

CONTRACT
for
WASTE REMOVAL, RECYCLING AND DISPOSAL SERVICES
between
SAN DIEGO CONVENTION CENTER CORPORATION, INC.
and
ENTER CONTRACTOR NAME
CONTRACT NO. XX-XXXX-E

This Contract ("Contract") is entered into effective xxxxxxxxxxxxxx ("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 Enter Contractor Name with primary offices located at Enter 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 located at 111 West Harbor Drive, San Diego, California ("Center") and,

WHEREAS, Corporation issued RFP No. 26-1066 to obtain the services of a qualified firm to provide waste removal, recycling and disposal services;

WHEREAS, Contractor responded to the RFP and is qualified to provide such services;

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

SECTION 1. SCOPE OF SERVICES

1.1 GENERAL: Contractor shall provide all necessary labor, supervision, equipment, transportation, insurance, and incidentals required for the proper operation, removal and disposal of waste materials ("Services") from the Center. Contractor shall ensure the Services are performed in a clean, safe and timely manner. All Services shall be performed as described herein and in accordance with industry standards.

1.2 CORPORATION EQUIPMENT: Corporation owns and has in place at the Center the following list of equipment. Contractor shall have the right to use the equipment in connection with providing the Services for Corporation.

Quantity	Equipment Description
1	(Packer #6)-Marathon RJ250SC 25-yard container/compactor with attached load hopper, detached hydraulic power pack and control panel (food compost).
7	(Packers #1, 2, 3, 4, 5, 7 & 8)-Marathon RJ250SC 30-yard containers/compactor with attached load hoppers with detached hydraulic power packs and control panels (compacted solid waste & mixed recyclables).
6	Toter-Universal lifters with control panels.
2	Toter Model 3063 portable battery powered lifters.

1.3 Maintenance of Equipment. Contractor shall inspect overall conditions of compactors, hydraulic power packs, and lifts on a bi-annual basis, as recommended by the manufacturer, including but not limited to: Inspect hydraulic lines and hoses for excessive wear, inspect door seals, lubricate ram guide tracks, inspect ram guide shoes, inspect and lubricate hinges and locks, check hydraulic pressure systems and relief valves, check hydraulic oil levels in the power pack, check for hydraulic leaks, inspect pressure switches and gauges, inspect lift hardware and lift mechanical systems, and lubricate lift mechanism. Contractor shall provide a report for each piece of equipment. Contractor shall provide Corporation with a comprehensive maintenance report after completion of each bi-annual visit. The report shall contain the current status of equipment and recommended repair items for the equipment described in Section 1 – Scope of Services, Paragraph 1.2. Contractor shall provide an estimate after each inspection for the items needing repair or replacement. Contractor shall only use trained and qualified mechanics and skilled maintenance people under Contractor's direction. Corporation will respond to the report and make a determination for repair and or replacement of items as applicable. Contractor will exercise all reasonable care to maintain the solid waste equipment in a safe and proper condition. Maintenance activities shall be scheduled by Corporation's designated representative, contingent on event activity.

1.3.1 If required during an emergency, Contractor or designee shall provide repair services for Corporation owned equipment as described in Section 1.2. Contractor or designee will commence repairs on the equipment within forty-eight (48) hours at Contractor's out-of-scope repair rate and must be authorized by Corporation's Facility Director or his/her designee.

1.4 Cleaning and Upkeep of Equipment. Basic cleaning and upkeep of collection containers inside the Center will be the sole responsibility of Corporation. Contractor shall be solely responsible for cleaning, upkeep, and exchange of all collection containers in the Center dock area. Corporation will assist and cooperate with Contractor in carrying out Contractor's responsibility under this paragraph.

1.4.1 Contractor shall steam clean compaction units and clean the hydraulic ram chamber units as directed by Corporation to maintain a high level of sanitation. The steam cleaning shall include the hopper section, the seal areas of the container door, the exterior of the compactor, and the refuge compaction compartment. Contractor shall clean the hydraulic ram chamber units as directed by Corporation. The cleaning of the hydraulic ram chamber units shall consist of the opening of the front access doors, removal of all accumulated waste in the hydraulic chamber, followed by steam cleaning of the chamber.

Contractor shall complete cleaning services within seventy-two (72) hours. After completion of cleaning services for compaction units and hydraulic ram chamber units, the equipment must be free of dirt, dust, and trash. If Corporation receives equipment back not meeting Corporation's cleaning requirements, Contractor shall immediately re-service the equipment at no additional cost to Corporation.

1.5 Waste Removal. Corporation generates six (6) separate waste streams:

Waste Stream	Container
Compacted solid waste	Packers #'s 1, 2, 3, 4, 5,& 7
Compostable food	Packer #6
Wood pallets/clean wood	25-yard roll-off
Carpet & carpet pad	40-yard roll-off
Single stream recycling	Packer #8
Construction/exhibit or waste	40-yard roll-off

Contractor shall accept and transport all six (6) waste streams at all times during this Contract:

- Contractor shall deliver compacted solid waste to a permitted landfill and/or a permitted trash to energy incineration facility.
- Contractor shall divert compostable food from any landfill and deliver stream to a certified food composting facility.
- Contractor shall divert wood pallets and clean wood from any landfill and deliver stream to a composting and/or shredding/chipping green waste recycling facility.

- Contractor shall divert carpet and carpet pad from any landfill and deliver stream to a certified carpet/carpet pad recycling facility, or a Material Sorting & Recycling Facility (MRF) that accepts carpet and carpet pad.
- Contractor shall divert single stream recycling from any landfill and deliver stream to a permitted MRF. Single stream recycling stream is comprised of glass bottles, plastics #1-7, clean aluminum foil and pans, styrofoam containers, aseptic carton containers and steel/tin cans.
- Contractor shall divert construction/exhibit debris from any landfill and deliver stream to a permitted Construction, Demolition, and Inert (CDI) Recycling Facility. Bulk construction/exhibit debris consists of abandoned shipping containers, abandoned exhibit fixtures/structures and construction debris.
- Contractor shall deliver bulk waste to a permitted landfill. Bulk waste debris consists of large material which cannot be sent to a CDI Facility.

1.5.1 Contractor shall not exceed a maximum waste pickup and turnaround time of twenty-four (24) hours after receiving e-mail notification from Corporation with the exception as described in Section 1 – Scope of Services, Paragraph 1.5.2. Reasonable delays due to third party vehicle accidents causing significant traffic delays that prevent Contractor from meeting stated timeframe will be accepted by Corporation. The above-mentioned timeframe is not inclusive of the required periodic cleaning of the containers.

1.5.2 Corporation will occasionally host events with considerable amounts of waste generated. Contractor shall provide on-call or on-site driver(s) with tractor(s) to service the waste streams. Turnaround time shall be completed within four (4) hours after receiving e-mail notification during normal business hours of applicable Contractor, landfill, and recycling facility. Corporation shall coordinate with Contractor a minimum of thirty (30) days in advance of when this specialized service is required.

1.5.3 Contractor shall supply at its own expense the following to Corporation for on-site collection and depository of waste streams for the duration of this Contract: One (1) 40-yard open top roll-off container for construction/exhibit debris or bulk waste. One (1) 25-yard open top roll-off container for wood/pallets and clean wood. One (1) 40-yard open top roll-off container for carpet and carpet pad.

1.5.4 Contractor shall provide additional 40-yard open top roll-off containers to be placed on the loading dock, or in the exhibit halls for bulk construction/exhibit debris and/or carpet and carpet pad on an as needed basis. Contractor will provide the bins within one (1) day after being notified by Corporation. Corporation will attempt to notify Contractor well in advance of the one-day notice, but on occasion unforeseen circumstances are present where Corporation is unable to provide such notice (e.g. material being abandoned in the exhibit halls).

1.5.5 Corporation will occasionally host events in which the licensee requires that the event is zero waste. When these events occur, Contractor shall remove and deliver all compacted solid waste to a licensed and permitted trash to energy incineration facility. Corporation will notify Contractor a minimum of thirty (30) days in advance of such specialty hauling and disposal services.

1.6 Pickup, Handling, and Schedule. Contractor shall dispose of removed waste and recyclables in legally permitted and sanctioned landfills, trash to energy incineration, or recycling recovery center(s) chosen by Contractor. Contractor's removal and handling of any waste streams shall comply with all legally required standards and necessary safety precautions.

1.6.1 Contractor shall provide the Services on an on-call basis. Contractor shall be available to provide the Services on a daily basis, including holidays and weekends.

1.6.2 Corporation's available service hours are from 6:00 a.m. to 5:00 p.m. local time, or at times required by Corporation in emergency situations. Contractor shall provide services on holidays and weekends as requested by Corporation. Corporation shall provide Contractor with no less than two (2) weeks written notice when holiday work is required.

1.6.3 Where applicable, all Services performed by Contractor shall be carried out at times acceptable to Corporation and said Services shall be scheduled by Contractor according to the use of Corporation facilities so as to minimize interference to scheduled events. All of Contractor's schedules are subject to the final approval and/or change of Corporation. Contractor shall notify Corporation in advance of compactor and container pick-up.

1.6.4 In the event of labor relation problems between Contractor and another party or between Corporation and another party, Contractor shall be solely responsible for arranging for and carrying out the removal of critical waste from the Center.

1.6.5 Tonnage receipts from the landfill, trash to energy or recycling processing center(s) shall be included with monthly billing. Invoices will not be paid unless accompanied by receipts so that tonnage can be verified.

1.7 **Waste Audit Report.** Contractor shall perform a waste audit and provide a written report on up to three (3) selected compactors for Corporation annually.

1.8 **Monthly Service Report.** In Excel format, Contractor shall provide monthly service reports to Corporation. Monthly service reports shall include:

- Container ID and Container Type
- Disposal Site Name and Address
- Haul Date
- Arrival Time
- Waste Type
- Tonnage per Container or Compactor
- Total Tonnage for Month
- Ticket/Service Number
- Post Collection Site Name and Address

1.9 **Inspection and Supervision.** Contractor shall regularly supervise and inspect all pick up points established by Corporation at the Center to ensure full and complete compliance with Contract. Corporation may at any time require Center pick up points and equipment be inspected by Contractor and Corporation designee.

1.9.1 Should Corporation determine Contractor's standards of service and operation of equipment not be acceptable, Corporation may immediately demand Contractor to improve and/or correct the specified problem(s) detailed by Corporation. Contractor's failure to correct specified problem(s) in the manner and time detailed by Corporation shall be an immediate breach of contract by Contractor, and Corporation may immediately terminate, at its sole discretion, part or all of contract.

1.10 **Cooperation with Corporation.** In the ingress and egress of Contractor's employees, or when Contractor brings into, stores or removes materials and/or equipment in, Contractor shall comply with all requests, rules, policies, and demands of Corporation, and Contractor shall carry out any and all of the Services covered by contract in a manner and fashion completely satisfactory to Corporation. Contractor shall cooperate with all Corporation staff to prevent the entrance of those people whose entrance is forbidden, or undesirable. Contractor will observe all rules and regulations in force at the Center. Contractor will make best efforts to avoid or minimize bringing into Center unnecessary dust, mud, or accumulated debris as well as not interfering with the convenience, sanitation, or routine of the facilities. Contractor will make best efforts to prevent the loss of damage to person(s) and/or property at the facilities, and in all cases to the full satisfaction of Corporation, repair/replace any and all damage caused by Contractor or its officers, agents, employees, Contractors, guests, licensees, or invitees.

SECTION 2. TERM

This Contract shall be in effect for a period of three (3) years, commencing on **enter date** and terminating on **enter end date** ("Initial Term"). Corporation may seek to extend this Contract for two (2) additional one-year terms (each an "Extension Term") on the same terms and conditions herein, by giving written notice to Contractor no less than ninety (90) days prior to the expiration date of the then expiring term. The two additional option years will be extended at the escalation rates identified in the proposer's pricing proposal. Either Party may decline to confirm any Extension Term for any reason, and such declination would render the Contract terminated upon expiration of the current term, unless terminated sooner as provided herein.

SECTION 3. COMPENSATION AND PAYMENT

3.1 Compensation. Contractor shall be compensated according to the prices per service specified in **Exhibit X – Exhibit Name Here**. Contractor agrees these prices are inclusive of all fees and costs including labor, supervision, equipment, transportation, insurance, and incidentals required to perform the Services. Contractor guarantees performance of the Services within each unit price as specified in **Exhibit X – Exhibit Name Here** and understands that Corporation shall have no obligation or liability to compensate Contractor for any additional costs above the unit prices, except as provided herein.

3.2 Remedies For Non-Performance. In the event of deficiencies in performance, Corporation will provide Contractor with written notice of such deficiencies, which may include quality inspection reports prepared by Corporation personnel. These reports will be issued in a timely manner and, when possible, prior to the imposition of any liquidated damages. Corporation may impose the following remedies:

For any services not performed as scheduled, Corporation may deduct from Contractor's subsequent invoice an amount determined by Corporation, not to exceed \$250.00 per occurrence.

Repeated instances of non-performance, as determined at the sole discretion of Corporation, shall constitute grounds for contractor default notice. Corporation may terminate the contract without requiring Contractor's consent upon default notice to the Contractor, as described in Section 6.3.

3.3 Land Fill Fees. In the event the City of San Diego or the San Diego County Board of Supervisors significantly increases fees for the use of City or County solid waste disposal facilities, Contractor and Corporation will negotiate in good faith to revise the applicable pricing in **Exhibit X – Exhibit Name Here**. Contractor shall provide documentation of actual cost increases as justification to Corporation. Corporation is under no obligation to accept any proposed changes to this Contract. In the event Corporation and Contractor fail to reach a mutually agreeable amendment, Corporation may immediately terminate all or a portion of this Contract without penalty or further obligation.

3.4 Billing and Payment. Contractor shall submit invoices for payment after performing the Services. Such invoices shall (1) reference this contract number **xx-xxxx**, and (2) include a written description of the Services performed for the previous month, unit price, volume, and invoice total amount. In addition, tonnage receipts from the landfill or recycling center(s) shall be included with each monthly invoice. Invoices shall not be paid unless accompanied by receipts so that tonnage can be verified. Landfill or recycling receipts must show the location of Services (i.e. Convention Center Dock #). All payments are subject to Corporation's inspection and approval of the Services performed and the invoice amount. Contractor shall submit invoices with contract number to:

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

Corporation shall remit payment to Contractor within thirty (30) days of receipt of approved invoices.

3.5 Funding Contingency. Corporation's fiscal year is the period between July 1 of each calendar year and June 30 of the succeeding calendar year. Corporation's continued obligation to make payments under this Contract, beyond the current fiscal year, is contingent upon the availability of sufficient funding in each subsequent fiscal year(s).

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 Services, and all other matters which may in any way affect the Services.

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 **Contractor Representative Name, Title, Contact Information**. Corporation's Designated Representative shall be **Corporation's Representative Name, Title, Contact Information**. All submittals required of Contractor shall be delivered to Corporation's Designated Representative.

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 Services. Contractor shall, at its own expense, promptly cause any damage to be repaired and/or replace anything irreparably damaged.

4.4 Compliance with Laws. Contractor shall obtain from San Diego County Solid Waste Compliance Office all licenses and permits, including all necessary collector permits and transport permits, required by San Diego County to service the Center. Contractor is required to maintain a City of San Diego Business License. All such licenses and permits will be kept current throughout the Term of the Contract. Contractor shall immediately notify Corporation in writing of Contractor's inability to obtain or maintain such licenses or permits. Failure to do so may be grounds for immediate termination of contract by Corporation. Contractor shall be liable for any damages incurred by Corporation in seeking replacement services should Corporation deem it necessary to terminate contract due to Contractor's failure to obtain or maintain all required licenses and/or permits, or for Contractor's failure to comply with any local, state, or federal law, regulation, or rule.

4.5 Safety. Contractor agrees to protect its employees and be responsible under all circumstances for the performance of their services. 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.

4.6 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.

4.7 Building Access and Parking. Contractor shall be provided access to the Center in connection with performing the Services, including dock access for loading and unloading. Parking for 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.

4.8 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.

4.9 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.

4.10 Prevailing Wage Requirement. As applicable, Contractor acknowledges it is familiar with and shall comply with and shall require all of its subcontractors to comply with, current State of California Prevailing Wage law and requirements.

4.11 Living Wage. Consultant 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. Consultant shall also permit Corporation access to the Consultant's (a) worksite and (b) payroll records, upon the Corporation's request and at any time during the Consultant's business or operation hours, to allow the Corporation to audit and confirm the Consultant's compliance with the Living Wage Ordinance. Consultant shall also ensure that the requirements of this Paragraph 4.11 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 4.11, and/or failure to promptly cure any noncompliance shall be grounds for termination of this Contract.

4.12 Noise & Odor Control. Contractor understands and acknowledges that events and activities occurring in the Center will take precedence over the Services to be performed. Therefore, if the noise or odors caused by performance of the Services 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.

4.13 Setoff. All claims for money due or to become due from Corporation shall be subject to deduction or set off by Corporation by reason of any counterclaim arising out of this or any other transaction with Contractor.

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 Services, 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.
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 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;

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 Services. 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.

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. 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 Services in accordance with the terms of this Contract;
- (2) Fails to perform the Services 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.

6.2 Notice of Cure: Cure of Default: Right to Suspend Work. Corporation shall give Contractor a written Notice of Cure specifying the nature of the default and providing a commercially reasonable time for Contractor to cure. 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 Services and performance of the Services until the default is corrected and cured.

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 Cure, 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 Services; and,
- (3) Terminate any subcontracts for work to be performed on, or work provided to, the Services.

Within five (5) business days of the termination date, Contractor shall submit to Corporation all documents relating to the Services, all documents required by this Contract to be given to Corporation upon completion of the Services, and a final billing statement for work provided through the termination date.

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. Corporation's retention of payments due to Contractor shall not release Contractor from such liability.

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 or due to a lack of continued funding for the Services. 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 Services, and cease all work and terminate all subcontracts on or before the effective date of termination.

Within five (5) business 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.

SECTION 8. GENERAL PROVISIONS

8.1 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.

8.2 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).

8.3 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:

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

or to Contractor addressed:

enter contractor name
enter contractor address

8.4 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.

8.5 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.

8.6 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.

8.7 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.

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

8.9 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.

8.10 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.

8.11 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.

8.12 Exhibits Incorporated. The following exhibits are incorporated into the Contract by this reference;

- Exhibit X – Exhibit Name Here
- Exhibit X – Exhibit Name Here

8.13 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.

8.14 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.

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

Contractor

San Diego Convention Center Corporation, Inc.

By _____

By _____

Printed Name _____

Printed Name _____

Title _____

Title _____

Date _____

Date _____