Property. Any checks drawn on or withdrawals made from the Operating Account in excess of Five Thousand and No/100 Dollars (\$5,000.00) shall require two (2) signatures by Contractor and the prior written approval of Contract Administrator.

City acknowledges and agrees that Contractor maintains bank accounts for itself ("Contractor's Account") and other clients using Contractor's TIN (the Operating Account, Contractor's Account, and such other client accounts collectively referred to as the "TIN Accounts"). City also acknowledges that if (a) any TIN Account is overdrawn, or (b) a judgment is entered against City, Contractor, or any other client for whom Contractor maintains a TIN Account, then the funds maintained in each TIN Account (including the Operating Account) may be subject to a legal collection process for liabilities of third-parties. The funds in the Operating Account are held in trust for the City and said funds are public funds. To help prevent a situation where a financial institution could withdraw funds from the Operating Account to rectify an overdrawn account of anyone other than the City, or a situation where a court could award a judgment for a legal collection process against the whole of Contractor's TIN Accounts located at a particular financial institution, Contractor agrees to the following: (a) Contractor shall maintain a trust account for City (utilizing Contractor's TIN), from which the City's funds shall be used solely for the payment of expenses related to the Property; (b) Contractor agrees never to commingle City's funds with other TIN Account funds to cover any other TIN Account funds or use City's funds to cover any other TIN Account which is overdrawn; and (c) within two (2) business days of receipt of knowledge of any type of legal collection process instituted against the Operating Account or any

other action that puts funds in the Operating Account at risk for the payment of liabilities of a party other than the City, Contractor shall give City written notice of such collection process and/or other risk and Contractor shall within five (5) business days reimburse the Operating Account for all funds seized for the obligations of a party other than the City. If the financial institution at which the Operating Account is maintained subsequently reimburses the Operating Account, City shall, upon demand, reimburse Contractor for any funds previously paid by Contractor with respect to funds seized.

Subject to the foregoing, Contractor shall have no liability to City in connection with the Operating Account if the Operating Account becomes subject to garnishment or court judgment, except in the event of negligence, willful misconduct, or fraud by Contractor or Contractor's affiliates.

15. Replenishment. City shall replenish Contractor's Operating Account, per section 3.2 of the Services Agreement, for reasonable direct expenses incurred by Contractor identified in the applicable line items of the City-approved Operating Budget and which are incurred within Contractor's authority within fifteen (15) business days of receiving the monthly reporting requirements.

Expenses not eligible for replenishment include the following:

- (1) office equipment and supplies other than those located at the Property and used exclusively for the Property;
 - (2) any overhead expense (including but not limited to items such as utilities, rent, and any expense not directly related to Management Services for the property) of Contractor incurred in its general offices with the exception of on-site employee overhead allocation;
 - (3) expenses for accounting, bookkeeping, reporting, check writing software, software training, and electronic data processing services; of Contractor incurred in its general offices and on the property;
 - (4) compensation of executive and supervisory personnel of Contractor, in its general offices;
 - (5) compensation and expenses applicable to time spent on matters other than the Property; and
 - (6) compensation of any personnel other than personnel located at the Property, with the exception of roving maintenance personnel (including Contractor's Chief Engineer, if any) who may be needed at the Property from time to time.
16. Negative Cash Flow. Contractor shall notify City of any anticipated negative cash flow. Within five (5) business days from City's receipt of such notice, City may, but shall have no obligation to, deposit cash funds in the Operating Account in an amount necessary to cover said negative cash flow. Contractor shall be held harmless for failure to pay any charges incurred by Contractor either as identified in the City-approved Operating Budget

or other expenditures authorized by the Agreement to the extent that funds are not available in the Operating Account. Nothing herein contained shall obligate Contractor to advance its own funds on behalf of City or relieve City from the obligation to pay the Contractor's compensation.

17. Failure to Maintain Licenses or Make Repairs. Contractor shall not be in breach of its obligations for failure to maintain any licenses or to correct any deficiencies, provided that: (i) Contractor immediately notifies City in writing of such required license and/or work; and (ii) the failure to obtain such license or to authorize and/or expedite such work is solely as a result of the unwillingness or inability of City to approve or fund such repairs or expenses, when such charges are attributable to City under this Agreement.

18. Additional Services:

The following services are not included in the Base Fee. All extraordinary services must be pre-approved, in writing, by the City.

- Current and future property use, projections and planning.
- Negotiation of major vendor contracts, including contracts relating to major construction and repair work performed by outside contractors and vendors.
- Securing bids and supervising major construction and repair work performed by outside contractors and vendors.

EXHIBIT B



EXHIBIT C



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 concerning product endorsement which requires that any advertisement referring to City as a user of a good or service will require the prior written approval of the Mayor.

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

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

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

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

ARTICLE X CONFLICT OF INTEREST AND VIOLATIONS OF LAW

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

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

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

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

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

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

ARTICLE XI DISPUTE RESOLUTION

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

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

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

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

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

ARTICLE XII MANDATORY ASSISTANCE

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

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

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

ARTICLE XIII MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT D
CITY REQUIRED FORMS

- 1) Operating Budget
- 2) Contractor Standards Pledge of Compliance
- 4) Equal Opportunity Contracting forms, including Contractors Certification of Pending Actions and Work Force Report
- 5) Insurance Certificates with all endorsements
- 6) Transient Occupancy Registration Certificate.

EXHIBIT E
REPORTING REQUIREMENTS

ANNUAL BUSINESS PLAN AND BUDGET REQUIREMENTS

1. Executive Summary
2. Property Analysis
3. Operating Budget
4. Capital Budget

MONTHLY REPORTING REQUIREMENTS

1. A review of operations for the preceding month, including Property operations, and key events.
2. Actual monthly and year-to-date statements and reports in the same format as the Operating Budget, a schedule of accounts receivable, a balance sheet as of the end of the month, as well as any information reasonably requested by City. The statements and reports should include the associated monthly, quarterly and year-to-date budget figures and calculated comparisons.
3. Contractor shall provide a commentary on any items which vary from the approved Operating Budget by more than 5% on a year-to-date basis.
4. A General Ledger statement for the month.
5. Expense Disbursement Report
6. Check Register
7. Aging Report
8. Bank Statements
9. Copies of all invoices paid on the check register for that month
10. Bank Reconciliations
11. Monthly Profit and Loss Statements
12. Contractor shall remit to the City in a manner prescribed by the City, all receipts from the RV Park for each calendar month, by the fifteenth (15th) day of each following month.
13. Contractor shall remit to the City, invoice for monthly Base Fee and Additional Services including a computation with detail sufficient to determine how the invoice was derived.

EXHIBIT F
ACCOUNTING AND RECONCILIATION PROCEDURES AND GUIDELINES

Mission Bay RV Resort

Contractor's accounting, record reconciliation and record retention procedures are intended to be consistent with the accounting, reconciliation and internal control standards and guidelines developed by the U.S. Government Accountability Office ("GAO") and Committee of Sponsoring Organizations of the Treadway Commission ("COSO") Internal Control Standards. Such procedures have been established to confirm: (i) on-going communications with clients and the applicable governmental agencies; (ii) the company-wide policy for internal electronic and physical controls relating to verification of receipts, authorization of disbursement and maintenance of financial records; and (iii) a backup system confirming segregation and tracking of duties.

In the case of multiple parks/properties with common ownership, income and disbursements are tracked, monitored and segregated for each park and/or property.

ANNUAL CASH ADVANCE
(from the City of San Diego)

Guidelines / Protocol:

Maintain an effective control system to protect, accurately process, and properly report City's assets, follow the internal control practices of segregating duties, obtaining appropriate authorizations and approvals, documenting the review and approval, securing assets, and reconciling cash.

Procedures:

- Contractor, on an annual basis, prepares an invoice for RV Park based on three months of budgeted operating expenses as detailed in the reporting requirements.
- Contractor *Supervisory Personnel* reviews and approves the invoice for completeness and accuracy. Contractor *Supervisory Personnel* signs and dates the invoice to indicate that a review has been performed.
- Contractor electronically submits the approved signed invoice along with the budget reconciliation to the Contract Administrator.
- Contract Administrator reviews and approves the invoice for completeness and accuracy.
- Contract Administrator issues a working capital advance in the amount of the invoice from the RV Park Operating Account.

MONTHLY REPLENISHMENT
(from the City of San Diego)

- Contractor, on a monthly basis, prepares the replenishment request packet (packet) which includes an invoice supported by the monthly reporting requirements detailed in Exhibit E for the RV Park Operating Account.
- Contractor *Supervisory Personnel* reviews and approves the packet for completeness and accuracy. Contractor *Supervisory Personnel* signs and dates the invoice to indicate that a review has been performed on the packet.
- Contractor electronically submits the approved packet to the designated representatives with the City.
- Designated representatives with the City reviews and approves the packet for completeness and accuracy.
- City replenishes Contractor.

ACCOUNTS PAYABLE AND EXPENDITURES

Guidelines / Protocol:

Maintain a tracking system for verifying control and authorization accounts payable and expenditures, including: (i) the examination of invoices before approval for payment, (ii) confirmation of data completeness and accuracy, and (iii) providing assurance that all recorded transactions have been approved and completed, in accordance with established protocol and procedures.

Procedures:

- Contractor's On-Site Manager reviews, signs and inputs, as a batch, all invoices into Contractor's AMSI Property Management Software.
- Contractor's Regional Manager then reviews, verifies, approves and releases each invoice for payment processing.
- After approval in the AMSI by the Contractor's Regional Manager, Contractor's Regional Assistant verifies the invoices in the batch for vendor and coding accuracy, and then posts the batch.
- Once the Contractor's Regional Assistant posts the batch, Contractor's Cash Manager generates checks for the approved invoices in the batch.
- Contractor's Controller then prints the checks, which are delivered to an authorized signatory (the CEO, the President, the CFO or the Executive Vice President of Operations).
- Contractor's authorized signatory (CEO/President/CFO/Executive Vice President of Operations) compares the printed check against the invoice/check register. Such procedure is verified electronically.

BANK RECONCILIATIONS

Guidelines / Protocol:

Maintain an effective control system for: (i) tracking payments made or funds received and (ii) review and audit of accounts.

Procedures:

- Contractor's Bank Reconciliation Specialist prepares and reconciles each bank statement on a monthly basis, and electronically signs and dates the file. (Such work is such individual's sole duty and responsibility, and such individual does not handle cash receipts, make disbursements or have custody of cash or checks, at any time.)
- Any entries to be reconciled between the Contractor's General Ledger Cash Balance, and the Bank Balance are posted by the Bank Reconciliation Specialist. The reconciled adjustments are posted in the next monthly period following the month of reconciliation.
- All reconciled adjustments, for a prior month, are reviewed by the Contractor's CFO or the Controller as part of the monthly bank reconciliation review. All bank reconciliations are initialed and dated to confirm review and approval electronically.

RECORDS RETENTION

Guidelines / Protocol:

Contractor has adopted procedures for record retention for all client financial statements, consistent with the Securities and Exchange Commission, 17 CFR Part 210, regarding Retention of Records Relevant to Audits and Reviews.

Procedures:

- Electronic copies are maintained on Contractor's server, as well as on a USB or similar storage device; all subject to appropriate firewalls and security software.
Electronic records are never deleted.
- A record retention system is maintained at a secure offsite storage facility (Iron Mountain), for the maintaining of paper copies for five (5) years. All records can be retrieved and delivered to Contractor on 24-hour notice. (In addition, all off-site records are electronically logged and tracked on the Contractor's server.) All Current Management Contracts used by Contractor contain a provision that all hard copy records are maintained for seven (7) years and thereafter automatically deleted. Such records are shredded on a monthly basis by Iron Mountain, in the month after the expiration of seven (7) years.

**MONTHLY REPORTING REQUIREMENTS/ ANNUAL OPERATING BUDGET
RECONCILIATION**

- Annual Budgets are provided (electronically and in hard copy) to the designated representative of the City, by April 1, of the current fiscal year; for the next fiscal year. Monthly Reports are provided (electronically and in hard copy) to the designated representatives of the City within 15-days after the end of each calendar month. Contractor requests confirmation of receipt and approval (email acceptable) from the designated representatives of the City for both Annual Operating Budgets and the required City monthly statements and reports as outlined in Exhibit E, under "Reporting Requirements" ("Monthly Reports"). If a response is not received from the designated representatives of the City, then a follow-up correspondence is sent requesting confirmation of receipt and approval of each Monthly Report.
- All Monthly Reports are reconciled and compared by the Contractor's Regional Manager, who documents such reconciliation in a written transmittal to Contractor Controller and/or CFO, on a monthly basis, with the Annual Operating Budget. Any variations are reported, with the next Monthly Report, to the City.