

Exhibit A – Sample Contract

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

This Contract is entered into on **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 Name** with offices located at **Contractor 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 (the “Center”); and is in need of the professional services in the areas of **description of service** being held at the Center;

WHEREAS, Contractor is engaged in the business of providing services in this area and possesses the necessary qualifications to provide such services;

NOW THEREFORE, in consideration of the mutual covenants and conditions herein, it is mutually agreed by the Parties that Corporation does hereby retain Contractor on the following terms and conditions:

SECTION 1. SCOPE OF SERVICES

1.1 Employment of Contractor. Corporation hereby agrees to engage Contractor and Contractor hereby agrees to perform the services hereinafter set forth, in accordance with all terms and conditions contained herein. Contractor represents that all professional services required hereunder will be performed directly by Contractor, or under direct supervision of Contractor. Contractor shall provide **description of services** (“Services”) as described below.

1.2 Scope of Services. Contractor shall complete the scope of services (“Services”) as follows:

- **Insert RFP Scope and Addenda**

1.3 Change Orders. A change to the scope (“Change Order”) may be a request from either Corporation or Contractor. In the event Corporation determines to change the scope to either delete or add work to be performed by Contractor, Contractor shall prepare a written Change Order setting forth in detail the changes to the scope, the cost associated with the changes, the modifications to the project schedule from the changes, and the amount by which the not to exceed (NTE) 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.

1.3.1 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 project schedule, (b) Contractor’s proposed adjustment to the NTE; 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.

1.3.2 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 scope. Contractor waives all compensation for any change not authorized by both Parties in writing.

1.3.3 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.

1.3.4 Executed Work Change. Each executed Change Order 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.

1.3.5 No Suspension. Contractor shall not suspend any work pending resolution of a proposed Change Order unless directed by Corporation in writing.

SECTION 2. TERM

All Services required pursuant to this Contract shall commence on **start date** and shall continue until completion of Services on **end date**. Corporation may terminate this Contract for any reason by giving ten (10) days written notice to Contractor.

SECTION 3. FINANCIAL

3.1 Compensation. All Contractor employee rates have been agreed to by Contractor and Corporation for the Services. This Contract has a NTE cost of **xxxxxxx**. Corporation shall compensate Contractor as follows:

Insert Compensation Schedule

3.2 Payment Terms. Contractor is solely responsible for the compensation of its employees, and must pay each employee for all hours worked. Corporation agrees to remit the negotiated Service Rate for all hours worked, including California overtime bill rates for hours worked in excess of 8 hours in a workday. Contractor shall invoice Corporation at end of Event. Corporation shall remit payment to Contractor within thirty (30) days of receipt of approved invoices. The Contractor Service Rate includes all deductions required by state and federal legislation, including employer's contributions for FICA taxes, providing Unemployment and Workers' Compensation, liability insurance and fidelity bonding, as well as all other deductions and benefits paid to temporary employees. Additionally, Contractor covers all administrative charges related to employee payroll, including preparation of W-2 forms at the end of the year.

3.3 Method of Payment. Contractor shall submit itemized invoices to the San Diego Convention Center Corporation, Inc., Attn: Accounts Payable. Invoices shall (1) reference Contract number **XX-XXXX-E**; and (2) include a written description of work performed. Invoices approved by Corporation shall be paid per the terms of this Contract. Corporation shall promptly notify Contractor of any disputed or disallowed charges.

3.4 Billing Records. Contractor shall maintain full and complete records of the time spent providing the Services and receipts for all expenses billed to the Corporation. Such records shall be retained for not less than four years following expiration or termination of this Contract and provided to Corporation within five business days following a written request.

At any time during normal business hours and as often as may be deemed necessary, Contractor shall make available to a representative of Corporation for examination all of its records with respect to the Services and shall permit Corporation to audit, examine and/or reproduce such records subject to Corporation's agreement to reasonable confidentiality restrictions. Contractor shall retain such financial and program service records for at least four years after termination or final payment under this Contract.

3.5 Payment of Taxes and Fees. Contractor shall promptly pay all license fees, possessory use taxes, personal property taxes, and retail sales taxes assessed on its Services or products provided in connection with its Services, including but not limited to federal, state and local taxes, workers compensation payments, unemployment insurance, payroll taxes and any and all other taxes or fees incurred as a result of Services provided under this Contract. Contractor understands that certain taxes may be assessed for its use of Corporation's Facilities to generate revenue from providing the Services to third parties ("Possessory Interest Tax"). Contractor shall be solely responsible for prompt payment of any and all applicable taxes, including real property, personal property, and Possessory Interest or other use tax assessed or levied on Contractor's interest in this Contract or Contractor's personal property.

3.6 Living Wage. Contractor shall comply with the City of San Diego Living Wage Ordinance (San Diego Municipal Code Article 2, Division 42, §§22.4201 through 22.4245), unless granted an exemption by the City's Purchasing Agent. Contractor shall also permit Corporation access to the Contractor's (a) worksite and (b) payroll records, upon the Corporation's request and at any time during the Contractor's business or operation hours, to allow the Corporation to audit and confirm the Contractor's compliance with the Living Wage Ordinance. Contractor shall also ensure that the requirements of this Paragraph 3.6 are incorporated into its agreements with any of its subcontractors engaged to work on Corporation matters, and shall provide the Corporation with documentation confirming that any such subcontractors have agreed to be bound by these requirements. Failure to comply with the Living Wage Ordinance, or with the terms of this Paragraph 3.6, and/or failure to promptly cure any noncompliance shall be grounds for termination of this Contract.

SECTION 4. GENERAL PERFORMANCE OBLIGATIONS OF CONTRACTOR

4.1 General Standards of Performance. The Services shall be provided in a manner that demonstrates the highest degree of customer service, quality control and professional collaboration. Contractor shall meet the performance requirements of Corporation and all users of its Services. The Services shall be delivered in a congenial and professional manner. Contractor shall not convey to any prospective Licensee, other provider of Services, or the public that use of Contractor Services is mandatory or a condition to using Corporation's Facilities. Contractor shall work with the Corporation in planning and coordinating event staffing and is expected to tie in their firm's emergency management plan with Corporation's plan.

4.2 Designated Representatives. The Parties' respective designated representatives shall be the day-to-day contact persons during the performance of the Services. Contractor's Designated Representative shall be **name/title/email/phone**. Corporation's Designated Representative shall be **name/title/email/phone**. All submittals required of Contractor shall be delivered to Corporation's Designated Representative.

4.3 Services to Corporation. Services required by Corporation shall be provided by Contractor in accordance with Section 1. Corporation shall provide timely communication regarding the scope of such Service requirements. Contractor understands and acknowledges that such Services may require additional on-site support and changes.

4.4 Administration of Personnel. Contractor shall assign sufficient employees and allocate sufficient staff hours to provide the Services required by this Contract. Compensation of personnel shall be Contractor's sole responsibility. Contractor shall have an operations representative available to contact whenever Services are being provided. Contractor shall exercise control over the conduct, demeanor and appearance of its employees, agents and representatives, and shall ensure they abide by all instructions, regulations and procedures established by Corporation. Contractor employees shall fully cooperate with those in authority on Corporation premises, when entering and exiting the Center, storing or removing materials and equipment, and performing work.

Contractor employees shall perform work in neat and clean uniforms provided by Corporation in accordance with Section 1.5, wear a name tag, present an alert, well-groomed and efficient appearance and be courteous at all times. Contractor employees shall exhibit good professional judgment, common sense, and shall uphold the highest professional standards in the course of performing their duties.

4.5 Building, Access, and Security. Contractor, its employees, agents, vendors, and invitees shall comply with Corporation's rules and regulations governing access to, and conduct in, Corporation's facilities. Contractor's employees shall access the Facilities through entrances designated by Corporation. Contractor shall require all personnel to sign in and sign out at a designated security point, when entering and leaving the Corporation facilities. All Contractor managers/supervisors shall be reachable via cell phone twenty-four hours a day, during Event.

4.6 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.

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

4.8 Drug Free Workplace Policy. Contractor shall advise all 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."

Contractor's employees must agree to the terms of this policy as a condition of employment in Corporation's Facilities and be advised that violations of this policy shall result in appropriate disciplinary action, up to and including termination.

SECTION 5. INDEMNIFICATION; INSURANCE

5.1 Indemnification. Contractor shall indemnify, hold harmless and defend the Corporation, City of San Diego, San Diego Unified Port District, and their respective members, officers, directors, agents and employees from and against any and all claims, suits, damages, actions, costs, and expenses (including reasonable attorney's fees) arising out of or connected with, whether directly or indirectly, Contractor's performance of the Services for this Contract by Contractor and/or its employees, agents, Contractors, or subcontractors, unless the claim or suit arises out of the sole negligence or willful misconduct of the parties to be indemnified, their employees or agents. The effect and application of this indemnification provision shall survive the termination or expiration of this Contract and shall not be limited to the insurance provisions of this Contract.

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

1. Commercial General Liability Policy with coverage 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 or resulting from the use or occupancy of the Center, or arising out of Contractor's and its employees', subContractors', agents' authorized representatives' performance of this Contract. Such insurance shall be primary and non-contributory with any other coverage, including Corporation's and such insurance shall afford immediate defense and indemnification of Corporation, City of San Diego and San Diego, San Diego Unified Port District to the limit of not less than TWO MILLION DOLLARS (\$2,000,000.00) and similar aggregate limit.

2. Employer's Liability insurance with the following limits:

Bodily Injury by Accident-	\$2,000,000.00 each accident
Bodily Injury by Disease -	\$2,000,000.00 policy limit
Bodily Injury by Disease -	\$2,000,000.00 each employee

3. Commercial Automobile Liability, or Business Auto coverage with limits not less than TWO MILLION DOLLARS (\$2,000,000.00) for each occurrence, combines single limit for bodily injury or death and property damage, covering owned, non-owned and hired automobiles, including loading and unloading operations;

4. Professional Liability. Contractor shall also maintain Professional Liability (errors and omissions) coverage with a limit of \$1,000,000 per claim and \$2,000,000 annual aggregate. The Contractor shall ensure both that (1) the policy retroactive date is on or before the date of commencement of the Services; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Services or termination of this Contract whichever occurs last. The Contractor agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the Corporation's exposure to loss. All defense costs shall be outside the limits of the policy.

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.

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.

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

SECTION 6. GENERAL PROVISIONS

6.1 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. Neither Contractor nor Contractor's employees shall in any event be entitled to any benefits to which Corporation employees are entitled, including, but not limited to, overtime, any retirement benefits, workers' compensation benefits, any injury leave or other leave benefits, Contractor being solely responsible for all such matters, as well as compliance with social security and income tax withholding and all other regulations and laws governing such matters.

6.2 Force Majeure. The performance obligations of either party 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 materials required for the Services because of the foregoing conditions. The obligation to perform shall resume immediately upon cessation of the force majeure condition(s).

6.3 Notices. Notices required by this Contract shall be deemed to have been communicated when either: (1) personally delivered; or (2) on the second (2nd) business day after mailing by overnight delivery, postage prepaid, and addressed:

to Corporation:

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

or to Contractor addressed:

Contact name & title
Contractor Name
Street address
City/State/Zip

In addition to providing any Notice under this Contract through one of the two above-described methods, on the same day that Notice is provided the noticing Party shall also email the Notice to the other Party's representative identified in Section 4.2.

6.4 Subordination. This Contract and Corporation's obligations herein shall be subordinate to any ground and premises leases, and to all obligations created or given by Corporation with respect to the Facilities. Contractor hereby covenants and agrees that it will, at any time required by Corporation, give and execute all further assurances as may be reasonably required to evidence and effectuate this subordination provision.

6.5 Binding on Successors and Assigns. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6.6 Assignment and Subcontracting. Notwithstanding the foregoing, Contractor shall not assign its performance obligations in this Contract, whether by assignment or novation, without the prior written consent of Corporation, and any purported assignment, without prior written consent, shall be void and a material breach. Claims for money due or to become due to Contractor 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.

6.7 Modifications and Amendments. This Contract cannot be amended or modified unless made in writing and signed by both parties.

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

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

6.10 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.

6.11 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.

6.12 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.

6.13 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.

IN WITNESS WHEREOF, the parties hereto have duly executed duplicate originals of this Contract effective the date set forth on the first page hereof.

Contractor Name

San Diego Convention Center Corporation, Inc.

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____