

**MANAGEMENT AND MARKETING SERVICES AGREEMENT
BETWEEN THE CITY OF SAN DIEGO AND
THE HERITAGE GROUP, INC.**

THIS Management and Marketing Service Agreement between the City of San Diego and the Heritage Group, Inc. ("Agreement") is made and entered into between the City of San Diego, a municipal corporation ("CITY"), and The Heritage Group, Inc., a California Corporation ("MANAGER") to provide management services to CITY for the real property ("Property").

RECITALS

- A. The Property consists of a strip retail center consisting of approximately 83,000 sf located at 3340 – 3360 Sports Arena Blvd. San Diego, California, 92110 known as "Sports Arena Square". The legal description for the Property is attached as **Exhibit A**.
- B. On June 30, 2015, CITY's Purchasing and Contracting Department approved CITY's Real Estate Asset Department's request to sole source an agreement contract for the Property to the MANAGER that is valid through June 29, 2016. Approval is attached as **Exhibit B**.

NOW THEREFORE, based on these facts, CITY and MANAGER agree as follows:

ARTICLE 1 - DEFINITIONS

The following terms shall have the respective meanings set forth below:

Operating Account - As defined in Section 6.2.

Buildings - All buildings, structures and improvements now or hereafter located on the Property, including fixtures such as plumbing, electrical, ventilating, heating, and air conditioning systems.

Effective Date - The date which is the later of (1) NOV. 6, 2015, or (2) the date upon which this Agreement is executed by all of the parties and approved by the City Attorney.

Impositions - All taxes, assessments, water, sewer or other rents, rates and charges, levies, license fees, all common area charges, permit fees, inspection fees, and any other authorization fees and charges, which at any time may be assessed, levied, confirmed or imposed on the Property, including real estate and personal property taxes (except as limited by Section 2.7).

"MANAGER" - Shall include the Heritage Group, Inc., a California Corporation, its officers, agents, representatives, affiliates and employees (but unless authorized by a court of competent jurisdiction, the officers, agents,

representatives, affiliates and employees shall have no liability under this Agreement).

Management Fees - As defined in Section 4.1.

Management Services - The Management Services are specifically described in Article 2 of this Agreement and generally include all aspects of operation and management of the Property including but not limited to: maintenance, repair, security, accounting, billing, collection, contracting for needed services including HVAC operation and maintenance, payment of expenses, handling of tenant issues and complaints, tenant legal compliance services, litigation support, and all other services necessary to the operation of the Property.

Operating Budget - The annual budget of expenditures for management and operation of the Property approved by CITY as set forth in Section 6.1.

Operating Equipment - All furniture, furnishings, fixtures and equipment required for the operation of the Property including, but not limited to: carpeting and floor coverings, draperies, communication equipment, window coverings, common area lighting, grounds maintenance equipment, and all other fixtures, equipment and apparatus needed for such purpose. All Operating Equipment is the property of the CITY and may not be taken from the Property without the prior written consent of CITY.

Operating Period - Period commencing on the Effective Date and terminating upon the termination of this Agreement.

Operating Year - The period from the Effective Date through and including the first June 30th thereafter, and each twelve (12) month period thereafter.

Property - The real property located at 3340-3360 Sports Arena Blvd., San Diego, California, 92110, as more specifically described in the legal description attached to this Agreement as Exhibit A, and all Buildings and improvements, together with all entrances, exits, rights of ingress and egress, easements and appurtenances belonging or appertaining to the property.

ARTICLE 2 - MANAGEMENT SERVICES

- 2.1 Property Management. CITY hereby retains MANAGER and MANAGER agrees to supervise and direct the management and operation of the Property ("Management Services") at the direction of CITY. MANAGER agrees to devote all necessary time and effort to management and operation of the Property pursuant to this Agreement.

- 2.2 Manager's Control and Discretion. Subject to the terms of this Agreement, MANAGER shall have all reasonable control and discretion in the operation, management and supervision of the Property for the purpose of carrying out the terms of this Agreement, except MANAGER shall obtain CITY's written consent before incurring any expense not contained in the approved Operating Budget where the amount payable exceeds two thousand dollars (\$2,000.00). No prior CITY consent shall be required, however, with regard to the following:
- a. Emergencies. In the event of an emergency, MANAGER shall make a reasonable effort to secure CITY'S approval before undertaking any necessary repairs or maintenance ; and
 - b. Payment of standard commercial utilities as required for the Property pursuant to this Agreement.
- 2.3 Industry Standards. MANAGER shall use its best efforts to operate and maintain the Property in a safe, clean, and aesthetically-acceptable condition. MANAGER agrees that the Management Services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent professional property management firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by CITY is required, it is understood to be general approval only and does not relieve MANAGER of responsibility for complying with all applicable laws, codes, and good property management practices. With respect to tenant relations, MANAGER shall maintain businesslike relations with all tenants. Complaints or requests related to the management, operation and maintenance of the Property shall be received, considered and responded to in a systematic manner. Complaints or requests of a serious or substantial nature in terms of safety or habitability of the Property shall be reported to the CITY with appropriate recommendations. MANAGER shall be available on a 24-hour basis to respond to an emergency.
- 2.4 City Modification of Management Services. CITY may, without invalidating this Agreement, order changes in the scope of the Management Services by altering, adding to, or deducting from the Management Services to be performed. All such changes shall be in writing and shall be performed in accordance with the provisions of this Agreement. If any such changes cause an increase or decrease in MANAGER's cost of, or the time required for, the performance of any of the Management Services, MANAGER shall so notify CITY. If appropriate, an equitable adjustment to MANAGER's compensation may be made, provided that any adjustment must be approved by both Parties in writing. The Mayor or his designee is authorized to provide approval on behalf of CITY for the changes contemplated by this Section. If (a) any change made by CITY pursuant to this section is unacceptable to MANAGER, or (b) the adjustment to MANAGER's

compensation (or a lack of adjustment) regarding the change is unacceptable to MANAGER, then MANAGER may terminate this Agreement.

- 2.5 Service Contracts. MANAGER shall (on behalf of and as an agent for CITY) negotiate and enter into service contracts required in the ordinary course of business in operating the Property, including, without limitation, contracts for electricity, gas, telephone, extermination, water heater maintenance, sanitary sewer maintenance, utility meter reading, landscaping and grounds keeping, security services, preventive and corrective maintenance services, lot preparation, emergency repairs and all other maintenance contractors that MANAGER deems advisable. MANAGER shall also ensure that all contractors are properly and adequately licensed and insured. Expenses for all such routine Service Contracts shall be paid in accordance with Article 4 without surcharge or mark-up.
- 2.6 Collection of Rents. MANAGER shall take all reasonable steps to bill and collect rent and other charges due CITY from tenants in accordance with the applicable leases.
- 2.7 Payment of Utilities. MANAGER shall pay, for and on behalf of and at the expense of CITY and without need of further authorization from CITY, all costs actually incurred for utilities on the Property including gas, electrical, water, and sewer in accordance with Article 4 without surcharge or mark-up.
- 2.8 Payment of Taxes. MANAGER shall pay, for and on behalf of and at the expense of CITY, all property taxes, if any, due for property in accordance with Section 4.2 provided that MANAGER shall first consult with CITY with regard to any property tax or assessment notice received and obtain City's written consent to make payment.
- 2.9 Purchase of Operating Supplies. MANAGER shall purchase or arrange for the purchase of all supplies, inventories, provisions, and Operating Equipment which in the normal course of business are necessary to maintain and operate the Property properly, subject to Section 2.10, below. CITY shall be credited with the full amount of any discounts or commissions obtained by MANAGER on any of such purchases.
- 2.10 Repairs and Maintenance. MANAGER shall cause to be made, on behalf of CITY, all reasonable repairs, replacements, alterations, additions and improvements to the Property necessary for the continued operation of the Property ("Repairs and Maintenance"). MANAGER shall obtain CITY's written consent before entering into any contract or agreement for such Repairs and Maintenance if the amount payable exceeds five thousand dollars (\$5,000.00) and has not previously been approved as part of the Operating Budget and not already included as part of management services provided under this Agreement and included in MANAGER's fee. If any of the work required is caused by the failure,

default or deficiency of labor or materials provided or performed by past contractors (prior to this Agreement) as to which any guarantees or warranties exist in favor of CITY, then MANAGER will notify CITY in writing of this fact and then invoke said guarantees or warranties, and seek to enforce them.

If MANAGER determines that: (a) a dangerous condition exists at the Property; (b) repairs, alterations or replacements are required to assure the continued safe operation of the Property or to comply with any applicable legal or insurance requirements; or (c) expenditures are required arising out of fire or other like or unlike casualty or other emergency; then MANAGER shall immediately notify CITY of the situation, and then MANAGER, in consultation with CITY, may take all reasonable steps and make such expenditures necessary to cure such condition, and may make such repairs, alterations, replacements or actions otherwise so required, subject to all applicable federal, state and local laws, rules, regulations, requirements and ordinances. CITY agrees to reimburse MANAGER from the Operating Account for all such expenses reasonably incurred within thirty days of receipt and/or a computation statement for same.

- 2.11 Licenses and Permits. MANAGER shall apply for and obtain and maintain in the name and at the expense of CITY, if required, all licenses and permits required of CITY or MANAGER in connection with the management and operation of the Property. CITY shall execute and deliver any and all applications and other documents, and otherwise cooperate to the fullest extent with MANAGER in applying for, obtaining, and maintaining such licenses and permits. MANAGER shall maintain all applicable licenses and permits and is responsible for updating said information with the governing authorities, institutions and agencies.
- 2.12 Transactions. MANAGER shall establish lease rates and fees to be charged at the Property and the form of lease agreement subject to CITY approval. MANAGER shall negotiate all leases, lease renewals upon terms approved by CITY. All documents in connection with the foregoing shall be signed by CITY and maintained in MANAGER'S files. City shall direct all lease inquires to MANAGER.
- 2.13 Laws and Ordinances. MANAGER shall, at CITY'S expense, comply with all applicable laws, rules, regulations, requirements and ordinances of any federal, state or municipal authority. MANAGER is not responsible for compliance of the Property with the requirements of any City, County, State or Federal ordinances, laws, rules, or regulations relating to the disposal of solid, liquid, or gaseous wastes or existence of hazardous, toxic or radioactive materials, to the extent such conditions existed at the Property prior to the effective date of this Agreement; however, MANAGER shall comply with all such applicable ordinances, laws, rules or regulations with respect to MANAGER's operations for, at and on the Property pursuant to this Agreement.

- 2.14 Reports. Monthly reports regarding maintenance, security and financials for each month are due to CITY by MANAGER on or before the fifteen (15th) day of the month following the reporting period. MANAGER will deliver a monthly report of resident complaints, of a serious nature as determined in CITY's sole discretion, the response by MANAGER and any outstanding issues. MANAGER will deliver to CITY a profit and loss statement showing results of the Property's operation for the previous calendar month and fiscal Operating year-to-date and adherence to the Operating Budget, including a computation of the Management Fee and explanation of variances from budget greater than ten percent (10%) or one thousand dollars (\$1,000) of the year-to-date budget for any line item.

ARTICLE 3 - DURATION OF AGREEMENT

- 3.1 Term. The term of this Agreement shall commence on its Effective Date and terminate on the (1) year anniversary date.
- 3.2 Renewal. This Agreement may be extended at CITY's option by giving written notice to MANAGER not less than sixty (60) days prior to the one (1) year anniversary date stating that CITY elects to extend the term through and until _____, 20__, up to a maximum of five (5) years or such earlier date as CITY may specify, subject to earlier termination in accordance with any other provision of this Agreement.
- 3.3 Termination for Convenience. CITY and MANAGER agree that either party may terminate this Agreement upon ninety (90) days written notice to the other party, beginning upon receipt of the notice. Such notice shall be delivered by certified mail with return receipt. After termination of this Agreement, MANAGER shall complete any and all additional work necessary for the orderly closing of MANAGER's Management Services under this Agreement. Notwithstanding the foregoing, on the Termination date CITY shall pay MANAGER one (1) month of the average management fee paid during the last twelve (12) month period prior to the Termination (to compensate MANAGER for the performance of its tasks required after Termination).
- 3.4 Termination for Default. If MANAGER fails to perform or adequately perform any obligation required by this Agreement, MANAGER's failure constitutes a default. If MANAGER fails to satisfactorily cure a default within fifteen (15) calendar days of receiving written notice from CITY specifying the nature of the default, CITY may immediately cancel and/or terminate this Agreement, and terminate each and every right of MANAGER (other than MANAGER's rights under Article 7 and Section 10.4), and any person claiming any rights by or through MANAGER under this Agreement. The rights and remedies of CITY enumerated in this Section are cumulative and shall not limit, waive, or deny any of CITY's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing

as of the date of this Agreement or hereinafter enacted or established, that may be available to CITY against MANAGER. If CITY fails to perform or adequately perform any obligation required by this Agreement, CITY's failure constitutes a default. If CITY fails to satisfactorily cure a default within fifteen (15) calendar days of receiving written notice from MANAGER specifying the nature of the default, MANAGER may immediately cancel and/or terminate this Agreement, and terminate each and every right of CITY (other than CITY's rights under Article 7 and Section 10.4), and any person claiming any rights by or through CITY under this Agreement. The rights and remedies of MANAGER enumerated in this Section are cumulative and shall not limit, waive, or deny any of MANAGER's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to MANAGER against CITY.

- 3.5 Force Majeure. If a default is the result of delays in the performance of the Management Services caused by unforeseen events beyond the control of both Parties, such delay may entitle MANAGER to a reasonable extension of time, but such delay shall not entitle MANAGER to damages or additional compensation. 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 MANAGER's work; inability to obtain materials, equipment or labor; or other specific reasons agreed to between CITY and MANAGER; provided, however, that this provision shall not apply to an inability to perform caused by the acts or omissions of MANAGER.

ARTICLE 4 – COMPENSATION

- 4.1 Management Fees. As compensation for the Management Services rendered by MANAGER pursuant to this Agreement, MANAGER will be paid monthly as follows:
- a. Management Fee: The greater of \$3,300 per month or 5% of all minimum rents and additional rents (CAM, parking, late charges, etc.). Said Management Fee shall be paid to MANAGER at the end of each month from proceeds generated by the property, or from the CITY should the property bank account lack sufficient funds; and
 - b. Leasing Fee: City shall pay Heritage a leasing commission, payable half upon execution of the lease and half upon move-in or rent commencement, whichever is later. The leasing commission shall be calculated in accordance with the following conditions (this schedule shall not apply to the former Black Angus Restaurant):

- Lease transactions with new tenants shall be paid at 4% of the total rent amount over the term of the lease.
- Premises expansions of existing tenants shall be paid at 4% of the total rent amount over the term of the lease.
- New transactions with the involvement of an outside broker and/or cooperating broker shall be paid at 5% of the total rent amount over the term of the lease. 3% shall be paid to the outside or cooperating broker and 2% shall be paid to Heritage.
- Lease renewal transactions where Heritage is the only broker involved shall be paid at 2% of the total rent amount over the term of the lease.
- In the event a tenant, (new or renewal) wherein City has previously paid a commission is in default, any new unamortized commission paid to listing broker shall be deducted from any new commission paid.
- Commissions shall only be paid if this Agreement is in effect.
- Month to month tenancies shall be 50% of the first month's base rent or \$500, whichever is greater.
- Minimum commission shall be \$500.

- 4.2 Services Included in MANAGER's fee. MANAGER agrees that the following services are the responsibility of MANAGER and included in the compensation to be paid in accordance with Section 4.1: commercial leasing; pre-litigation eviction activities; supervision and management of staff; collection of rents and fees; tenant relations; operating budget and bank account management, accounting and reporting; all costs of insurance to be provided by MANAGER as required by this Agreement. Nothing in this section requires MANAGER to employ attorneys or to engage in litigation or other enforcement procedures.
- 4.3 Additional Services. The CITY agrees to pay the MANAGER at MANAGER's current billable rates for its employees, for additional work required by the CITY. These additional services may include, but are not limited to, tenant improvement and capital improvement coordination, asbestos research or abatement issues, legal research, court appearances, interrogatories, depositions, preparation and delivery of estoppels and other activities due to sale or potential sale or refinancing of the property, market research, feasibility studies, consulting work, property appraisal, special accounting items, extra work resulting from other non-management related activities. MANAGER agrees to obtain prior written authorization from CITY prior to incurring any of these additional charges.
- 4.4 Major Repairs. In the event the Property is in need of major Repairs and Maintenance ("Major Repairs and Maintenance"), MANAGER will hire a contractor and oversee the work. MANAGER shall comply with all applicable federal, state and local laws in the selection and hiring of a contractor, including, but not limited to, those set forth in the Contract Requirements attached as **Exhibit C.** CITY will pay MANAGER a 15% overhead and service fee to supervise and manage the contractor. Major Repairs and Maintenance is defined

as any work which cost is equal to or greater than \$5,000, including, but not limited to, repairing or replacing the roof, wood siding, air conditioning and repainting the building. Repairs and Maintenance which cost less than \$5,000 shall be procured and managed without any overhead, service fee, surcharge or mark-up.

Notwithstanding the foregoing, CITY is under no obligation to use MANAGER's construction management services.

- 4.5 Financial Obligations. Except as otherwise expressly agreed herein, all debts and expenses arising from the operation of the Property in accordance with this agreement are those of the CITY and are to be paid by the MANAGER from collection of rent. In no event will MANAGER be required to bear any loss or advance any of its funds for the operation of the Property; except however, if MANAGER does so it will be entitled to reimbursement by CITY. Without limiting the scope of this section, all payments made by MANAGER under Article 4 of this Agreement are subject to the provisions of this section and are to be paid from collected rents.

ARTICLE 5 - CONTRACT ADMINISTRATION

- 5.1 Contract Administrator. The Real Estate Assets Department is the contract administrator for this Agreement. MANAGER shall provide Management Services under the direction of the Director of the Real Estate Assets Department and designees. The Director and designees will communicate with MANAGER on all matters related to the administration of this Agreement and MANAGER's performance of the Management Services rendered hereunder. When this Agreement refers to communications to or with CITY, those communications will be with the Director or other person designated by the Director, unless the Agreement specifies otherwise.
- 5.2 Confidentiality of Services. All Management Services performed by MANAGER, including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by MANAGER, pursuant to this Agreement, are for the sole use of CITY, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of CITY.

ARTICLE 6 - FINANCIAL AND LEGAL MATTERS

- 6.1 Annual Operating Budget. MANAGER shall submit to CITY on an annual basis a budget itemizing all monthly revenues and operating expenses for the Property estimated by MANAGER for the forthcoming Operating Year. For each line item

MANAGER 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. Thereafter, MANAGER 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 MANAGER, 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 by July 1 for the following Operating Year.

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

- 6.2 Operating and Security Deposit Accounts. MANAGER shall deposit in a state or national banking institution whose deposits are insured by the FDIC, selected by MANAGER, in a separate account in the Property's name ("Operating Account"), all monies furnished by MANAGER and/or CITY as working capital and all monies received by MANAGER for or on behalf of CITY and will disburse and pay the same as required in connection with the ownership, maintenance and operation of the Property, to include: taxes (as limited by section 2.8), and all costs and expenses of maintaining, operating and supervising the operation of the property, Impositions, compensation for MANAGER, and expenses incurred by CITY on behalf of the Property. Monies received by MANAGER in the operation of the Property shall not be commingled with MANAGER'S own funds. Net income from the Operating Account shall be handled as provided in section 6.3. MANAGER shall retain all tenant security deposits, including those tenant security deposits possessed and maintained by MANAGER on the Effective Date, in a state or national banking institution whose deposits are insured by the FDIC, selected by MANAGER in a separate account in the Property's name ("Security Deposit Account"). MANAGER shall refund tenant security deposits when applicable.
- 6.3 Payment to CITY. MANAGER shall pay to CITY all net rental income, calculated by deducting from all gross Property revenue and income, including without limitation all tenant rents and fees, the total amount of all authorized expenses and reserves relating to the operation and management of the Property, including compensation to MANAGER under Article 4 and any amounts requested by CITY as reserve working capital for the operation of the Property. Payment shall be made on or before the last day of the calendar month following the calendar month in which the rents were received.
- 6.4 Manager Not to Pledge City's Credit. MANAGER shall not pledge CITY's credit and shall not, in the name of CITY, borrow any money or execute any promissory note or other encumbrance without the prior consent of CITY.

- 6.5 Maintenance of Books and Records. MANAGER shall maintain books, records, logs, documents and other evidence sufficient to record all actions taken with respect to the rendering of Management Services for the Property, throughout the performance of the Management Services and until turned over to CITY.
- 6.6 City's Right of Inspection and Review. MANAGER shall, upon reasonable notice, accord to CITY and its accountants, attorneys and agents, the right at reasonable times during the term of this Agreement to inspect the Property and to examine and make copies of the Property's books and records. Such inspections and examinations shall be at reasonable times and shall be done with as little disruption to the business of the Property as possible. Upon the termination of this Agreement, all such books and records shall forthwith be turned over to CITY so as to insure the orderly continuation of the operation of the Property; provided, however, all such books and records shall thereafter be available to MANAGER at the Property for inspection, audit, examination and extracting, at all reasonable times upon reasonable notice. Nothing herein shall be construed to require MANAGER to provide an audit of the books and records for the Property. Any such audit shall be prepared, at the expense of the CITY, by such independent accountants as CITY may select.
- 6.7 Unlawful Detainer/Legal Action Consent. MANAGER must receive CITY'S prior written consent and leave of court as may be required before instituting legal action or proceedings to collect charges for rent, resident charges and other costs, to evict residents or their guests, or to cancel or terminate residencies for breach or default.
- 6.8 Legal Actions for Default. MANAGER shall institute, in its own name or in name of CITY, but at the expense of CITY, legal actions or proceedings to collect rent and other charges, to evict Property residents or their guests, with the prior written consent of the CITY.
- 6.9 Other Court Actions. MANAGER must receive CITY'S prior written consent and leave of court, as may be required, before instituting other court actions.
- 6.10 Independent Contractor. MANAGER and any subcontractors employed by MANAGER shall be independent contractors of the CITY. Any provisions of this Agreement that may appear to give CITY any right to direct MANAGER concerning the details of performing the Management Services, or to exercise any control over such performance, shall mean only that MANAGER shall follow the direction of CITY concerning the end results of the performance.

ARTICLE 7 - RISK MANAGEMENT

7.1 Indemnification.

- a. MANAGER agrees to defend, indemnify, protect, and hold the CITY, its elected officials, officers, agents, representatives, and employees harmless from and against any and all claims, actions, suits, proceedings, losses, costs, damages, liabilities, deficiencies, fines, and penalties, including, but not limited to attorneys fees and costs of suit, incurred directly or indirectly, for liability asserted or liability established for damages or injuries to any person or property, to the extent the foregoing are caused by MANAGER'S (including MANAGER'S officers, agents, representatives and employees) willful misconduct, wrongful acts, negligent acts, errors or omissions, to the extent that any such acts were not authorized or ratified by the CITY. Provided, however, MANAGER'S duty to indemnify and hold the CITY harmless shall not include any claims or liability arising from the gross negligence, or willful misconduct of the CITY, its elected officials, representatives, agents, officers, or employees.
- b. In addition to, and not as a limitation of any other obligations, the CITY agrees to indemnify, defend and hold MANAGER (and, unless authorized by a court of competent jurisdiction, MANAGER's officers, agents, representatives, affiliates and employees) harmless from and against any and all claims, actions, suits, proceedings, losses, costs, damages, liabilities, deficiencies, fines, and penalties, including, but not limited to attorneys fees and costs of suit, incurred directly or indirectly, for liability asserted or liability established for damages or injuries to any person or property, resulting from or arising out of any acts or inaction by MANAGER which are authorized or ratified by the CITY, are in accordance with the terms of this Agreement, or which are not subject to MANAGER's duty to indemnify the City as described in paragraph 7.1a above.

In addition, the CITY's obligations under this Agreement shall be joint and several, as to the CITY, and any and all of its divisions and agencies, to the extent permitted by law or Court order. Furthermore, with regard to the indemnification under this Agreement, MANAGER shall be named as an additional insured under any insurance policies maintained and/or obtained by the CITY, or self insurance maintained by for matters in which CITY must indemnify and defend MANAGER as described above. However, nothing in this section seeks to relieve MANAGER from the requirements of carrying the minimum insurance that provides coverage for acts listed in 7.1a in the amounts listed in 7.3 through 7.7 through the life of the management contract.

- c. With regard to the indemnifications under Paragraphs (a) and (b), the indemnifying party shall be obligated, at the sole expense of the

indemnifying party, to provide legal counsel selected by the indemnifying party and approved by the indemnified party, to provide defense for and on behalf of the indemnified party.

- d. The obligations to indemnify, defend, and hold harmless, as provided in this Agreement, shall continue on or after the termination of this Agreement as to acts and events occurring before expiration of the Agreement. Furthermore, MANAGER and the CITY acknowledge and agree that the indemnity provisions contained herein are a result of the CITY's inability or unwillingness to acquire otherwise commercially available insurance, or the CITY's determination, in the future, to self-insure rather than to carry liability insurance, even if such insurance is commercially available.

7.2 MANAGER's Insurance. MANAGER shall procure and maintain, at all times during the term of this Agreement, a minimum of the insurance set forth below:

- a. Professional Liability Insurance. MANAGER will keep in full force and effect a professional liability policy with liability coverage of no less than one million dollars (\$1,000,000) for each claim for real estate services professional and personal injury liability.
- b. Workers' Compensation. For all of MANAGER's employees who are subject to this Agreement and to the extent required by the State of California, MANAGER shall keep in full force and effect, a workers compensation policy. That policy shall also provide employers liability coverage with limits of one million dollars (\$1,000,000), and MANAGER shall provide an endorsement that the insurer waives the right of subrogation against the CITY and its respective elected officials, officers, employees, agents and representatives.
- b. Fidelity Bond. MANAGER shall keep in full force and effect fidelity bond for all on-site Property employees. The fidelity bond shall provide a minimum of one million dollars (\$1,000,000) coverage and shall cover the loss of client funds, including rental income and fee payments.
- c. Commercial Automobile Liability. For all of MANAGER's automobiles including owned, hired and non-owned automobiles, MANAGER shall keep in full force and effect, automobile insurance for bodily injury and property damage providing coverage to a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile. The CITY shall be named as an additional insured, but only for liability arising out of Management Services performed under this Agreement.

- 7.3 Rating Requirements. All insurance required by express provision of this Agreement shall be carried only by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Rating Guide and have been approved by CITY.
- 7.4 Deductibles. All deductibles on any policy obtained pursuant to Section 7.3 shall be the responsibility of the Manager. In addition, all deductibles under Section 7.3 in excess of ten thousand dollars (\$10,000.00) shall be disclosed to and approved by City at the time evidence of insurance is provided.
- 7.5 Specific Provisions Required. Each insurance policy required under this Article shall expressly provide, and an endorsement shall be submitted to CITY, that reflects the following:
- a. Except as to Workers Compensation insurance, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. CITY's Additional Insured status must be reflected on an additional insured endorsement form CG 20 10 (11/85) or equivalent, which shall be submitted to CITY.
 - b. The policies shall include a waiver of any rights of subrogation.
 - c. The policies are primary and non-contributory to any insurance that may be carried by the CITY, as reflected in an endorsement which shall be submitted to the CITY.
 - d. The policies cannot be canceled, non-renewed or materially changed except after thirty (30) calendar days prior written notice by MANAGER to the CITY by certified mail, except for non-payment of premium, in which case ten days prior written notice will be provided.
 - e. Before performing any Management Services, the MANAGER shall provide the CITY with all Certificates of Insurance accompanied by all endorsements.
 - f. MANAGER shall not modify any policy or endorsement which increases the CITY's exposure to loss for the duration of this Agreement.
- 7.6 Waiver. Neither MANAGER nor CITY shall assert against the other and each does hereby waive with respect to the other any claims for any losses, damages, liabilities and expenses (including attorney's fees and disbursements) incurred or sustained by it on account of damage or injury to persons or property arising out of the ownership, operation or maintenance of the Property, to the extent that same are (1) covered as prescribed herein and (2) further to the extent that any such losses are in fact reimbursed by said insurance.

- 7.7 Accident Reports. MANAGER shall promptly investigate and make a full written report to CITY as to all material accidents involving bodily injury and/or claims for property damage relating to the ownership, operation, and maintenance of the Property, including the estimated cost of repair. All such accident reports shall be delivered to CITY within forty-eight (48) hours. MANAGER's obligations under this section shall only commence when MANAGER becomes aware of the events identified in this section.
- 7.8 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of or relates in any way to the Management Services provided under this Agreement or out of the commercial use of or cessation of commercial use on the Property, upon CITY's request, MANAGER, its agents, officers, and employees agree to assist in resolving the dispute or litigation. MANAGER's assistance includes, but is not limited to, providing professional consultations, providing records and documents, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation. MANAGER's obligation to provide mandatory assistance shall survive the term of this Agreement.

If mandatory assistance is rendered by MANAGER after expiration of the term of this Agreement, then CITY shall compensate MANAGER for its time incurred in providing Mandatory Assistance in the amount of \$500 per day for corporate officers. For other employees of MANAGER, CITY shall reimburse MANAGER for the time spent at the employee's regular wages. If, however, it is established through resolution of the third party dispute or litigation that liability is solely attributable to the acts or omissions of MANAGER, its agents, officers, and employees, then MANAGER shall reimburse CITY.

ARTICLE 8 - NOTICES

- 8.1 Delivery of Notice. All notices, demands and requests which may or must be given by either party to the other shall be in writing and shall be personally delivered or sent by facsimile and United States certified mail to the address of the party set forth below. Any notice or other document delivered hereunder shall be deemed to have been delivered effective upon delivery, if delivered personally or by facsimile, and within seventy-two (72) hours following the mailing of notice.

Notice to the MANAGER shall be addressed to:

Mark E. Hoekstra
The Heritage Group, Inc..
610 W. Ash Street, Ste. 1503
San Diego, CA 92101

Notice to CITY shall be addressed to:

City of San Diego
Real Estate Assets Department
ATTENTION: Director
1200 Third Avenue, Suite 1700 (MS-51A)
San Diego, California 92101

- 8.2 Required Notice. Notice shall be provided in the event of an occurrence which would give MANAGER or CITY the right to terminate this Agreement, or any event which, after notice or lapse of time or both, would constitute such an event.

ARTICLE 9 - ADDITIONAL REQUIREMENTS

- 9.1 Drug-Free Workplace. MANAGER agrees to comply with CITY's Drug Free Workplace requirements set forth in Council Policy 100-17, adopted by Council Resolution No. R-277952 and incorporated into this Agreement by this reference. MANAGER shall certify to CITY that it will provide a drug-free workplace by submitting a MANAGER Certification for a Drug-Free Workplace form.
- a. MANAGER's Notice to Employees. MANAGER shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition. MANAGER shall post the drug-free policy in a prominent place.
 - b. Drug-Free Awareness Program. MANAGER shall establish a drug-free awareness program to inform employees about all of the following:
 - 1. The dangers of drug abuse in the work place.
 - 2. The policy of maintaining a drug-free work place.
 - 3. The penalties that may be imposed upon employees for drug abuse violations.
 - c. Subcontractor's Agreements. MANAGER further ensures that each contract for subcontractor services for the Property shall contain language that binds the subcontractor to comply with the provisions of Section 9.1 of this Agreement. MANAGER and any subcontractors shall be individually responsible for their own drug-free work place program.

- 9.2 Americans with Disabilities Act Statement. MANAGER agrees to comply with CITY's American with Disabilities Act (ADA) requirements set forth in Council Policy 100-04, adopted by Council Resolution No. 282153 and incorporated into this Agreement by this reference. MANAGER shall certify to CITY that it will comply with the ADA by adhering to the following:
- a. Title I - Employment Mandates. "No contractor may discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, disciplines, layoffs, and terminations of employment."
 - b. Title II - State and Local Government. "No qualified individual with a disability may be excluded on the basis, from participation in, or be denied the benefits of services, programs, or activities by contractors or subcontractors providing services to CITY."
 - c. Post a Statement. MANAGER shall post a statement addressing the requirements of the ADA in a prominent place at the worksite.
 - d. Subcontractor Agreements. MANAGER further certifies that any subcontract for providing management services for the Property shall contain language that binds the subcontractor to comply with Section 9.2 of this Agreement. MANAGER and subcontractors shall be individually responsible for their own ADA employment programs.
- 9.3 Disabled Access. MANAGER shall ensure that all repairs and construction on the property comply with CITY's disabled access requirements by bringing up to code and making accessible any areas of the premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of CITY.
- 9.4 Equal Opportunity. MANAGER shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and all other laws, rules and regulations of competent governmental authority.

MANAGER shall not discriminate against any employee or applicant for employment 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. Manager shall provide equal opportunity for contractors and subcontractors to participate in contracting and subcontracting opportunities. Manager 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. MANAGER shall cause the foregoing provisions to be inserted in all subleases and all contracts for any work covered by this Agreement so that such provisions will be binding upon each sublessee and contractor.

MANAGER shall fully cooperate with any investigation conducted by the City of San Diego, in its governmental capacity, pursuant to its Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time], and upon CITY's request, MANAGER shall submit a current Workforce Report. MANAGER acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.

- 9.5 California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by MANAGER pursuant to this Agreement is or is not a public record subject to disclosure under the California Public Records Act. MANAGER shall hold CITY, its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the California Public Records Act.
- 9.6 Product Endorsement. MANAGER acknowledges and agrees to comply with the provisions of CITY's Administrative Regulation 95-65, concerning product endorsement. Any advertisement identifying or referring to CITY as the user of a product or service requires the prior written approval of CITY.
- 9.7 Conflict of Interest. MANAGER 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. CITY may determine that a conflict of interest code requires MANAGER to complete one or more statements of economic interest disclosing relevant financial interests. Upon CITY's request, MANAGER shall submit the necessary documentation to CITY.

MANAGER shall 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.

MANAGER's personnel employed on the Property shall not accept gratuities or any other favors from any current or potential subcontractors, vendors, or suppliers. MANAGER shall not recommend or specify any product, supplier, or

contractor with whom MANAGER has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

If MANAGER violates any conflict of interest laws or any of these conflict of interest provisions, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects MANAGER to liability to CITY for attorney's fees and damages sustained as a result of the violation.

- 9.8 Best Management Practices. MANAGER and each of its subcontractors shall comply with any Storm Water Pollution Prevention Plan or Best Management Practices adopted for the Property in performing Management Services.

ARTICLE 10 - GENERAL PROVISIONS

- 10.1 Non-Assignment. MANAGER shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without CITY's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for immediate termination of this Agreement, at the sole discretion of CITY. In no event shall any putative assignment create a contractual relationship between CITY and any putative assignee.
- 10.2 Compliance with Controlling Law. MANAGER shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to MANAGER in the performance of the Management Services under this Agreement. In addition, MANAGER shall comply immediately with all directives issued by CITY or its authorized representatives under authority of any laws, statutes, ordinances, rules, regulations and Court orders. The laws of the State of California shall govern and control the terms and conditions of this Agreement.
- 10.3 Jurisdiction and Venue. The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California.
- 10.4 Rights Upon Termination. Except as otherwise provided herein, upon termination of this Agreement, the following shall apply:
- a. All amounts due and owing between the parties shall become immediately due and payable.

- b. All Operating Equipment and supplies including telephones, fax machines, desks, computers, computer software and programs, billing systems, chairs, file cabinets, landscaping and maintenance equipment, and all other equipment and supplies purchased or reimbursed by CITY is CITY Property and shall remain on-site.
- c. MANAGER shall have the right to remove all of its personal property from the Property in a peaceful and orderly manner.
- d. MANAGER shall transfer to CITY all books and records pertaining to the Property which have been in the custody and control of MANAGER.

These rights shall be in addition to and not in exclusion of any and all other rights of the parties.

- 10.5 No Partnership or Joint Venture. Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between CITY, its successors and assignees, on the one part, and MANAGER, its successors and assignees, on the other part.
- 10.6 Integration; Modifications. This Agreement and the exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties or an amendment to this Agreement agreed to by both Parties.
- 10.7 No Warranty. MANAGER makes no guarantee, warranty, or representation that there will be profits or that there will not be losses from the operation of the Property.
- 10.8 Headings. The article and paragraph headings contained herein are for convenience of reference only and are not intended to define, limit; or describe the scope or intent of any provision of this Agreement.
- 10.9 Approval or Consent. Except as otherwise herein provided, whenever under any provision of this Agreement the approval or consent of either party is required, such consent or approval shall be in writing, duly executed by an authorized officer or agent of the party granting such consent or approval, and shall not be unreasonable withheld. Whenever consent of CITY is required under this Agreement, the Mayor or his designee is authorized to provide such consent.

- 10.10 Partial Invalidity. In the event that any one or more phrases, sentences, clauses or paragraphs contained in this Agreement shall be declared invalid by the final and unappealable order, decree or judgment of any court or arbitrator, this Agreement shall be construed as if such phrases, sentences, clauses or paragraphs had not been inserted.
- 10.11 Successors in Interest. This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.
- 10.12 Waiver of Provisions. The failure of either party to insist upon a strict performance of any of the terms or provisions of this Agreement or to exercise any option, right or remedy herein contained, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.
- 10.13 Third Parties. Subject to other provisions of this Agreement; it is agreed that none of the obligations hereunder of either party shall run to, or be enforceable by, any party other than the other party to this Agreement.
- 10.14 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 any possessory interest.
- 10.15 Municipal Powers. Nothing contained in this Agreement shall be construed as a limitation upon the powers of CITY as a chartered city of the State of California.
- 10.16 Drafting Ambiguities. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement 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 Agreement.

- 10.17 Legal Actions. Any legal action in connection with this Agreement shall be filed and maintained in San Diego County.

ARTICLE 11 - SIGNATURES

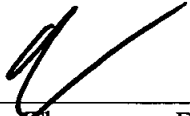
- 11.1 Counterparts. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all parties had executed the same page.
- 11.2 Signing Authority. The representative for each party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other party or parties hereto harmless if it is later determined that such authority does not exist.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

Dated this 1 day of September, 2015.

THE CITY OF SAN DIEGO

By 
Cybele Thompson, Director
Real Estate Assets Department

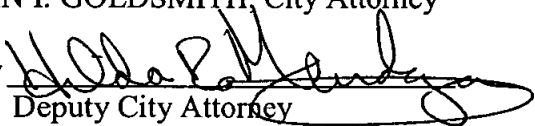
I HEREBY CERTIFY I can legally bind The Heritage Group, Inc., and that I have read all of this Agreement, this 31ST day of August, 2015.

THE HERITAGE GROUP, INC.

By 
Mark Hoekstra, ~~President~~ *Managing Director*

I HEREBY APPROVE the form of the foregoing Agreement this 6th day of November, 2015.

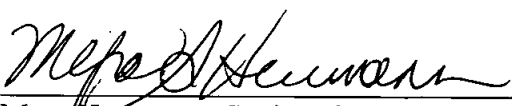
JAN I. GOLDSMITH, City Attorney

By 
Deputy City Attorney

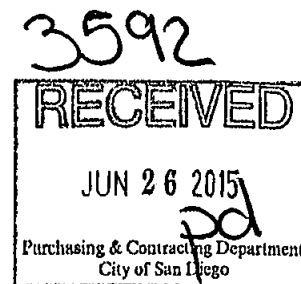
ENVIRONMENTAL CLEARANCE:

This activity is Categorically Exempt from CEQA pursuant to State CEQA Guidelines Section §15301 (Existing Facilities).

Date: 10/27/15

BY: 
Myra Herrmann, Senior Planner
City of San Diego Planning Department
Environmental & Resources Analysis Section

Purchasing and Contracting Department
City of San Diego



REQUEST AND CERTIFICATION FOR SOLE SOURCE PROCUREMENT

To: Purchasing and Contracting Director or Designee

From:	Cybele Thompson	Director	Real Estate Assets
	Name	Title	Department

Date: June 25, 2015

1. Describe goods or service(s) to be purchased. Include vendor's cost, City stock number if applicable, name, and telephone number:

This sole source Procurement request is for a Property Management Agreement with Heritage Group, Inc. for Sports Arena Square. Sports Arena Square is a multi-tenant strip retail property located at 3340-3360 Sports Arena Blvd., San Diego CA 92110 whose lease was terminated and the ownership of the improvements reverted to the City on February 28, 2013. Purchasing and Contracting (P&C) approved the Sole Source Request Case No. 2876 on March 4, 2013 effective through June 30, 2013 (which is now expired) for Heritage to continue managing the property, minimize disruption to the tenants and receipt of revenue to the City. A scope of work for a Property Management Agreement RFP was submitted to P&C soon thereafter, but based on staffing/workloads, the RFP was not issued. Please see below for further discussion as to why issuing an RFP now would not provide an advantage to the City and would therefore be undesirable, impractical, or impossible.

The scope of work includes supervise and direct management and operation of the property at the direction of the City, negotiate rental agreements and rent adjustments, prepare operating budgets, negotiate and enter into service contracts, purchase operating supplies, collect rents (receipting and depositing), institute any legal proceedings to collect rent, open and manage bank accounts, payment of utilities, payment of taxes, invoice tenants for monthly pro-rata charges, maintenance of books and records using the Yardi accounting system software, communicate with tenants, supervise and direct contractors who perform maintenance, repairs and security services, oversee capital improvement projects and monthly reporting.

2. Explain why strict compliance with a competitive process would be unavailing or would not produce an advantage, and why soliciting bids or proposals would therefore be undesirable, impractical, or impossible:

The competitive bid process does not provide an advantage to the City and would therefore be undesirable, impractical, or impossible. The new information we discovered after we entered into the expired services contract (2013) with Heritage Real Estate Advisors, Inc. (renamed Heritage Group, Inc.) is that the City wishes to extend the month to month leases to be coterminous with the Sports Arena lease on May 31, 2020, in order to eventually issue an RFP

Sole Source Request and Certification
Effective: October 13, 2014
OCA Document No. 881681

for the entire area This decision was made in late 2014. By the time of this decision, Heritage had established strong relationships with the existing Sports Arena Square tenants to be able to increase their rent in exchange for converting their month to month leases to now end on May 31, 2020. The new contract terms for all the lease extensions have been agreed upon verbally by the two largest tenants (The Arena MMA – 22,545 SF and SOMA – 24,177 SF) and with about 80% of the smaller tenants. The two largest tenants occupy close to 60% of the entire rentable space in the strip mall. The lease extensions may be executed once the Property Management Agreement with Heritage Group is approved by the City. If a new management company were to take over negotiations from Heritage Group, a new management company would have to start from scratch in working with all the individual tenants and conducting rental surveys, etc. For every month the City does not extend these leases (keeps them month to month), the City loses out on substantial additional rental income as well as greater stability to the project. Heritage Group is in a unique position to affect these lease extensions that neither the City, nor any other entity, would have the ability to do in a timely manner through the RFP process. Once these leases are extended through 2020, the City may issue an RFP for the management contract of Sports Arena Square because the real value that only Heritage Group can bring would already have been added. It is not practical for the City to manage this project directly due to the multiple tenants and the numerous vendor contracts associated with this project, READ simply does not have the resources at this time.

3. This sole source procurement is necessary because:

- ☒ Goods are available from only one source
- ☐ The requested goods are replacement parts or components for existing City equipment or required by warranty and/or insurance coverage
- ☐ The contract is necessary for the reasons explained in San Diego Municipal Code (SDMC) section 22.3208(c) (explain) [Click here to enter text.](#)
- ☐ Other (describe) [Click here to enter text.](#)

4. Goods and services evaluated (add additional pages, if needed):

A.	Click here to enter text.	Click here to enter text.	Click here to enter text.
	Good/Service	Name of Vendor	Bid Amount
	Click here to enter text.	Click here to enter text.	Click here to enter text.
	Person Contacted	Telephone Number	SLBE Status
B.	Click here to enter text.	Click here to enter text.	Click here to enter text.
	Good/Service	Name of Vendor	Bid Amount
	Click here to enter text.	Click here to enter text.	Click here to enter text.
	Person Contacted	Telephone Number	SLBE Status

C.	<u>Click here to enter text.</u>	<u>Click here to enter text.</u>	<u>Click here to enter text.</u>
	<u>Good/Service</u>	<u>Name of Vendor</u>	<u>Bid Amount</u>
	<u>Click here to enter text.</u>	<u>Click here to enter text.</u>	<u>Click here to enter text.</u>
	<u>Person Contacted</u>	<u>Telephone Number</u>	<u>SLBE Status</u>

REVIEWED:

[Signature]
Department Director or Designee

6/25/15
Date

APPROVED:

[Signature]
Deputy Chief Operating Officer

6.25.2015
Date

DENIED:

Deputy Chief Operating Officer

Date

Reason for denial: _____

5. Purchasing Department Comments:

This sole source is in the best interest of the City to ensure the City's revenue from the leases, and the Lessee's property management is in place while the City goes out for solicitation for these services.

Buyer:

[Signature]

6/28/15
Date

Given the information in your memorandum, I certify that strict compliance with a competitive process would be unavailing or would not produce an advantage, and that soliciting bids or proposals would therefore be undesirable, impracticable, or impossible. My approval is valid for one (1) year from the signature date below. The requesting department must submit a purchase requisition and a copy of this certification to Purchasing and Contracting in order for a Purchase Order to be issued.

APPROVED:

[Signature]
Purchasing Director/Designee under SDMC §22.3016

6/30/15
Date

DENIED:

Purchasing Director/Designee under SDMC §22.3016

Date

Reason(s) for denial: _____

Sole Source Request and Certification
Effective: October 13, 2014
OCA Document No. 881681

EXHIBIT C

CONTRACTOR REQUIREMENTS

I. COMPETITIVE BIDDING, EQUAL OPPORTUNITY AND EQUAL BENEFITS

1.1 Compliance. MANAGER shall bid and award contracts to complete any Repair and Maintenance ("Project") in accordance with the Charter and rules, regulations, and laws promulgated thereunder, including, but not limited to, the San Diego Municipal Code (Municipal Code) and City Council resolutions and policies, as well as any expressly applicable public contract laws, rules, and regulations (Required Contracting Procedures). Required Contracting Procedures include all contracting requirements that are applicable to the CITY, including, but not limited to, competitive bidding, the CITY's small and local business program for public works contracts, and the CITY's Equal Benefits Ordinance. MANAGER understands that it must comply with all Required Contracting Procedures. Failure to adhere to all Required Contracting Procedures is a material breach of the Agreement, and any contract awarded not in accordance with the Required Contracting Procedures shall be ineligible for payment pursuant to the Agreement.

1.2 Bidding Documents. Following CITY review of the Construction Documents, MANAGER shall prepare final corrected Construction Documents to be submitted to CITY for review and approval, in accordance with CITY's standard review procedures prior to solicitation of bids.

1.2.1 Submission of Construction Documents. MANAGER shall submit bidding documents to CITY for approval before soliciting bids for work on the Project. CITY retains the right to notify MANAGER of necessary corrections and will notify MANAGER of corrections within fifteen (15) Working Days of submittal date.

1.2.2 Obtain all Permits and Approvals. MANAGER shall obtain all necessary permits, including, but not limited to, environmental, grading, building, mechanical, electrical, and plumbing. Approval of Construction Documents will be evidenced by CITY's issuance of a letter indicating MANAGER may proceed with competitive bidding.

1.3 Solicitation of Bids. MANAGER shall solicit bids for construction of the Project in accordance with all Required Contracting Procedures.

1.4 Bid Opening and Award of Contract. MANAGER shall solicit and open bids and award contracts in accordance with all the Required Contracting Procedures.

1.5 Nondiscrimination Requirements.

- 1.5.1 Compliance with the CITY's Equal Opportunity Contracting Program. MANAGER shall comply with CITY's Equal Opportunity Contracting Program. MANAGER shall not discriminate against any employee or applicant for employment on any basis prohibited by law. MANAGER shall provide equal opportunity in all employment practices. MANAGER shall ensure its consultants, contractors, and their subcontractors comply with the CITY's Equal Opportunity Contracting Program. Nothing in this Section shall be interpreted to hold the MANAGER liable for any discriminatory practice of its consultants, contractors or their subcontractors.
- 1.5.2 Nondiscrimination Ordinance. MANAGER 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 consultants, contractors, subcontractors, vendors or suppliers. MANAGER shall provide equal opportunity for contractors and subcontractors to participate in contracting and subcontracting opportunities. MANAGER understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in Agreement termination, debarment, and other sanctions. This language shall be in contracts between the MANAGER and any consultants, contractors, subcontractors, vendors and suppliers.
- 1.5.3 Compliance Investigations. Upon CITY's request, MANAGER agrees to provide to CITY, within sixty (60) calendar days, a truthful and complete list of the names of all consultants, contractors, subcontractors, vendors and suppliers MANAGER used in the past five years on any of its contracts undertaken within San Diego County, including the total dollar amount paid by MANAGER for each contract, subcontract or supply contract. The MANAGER further agrees to fully cooperate in any investigation conducted by CITY pursuant to CITY's Nondiscrimination in Contracting Ordinance (Municipal Code sections 22.3501-22.3517). MANAGER understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in remedies being ordered against MANAGER up to and including Agreement termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. MANAGER further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

1.6 Equal Benefits. This Agreement is with a sole source and therefore, MANAGER is not subject to the CITY's Equal Benefits Ordinance, Chapter 2, Article 2, Division 43 of the Municipal Code. However, the Equal Benefits Ordinance is applicable to contracts that MANAGER enters into with respect to the Project. Therefore, MANAGER shall ensure that its contractor(s) and consultant(s) comply with the Equal Benefits Ordinance. MANAGER shall include in each of its contracts with its contractor(s) and consultant(s) provisions: (i) stating that the contractor(s) and/or consultant(s) must comply with the Equal Benefits Ordinance; (ii) stating that failure to maintain equal benefits is a material breach of those agreements; and (iii) requiring the contractor(s) and/or consultant(s) to certify that they will maintain equal benefits for the duration of the contract. Municipal Code § 22.4304(e)-(f). In addition, MANAGER's contractor(s) and/or consultant(s) must comply with the requirement that they not discriminate in the provision of benefits between employees with spouses and employees with domestic partners, and that it notify employees of the equal benefits policy at the time of hire and during open enrollment periods during the performance of the contract. Municipal Code § 22.4304(a)-(b). MANAGER's contractor(s) and/or consultant(s) must also provide the CITY with access to documents and records sufficient for the CITY to verify compliance with the Equal Benefits Ordinance requirements. Municipal Code § 22.4304(c). Additionally, MANAGER's contractor(s) and/or consultant(s) may not use a separate entity to evade the requirements of the Equal Benefits Ordinance. Municipal Code § 22.4304(d). MANAGER shall ensure that its contractor(s) and consultant(s) complete the Equal Benefits Ordinance Certification of Compliance included as an example herein as Exhibit J.

II. PREVAILING WAGE AND LIVING WAGE

2.1 Prevailing Wage. Prevailing wages apply to the Project. Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed on the Project is subject to State prevailing wage laws, and MANAGER shall ensure compliance with all applicable prevailing wage laws and requirements. For construction work performed on the Project that cumulatively exceeds \$25,000 and for alteration, demolition, repair and maintenance work performed on the Project that cumulatively exceeds \$15,000, MANAGER shall ensure that its contractors and subcontractors comply with State prevailing wage laws including, but not limited to, the requirements listed below. This requirement is in addition to the requirement to pay Living Wage pursuant to San Diego Municipal Code sections 22.4201 through 22.4245. MANAGER 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 contractors and subcontractors. Living Wage applies to workers who are not subject to Prevailing Wage Rates.

2.1.1 Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, MANAGER shall ensure that its contractors and subcontractors ensure that all workers who perform work on the Project 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.

2.1.1.1 Copies of such prevailing rate of per diem wages are on file at the CITY and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at

<http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>.

MANAGER shall ensure that its contractors and subcontractors post a copy of the prevailing rate of per diem wages determination at each job site and make them available to any interested party upon request.

2.1.1.2 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 contract for the Project. 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 the contract in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of the contract, each successive predetermined wage rate shall apply to the contract on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of the contract, such wage rate shall apply to the balance of the contract.

2.1.2 Penalties for Violations. MANAGER shall require its contractor and subcontractors 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.

2.1.3 Payroll Records. MANAGER shall require its contractor and subcontractors 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. MANAGER shall require its contractor to require its subcontractors to also comply with section 1776. MANAGER shall require its contractor and subcontractors submit weekly certified payroll records online via the CITY's web-based Labor Compliance Program. MANAGER shall require its contractor to ensure that its subcontractors submit certified payroll records to the CITY. MANAGER shall also require its contractor and subcontractors to furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

- 2.1.4 Apprentices. MANAGER shall require its contractors and its subcontractors comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. MANAGER shall require its contractors to be held responsible for the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.
- 2.1.5 Working Hours. MANAGER shall require its contractors and subcontractors to comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restricting working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specifying penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.
- 2.1.6 Required Provisions for Subcontracts. MANAGER shall require its contractors to 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.
- 2.1.7 Labor Code Section 1861 Certification. In accordance with California Labor Code section 3700, MANAGER shall require that its contractors secure the payment of compensation of its employees and by signing the contract, the contractors certify as follows: "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 or contract].”

- 2.1.8 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.
- 2.1.9 Department of Industrial Relations Registration. This Project is subject to compliance monitoring and enforcement by the DIR. MANAGER shall register with the DIR pursuant to Labor Code section 1725.5. No contractor or subcontractor may be listed on a bid or proposal for a public works project unless registered with the DIR pursuant to California Labor Code section 1725.5. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, 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 California Labor Code 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 2103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.” MANAGER shall ensure that its calls for bids and contract documents include the following provisions: “No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5”; “No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5”; “This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations”; and “By submitting a bid or proposal, Contractor is certifying that he or she has

verified that all subcontractors used on this public work project are registered with the DIR in compliance with California Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration to the City upon request.”

2.1.9.1 A contractor’s inadvertent error in listing a subcontractor who is not registered pursuant to California Labor Code section 1725.5 in 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 California Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered subcontractor pursuant to Public Contract Code section 4107.

2.1.9.2 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.

2.1.9.3 MANAGER shall verify that all contractors and subcontractors used on the Project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and MANAGER shall provide proof of contractor and subcontractor registration to CITY upon request.

2.2 Living Wages. This Project is subject to the City’s Living Wage Ordinance (LWO), codified at SDMC sections 22.4201 through 22.4245. The LWO requires payment of minimum hourly wage rates and other benefits unless an exemption applies. SDMC section 22.4225 requires each contractor to fill out and file a living wage certification with the City Manager within thirty (30) days of award of the contract. LWO wage and health benefit rates are adjusted annually in accordance with SDMC section 22.4220(b) to reflect the Consumer Price Index. Service contracts, financial assistance agreements, and City facilities agreements must include this upward adjustment of wage rates to covered employees on July 1 of each year. In addition, MANAGER agrees to require all of its contractors, subcontractors, sublessees, and concessionaires subject to the LWO to comply with the LWO and all applicable regulations and rules.

2.2.1. Exemption from Living Wage Ordinance. Pursuant to SDMC section 22.4215, this Project may be exempt from the LWO. For a determination on this exemption, the contractor must complete the Living Wage Ordinance Application for Exemption.

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

III. DESIGN AND CONSTRUCTION STANDARDS

3.1 Compliance with all Laws, Design Standards, and Construction Standards. In all aspects of the design and construction of the Project, MANAGER's contractor shall comply with all applicable local, state and federal laws, rules, regulations, policies and ordinances, and, if applicable, the most current editions of the Green Book. It shall be MANAGER's contractor's sole responsibility to comply with the Americans with Disabilities Act and Title 24 of the California Building Standards Code, California Code of Regulations. MANAGER's contractor shall certify compliance with Title 24/ADA to CITY in the form and content as set forth on **Attachment 1**, "Certification for Title 24/ADA Compliance."

3.2 Imputed Knowledge. MANAGER shall be responsible for all amendments or updates to design and construction standards and knowledge of all amendments or updates to design and construction standards, whether local, state, or federal, and such knowledge will be imputed to MANAGER to the fullest extent allowed by law.

3.3 CITY Approval. MANAGER shall be required to obtain CITY approval of design, plans, and specifications. Unless specifically provided otherwise, whenever this Agreement requires an action or approval by CITY, that action or approval shall be performed by the duly authorized CITY representative designated by this Agreement.

3.4 CITY Approval Not a Waiver of Obligations. Where approval by CITY, the Mayor, or other representatives of CITY is required, it is understood to be general approval only and does not relieve MANAGER of responsibility for complying with all applicable laws, codes, regulations, and standard consulting, design, or construction practices.

IV. CONSTRUCTION AND DRUG-FREE WORKPLACE

4.1 Project Completion and Construction Requirements. MANAGER shall cause for the timely commencement of construction of the Project and shall diligently pursue such construction to completion.

4.2 Drug-Free Workplace. MANAGER shall ensure that its contractors comply with the requirements of CITY's Council Policy 100-17, "DRUG-FREE WORKPLACE", adopted by San Diego Resolution R-277952.

V. BONDS AND OTHER ACCEPTABLE SECURITIES

5.1 **Payment Bond.** If applicable, MANAGER shall provide or require its construction contractor to provide CITY with a payment bond, letter of credit (LOC), cash or other acceptable security for material and labor in favor of CITY for 100 percent of the proposed construction costs, as determined by competitive bidding (Payment Bond).

5.2 **Performance Bond.** If applicable, MANAGER shall provide or require its construction contractor to provide CITY with a bond, Letter Of Credit, cash or other acceptable security guaranteeing the performance in favor of CITY for 100 percent of the proposed construction costs, as determined by competitive bidding (Performance Bond).

5.3 **Warranty Bond.** MANAGER shall provide or require its construction contractor to provide CITY with a bond, LOC, cash or other acceptable security guaranteeing the Project during the warranty period in favor of CITY (Warranty Bond). MANAGER shall provide the Warranty Bond to CITY upon release of the Performance Bond or commencement of the warranty periods, whichever occurs first.

5.4 **Term.** The Payment Bond shall remain in full force and effect until final completion of the Project and acceptance of the Project by CITY to ensure that all claims for materials and labor are paid, except as otherwise provided by law or regulation. The Performance Bond shall remain in full force and effect until acceptance of the Project by CITY. Upon acceptance, CITY shall follow the procedures outlined in California Government Code section 66499.7 and release the Performance Bond. The Warranty Bond shall remain in full force and effect for the warranty periods provided in this Exhibit C.

5.5 **Certificate of Agency.** All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

5.6 **Licensing and Rating.** The bonds shall be duly executed by a responsible surety company admitted to do business in the State of California, licensed or authorized in the jurisdiction in which the Project is located to issue bonds for the limits required by this Agreement, and have a minimum AM Best rating of "A-" to an amount not to exceed 10 percent of its capital and surplus.

5.7 **Insolvency or Bankruptcy.** If the surety on any bond furnished by the construction contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located, MANAGER shall within seven (7) calendar days thereafter substitute or require the substitution of another bond or other acceptable security, acceptable to CITY.

VI. INDEMNIFICATION

6.1 Indemnification and Hold Harmless Agreement. Other than in the performance of design professional services which shall be solely as addressed in Sections 6.2 and 6.3 below, to the fullest extent permitted by law, MANAGER shall require its contractor to defend (with legal counsel reasonably acceptable to the CITY), indemnify and hold harmless the CITY and its officers, agents, departments, officials, and employees (Indemnified Parties) from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of MANAGER's contractor or MANAGER's contractor's agents), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, 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 services performed under this Agreement by MANAGER's contractor or MANAGER's contractor's agents, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. MANAGER's contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties.

6.2 Indemnification for Design Professional Services. To the fullest extent permitted by law (including, without limitation, California Civil Code section 2782.8), with respect to the performance of design professional services, MANAGER shall require its design professional to indemnify and hold harmless the CITY, its officers, and employees, from all claims, demands, or liability that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of MANAGER's design professional or design professional's officers or employees.

6.3 Design Professional Services Defense. The Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of design professional or design professional's officers or employees.

6.4 Insurance. The provisions of this Section 6 are not limited by the requirements of Section 7 related to insurance.

6.5 Enforcement Costs. MANAGER agrees to pay any and all costs CITY incurs enforcing the indemnity and defense provisions set forth in this Section 6.

6.6 Indemnification for Liens and Stop Notices. MANAGER shall keep the Project and underlying property free of any mechanic's liens and immediately secure the release of any stop notices. MANAGER shall defend, indemnify, protect, and hold harmless, CITY, its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney fees, arising from or attributable to a failure to pay

claimants. MANAGER shall be responsible for payment of all persons entitled to assert liens and stop notices.

VII. INSURANCE

7.1 General. MANAGER shall not cause work to begin on the Project under this Agreement until it has: (i) obtained or caused MANAGER's contractor to obtain, and upon CITY's request provided to CITY, insurance certificates reflecting evidence of all insurance required in this Section 7; (ii) obtained CITY approval of each company or companies; and (iii) confirmed that all policies contain specific provisions required by CITY pursuant to this Section 7.

7.2 Type and Amount of Insurance. The CITY shall confer with the CITY's risk management department and determine the appropriate dollar amount and type of insurance, including any endorsements or specific clauses, necessary for the Project (Required Insurance). MANAGER shall obtain the Required Insurance prior to the commencement of work. CITY's Typical Insurance Provisions are attached as **Attachment 2**. If MANAGER is not informed otherwise in writing of Required Insurance, CITY's Typical Insurance Provisions included in **Attachment 2** shall be the Required Insurance for the Project.

7.3 Written Notice. Except as provided for under California law, any Required Insurance shall not be canceled, non-renewed or materially changed except after thirty (30) calendar days prior written notice by MANAGER to CITY by certified mail, except for non-payment of premium, in which case ten (10) calendar days notice shall be provided.

7.3.1 Where the words "will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" are present on a certificate, they shall be deleted.

7.4 Rating Requirements. Except for the State Compensation Insurance Fund, all insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have been given at least an "A" or "A-" and "VI" rating by AM BEST, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY.

7.5 Non-Admitted Carriers. 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 Eligible Surplus Lines Insurers.

7.6 Additional Insurance. MANAGER may obtain additional insurance not required by this Agreement.

7.7 Obligation to Provide Documents. Prior to performing any work on the Project, MANAGER shall provide copies of documents including, but not limited to, certificates of

insurance and endorsements, and shall furnish renewal documentation prior to expiration of insurance. Each required document shall be signed by the insurer or a person authorized by the insurer to bind coverage on its behalf. CITY reserves the right to require complete, certified copies of all insurance policies required herein.

7.8 Deductibles/Self Insured Retentions. All deductibles and self-insurance retentions on any policy shall be the responsibility of MANAGER. Deductibles and self-insurance retentions shall be disclosed to CITY at the time the evidence of insurance is provided.

7.9 Policy Changes. MANAGER shall not modify or allow MANAGER's contractor to modify any policy or endorsement thereto which increases CITY's exposure to loss for the duration of this Agreement.

7.10 Reservation of Rights. CITY reserves the right, from time to time, to review the MANAGER's or MANAGER's contractor's insurance coverage, limits, deductible and self insured retentions to determine if they are acceptable to CITY.

7.11 Not a Limitation of Other Obligations. Insurance provisions under this Section 7 shall not be construed to limit MANAGER's obligations under this Agreement, including indemnity.

7.12 Material Breach. Failure to maintain, renew, or provide evidence of renewal of required insurance by MANAGER or MANAGER's contractor during the term of this Agreement, and for a period of ten (10) years from the Effective Date of this Agreement, may be treated by CITY as a material breach of this Agreement.

VIII. WARRANTIES

8.1 Warranties Required. MANAGER shall require the contractor and its subcontractors and agents to provide the warranties listed below, if applicable. This warranty requirement is not intended to exclude, and shall not exclude, other implicit or explicit warranties or guarantees required or implied by law. All such warranties shall be enforceable by and inure to the benefit of CITY.

8.1.1 Materials and Workmanship. All work on the Project shall be guaranteed against defective workmanship and all materials furnished by MANAGER's contractor or its agents shall be guaranteed against defects for a period of one (1) year from the date of the Project's final completion and acceptance by CITY. MANAGER's contractor shall replace or repair or require its agents to replace or repair any such Defective Work or materials in a manner satisfactory to CITY, after notice to do so from CITY, and within the time specified in the notice.

8.1.2 New Materials and Equipment. MANAGER's contractor shall warrant and guarantee, and shall require its agents to warrant and guarantee, that all materials and equipment incorporated into the Project are new unless otherwise specified.

8.1.3 Design, Construction, and Other Defects. MANAGER's contractor shall warrant and guarantee, and shall require its agents to warrant and guarantee, that all work is in accordance with the approved plans and specifications and is not defective in any way in design, construction, or otherwise.

8.2 Form and Content. Except manufacturer's standard printed warranties, all warranties shall be on MANAGER's and MANAGER's agents, material supplier's, installer's or manufacturer's own letterhead, addressed to CITY. All warranties shall be submitted in the format specified in this Section.

8.2.1 Durable Binder. Obtain warranties, executed in triplicate by MANAGER, MANAGER's agents, installers, and manufacturers. Provide table of contents and assemble in binder with durable plastic cover.

8.2.2 Table of Contents. All warranties shall be listed and typewritten in the sequence of the table of contents of the Project manual, with each item identified with the number and title of the specification section in which specified, and the name of product or work item.

8.2.3 Index Tabs. Each warranty shall be separated with index tab sheets keyed to the table of contents listing.

8.2.4 Detail. Provide full information, using separate typewritten sheets, as necessary. List MANAGER's agents, installer, and manufacturer, with name, address and telephone number of responsible principal.

8.2.5 Warranty Start Date. This date shall be left blank until the date of Final Completion.

8.2.6 Signature and Notarization. All warranties shall be signed and notarized. Signatures shall be required from MANAGER's construction contractor and where appropriate, the responsible subcontractor.

8.3 Term of Warranties. Unless otherwise specified or provided by law, all warranties, including those pertaining to plants, trees, shrubs and ground cover, shall extend for a term of one (1) year from the date of final completion and acceptance of the Project by CITY.

8.4 Meetings. During the one (1) year warranty period described in Section 8.3, MANAGER shall meet and shall require its design consultant, construction contractor, and key subcontractors to meet, with CITY representatives, on a monthly basis, if requested by CITY. This meeting shall be held to discuss and resolve any problems CITY discovers in design, construction, or furnishing, fixtures, and equipment of the Project during the one (1) year warranty period.

IX. DEFECTIVE WORK

9.1 Correction, Removal, or Replacement. All work, material, or equipment that is unsatisfactory, faulty, incomplete, or does not conform to the approved construction documents is defective (Defective Work). If within the designated warranty period, or such additional period as may be required by law or regulation, the Project is discovered to contain Defective Work, MANAGER shall promptly and in accordance with CITY's written instructions and within the reasonable time limits stated therein, either correct the Defective Work or cause the Defective Work to be corrected, or if it has been rejected by CITY, remove it from the site and replace it with non-defective and conforming work.

9.2 CITY's Right to Correct. If circumstances warrant, including an emergency or MANAGER's failure to adhere to Section 9.1, CITY may correct, remove, or replace the Defective Work. In such circumstances, MANAGER shall not recover costs associated with the Defective Work and shall reimburse CITY for all CITY's costs, whether direct or indirect, associated with the correction or removal and replacement.

9.3 Defects Constitute Non-Reimbursable Costs. CITY is entitled to an appropriate decrease in reimbursement for Defective Work from MANAGER and MANAGER's contractor or to make a claim against MANAGER's or the MANAGER's contractor's bond if MANAGER has been paid in full.

9.4 Extension of Warranty. When Defective Work, or damage therefrom, has been corrected, removed, or replaced during the warranty period, the one (1) year, or relevant warranty period, shall be extended for an additional one (1) year from the date of the satisfactory completion of the correction, removal, or replacement.

9.5 No Limitation on other Remedies. Exercise of the remedies for Defective Work pursuant to this Section 9 shall not limit the remedies CITY may pursue under this Agreement, at law, or in equity.

9.6 Resolution of Disputes. If MANAGER and CITY are unable to reach agreement on disputed work, payment of disputed amounts shall be as later determined by mediation or as subsequently adjudicated or established in a court of law. MANAGER shall maintain and keep all records relating to disputed work in accordance with Section 10.

9.7 Prior to Final Acceptance and Reimbursement to the MANAGER. Where Defective Work has been identified prior to the final completion and acceptance by CITY of the Project, MANAGER shall promptly, and in accordance with CITY's written instructions and within the reasonable time limits stated therein, either correct the Defective Work, or if it has been rejected by CITY, remove it from the site and replace it with non-defective and conforming work. Where Defective Work is not remedied, CITY is entitled to make a claim against the MANAGER's or MANAGER's contractor's bond or any other remedy available at law or in equity.

X. RECORDS AND AUDITS

10.1 Retention of Records. MANAGER and MANAGER's agents shall maintain data and records related to the Project for a period of not less than five (5) years following the Effective Date of this Agreement.

10.2 Audit of Records. At any time during normal business hours and as often as CITY deems necessary, MANAGER and all MANAGER's contractors or subcontractors shall make available to CITY for examination at reasonable locations within the CITY/County of San Diego all of the data and records with respect to all matters covered by this Agreement. MANAGER and all MANAGER's contractors or subcontractors shall permit CITY to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered by this Agreement. If records are not made available within the CITY/County of San Diego, then MANAGER's contractor shall pay all CITY's travel-related costs to audit the records associated with the Project at the location where the records are maintained.

10.2.1 Costs. MANAGER and MANAGER's agents shall allow CITY to audit and examine books, records, documents, and any and all evidence and accounting procedures and practices that CITY determines are necessary to discover and verify all costs of whatever nature, which are claimed to have been incurred or anticipated to be incurred.

MOD-3592

RECEIVED JUL 13 2016

NW

Purchasing and Contracting Department
City of San Diego

REQUEST AND CERTIFICATION FOR SOLE SOURCE PROCUREMENT

To: Purchasing and Contracting Director or Designee

From:	Cybele Thompson	Director	Real Estate Assets
	Name	Title	Department

Date: July 11, 2016

- Describe goods or service(s) to be purchased. Include vendor's cost, City stock number if applicable, name, and telephone number:
Request for modification of Sole Source # 3592 (attached) to request an additional 4 years.
Vendor: The Heritage Group, Inc.
Cost: The greater of \$3,300 per month or 5% of all minimum rents.
Duration: 4 more years requested, because all the current leases are being extended until no later than 2020 to coterminate with the Sports Arena lease, which will expire on 5/31/2020. After that the City may issue an RFP for the entire site – the Sports Arena, as well as the Sports Arena Square.

- Explain why strict compliance with a competitive process would be unavailing or would not produce an advantage, and why soliciting bids or proposals would therefore be undesirable, impractical, or impossible:

Updates include: New lease agreements have been signed by the tenants, with the exception of Arena MMA, who is the second largest tenant in the shopping center. Negotiations with this tenant are still ongoing. The Heritage Group, Inc. is in the process of overseeing a large demolition project in the shopping center. Once the building has been demolished a new parking area will take its place. The existing parking area will be resurfaced and restriped, and the shopping center will be re-painted.

It would be very disruptive to change the management company during these ongoing projects and tenant negotiations and to the strong tenant-property management relationship Heritage Group has already developed with the existing tenants. If a new management company were to take over they would have to start from scratch in developing relationships with the existing tenants. Tenant negotiations, as well as the improvement projects would be delayed, which may increase the costs to the City and lower the income.

- This sole source procurement is necessary because:

- ☒ Goods are available from only one source
- ☐ The requested goods are replacement parts or components for existing City equipment or required by warranty and/or insurance coverage
- ☐ The contract is necessary for the reasons explained in San Diego Municipal Code (SDMC) section 22.3208(d) (explain) Click here to enter text.

Sole Source Request and Certification
Effective: October 13, 2014
OCA Document No. 881681

☐ Other (describe) Click here to enter text.

4. Goods and services evaluated (add additional pages, if needed):

A.	<u>Click here to enter text.</u> Good/Service	<u>Click here to enter text.</u> Name of Vendor	<u>Click here to enter text.</u> Bid Amount
	<u>Click here to enter text.</u> Person Contacted	<u>Click here to enter text.</u> Telephone Number	<u>Click here to enter text.</u> SLBE Status
B.	<u>Click here to enter text.</u> Good/Service	<u>Click here to enter text.</u> Name of Vendor	<u>Click here to enter text.</u> Bid Amount
	<u>Click here to enter text.</u> Person Contacted	<u>Click here to enter text.</u> Telephone Number	<u>Click here to enter text.</u> SLBE Status
C.	<u>Click here to enter text.</u> Good/Service	<u>Click here to enter text.</u> Name of Vendor	<u>Click here to enter text.</u> Bid Amount
	<u>Click here to enter text.</u> Person Contacted	<u>Click here to enter text.</u> Telephone Number	<u>Click here to enter text.</u> SLBE Status

REVIEWED:

[Signature]
Department Director or Designee

7/18/16
Date

APPROVED:

[Signature]
Deputy Chief Operating Officer

7.12.2016
Date

DENIED:

Deputy Chief Operating Officer

Date

Reason for denial: _____

5. Purchasing Department Comments:

I recommend approval of this Sole Source

Buyer:

Veronica Ford

8/2/16
Date

☒ Given the information in your memorandum, I certify that strict compliance with a competitive process would be unavailing or would not produce an advantage, and that soliciting bids or proposals would therefore be undesirable, impracticable, or impossible. My approval is valid for four (4) years from the signature date below. The requesting department must submit a purchase

requisition and a copy of this certification to Purchasing and Contracting in order for a Purchase Order to be issued.

APPROVED:



Purchasing Director/Designee under SDMC §22.3016

8/4/2016

Date

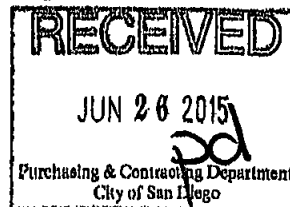
DENIED:

Purchasing Director/Designee under SDMC §22.3016

Date

Reason(s) for denial: _____

3592



Purchasing and Contracting Department
City of San Diego

REQUEST AND CERTIFICATION FOR SOLE SOURCE PROCUREMENT

To: Purchasing and Contracting Director or Designee

From: Cybele Thompson	Director	Real Estate Assets
Name	Title	Department

Date: June 25, 2015

1. Describe goods or service(s) to be purchased. Include vendor's cost, City stock number if applicable, name, and telephone number:

This sole source Procurement request is for a Property Management Agreement with Heritage Group, Inc. for Sports Arena Square. Sports Arena Square is a multi-tenant strip retail property located at 3340-3360 Sports Arena Blvd., San Diego CA 92110 whose lease was terminated and the ownership of the improvements reverted to the City on February 28, 2013. Purchasing and Contracting (P&C) approved the Sole Source Request Case No. 2876 on March 4, 2013 effective through June 30, 2013 (which is now expired) for Heritage to continue managing the property, minimize disruption to the tenants and receipt of revenue to the City. A scope of work for a Property Management Agreement RFP was submitted to P&C soon thereafter, but based on staffing/workloads, the RFP was not issued. Please see below for further discussion as to why issuing an RFP now would not provide an advantage to the City and would therefore be undesirable, impractical, or impossible.

The scope of work includes supervise and direct management and operation of the property at the direction of the City, negotiate rental agreements and rent adjustments, prepare operating budgets, negotiate and enter into service contracts, purchase operating supplies, collect rents (receipting and depositing), institute any legal proceedings to collect rent, open and manage bank accounts, payment of utilities, payment of taxes, invoice tenants for monthly pro-rata charges, maintenance of books and records using the Yardi accounting system software, communicate with tenants, supervise and direct contractors who perform maintenance, repairs and security services, oversee capital improvement projects and monthly reporting.

2. Explain why strict compliance with a competitive process would be unavailing or would not produce an advantage, and why soliciting bids or proposals would therefore be undesirable, impractical, or impossible:

The competitive bid process does not provide an advantage to the City and would therefore be undesirable, impractical, or impossible. The new information we discovered after we entered into the expired services contract (2013) with Heritage Real Estate Advisors, Inc. (renamed Heritage Group, Inc.) is that the City wishes to extend the month to month leases to be coterminous with the Sports Arena lease on May 31, 2020, in order to eventually issue an RFP

Sole Source Request and Certification
Effective: October 13, 2014
OCA Document No. 881681

for the entire area This decision was made in late 2014. By the time of this decision, Heritage had established strong relationships with the existing Sports Arena Square tenants to be able to increase their rent in exchange for converting their month to month leases to now end on May 31, 2020. The new contract terms for all the lease extensions have been agreed upon verbally by the two largest tenants (The Arena MMA – 22,545 SF and SOMA – 24,177 SF) and with about 80% of the smaller tenants. The two largest tenants occupy close to 60% of the entire rentable space in the strip mall. The lease extensions may be executed once the Property Management Agreement with Heritage Group is approved by the City. If a new management company were to take over negotiations from Heritage Group, a new management company would have to start from scratch in working with all the individual tenants and conducting rental surveys, etc. For every month the City does not extend these leases (keeps them month to month), the City loses out on substantial additional rental income as well as greater stability to the project. Heritage Group is in a unique position to affect these lease extensions that neither the City, nor any other entity, would have the ability to do in a timely manner through the RFP process. Once these leases are extended through 2020, the City may issue an RFP for the management contract of Sports Arena Square because the real value that only Heritage Group can bring would already have been added. It is not practical for the City to manage this project directly due to the multiple tenants and the numerous vendor contracts associated with this project, READ simply does not have the resources at this time.

3. This sole source procurement is necessary because:

- ☒ Goods are available from only one source
- ☐ The requested goods are replacement parts or components for existing City equipment or required by warranty and/or insurance coverage
- ☐ The contract is necessary for the reasons explained in San Diego Municipal Code (SDMC) section 22.3208(c) (explain) [Click here to enter text.](#)
- ☐ Other (describe) [Click here to enter text.](#)

4. Goods and services evaluated (add additional pages, if needed):

A.	Click here to enter text.	Click here to enter text.	Click here to enter text.
	Good/Service	Name of Vendor	Bid Amount
	Click here to enter text.	Click here to enter text.	Click here to enter text.
	Person Contacted	Telephone Number	SLBE Status
B.	Click here to enter text.	Click here to enter text.	Click here to enter text.
	Good/Service	Name of Vendor	Bid Amount
	Click here to enter text.	Click here to enter text.	Click here to enter text.
	Person Contacted	Telephone Number	SLBE Status

C.	<u>Click here to enter text.</u> Good/Service	<u>Click here to enter text.</u> Name of Vendor	<u>Click here to enter text.</u> Bid Amount
	<u>Click here to enter text.</u> Person Contacted	<u>Click here to enter text.</u> Telephone Number	<u>Click here to enter text.</u> SLBE Status

REVIEWED:

[Signature]
Department Director or Designee

6/25/15
Date

APPROVED:

[Signature]
Deputy Chief Operating Officer

6-25-2015
Date

DENIED:

Deputy Chief Operating Officer

Date

Reason for denial: _____

5. Purchasing Department Comments:

This sole source is in the best interest of the City to ensure the City's revenue from the leases, and the Lessee's property management is in place while the City goes out for solicitation for these services.

Buyer:

Caron Wolff

6/28/15
Date

Given the information in your memorandum, I certify that strict compliance with a competitive process would be unavailing or would not produce an advantage, and that soliciting bids or proposals would therefore be undesirable, impracticable, or impossible. My approval is valid for one (1) year from the signature date below. The requesting department must submit a purchase requisition and a copy of this certification to Purchasing and Contracting in order for a Purchase Order to be issued.

APPROVED:

[Signature]
Purchasing Director/Designee under SDMC §22.3016

6/30/15
Date

DENIED:

Purchasing Director/Designee under SDMC §22.3016

Date

Reason(s) for denial: _____

Sole Source Request and Certification
Effective: October 13, 2014
OCA Document No. 881681

Purchasing and Contracting Department
City of San Diego

REQUEST AND CERTIFICATION FOR SOLE SOURCE PROCUREMENT

To: Purchasing and Contracting Director or Designee

From:	Cybele Thompson	Director	Real Estate Assets
	Name	Title	Department

Date: July 11, 2016

1. Describe goods or service(s) to be purchased. Include vendor's cost, City stock number if applicable, name, and telephone number:
Request for modification of Sole Source # 3592 (attached) to request an additional 4 years.
Vendor: The Heritage Group, Inc.
Cost: The greater of \$3,300 per month or 5% of all minimum rents.
Duration: 4 more years requested, because all the current leases are being extended until no later than 2020 to coterminate with the Sports Arena lease, which will expire on 5/31/2020. After that the City may issue an RFP for the entire site – the Sports Arena, as well as the Sports Arena Square.

2. Explain why strict compliance with a competitive process would be unavailing or would not produce an advantage, and why soliciting bids or proposals would therefore be undesirable, impractical, or impossible:

Updates include: New lease agreements have been signed by the tenants, with the exception of Arena MMA, who is the second largest tenant in the shopping center. Negotiations with this tenant are still ongoing. The Heritage Group, Inc. is in the process of overseeing a large demolition project in the shopping center. Once the building has been demolished a new parking area will take its place. The existing parking area will be resurfaced and restriped, and the shopping center will be re-painted.

It would be very disruptive to change the management company during these ongoing projects and tenant negotiations and to the strong tenant-property management relationship Heritage Group has already developed with the existing tenants. If a new management company were to take over they would have to start from scratch in developing relationships with the existing tenants. Tenant negotiations, as well as the improvement projects would be delayed, which may increase the costs to the City and lower the income.

3. This sole source procurement is necessary because:

- ☒ Goods are available from only one source
- ☐ The requested goods are replacement parts or components for existing City equipment or required by warranty and/or insurance coverage
- ☐ The contract is necessary for the reasons explained in San Diego Municipal Code (SDMC) section 22.3208(d) (explain) Click here to enter text.

Sole Source Request and Certification

Effective: October 13, 2014

OCA Document No. 881681

☐ Other (describe) Click here to enter text.

4. Goods and services evaluated (add additional pages, if needed):

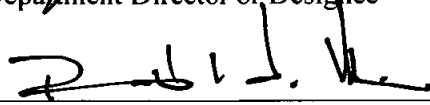
A.	<u>Click here to enter text.</u> Good/Service	<u>Click here to enter text.</u> Name of Vendor	<u>Click here to enter text.</u> Bid Amount
	<u>Click here to enter text.</u> Person Contacted	<u>Click here to enter text.</u> Telephone Number	<u>Click here to enter text.</u> SLBE Status
B.	<u>Click here to enter text.</u> Good/Service	<u>Click here to enter text.</u> Name of Vendor	<u>Click here to enter text.</u> Bid Amount
	<u>Click here to enter text.</u> Person Contacted	<u>Click here to enter text.</u> Telephone Number	<u>Click here to enter text.</u> SLBE Status
C.	<u>Click here to enter text.</u> Good/Service	<u>Click here to enter text.</u> Name of Vendor	<u>Click here to enter text.</u> Bid Amount
	<u>Click here to enter text.</u> Person Contacted	<u>Click here to enter text.</u> Telephone Number	<u>Click here to enter text.</u> SLBE Status

REVIEWED:


Department Director or Designee

7/12/16
Date

APPROVED:


Deputy Chief Operating Officer

7.12.2016
Date

DENIED:

Deputy Chief Operating Officer

Date

Reason for denial: _____

5. Purchasing Department Comments:

Buyer: _____

Date

☒ Given the information in your memorandum, I certify that strict compliance with a competitive process would be unavailing or would not produce an advantage, and that soliciting bids or proposals would therefore be undesirable, impracticable, or impossible. My approval is valid for four (4) years from the signature date below. The requesting department must submit a purchase

requisition and a copy of this certification to Purchasing and Contracting in order for a Purchase Order to be issued.

APPROVED:

Purchasing Director/Designee under SDMC §22.3016

Date

DENIED:

Purchasing Director/Designee under SDMC §22.3016

Date

Reason(s) for denial: _____
