

Exhibit B – Sample Contract

CONTRACT
for
DESCRIPTION OF SERVICE
between
SAN DIEGO CONVENTION CENTER CORPORATION, INC.
and
CONTRACTOR BUSINESS NAME
CONTRACT NO. XX-XXXX-E

This Contract (“Contract”) is entered into effective **date** (“Effective Date”) by and between the San Diego Convention Center Corporation, Inc. (“Corporation”), a California nonprofit corporation with primary offices located at 111 West Harbor Drive, San Diego City and County, California 92101 and **Contractor Business Name** with primary offices located at **full address** (“Contractor”), individually referred to herein as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, Corporation operates and manages the San Diego Convention Center located at 111 West harbor Drive, San Diego, California (“Center”) and,

WHEREAS, Corporation desires to obtain the services of a qualified firm to provide **brief description of services**;

WHEREAS, Contractor is in the business of providing **type of services**;

NOW THEREFORE, in consideration of the mutual covenants and conditions herein, the Parties agree as follows:

SECTION 1. SCOPE OF WORK

Contractor shall complete the Scope of Work (“SOW”) as specified in Exhibit A – Scope of Work, attached hereto and incorporated herein. Contractor shall also perform in accordance with the following Attachments and Exhibits:

- **Exhibit X – additional exhibits (as needed).**

All attachments and exhibits are hereby incorporated into and made part of this Contract by this reference.

SECTION 2. TIME OF PERFORMANCE

2.1 Term. The term of this Contract shall commence on **start date** and terminates no later than **end date** (“Term”). The Contract may be terminated sooner as provided in Sections 6 or 7 herein. Corporation has the option to extend the Term in its sole discretion and upon providing written notice to Contractor before the end of the Term. It is understood that except for the Term, all terms of this Contract (including payment and compensation terms) will remain the same.

2.2 Demolition and Modernization Period. Contractor work must be performed as not to affect adjacent active areas, events, pedestrian traffic, and existing surfaces and equipment. Contractor is responsible to protect and prevent damage to property during all work and shall restore to its original condition without extra costs to the Corporation any property damaged due to the acts or omissions of any employees, agents, or subcontractors of the Contractor. Such repairs shall meet the requirements of the Corporation.

The work may proceed on a 7-day per week/24-hour per day basis, including weekdays, weekends, and holidays within the timeframe coordinated with Corporation's Designated Representative to meet the completion date/time; except for those dates designated as "controlled noise" period, when Contractor shall not perform any work that will make significant noise, such as demolition, sawing, drilling, etc. All SOW must be scheduled with Corporation's Designated Representative with adequate advance notice.

SECTION 3. COMPENSATION, PAYMENT, PREREQUISITES TO FINAL PAYMENT

3.1 Compensation. Total compensation payable to Contractor pursuant to this Contract shall not exceed **dollar amount (\$X,XXX.00)** Guaranteed Maximum Price ("GMP"), inclusive of applicable California Prevailing Wage.

3.1.2 Out-of-Scope Service Rates. In the event Corporation requests out-of-scope services, Corporation shall compensate Contractor on a time and equipment basis as described in **Exhibit X – additional exhibits (as needed)**, attached hereto and incorporated herein.

3.2 Change Orders. A change to the SOW ("Change Order") may be a request from either Corporation or Contractor. In the event Corporation determines to change the SOW to either delete or add work to be performed by Contractor or the materials to be provided for the SOW, Contractor shall prepare a written Change Order setting forth in detail the changes to the SOW, the cost associated with the changes, the modifications to the schedule from the changes, and the amount by which the GMP will decrease or increase. Corporation shall have the right to approve or disapprove the Change Order in its sole and absolute discretion. Any Change Order approved by Corporation and Contractor must be authorized in writing and executed by both Parties prior to commencement of any work on the Change Order.

3.2.1 Changes Requested by Contractor. If Contractor believes a Change Order is necessary for any reason to complete the SOW, Contractor shall provide Corporation a proposed Change Order in writing including (a) Contractor's proposed adjustment to the schedule, (b) Contractor's proposed adjustment to the GMP; and (c) a detailed description of the change and reason for the change. Corporation shall have the right to approve or disapprove the Change Order in its sole and absolute discretion. Any Change Order approved by Corporation and Contractor must be authorized in writing and executed by both Parties prior to commencement of any work on the Change Order.

3.2.2 Changes in Writing. Contractor may not implement any Change Order without written authorization from Corporation except for (a) emergencies endangering life or property, (b) minor modifications not changing cost and not inconsistent with purposes of the SOW. Contractor waives all compensation for any change not authorized by both Parties in writing.

3.2.3 Conflicts. If a conflict exists between the Change Order and this Contract, the Change Order shall prevail. All work performed under a Change Order must be pursuant to the terms and conditions of this Contract.

3.2.4 Executed Work Change. Each executed Work Change Form will constitute a final settlement, and waiver by, Contractor of the right to assert any further claim for the items addressed in the Work Change Form including any increase in compensation based upon claims such as of loss of productivity, lost efficiency, or resulting residual costs.

3.3 Payment. Unless otherwise provided under this Contract, all costs necessary for proper execution and completion of the SOW are included in the GMP. Partial payments for satisfactory work completed may be made no less than monthly, subject to the approval of the Corporation.

3.3.1 Contractor shall submit invoices to Corporation using a format acceptable to Corporation that includes the following:

- (1) Detailed statement of the amount being billed;

(2) Reference the applicable Contract number.

Contractor shall submit duplicate invoices to either:

accounts.payable@visitsandiego.com

or

San Diego Convention Center Corporation
Attn: Accounts Payable
111 West Harbor Drive
San Diego, California 92101

Corporation shall remit payment to Contractor within thirty (30) days of receipt of approved invoice. Corporation may issue payment via automated clearing house (ACH), credit card, or check, as payment. If Corporation makes payment via check, the payment shall be made to the following address:

Contractor Business Name
Street Address
City/State/Zip

Contractor acknowledges and agrees that failure to submit a complete and accurate invoice within one hundred and twenty (120) days from the date the Work occurred may result in non-payment by Corporation and will not constitute a breach or default by Corporation under this Contract.

3.3.2 Payment and Acceptance. Any payment issued before Final Acceptance does not constitute as evidence of Corporation's acceptance of any work performed or act as a waiver of Corporation's rights to make future claims for improper or incorrect invoiced amounts from Contractor.

3.3.3 Stop Work. Corporation may withhold payments or stop work upon the occurrence of any of the following events: (a) Corporation determines it is necessary to stop work due to safety concerns; (b) Contractor has failed to provide evidence of insurance in compliance with the requirements listed in this Contract; (c) Contractor no longer holds a valid State of California license to perform the work; (d) Contractor has defaulted under this Contract; (e) any portion of the work contains defects not in compliance with this Contract.

3.4 Disallowed Costs and Withheld Payments. Corporation shall have the right to disallow any costs that are improperly or incorrectly billed. Corporation shall have the right to withhold from payments due Contractor, such amounts as, in its judgment, may be necessary to cover:

- (1) Valid claims for payment for labor or materials furnished by third parties for the SOW;
- (2) Correction of defective work which Contractor has failed to correct;
- (3) A default of Contractor in the performance of any terms or conditions of this Contract;
- (4) Costs for damages/repairs for damages caused by Contractor during its performance of the SOW that have not been addressed to the satisfaction of Corporation; and,
- (5) Costs associated with completing the SOW when it reasonably appears that the unexpended funds for the SOW are insufficient to cover the cost of completion.

When the cause for withholding the funds has been addressed to Corporation's satisfaction, the withheld funds shall be paid to Contractor.

3.5 Audit. Contractor may designate its own employee or its contracted representative from a certified public accounting firm, who will have the right to audit and examine at any cost, payment, settlement, or other supporting documentation relating to this Contract. Contractor agrees to fully cooperate with such audit(s). Corporation shall provide notice to Contractor of any exception taken as a result of an audit, and Contractor shall refund to Corporation no later than ten (10) days of such notice the amount specified. If Contractor fails to make such payment, Contractor shall pay interest on any unpaid portion of such payment, accruing monthly, at a rate equal to the lesser of ten percent (10%) per annum and the maximum lawful rate. Such interest shall be calculated from the date of the notice of the exception(s) to the date Contractor reimburses Corporation in full for the exception(s). Contractor shall reimburse Corporation for the cost of the audit if it discloses overage of five percent (5%) or greater. Corporation's audit rights extend for a period of five (5) years following the date of final payment. Contractor and the Contractor Parties shall retain all necessary records and documentation for the length of this audit period.

3.6 Taxes. Contractor is liable for and shall pay before delinquency all federal, state, municipal, or local sales, use, excise and other taxes in relation to the materials, equipment, wages, and salaries paid in relation to the performance of the SOW. Contractor agrees to treat all individuals performing the SOW as employees of Contractor or Contractor Party as applicable for purposes of federal and state income taxes, unemployment and disability insurance, Medicare taxes, and Social Security.

3.6.1 California Tax. Contractor represents that Contractor is a California resident or registered with the California Secretary of State and shall provide Corporation with a copy of Form 590 (Withholding Exemption Certificate) in accordance with California Revenue and Taxation Code Section 18662 or seven percent (7%) of all compensation payable to Contractor for work performed in California be withheld in accordance with applicable California Franchise Tax Board regulations unless Corporation has been notified in writing that withholding is a lower rate or withholding is waived.

SECTION 4. GENERAL PERFORMANCE OBLIGATIONS OF CONTRACTOR

4.1 General Standards: Site Examination. All work shall be performed as described in the Contract and in accordance with industry standards for the type of facility and work being performed. Contractor has satisfied itself as to the nature and location of the work, the kind and type of equipment, facilities and materials needed to perform the SOW, and all other matters which may in any way affect the SOW.

Contractor agrees that the GMP is based on its examination of the site and that it will make no claim for additional compensation if the conditions encountered differ from those anticipated by such examination.

4.2 Designated Representatives. The Parties' respective designated representatives shall be the day-to-day contact persons during the performance of the SOW. Contractor's Designated Representative shall be **Contractor's contact name, phone number, and email address**. Corporation's Designated Representative shall be **Corporation's contact name, phone number, and email address**. All submittals required of Contractor shall be delivered to Corporation's Designated Representative. Corporation may change the Designated Representative at any time. Corporation's Designated Representative is not the authorized representative to execute or authorize amendments or Change Orders to this Contract.

4.3 Injury to Persons: Damage to the Center or Corporation's Equipment. Contractor shall be solely liable for any death or bodily injury, or any damage to the Center, its contents, or Corporation's equipment, caused by Contractor, its agents and employees, in connection with providing the SOW. Contractor shall, at its own expense, promptly cause any damage to be repaired and/or replace anything irreparably damaged.

4.4 Permits and Regulations. Before commencing the SOW, Contractor shall procure all necessary building permits and comply with all the laws, ordinances, codes and regulations now or hereafter in effect promulgated by any State, or local governmental agency relating the performance of the SOW herein. Contractor agrees to indemnify Corporation from liability or penalty which might be imposed by reason of an asserted violation of such laws, ordinances, codes and regulations. On completion of the SOW, Contractor shall submit to Corporation original Certificates of Inspection and Acceptance, as applicable.

4.5 License. Contractor must have a Contractor License with the following classification(s) **CSLB classification** at all times during performance of work under this Contract. Contractor represents that it currently holds such license, and any valid State of California license for all categories of work to be performed hereunder, as required under the California Business and Professions Code. Contractor further agrees to provide notice to Corporation immediately upon the termination or non-renewal of said license or licenses, and in the event of termination or non-renewal, obtain a valid license before performing any further work under the terms of this Contract.

4.6 Safety. Contractor agrees to protect its work site (in progress and completed) and be responsible under all circumstances for its condition until Corporation's acceptance of the entire project and to protect Corporation's facility, property, employees and the public from damage or injury. Contractor shall abide by all standards of the Occupational Safety & Health Administration which are applicable to the work being performed as well as all safety rules issued by Corporation from time to time.

4.7 Inspection and Acceptance. Corporation shall have access to and the right to inspect all material, equipment and work during the course of performance of the SOW. Contractor shall replace, without charge, any material or correct any workmanship found by Corporation not to conform to the requirements of this Contract unless Corporation consents to accept such material or workmanship with an appropriate reduction in the price.

4.7.1 When the work has reached substantial completion, Contractor shall notify Corporation and request a walk-through inspection by Corporation. Contractor shall provide Corporation a list of all work to be completed following the inspection. Based on its walk-through inspection, Corporation shall develop and provide to Contractor a list of work which Contractor must complete and/or correct prior to final inspection. The combined lists shall constitute a final Punch List.

4.7.2 Contractor shall notify Corporation when the SOW has been completed. If Corporation determines the SOW to have been performed to satisfaction, Corporation shall instruct Contractor to submit for final payment. If Company finds any defect or noncompliance with the SOW, it shall deliver a written notice to Contractor stating such defects or noncompliance. Contractor shall remedy the issues identified as soon as possible at Contractor's expense. Corporation's acceptance and approval of SOW shall constitute "Final Acceptance" but shall not waive Contractor's responsibility to correct defects in SOW identified by Corporation at any time in the future per the Section 4.8.

4.8 Warranty of Work: Document and Manuals. Except as otherwise specified, all work and deliverables shall be warranted by the Contractor against defects in material or workmanship. Contractor shall provide a one (1) year warranty on Contractor supplied-parts and three (3) months on labor/workmanship from the date of Final Acceptance by Corporation. Defects include, but are not limited to, the use of inferior materials or equipment or unskilled or under-skilled labor in the work performed. If repairs or changes are required to correct defects during the warranty period, Contractor shall, at no cost to Corporation, promptly perform all work required to replace or repair all defective or non-conforming work. Contractor shall assign all guarantees or warranties to Corporation in the event of an assignment.

Manufacturers' warranties received by the Contractor which are applicable to the material furnished by Contractor under this Contract shall run to the Corporation and survive Final Acceptance and payment.

As applicable, Contractor shall provide Corporation all documents and manuals as set forth in the SOW.

4.9 Title to the Work. The title to all work completed or in the progress at the site and all materials, for which Corporation has paid Contractor, shall be in Corporation. Title and risk of loss of all other materials, equipment and tools delivered to the site shall remain in Contractor.

4.10 Patents, Copyrights, Royalties and Indemnities. Contractor shall indemnify, hold harmless and defend Corporation, Port of San Diego, City of San Diego, its officers, agents and employees from

liability of any nature, including cost and expense, from any claim involving copyrights or patented infringement on any invention, process, design, article or appliance manufactured or used in the performance of the SOW.

4.11 Electrical Power. Corporation shall provide Contractor with convenient access to electrical power required to perform the work. The electrical outlets used by Contractor shall be those designated or approved by Corporation.

4.12 Site Supervision. Contractor shall ensure that a superintendent is present and supervising Contractor's employees, as necessary, when work is being performed.

4.13 Apprentices. Apprentices of any crafts or trade may be employed, and when required by California Labor Code, Article 3, Section 1777.5, provided they are properly indentured to the Contractor in full compliance with provisions of the stated Labor Code. The prime Contractor shall bear the responsibility of compliance with Labor Code Section 1777.5 and for all apprenticeship occupations and agrees to comply with that section.

4.14 Hours of Work. It is Contractor's responsibility to be fully aware of and comply with State law pertaining to legal days worked as provided in California Labor Code, Article 3, §§1810 et seq.

4.15 Corporation's Security Procedures. Contractor shall abide by Corporation's security procedures, rules, and regulations. Contractor shall check-in with Corporation's security on a daily basis to obtain identification badges which shall be worn by Contractor's employees when present in or around the Center. Contractor shall observe access routes, entrance gates, parking, and temporary storage areas as designated by Corporation. No vehicles or equipment may be moved, handled, maintained or stored upon any area not authorized by Corporation.

4.16 Building Access and Parking. Contractor shall be provided access to the Center in connection with performing the SOW, including dock access for loading and unloading of equipment. Parking for construction vehicles may be provided, if available, in designated areas; however, no parking will be provided for personal vehicles. Access to the Center and its surrounding premises shall be as directed by the Corporation's Designated Representative. Contractor and its employees shall not have access to, nor shall they enter, certain areas of the Center designated as restricted.

4.17 Equal Employment Opportunity. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices.

In the event Contractor has fifteen (15) or more employees, Contractor agrees to be bound by the City of San Diego Equal Employment Opportunity Ordinance (Municipal Code Chapter II, Article 2, Division 27), setting forth the City of San Diego Equal Employment Opportunity ("EEO") Program, which is applicable to this Contract and administered by Corporation.

Contractor shall comply with all state Wage and Hour laws and all California laws and regulations governing employment and conditions of employment. Contractor shall comply with the California Workers' Compensation Act as applicable to its employees.

4.18 Drug Free Workplace Policy. Contractor shall advise all of its employees of Corporation's DRUG FREE WORKPLACE POLICY which states:

"The unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited at the San Diego Convention Center and the Center."

Contractor's employees must agree to the terms of this policy as a condition of employment and be advised that violations of this policy shall result in appropriate disciplinary action, up to and including termination, and that an employee convicted of a violation of a criminal drug statute, occurring in the workplace, is

required to notify his/her supervisor of the conviction, in writing, no later than five (5) calendar days after such conviction.

4.19 Prevailing Wage Requirement. Contractor acknowledges it is familiar with, shall comply with, and shall require all of its subcontractors to comply with, current State of California Prevailing Wage and Public Works law and requirements, including any registration requirements.

4.19.1 Compliance with Prevailing Wage Requirement. Pursuant to sections 1720 through 1861 of the California Labor Code, the Contractor and its Subcontractors shall ensure that all workers who perform work under this Contract are paid not less than the prevailing rate of per diem wages as determined by the Director to the Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and surveying work. Certified payroll records and lien releases are required for payment of invoices.

4.20 Noise & Odor Control. Contractor understands and acknowledges that events and activities occurring in the Center will take precedence over the SOW to be performed. Therefore, if the noise or odors caused by performance of the SOW is unacceptable to Corporation's clients or interferes with use of the Center, Contractor agrees it shall cease its work immediately upon Corporation's request.

4.21 Independent Contractor. The Parties acknowledge that Contractor is an independent business separate from Corporation and will perform the SOW as an independent contractor and no employer-employee relationship or joint-venture partnership will be created with Corporation. Contractor agrees to provide and maintain its own business premises, equipment, and supplies at its sole expense. Contractor is responsible to ensure that each Contractor Party is properly licensed and possesses the proper certifications, training, and qualifications to perform the work. Contractor, Contractor Party, and any other individuals performing the work are not eligible or entitled to Corporation's employee benefit plans, policies or programs that are now or in the future be in effect including any pension, retirement, 403 (b) or 457 plan; any life or health insurance plan; any vacation or holiday plan.

SECTION 5. INDEMNIFICATION; INSURANCE

5.1 Indemnification. Contractor shall indemnify, hold harmless and defend the Corporation, the City of San Diego, and the San Diego Unified Port District and their respective members, officers, directors, agents and employees from and against any and all liabilities, obligations, damages, costs, losses, and expenses (including reasonable attorney's fees) as a result of any and all claims, demands, actions or judgments of every nature whatsoever in favor of any person on account of personal injury or death, or damages to party incident to or resulting directly or indirectly from Contractor's performance of this Contract or the SOW, and any transactions arising out of or related to this Contract. The effect and application of this indemnification provision shall survive the termination or expiration of this Contract.

5.2 Provided by Contractor. Contractor shall, at its sole cost and expense, procure and maintain, throughout the term of this Contract, the insurance set forth herein. All insurance policies shall be issued by an insurance company authorized by law to conduct business in the State of California, subject to Corporation's approval. Prior to commencing performance of this Contract, Contractor shall provide Corporation original insurance certificates evidencing the required coverage.

- (1) Commercial General Liability Policy with coverages as broad and as encompassing as the Commercial General Liability in the occurrence form, and providing coverage against claims for bodily injury or death and property damage occurring in or upon the Center, and arising out of Contractor's and its employees', subcontractors', agents' and authorized representatives' performance of this Contract. Such insurance shall be primary and non-contributory with any other coverage, including Corporation's, and shall afford immediate defense and indemnification of Corporation, the City of San Diego, and the San Diego Unified Port District to the limit of not less than TWO MILLION DOLLARS (\$2,000,000). Such insurance shall waive any right of subrogation against Corporation;
- (2) Employer's Liability insurance with the following limits:

Bodily Injury by Accident	\$2,000,000 each accident.
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Bodily Injury by Disease	\$2,000,000 policy limit.
Bodily Injury by Disease	\$2,000,000 each employee.

- (3) Commercial Automobile Liability, or Business Auto coverage with limits not less than ONE MILLION DOLLARS (\$1,000,000.00) for each occurrence, combined single limit for bodily injury or death and property damage, covering owned, non-owned and hired automobiles, including loading and unloading operations;

The Commercial General Liability and Commercial Automobile Liability insurance policies described above must include the following additional insured endorsement language:

San Diego Convention Center Corporation, Inc., City of San Diego, San Diego Unified Port District, and the members, officers, directors, agents and employees of each of these three entities are named as additional insured.

- (4) Special Form (All-Risks) as applicable, coverage, providing one-hundred percent (100%) replacement value, covering loss or damage to all equipment owned by Corporation and used by Contractor to perform the SOW. The deductible or self-insured retention for the Special Form insurance shall not exceed FIVE THOUSAND DOLLARS (\$5,000.00) per occurrence;
- (5) Workers' Compensation insurance as required by the laws of the State of California.

The cancellation clause for all the above policies and certificate(s) shall read as follows:

Should this policy be canceled before the expiration date thereof, the issuing company will mail sixty days written notice to the certificate holder named herein.

Consultant and Corporation agree that the specified coverage or limits of insurance in no way limits the liability of Consultant. Consultant shall maintain with respect to each such policy or agreement evidence of such insurance coverage and endorsements as required by this Section.

SECTION 6. CONTRACTOR'S DEFAULT; CORPORATION'S RIGHT TO SUSPEND WORK AND RIGHT TO TERMINATE FOR CAUSE

6.1 Defaults by Contractor. Contractor shall be in default if it:

- (1) Provides defective materials or workmanship or fails to perform the SOW in accordance with the terms of this Contract;
- (2) Fails to perform the SOW in compliance with the provisions of this Contract;
- (3) Disregards or violates any applicable laws or regulations; or,
- (4) Declares bankruptcy, becomes insolvent, assigns its assets for the benefit of its creditors, or is unable to pay debts as they become due.
- (5) Contractor's directors or shareholders take action to dissolve or liquidate Contractor

6.2 Notice of Default: Cure of Default: Right to Suspend Work. Corporation shall give Contractor a written Notice of Default specifying the nature of the default and providing a commercially reasonable time for Contractor to cure the default. If Corporation determines, in its sole discretion, that the nature of the default justifies it, Corporation shall have the right to direct Contractor to suspend further work on the SOW and performance of the SOW until the default is corrected and cured. Upon receiving the Notice of Default, Contractor shall immediately suspend the work except such operations as may be necessary to prevent damage to property and to secure the area so it meets safety, health, and environmental requirements. Contractor shall resume the work when Corporation serves Contractor with written notice lifting the suspension. Should work be terminated by the Corporation, Contractor reserves the right to receive payment for materials and parts acquired for the necessary completion of the scope of work for any part that is terminated after the issuing of a purchase order.

6.3 Termination for Cause: Corporation's Right to Complete Work at Contractor's Expense.

In the event Contractor fails to cure the default within the time allowed in the Notice of Default, Corporation shall have the right to terminate this Contract and Contractor's performance hereunder by issuing a written Notice of Termination, specifying the effective date of termination. Upon receipt of the Notice of Termination, Contractor shall:

- (1) Stop work immediately or as specified in the notice;
- (2) Place no further contracts for materials, work or equipment required for the SOW; and,
- (3) Terminate any subcontracts for work to be performed on, or work provided to, the SOW.

Within thirty (30) days of the termination date, Contractor shall submit to Corporation all documents relating to the SOW, all documents required by this Contract to be given to Corporation upon completion of the SOW, and a final billing statement for work provided through the termination date.

Corporation shall have the right to take immediate possession of the completed work and the work in progress, and have the unfinished work completed by whatever method or means the Corporation may select.

6.4 Corporation's Rights Preserved. The termination of this Contract and Contractor's performance pursuant to this Section shall not affect any rights or remedies Corporation may have against Contractor, then existing or which may thereafter accrue.

SECTION 7. TERMINATION FOR CORPORATION'S CONVENIENCE OR FUNDING

Corporation may terminate this Contract without cause if, in its sole discretion, it is convenient to do so for any reason. In the event Corporation determines to terminate the Contract pursuant to this Section, it shall give Contractor written Notice of Termination not less than ten (10) days prior to the effective date of termination. Upon receipt of such notice, Contractor shall place no further orders for material, labor or equipment for the SOW, and cease all work and terminate all subcontracts on or before the effective date of termination.

Within thirty (30) days of effective date of termination, Contractor shall submit to Corporation a final billing for all work provided through the date of termination. Corporation shall be liable only for the value of the work performed and actual costs incurred by Contractor through the termination date. Corporation shall not be liable to Contractor for lost profit or lost opportunity costs. By executing this Contract, Contractor waives any and all claims for damages that might otherwise arise from Corporation's termination under this Section

SECTION 8. OWNERSHIP OF DOCUMENTS; DESIGN AND/OR CONSTRUCTION DOCUMENTS

Any and all materials and documents, including but without limitation all drawings, designs, specifications, computations, technical data, design and construction documents, plans, investigations and reports, as well as all information and data retained on electronic or magnetic media, prepared by or for Contractor or obtained by Contractor in connection with the performance of the SOW, shall be the Corporation's property. The originals of all such materials and documents shall be delivered to Corporation upon its request. Contractor shall have the right, at its own expense, to make duplicate copies of such materials and documents for its own files, or other purposes as authorized in writing by Corporation.

Corporation acknowledges that design and construction documents are instruments of professional service. Nonetheless, design and/or construction documents prepared pursuant to this Contract shall become Corporation's property upon completion of the SOW and payment in all sums owed to Contractor. Corporation agrees, to the fullest extent permitted by law, to indemnify and hold Contractor harmless from any claim, liability or cost (including reasonable attorney's fees and defense costs) arising out of any unauthorized reuse or modification of the design and/or construction documents by Corporation or any person or entity acquiring such documents from or through Corporation with Contractor's written consent.

Except as necessary for the performance of work under this Contract, no copies, sketches, graphs or other materials prepared pursuant to this Contract shall be released by Contractor to any other person or agency without Corporation's prior written approval. All press releases shall be approved and distributed solely by Corporation, unless otherwise provided in writing by Corporation. After project completion, Contractor may list the project and general details in its promotional materials.

SECTION 9. LIENS

9.1 Payment for Subcontractors. Contractor shall apply payments received from Corporation first to the payment of laborers, subcontractors, suppliers, and others responsible for any work for which payments are made including funds to pay any obligations incurred by Contractor in connection to this SOW. Upon request from Corporation, Contractor shall provide evidence of nature and extent of obligations incurred by Contractor showing payments made by Contractor on account thereof. Contractor shall submit original copies of lien releases and waivers from Contractor and its subcontractors with the invoice or request for payment using the forms provided by California Civil Code sections 8132, 8134, or 8136 as applicable.

9.2 Contractor Lien Responsibility. Contractor agrees to keep Corporation, SOW, the Center, and any fund from which costs are to be paid free and clear of all liens, claims, or stop notices arising from performance of the SOW.

9.3 Notice of Non-Responsibility. Contractor shall have the right to post on Corporation property any notice or notices of non-responsibility per the mechanic's lien laws of the State of California. Upon Final Acceptance, Contractor shall (at Contractor's expense) submit a Notice of Completion to be recorded in the office of the Recorder of the County of San Diego in accordance with Section 3093 of the State Civil Code.

SECTION 10. LABOR

10.1 Employee Removal. Corporation, in its sole discretion, has the right to request Contractor to remove any employee, Contractor Party, or any Contractor Representative. Contractor shall promptly remove from service the indicated person(s) per Corporation request.

10.2 Key Personnel. Contractor shall provide advance notice to Corporation if any of the "key personnel" are to be removed or replaced during performance of the SOW.

SECTION 11. CONSTRUCTION METHODS

11.1 Contractor Performance. Contractor has sole control over construction methods, means, techniques, and procedures to perform the SOW in accordance with the terms of this Contract.

11.2 Contractor Equipment. Contractor agrees to furnish all scaffolding and equipment that is necessary to perform the SOW. Any damage caused by malfunctioning equipment shall be covered by Contractor at no additional cost.

SECTION 12. INTELLECTUAL PROPERTY

12.1 Claims. Contractor warrants that the work performed under the SOW will be free of any claims in connection with trade secret, trademark, service mark, trade name, copyright, patent infringement, or any other violations of intellectual property rights. If any claim is made, Contractor shall remove any such claim at its expense and either procure the right to use the work or product or replace or modify the product so they are not infringing or violating any intellectual property rights.

12.2 Company Intellectual Property. Corporation will retain ownership of any and all specifications, documentations, and other material provided by Corporation to Contractor in connection with the SOW. Any invention, drawing, method, technique, process, or discovery whether or not patentable/copyrightable that Contractor or Contractor Party may develop in course of performing the SOW, and any deliverable (including drawings, calculations, reports, and analysis) developed by Contractor and Contractor Party is required to be delivered to Corporation pursuant to the SOW, shall be owned by Corporation.

SECTION 13. GENERAL PROVISIONS

13.1 Independent Contractor Status: No Agency Relationship. Contractor is and shall remain an independent Contractor. Neither Contractor nor its agents or employees shall act as officers, agents, or employees of Corporation. Contractor has no authority to assume or create any commitment or obligation on behalf of Corporation, or to bind Corporation in any manner.

13.2 Force Majeure. The obligation of any party to perform any acts herein shall be suspended during the period such performance is prevented by acts of God; war; riot; invasion; fire; accident; strike or walkout; government interference, regulation, appropriation, or rationing; or by inability to secure goods because of the foregoing conditions. The obligation to perform shall resume immediately upon cessation of the force majeure condition(s).

13.2.1 If either Party is unable to perform its obligations under this Contract due to Force Majeure causes, the impacted party must provide written notice to the other party no later than five (5) days after the initial occurrence of the Force Majeure. The notice must include evidence sufficient to establish the event constitutes as Force Majeure and state the anticipated duration of the Force Majeure event. When the impacted party is able to resume performance of its obligations under this Contract, the impacted party shall provide notice to the other party stating such. The Corporation in its sole and absolute discretion has the right to determine if Contract's alleged Force Majeure event qualifies for any suspension of performance under this Section. If the impacted party is Contractor, Corporation may terminate, without any additional liability, the Contract if a Force Majeure event extends for more than thirty (30) consecutive days.

13.3 Notices. Any notice required by this Contract shall be deemed to have been sufficiently communicated when (1) personally delivered or (2) on the second (2nd) business day after mailing by overnight delivery, postage prepaid with confirmation of delivery:

to Corporation addressed:

President and Chief Executive Officer
San Diego Convention Center Corporation Inc.
111 West Harbor Drive
San Diego, California 92101-7899
(With copy to: Procurement Department)
E-mail: procurement@visitsandiego.com

or to Contractor addressed:

Contractor Business Name
Street Address
City/State/Zip
E-mail Address

13.4 Subordination. This Contract and the obligations of Corporation herein shall be subordinate to any ground and premises leases, and to obligations (including deeds of trusts, mortgages, bonds, and all instruments supplemental thereto), and all renewals, modifications, consolidations, replacements and extensions thereof, created or given by Corporation with respect to the Center. Contractor hereby covenants and agrees that it will at any time required by Corporation, during the term hereof and any extension or renewal, give and execute all further assurances as may be reasonably required to evidence and effectuate this subordination provision, to the holder or holders of any such leases or obligations.

13.5 Binding on Successors and Assigns. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto and each of their respective successors and assigns, subject to the limitations on assignment and subcontracting set forth herein below.

13.6 Assignment and Subcontracting. Contractor shall not assign or transfer any interest in this Contract, whether by assignment or novation, without the prior written consent of Corporation; and any purported assignment by Contractor, without prior written consent, shall be null and void and constitute a material breach.

Claims for money due or to become due to Contractor from Corporation under this Contract may be

assigned to a bank, trust company, or other financial institutions, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be promptly furnished to Corporation.

No performance required of Contractor herein may be subcontracted without Corporation's prior written approval, unless such subcontracting was included in Contractor's proposal. If this Contract contains a list of Contractor Parties approved by Corporation for the performance of some or all of the SOW, Contractor must obtain written consent from Corporation before retaining any subcontractor, supplier, or other entities other than those listed in this Contract. Corporation reserves the right to disapprove of any Contractor Party. "Contractor Party" means Contractor's agents, suppliers, subcontractors, and other entities whether they are employed directly or indirectly by Contractor to perform the SOW. In the event Corporation disapproves of a Contractor Party, Contractor shall promptly remove such subcontractor from the jobsite and find an appropriate replacement. Contractor is responsible for performance of the SOW whether performed by Contractor or Contractor Party.

13.7 Modifications and Amendments. No amendment or modification of this Contract shall be valid or binding unless made in writing and signed on behalf of each party by a duly authorized representative.

13.8 Singular, Plural, and Gender. As used herein, the singular shall include the plural and the masculine shall include the feminine or neuter.

13.9 Headings. All section and paragraph headings are for reference and convenience only and do not alter, amend, explain, interpret or otherwise affect the terms and conditions of this Contract.

13.10 Applicable Law. This Contract is made and entered into in the State of California and its interpretation and enforcement and the construction of its terms shall be governed by California law.

13.11 Attorneys' Fees. If legal action, including arbitration or action for declaratory relief, is brought by either party to interpret or enforce any provisions of this Contract, the prevailing party shall be entitled to an award of reasonable attorneys' fees and other costs incurred, the award of which may be determined in the same action or a separate action brought for that purpose.

13.12 Exhibits Incorporated. The following Exhibits are incorporated into the Contract by this reference:

- Exhibit A – Scope of Work
- Exhibit X – additional exhibits (as needed)

13.13 Entire Agreement. This Contract represents the sole and entire agreement between Corporation and Contractor, and supersedes all prior negotiations, representations, agreements, arrangements or understandings, either oral or written, between or among the parties hereto, relating to the subject matter of this Contract.

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

13.15 Disputes: Venue. If litigation is initiated to enforce or interpret any term of this Contract, the Parties agree that action will be brought in the Superior Court of the County of San Diego, California (or the U.S. District Court for the Southern District of California if federal courts have exclusive jurisdiction over the subject matter of the dispute).

- Signature Page to Follow -

IN WITNESS WHEREOF, the parties hereto have duly executed duplicate originals of this Contract.

Contractor Business Name

San Diego Convention Center Corporation, Inc.

By _____

By _____

Printed Name _____

Printed Name _____

Title _____

Title _____

Date _____

Date _____

EXHIBIT A – SCOPE OF WORK