

## GASLAMP PROMENADE MAINTENANCE AGREEMENT

This GASLAMP PROMENADE MAINTENANCE AGREEMENT ("Agreement") is dated as of June 30, 2023, between the Gaslamp Quarter Association, Inc. ("GQA") a California nonprofit mutual benefit corporation, and Commotion-Media, Inc. ("CMI"), a California corporation (collectively, the "Parties").

### RECITALS

- I. The GQA is a municipal Business Improvement District established to promote, market, and improve the historic San Diego Gaslamp Quarter (the "Gaslamp Quarter").
- II. CMI is in the business of providing staffing and contracted services.
- III. By and through that certain Maintenance and Operations Agreement between the City of San Diego (the "City") and the GQA (the "City Agreement") attached hereto as Exhibit "A", the GQA is charged with the administration of all contracts necessary for the maintenance and operation of the 5<sup>th</sup> Avenue Promenade, located on 5<sup>th</sup> Avenue between Broadway and K Street in the Gaslamp Quarter (the "Promenade").
- IV. By virtue of its obligations under the City Agreement, on May 19, 2023, the GQA released the Request for Proposal (the "Bollard RFP") attached hereto as Exhibit "B" seeking a subcontractor to maintain and operate the bollards blocking vehicular access to the Promenade and related matters.
- V. On June 2, 2023, CMI submitted a proposal (the "Proposal") in response to the Bollard RFP attached hereto as Exhibit "C", which was accepted by the GQA. The Parties enter into this Agreement to describe CMI's obligations in connection with the maintenance and operation of the Promenade in accordance with the City Agreement and the Bollard RFP.

NOW, THEREFORE, in consideration of the covenants, promises and representations and warranties set forth herein, and for other good and valuable consideration, intending to be legally bound hereby, the parties agree as follows:

### SECTION 1. OBLIGATIONS OF CMI

- 1.1 **Promenade Access Management and Oversight:** In consideration for the monthly Management Fee described in Section 3 of this Agreement, CMI hereby agrees to deliver the following services (the "Services") in connection with managing access to the Promenade:
  - (a) **Vehicular Access Control:** Every day throughout the term of this Agreement, CMI shall install and remove the bollards that block vehicular traffic at each Promenade entrance as follows:

- (i) **Pedestrian Traffic Hours:** CMI staff shall commence installing bollards to block vehicular traffic to the Promenade at 12:00 pm daily. Once installed, the bollards shall remain in place until 1:59 am, when vehicular access shall be restored by removing the bollards.
  - (ii) **Vehicular Traffic Hours:** CMI staff shall commence removing bollards to permit vehicular access to the Promenade at 2:00 am daily and place them in the racks as detailed in Section 1.1(c) until 12:00 pm.
  - (iii) **Exceptions:** It is understood and agreed that there will be occasional exceptions to the pedestrian and vehicular traffic hours referenced above as determined by the San Diego Police Department (SDPD) or the City's Special Events Office with a minimum of 60 days advance notice.
  - (iv) **Emergency Access:** CMI shall provide the SDPD and the San Diego Fire Department (SDFD) with additional bollard removal and storage keys to ensure access by each agency in the event of an emergency.
- (b) **Installation and Removal of Turn Restriction Signage:** CMI staff shall install and remove turn restriction signage to 5<sup>th</sup> Avenue each day in conjunction with the removal and replacement of the bollards.
- (c) **Storage and Inventory:** CMI shall ensure that bollards and other materials needed to manage access to the Promenade are securely stored in the nearby sidewalk rack installed by the City of San Diego. CMI shall also be responsible for replacing damaged, broken, or lost bollards and other materials in a timely manner to ensure that replacements are available. On no less than a weekly basis, CMI shall submit a written inventory report to the GQA, together with requests to replace damaged or missing items. The GQA will be responsible for providing requested replacements necessary to maintain bollards and other promenade access materials.

The GQA will provide CMI staff with the tools and equipment required to perform the Services referenced herein, including: (i) cordless electric drills with bits for removing bollards; (ii) weight belts for CMI staff responsible for removing the bollards; (iii) pouches for carrying nuts and locks; (iv) reflective vests; (v) custom carts for moving bollards to the storage racks; and (vi) such other tools and equipment as the parties may deem necessary, all of which shall remain the property of the GQA.

- 1.2 **Coordination with City Services:** CMI shall coordinate with City departments on the following matters and serve as the main point of contact for the Promenade in connection with the same:

- (a) **Transportation**: CMI shall coordinate with the Transportation Department on all matters pertaining to Promenade operations, including (without limitation), traffic control measures, sidewalk hazards, and other streetscape issues that impact the public right of way.
  - (b) **Police**: CMI shall coordinate with the SDPD to tow unauthorized vehicles parked in the Promenade in accordance with local ordinances, statutes, and regulations governing the towing of vehicles. The GQA shall assume all costs and responsibility associated with towing unauthorized vehicles and coordination with public safety departments.
  - (c) **Fire**: CMI shall coordinate with the SDFD and the SFPD to ensure rapid access to the Promenade in the event of an emergency, within a reasonable response time outside of normal bollard operational hours.
  - (d) **Special Events**: CMI shall coordinate with the City Office of Special Events and external event organizers to accommodate special events as event applications are received by the City and adjust Promenade vehicle and pedestrian access hours to accommodate permitted special events as needed.
  - (e) **Meetings**: On no less than a bi-monthly basis, CMI management personnel shall meet with GQA and City representatives to monitor and coordinate Promenade operations including special events, transportation, or public works projects that may impact the Promenade.
- 1.3 **Reporting**: During the course of providing the Services referenced in Section 1.1, CMI shall monitor the condition of the Promenade and report the following issues to the City:
- (a) **Graffiti**: All graffiti observed on private property is to be reported within 24 hours via the City's "Get it Done" application at <https://www.sandiego.gov/get-itdone>.
  - (b) **Lighting issues**: Non-functioning street lamps or damaged street light poles are to be immediately reported via the City's "Get it Done" application.
  - (c) **Sidewalk Safety Hazards**: CMI personnel shall report any observed sidewalk safety hazards immediately so they can be barricaded and repaired. For the purposes of this Agreement, "sidewalk safety hazard" includes, but is not limited to, cracked, raised, uneven, damaged, or unsafe sidewalks or curbs; damaged meter boxes; and damaged or unsafe street vaults and grates. Sidewalk safety hazards and other street related issues are to be reported by calling 619-527-7500.
  - (d) **Other issues**: Observed trash, loitering, improperly placed stickers, and similar issues impacting the Promenade are to be reported via the Clean & Safe application.

Criminal acts and aggressive loitering/panhandling issues are to be reported directly to the San Diego Police Department (SDPD).

**1.4 Additional Obligations:** At all times throughout the Term of this Agreement, CMI shall comply with the following obligations:

- (a) **Compliance with Applicable Laws:** While providing the Services referenced in this Agreement, CMI and all of its officers, directors, employees, and agents shall comply with City, county, state, and federal statutes, rules, ordinances, and regulations that may apply to the activity being conducted, together with all notices issued by the City under the authority of all current or future laws, statutes, ordinances, or regulations. CMI's legal compliance obligations include, but are not limited to, San Diego Municipal Code §22.3019, which requires compliance with California Labor Code sections 1720 through 1861 (State of California prevailing wage law) for construction work performed or funded pursuant to an Agreement cumulatively exceeding \$25,000.
- (b) **Insurance:** CMI shall procure and maintain throughout the Term of this Agreement any and all insurance that the GQA is required to obtain as set forth in the City Agreement, the Bollard RFP, and the Proposal. As required by the City Agreement, CMI shall ensure that it maintains those policies referenced therein as detailed in the Proposal. CMI further understands and agrees that the City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the GQA including materials, parts, or equipment furnished in connection with such work or operations.
- (c) **Staff:** Throughout the Term of this Agreement, CMI shall maintain and train such staff as may be required to provide the Services referenced herein as set forth in the Proposal and ensure that all employees are able to meet the requirements of their position.

  - (i) **Living Wage Ordinance:** CMI hereby acknowledges that this Agreement is subject to the City's Living Wage Ordinance (LWO) (Municipal Code §§ 22.4201 through 22.4245), which requires payment of minimum hourly wage rates and other benefits, which are subject to annual adjustment to reflect the Consumer Price Index. As required by the LWO, CMI shall complete and file a living wage certification with the City Manager within thirty (30) days following the execution this Agreement and shall at all times comply with the LWO and its applicable regulations and rules.
  - (ii) **Prevailing Wage Law:** Under San Diego Municipal Code §22.3019 ("PWO"), construction work performed or funded under this Agreement cumulatively exceeding \$25,000 and alteration, demolition, repair and maintenance work

performed or funded under this Agreement cumulatively exceeding \$15,000 is subject to the State of California prevailing wage law set forth in California Labor Code §§1720 through 1861 ("PWL") and in undertaking any and all such work, CMI shall comply with the PWL, including, but not limited to, the requirements set forth in Exhibit E to the City Agreement. This PWL compliance requirement is in addition to the LWO compliance requirement described above and in the City Agreement.

- (iii) **Dual Applicability:** If both the PWL and the LWO are applicable to the Services to be performed hereunder, CMI must determine which per diem rate is highest for each classification of work between the applicable prevailing wage rate and living wage rate and pay the higher of the two rates to its employees. The LWO may apply to work that is not subject to the PWL.

## **SECTION 2. SERVICE FEES**

- 2.1 **Monthly Service Fee:** In consideration for the Services to be provided by CMI, the GQA shall pay a monthly service fee (the "Service Fee") of \$31,240.00, which amount shall be due and payable on or before the first day of each month during the Term of this Agreement.

- (i) **Renegotiation:** The parties understand and agree that the Promenade project has not yet been fully completed, and that the Service Fee is therefore based on CMI's good faith estimate of staffing budgets. Therefore, in the event Service delivery exceeds estimated staffing costs, the Parties agree that the monthly Service Fee shall be subject to renegotiation, the end result of which shall be memorialized in an amendment to this Agreement.

- 2.2 **Additional Service Fees:** In the event CMI is requested to remove and reinstall bollards outside of the Pedestrian and Vehicle access hours described in Section 1.1(a) (i) and (ii) of this Agreement, the GQA shall pay the following additional fees:

- (i) Single Block Removal and Installation: \$300
- (ii) Two Block Removal and Installation: \$400
- (iii) Three Block Removal and Installation: \$500
- (iv) Four+ Block Removal and Installation: \$1,000

## **SECTION 3. TERM AND TERMINATION**

- 3.1 **Effective Period:** This Agreement shall become effective as of the date it is executed by both parties after Board approval (the "Effective Date") and shall remain in effect for five (5) years. In no event shall the term of this Agreement extend beyond June 30, 2028.

**3.2 Suspension of Payments.** If CMI fails to perform any of its obligations set forth in this Agreement, the GQA shall have the right to suspend payments due hereunder until such time as CMI is in compliance with the terms of this Agreement. If, as a result of CMI's failure to perform, the GQA elects to withhold payment, it shall give CMI written notice of its intention to withhold payment until CMI has cured its noncompliance. Such notice shall provide CMI with a description of the failure to perform that the GQA has based its suspension of reimbursement. Upon the performance by CMI of its obligations hereunder, the GQA shall resume the suspended payments. If the deficiency is not corrected to the satisfaction of the GQA within ten (10) calendar days, the GQA may terminate this Agreement for cause.

**3.3 Events of Default.** CMI's failure to satisfactorily perform any obligation required by this Agreement constitutes a default. Examples of default include a determination by the GQA that CMI has: (1) consistently failed to perform the Services described hereunder when and as they were required to be performed, or otherwise failed to perform such Services in a good and workmanlike manner. The GQA shall promptly give CMI written notice of the occurrence of the default and shall allow CMI ten (10) days to cure the default, or to submit a written plan of action to cure such a default. Failure to cure the default or timely submit the plan of action within the ten (10) day period, or failure to adhere to the plan of action, shall entitle the GQA to terminate this Agreement for cause. If the default may endanger the public's health and safety, CMI shall cure the default within twenty-four (24) hours of receipt of notice of the default. If CMI fails to fully and timely cure the default, then the GQA may, in its sole and absolute discretion, terminate this Agreement.

**3.4 Other Termination Rights.**

- (a) **Cancellation of City Agreement:** In the event the City Agreement is canceled by the City for any reason whatsoever, such cancellation shall have the effect of immediately terminating this Agreement.
- (b) **Bankruptcy or Assignment.** If CMI files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the GQA may at its option and without further notice to, or demand upon CMI, terminate this Agreement.
- (c) **Termination by CMI:** CMI may terminate this agreement for any reason after providing the GQA with ninety (90) calendar days written notice of its intent to terminate. CMI shall transmit to the GQA all books, records, data, equipment and other assets maintained by CMI in connection with the Services or provided by the GQA no later than ninety (90) calendar days of issuance of written notice of termination.

## **SECTION 4. WARRANTIES AND INDEMNIFICATION**

- 4.1 **CMI's Representations and Warranties:** CMI represents and warrants that: (i) it has the experience, ability, and resources to perform all Services and other obligations described in this Agreement; and (ii) it shall provide the Services in a timely, good, and workmanlike manner in accordance with industry standards.
- 4.2 **Indemnification:** CMI hereby agrees to indemnify and hold harmless the GQA, together with its directors, officers, members, agents, and employees, from and against any and all liabilities, damages, losses, expenses, claims, demands, suits, fines, or judgments (including, but not limited to, attorneys' fees, expert witness costs, court costs, and expenses) that may at any time be threatened against, suffered by, accrued against, charged to, or recoverable against the GQA in any forum, that stem from CMI's performance or non-performance of the Services and other obligations described in this Agreement.

## **SECTION 5. ADDITIONAL AGREEMENTS**

- 5.1 **Independent Contractor.** CMI is providing the Services as an independent contractor, and this Agreement does not create an employer/employee relationship, nor does this Agreement create a relationship of joint venturers, partners, associates, or any other relationship between the parties other than that of independent contractor. CMI shall be solely responsible for payment of all taxes as may be imposed on any income derived by CMI hereunder and for any and all other liabilities arising out of CMI's independent status. To the extent that the GQA pays any taxes or other sums on CMI's behalf for any reason, CMI shall promptly indemnify or reimburse the GQA for any and all such sums.
- 5.2 **Employees and Subcontractors.** CMI shall have the right to retain, and will be solely responsible for, its own employees, agents, and subcontractors; provided, however, that any such person retained by CMI to assist with the provision of Services hereunder must be compensated in accordance with the LMO and PWL as detailed in Section 1.4(c) and be held jointly and severally liable for any breach of the terms of this Agreement. All such persons will be retained by CMI at its own risk, expense, and supervision, and CMI shall have no right of compensation or reimbursement from or against GQA in connection with such retention in the absence of a prior written agreement between the parties.
- 5.3 **No Partnership or Joint Venture:** This Agreement is not intended to, and shall not for any reason, be deemed to create a partnership, joint venture, or similar relationship between the parties.

## **SECTION 6. GENERAL PROVISIONS**

- 6.1 **Notices:** Any notice or communication required under this Agreement to be made to either party shall be typewritten in English and shall be considered delivered when personally delivered, delivered by registered U.S. Mail or electronic mail with confirmed receipt, or overnight courier to the last known address of the party.
- 6.2 **Titles and Captions:** All article and section titles or captions in this Agreement are for convenience only. They shall not be deemed a part of this Agreement, and in no way define, limit, extend, or describe the scope or intent of any of its provisions.
- 6.3 **Binding Effect:** This Agreement shall be binding upon and inure to the benefit of the Parties and their successors, legal representatives, and permitted assigns.
- 6.4 **Entire Agreement:** This Agreement together with the attached exhibits, constitutes the entire agreement between the parties hereto, and supersedes all prior and contemporaneous agreements, arrangements, negotiations, and understandings between the parties hereto relating to the subject matter hereof. There are no other understandings, statements, promises or inducements between the parties, oral or otherwise, contrary to the terms of this Agreement. This Agreement may only be modified, amended, or supplemented pursuant to a written instrument executed by both parties hereto.
- 6.5 **No Waiver:** No waiver of any term, provision, or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute, a waiver of any other provision hereof, whether or not similar, nor shall any such waiver constitute a continuing waiver, and no waiver shall be binding unless executed by the party making such waiver.
- 6.6 **Assignment:** Except as specifically set forth in this Agreement, neither party shall sell, assign, license, franchise, sublicense, or otherwise transfer or convey all or any part of this Agreement or the rights or obligations created hereby, or the services provided hereunder to any third person or entity without the express written consent of the other party in advance.
- 6.7 **Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 6.8 **Invalidity of Provisions:** If any provisions of this Agreement is or becomes wholly or partly invalid, illegal, or unenforceable: the validity, legality, and enforceability of the remaining provisions shall continue in force unaffected, and the parties shall meet as soon as possible and negotiate in good faith upon a replacement provision that is legally valid and that as nearly as possible achieves the objectives of the Agreement




Accepted contract for the initial dates  
7/1/23-7/8/23. Agreement to be  
viewed by Commotion-Media, Inc  
attorney by 7/8/23.

**6.11 Further Documents:** The parties agree to execute such other documents as may be necessary to effectuate the purposes of this Agreement as set forth above.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized respective officers, as of the date first written above

**GASLAMP QUARTER ASSOCIATION, INC.**

**COMMOTION** 6/30/2023

By: 

By: 

Name: MICHAEL TRIMBLE  
Michael Trimble, Executive Director

Name: \_\_\_\_\_  
Kevin Flatt, CEO

Date: 6/30/23

Date: 6-30-2023

EXHIBIT "A"

CITY AGREEMENT

EXHIBIT "B"

BOLLARD RFP

EXHIBIT "C"

PROPOSAL

# COMMOTION-MEDIA, INC. RESPONSE TO RFP BY GQA FOR GASLAMP PROMENADE BOLLARD OPERATIONS

PRESENTED BY: COMMOTION-MEDIA, INC.

PREPARED BY: KEVIN FLATT CEO

DATE PRESENTED: 6/2/2023

Submission of this proposal signifies that all the terms, conditions, requirements, protest procedures, performance measures and instructions concerning the award of the Consulting Services RFQ-P to which this proposal responds, have been read and understood. Further, in signing this letter, as the authorized representative of the submitting firm, it is expressly agreed by the proposer that failure to have provided accurate and truthful information in this proposal or any deviation from any requirement or performance measure stated in the RFQ-P shall constitute grounds for rejection of this proposal. And further, proposer agrees that if the submitted proposal is not in the format of the RFQ-P, proposer's proposal will be deemed non responsive.

Commotion-Media, Inc. is pleased to present our proposal to be a GQA partner vendor in the Gaslamp Promenade for Bollard Operations and Maintenance. The company's management has over 30 years of experience in the Gaslamp Quarter and has witnessed the district go through many changes as the heart of downtown San Diego. Commotion Media is excited to be a part of the next chapter for the Gaslamp Quarter and the Gaslamp Promenade Project.

Scope of Work Commotion Media will perform.

1. Close the Promenade (Fifth Avenue between Broadway and K Street) to vehicular traffic by removing and replacing bollards that open and close the promenade to vehicular traffic based on the following operating hours.
  - a. No less than seven days a week between the hours of 12:00 PM and 2:00 AM, 365 days a year.
  - b. Bollards will be in place no earlier than 12:00 PM to 2:00 AM for the purposes of allowing pedestrian traffic only.
  - c. Bollards will be removed no later than 2:01 AM to 12:00 PM to allow vehicle access.
  - d. Install and remove turn restriction signage daily in conjunction with bollard installation and removal.
2. Exceptions to the operating hours that are determined by the San Diego Police Department or the City of San Diego's Special Events department with a minimum of 60 days advance notice. Commotion Media shall accommodate permitted special events as determined by the City of San Diego's Special Events department.
3. Commotion Media will provide access to agencies determined by the City of San Diego and GQA who require emergency access within reason. City of San Diego will be responsible to offer

emergency services access to bollards locks. Commotion Media will have emergency numbers to be utilized. Contact information will be given to all GQA member businesses/tenants. Commotion Media will be compensated if staff is required to remove and or reinstall bollards outside of normal bollard installation/removal hours.

4. Commotion Media will implement additional signage and barricades, approved/requested by SDPD, as needed, to ensure safe and accessible pedestrian access at all times.

Any sidewalk safety hazards observed in the course of providing services shall be barricaded immediately and repair order sent to designated City of San Diego Department. "Safety hazard" includes, but is not limited to, the following conditions: cracked, raised, uneven, damaged, or unsafe sidewalks or curbs; damaged meter boxes; and damaged or unsafe street vaults and grates.

#### Storage and Inventory of Materials:

1. Bollards will be securely stored and any other materials needed to operate the Promenade on the City-installed sidewalk rack as identified in the Site Plan.
2. Commotion Media will ensure there are always replacement bollards available. Commotion Media shall replace damaged, broken, or lost barricades in a timely manner and ensure there is always adequate inventory to maintain Promenade operations. Inventory issues will be reported on a weekly basis to the GQA with requests to replace any damaged or missing parts. GQA will be responsible for providing replacement parts required to maintain bollard program.

#### Transportation Maintenance Coordination:

- Commotion Media staff will coordinate with the Transportation Department on Promenade operations. This includes but is not limited to traffic control measures, sidewalk hazards, and other streetscape improvements that impact the public right of way:
  - a. Graffiti Control: All graffiti observed on private property will be reported for repair within twenty-four (24) hours via the City's Get It Done application at <https://www.sandiego.gov/get-itdone>.
  - b. Lighting Service: Street light lamps observed to be out or street light poles which have been damaged will be immediately reported via the City's Get It Done application at <https://www.sandiego.gov/getit-done>. For urgent street-related issues, dial 619- 527-750
  - c. Trash/Loitering/Stickers: Report using the Clean & Safe App. If issue with loitering is more aggressive Commotion Media staff will report to SDPD.

#### SDPD Coordination:

1. Commotion Media will coordinate with the San Diego Police Department and San Diego Fire Department to ensure there is adequate and rapid access to the Project in case of emergency within a reasonable response time outside of normal bollard operational hours. Addition of a lockbox on each block where universal key would be stored.
2. Commotion Media will Coordinate with SDPD to tow unauthorized vehicles. The GQA shall assume all costs and responsibility associated with towing unauthorized vehicles and coordination with public safety departments. Commotion Media will follow local ordinances, laws, rules, and regulations related to towing of vehicles.

Special Events Coordination:

1. Commotion Media will coordinate with the Office of Special Events and external event organizers to accommodate special events as event inquiries are received by the City of San Diego. Commotion Media shall accommodate special events that are permitted by the City of San Diego. For requests outside of normal bollard removal/installation hours, Commotion Media will invoice GQA.
2. Commotion Media will meet with the Gaslamp Quarter Association and the City of San Diego on a bi-monthly basis to monitor and coordinate Project operations including special events, transportation, or public works projects that may impact the Project.

Insurance:

1. Commotion Media will comply with all applicable laws, statutes, ordinances, and regulations of City, county, state, and federal governments in performing its work.
2. Commotion Media will obtain and maintain insurance Identifying both the City of San Diego and the GQA (and their officers, officials, employees and volunteers) as additional insureds. Commotion Media for the duration on the contract will maintain the following Insurance levels.
  - a. Commercial General Liability. Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
  - b. Commercial Automobile Liability. Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if GQA has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
  - c. Workers' Compensation. Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.

- d. Professional Liability (Errors and Omissions). For consultant contracts, insurance appropriate to Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

Other Insurance Provisions:

Commotion Media's insurance policy contains, or will be endorsed to contain, the following provisions:

1. Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).
2. Primary Coverage. For any claims related to this contract, Commotion Media insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.
3. Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.
4. Waiver of Subrogation. Commotion Media hereby grants to City a waiver of any right to subrogation which the Workers' Compensation insurer of said Commotion Media may acquire against City by virtue of the payment of any loss under such insurance. Commotion Media agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.
5. Claims Made Policies (applicable only to professional liability). The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work. Self-Insured Retentions.
6. Commotion Media understands that Self-insured retentions must be declared to and approved by City. The city may require Commotion Media to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.
7. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to the City. The city will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI



list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

8. **Verification of Coverage.** Commotion Media shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Commotion Media's obligation to provide them. Commotion Media understands that the city reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
9. **Special Risks or Circumstances.** Commotion Media understand the city reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurance, coverage, or other special circumstances.
10. **Additional Insurance.** Commotion Media may obtain additional insurance not required by this Contract.
11. **Excess Insurance.** All policies providing excess coverage to the City shall follow the form of the primary policy or policies including but not limited to all endorsements.

#### Living Wages:

1. Commotion Media will compensate all workers and or subcontract workers in accordance with the City of San Diego Living Wage Ordinance (LWO).
2. Living wage and operational cost to be reviewed and adjusted annually if agreed upon.

STATEMENT COPIED FROM RFP: This Agreement is subject to the City's Living Wage Ordinance (LWO), codified at San Diego Municipal Code sections 22.4201 through 22.4245. The LWO requires payment of minimum hourly wage rates and other benefits unless an exemption applies. San Diego Municipal Code section 22.4225 requires each Contractor to fill out and file a living wage certification with the City Manager within thirty (30) days of this Agreement. LWO wage and health benefit rates are adjusted annually in accordance with San Diego Municipal Code section 22.4220(b) to reflect the Consumer Price Index. Service contracts, financial assistance agreements, and City facilities agreements must include this upward adjustment of wage rates to covered employees on July 1 of each year. In addition, Contractor agrees to require all of its subcontractors subject to the LWO to comply with the LWO and all applicable regulations and rules.

#### Staff Proposal:

1. **Lead 1:** Position M-F available to respond 7 days a week during bollard operating hours. Regular meetings with GQA Director and Board. Weekly meetings with GQA Director to discuss Promenade footprint and entire Gaslamp Quarter Footprint.
2. **Lead 2 & 3:** Position M-F during Closing and Opening bollard process. Report on inventory daily and create daily report of any issues within Promenade footprint.

3. Staff 4-8: Position 7 days a week to install and remove bollards, report using various tools issues with trash/stickers/loiterers.

\*Artisan Market which occurs on Saturday and Sunday annually will be responsible for removing and reinstalling bollards during their operating hours. Commotion-Media, Inc. is not liable for the process of installing and or removing bollards for the Artisan Market.

#### COMMOTION MEDIA STAFF AND PREPERATION:

1. All staff members will be employees of Commotion Media.
2. Commotion Media staff will be trained and sign off on SOP's created in coordination with GQA for the installation and removal of Bollards.
  - a. All Commotion Media members will randomly be tested on their knowledge of the installation and removal of Bollards.
3. Lifting belts and reflective vests will be worn by all Commotion Media staff while working on the promenade bollard project. Absolutely no deviation will be allowed.

#### GQA PROVIDED TOOLS:

1. GQA will provide Commotion Media with tools to operate the Promenade Bollard Project.
  - Electric Drill with bits for removing Bollard nuts
  - Weight Belts for each staff member
  - Pouches for carrying nuts and locks
  - Reflective vests
  - Custom Cart for moving bollards between street and holding mounts

## COMPENSATION:

Compensation will be due on 1<sup>st</sup> day of every month for the duration of the contract term. Commotion-Media has right to request additional rate negotiation in the event the project is found to exceed the staffing currently budgeted. This is due to the fact that the project has not yet been installed completely, and contractor therefore lacks the ability to physically view the project in real time.

Total Contract compensation to Commotion Media Inc will be \$377,040.00 Annually.

Contract installment due dates:

07/01/23	\$31,420.00	01/01/24	\$31,420.00
08/01/23	\$31,420.00	02/01/24	\$31,420.00
09/01/23	\$31,420.00	03/01/24	\$31,420.00
10/01/23	\$31,420.00	04/01/24	\$31,420.00
11/01/23	\$31,420.00	05/01/24	\$31,420.00
12/01/23	\$31,420.00	06/01/24	\$31,420.00

Accessorial:

- In the event Commotion Media is requested to remove/reinstall bollards outside of normal bollard installation/removal operating hours, there will be an additional service fee as follows:
  - 1 block \$300.00 per Installation or Removal of Bollards
  - 2 block \$400.00 per Installation or Removal of Bollards
  - 3 block \$500.00 per Installation or Removal of Bollards
  - 4+ block \$1,000.00 per Installation or Removal of Bollards

This Agreement will be governed by and construed in accordance with the laws of the State of California without regard to conflict of law rules. Executed at San Diego, California, on the date and year first above written.

Commotion-Media, Inc.

By: Kevin Flatt, CEO



## PROPOSER/CONTRACTOR STATUS FORM

PAGE 1 OF 2

CONSULTANTS NAME: COMMOTION-MEDIA, INC. COUNTY: SAN DIEGO

ADDRESS: 656 5<sup>TH</sup> AVE FEDERAL ID: 93-1674833

CITY: SAN DIEGO STATE: CA ZIP: 92101

Status of contractor proposing to do business (please check one)

☐ INDIVIDUAL ☐ LIMITED PARTNERSHIP ☐ GENERAL ☐ PARTNERSHIP ☒ CORPORATION

INDIVIDUAL (Please check one) ☐ RESIDENT ☐ NON-RESIDENT

IF A SOLE PROPRIETOR, STATE THE TRUE NAME OF THE SOLE PROPRIETOR: (I.E., JOHN ROE SMITH; NOT J. ROE SMITH OR NOT JOHN R. SMITH) \_\_\_\_\_

PARTNERSHIP (PLEASE CHECK ONE)

☐ LIMITED PARTNERSHIP ☐ GENERAL PARTNERSHIP IF A PARTNERSHIP.

LIST EACH PARTNER IDENTIFYING WHETHER LIMITED PARTNER(S), STATING THEIR TRUE FULL NAME AND THEIR INTEREST IN THE PARTNERSHIP:

\_\_\_\_\_  
\_\_\_\_\_

CORPORATION PLACE AND DATE OF INCORPORATION: SAN DIEGO, CA 2/1/2023

IF NOT A CALIFORNIA CORPORATION IN GOOD STANDING, PLEASE STATE THE DATE THE CORPORATION WAS AUTHORIZED TO DO BUSINESS IN CALIFORNIA: \_\_\_\_\_.

CURRENT OFFICERS: PRESIDENT: KEVIN FLATT VICE PRESIDENT: \_\_\_\_\_

SECRETARY: \_\_\_\_\_ TREASURER: \_\_\_\_\_

OTHER OFFICERS: \_\_\_\_\_

ALL MUST ANSWER:

ARE YOU SUBJECT TO FEDERAL BACKUP WITHHOLDING? NO

## CONSULTANTS STATUS FORM


PAGE 2 OF 2

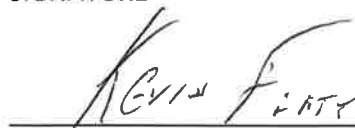
FICTITIOUS NAME

IF CONTRACTOR IS DOING BUSINESS UNDER A FICTITIOUS BUSINESS NAME AND WILL BE PERFORMING UNDER THE FICTITIOUS NAME, PLEASE ATTACH A CLEARLY LEGIBLE COPY OF THE CURRENT FICTITIOUS FILING.

WE RESERVE THE RIGHT TO VERIFY THE INFORMATION PROVIDED ON THIS FORM BY THE PROPOSER DURING THE RFQ PROCESS. BY SIGNING THIS FORM, YOU ARE AUTHORIZING THE RELEASE OF ANY AND ALL INFORMATION PERTAINING TO YOURSELF AND BUSINESS IN WHICH YOU PARTICIPATE OR HAVE PARTICIPATED, INCLUDING INFORMATION OF A CONFIDENTIAL OR PRIVILEGED NATURE IN THE POSSESSION OF GOVERNMENT OF PRIVATE AGENCIES OR INDIVIDUAL WHO FURNISH SUCH INFORMATION FROM LIABILITY FOR DAMAGES WHICH MAY RESULT FROM FURNISHING THE INFORMATION REQUESTED.

I DECLARE UNDER PENALTY OF PERJURY THAT THE ABOVE INFORMATION IS TRUE AND CORRECT AND THAT I AM AUTHORIZED TO SIGN THIS STATUS FORM ON BEHALF OF THE PROPOSER/CONTRACTOR.

  
\_\_\_\_\_  
SIGNATURE

  
\_\_\_\_\_  
PRINT NAME

IF THIS STATUS FORM IS NOT COMPLETELY FILLED OUT, SIGNED AND SUBMITTED WITH PROPOSER'S RESPONSE TO THE RFQ, THE BID WILL BE REJECTED AS NON-RESPONSIVE. ANY FALSE OR MISLEADING INFORMATION WILL CAUSE THE BID TO BE REJECTED AS NON-RESPONSIVE.

**AGREEMENT BETWEEN THE CITY OF SAN DIEGO  
AND GASLAMP QUARTER ASSOCIATION  
FOR THE MAINTENANCE AND OPERATION OF THE  
5TH AVENUE PROMENADE**

THIS MAINTENANCE AND OPERATIONS AGREEMENT (“Agreement”) is made as of \_\_\_\_\_, 2023 (“Effective Date”), and entered into by and between the City of San Diego, a municipal corporation (“City”), and Gaslamp Quarter Association, a non-profit corporation (“Contractor”).

**RECITALS**

The City is retaining the services of Contractor to administer all contracts necessary to provide maintenance activities of the 5th Avenue Promenade Project (“Project”) in the Downtown Community Parking District (“District”) and manage the day-to-day operations of the Project.

The boundaries of the Project are generally located from Fifth Avenue to Broadway Street to K Street within the Gaslamp Quarter neighborhood (“Property”).

The Project will close access to vehicles by installing bollards during specified hours to regulate, manage, and control vehicle parking and traffic within the Property, and to enhance mobility by facilitating the use of alternative forms of transportation that reduce parking demand within the Property.

The City Council annually approves the Community Parking District Plan and Budget report that includes a budget for the services to be provided within all community parking districts within the City of San Diego, including those administered by the Contractor for the applicable fiscal year (“District Plan and Budget”).

NOW, THEREFORE, for good and valuable consideration, City and Contractor agree as follows:

**ARTICLE I  
SCOPE OF SERVICES**

**1.1 Services**

- 1.1.1 Contractor shall operate the Project no less than seven days a week between the hours of 12 p.m. and 2 a.m., 365 days a year. The Contractor may seek to request a change to the operating hours, on a temporary or permanent basis. Any proposed change to the operating hours must be approved by the City in writing, and must fall within previously authorized closure hours and the established tow-away zone

hours. The City retains the right to approve or reject a request to change the operating hours in its sole discretion. Contractor acknowledges that any expansion of the closure for the slow street area must comply with applicable requirements of state law, including Vehicle Code section 21101(f) and any then existing slow streets program adopted by the City.

- 1.1.2 Contractor shall provide administration of all contracts necessary to provide the maintenance activities of the Project, manage the day-to-day operations of the Project, and prepare financial statements for the Project in accordance with Council Policy 100-18.
- 1.1.3 Contractor shall perform all duties as reasonable and necessary to accomplish the intent of this Agreement in a manner consistent with the proper expenditure of parking meter revenue consistent with Council Policy 100-18, and the standards outlined in this Agreement.

## **1.2 Specific Requirements**

- 1.2.1 Contractor, at a minimum, shall provide the maintenance activities and operations of the Project as described in the Scope of Services (Exhibit A) within the boundaries of the Property, consistent with Council Policy 100-18 and District Plan and Budget.
- 1.2.2 Contractor shall provide services for Project as described in this agreement. Any deviation from scope of services must be approved by City Designated Representative in writing.
- 1.2.3 Per the San Diego Municipal Code Ch. 2, Art. 2, Div. 1-21, known as the Special Events Ordinance, the Contractor shall coordinate with the Office of Special Events to accommodate permitted events that may take place within the Project.

Contractor shall correct any deficiency reported by City staff under section 6.1 of this Agreement within thirty (30) calendar days unless the deficiency is deemed to be an urgent request, at which point the item needs to be mitigated and resolution communicated to the City immediately.

- 1.2.4 Contractor shall be responsible for responding, in writing, to the City regarding Project maintenance or operational complaints received by the City and notify the City of any complaints received by Contractor.
- 1.2.5 Contractor shall conduct at least one (1) public meeting per calendar year which shall include the property owners, any applicable property owners' representatives, and City staff, to discuss the

budget, improvements, and activities for the following fiscal year. The Contractor agrees to coordinate with the Downtown Parking Management Group to conduct at least one (1) public noticed meeting per year.

- 1.2.6 Consistent with Council Policy 100-18, Contractor shall submit to the City a prospective annual report regarding Project operations and activities, including a line-item budget for the upcoming fiscal year. The proposed Project budget will be brought forward to City Council for consideration as part of the annual District Plan and Budget.
- 1.2.7 Contractor shall maintain separate books and records of costs associated with Contractor's responsibilities under this Agreement, which shall be available for audit at any time during normal business hours and as often as the City deems necessary. All records shall be made available within the City of San Diego, and the City shall be allowed to audit, examine, and make excerpts from such data pertaining to all matters covered by the Agreement. The Contractor shall maintain such books and records for a period of five (5) years following completion of the Agreement. The Contractor shall pay for the costs of any audit performed by or at the direction of the City.

## **ARTICLE II**

### **SERVICES PROVIDED BY THE CITY**

#### **2.1 Community Parking District Plan and Budget**

- 2.1.1 The City will review and consider the Contractor's proposed budget for the extraordinary maintenance activities and operations of the Project under Council Policy 100-18.
- 2.1.2 The City agrees to reimburse Contractor for the Project, subject to terms and conditions of this Agreement, Council Policy 100-18, and approval of the District Plan and Budget by City Council.

#### **2.2 Services**

- 2.2.1 The City reserves the right to deploy its public safety personnel in a manner which, in the City's sole discretion, best serves the needs of the public. Further, nothing in this Agreement shall be deemed to abrogate or waive the provisions of California Government Code section 845.



- 2.2.2 The City will review and coordinate the disbursement of CPD revenue through the annual District Plan and Budget process, consistent with Council Policy 100-18, to provide administrative services, assistance, and information to Contractor.
- 2.2.3 The City will provide signage for traffic control. The Contractor shall be responsible for installing and removing signage daily as detailed in Exhibit B.

### **ARTICLE III**

#### **CONTRACT ADMINISTRATION, ROLES, AND DUTIES**

**3.1 City's Contract Administrator**

City's Transportation Department is the contract administrator for purposes of this Agreement. Contractor shall communicate with City Staff from that department on all matters related to the administration of the Agreement and Contractor's performance of its obligations and duties. The following Mayor designee (City Representative) shall be the primary contact between the City and Contractor for purposes of this Agreement:

CITY OF SAN DIEGO  
Patrick Hadley, Deputy Director  
2781 Caminito Chollas  
San Diego, CA 92105  
(619)527-7504  
phadley@sandiego.gov

GASLAMP QUARTER ASSOCIATION  
Attn: Michael Trimble, Executive Director  
614 Fifth Avenue, Suite E  
San Diego, CA 92101  
619-233-5227  
michael@gaslamp.org

**3.2 Independent Contractor**

Contractor acknowledges, and shall ensure that each Subcontractor acknowledges, that they are an independent contractor and not an agent or employee of the City. Contractor shall administer the Project and may engage one or more contractors to provide routine maintenance and operation services listed within the District Plan

and Budget.

### **3.3 Contractor's Representatives**

- 3.3.1 Contractor agrees that a designated officer of Contractor (Contractor Representative) shall be the primary contact between Contractor and the City for the purposes of this Agreement. The Contractor Representative shall coordinate Contractor's activities for the Project and this Agreement. In order to simplify invoice processing, it is agreed by Contractor that the Contractor Representative shall act as billing agent for work provided by Contractor.
- 3.3.2 Contractor's management of the Project is of substantial concern and importance to the City, requiring coordination with City services. The quality of performance will reflect on the City and its management. Accordingly, the City requires Contractor to inform the City on a regular basis of any changes in Contractor staff that would impact this agreement and of the identity of its subcontractors and their areas of responsibility.
- 3.3.3 In addition to compliance with all applicable laws, rules, regulations, ordinances, resolutions, and policies of the federal, state, and local government as they pertain to this Agreement, Contractor shall comply with all directives issued by the City, through its Administrator, or other authorized representatives, under authority of any law, rule, ordinance, or regulation.

## **ARTICLE IV CONTRACTS AWARDED BY CONTRACTOR**

### **4.1 Conflict of Interest**

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

## **ARTICLE V**

## REIMBURSEMENT

### 5.1 Reimbursements

- 5.1.1 Contractor shall only be reimbursed for expenses approved by the City and this Agreement.
- 5.1.2 Contractor may seek reimbursement only for expenditures approved by the Contract Administrator and consistent with Council Policy 100-18, or any laws and regulations regarding additional City funding sources, provided that those expenditures are incurred by Contractor during the Term of this Agreement and are already paid for by Contractor.
  - 5.1.2.1 The City shall not make any payment to Contractor if Contractor is in default of any previous City Agreement.
  - 5.1.2.2 Expenses requested for reimbursement that are not supported with proper documentation shall be considered ineligible expenditures.
  - 5.1.2.3 Expenses requested for reimbursement that are ineligible under Council Policy 100-18 or this Agreement, shall be considered ineligible expenditures unless approved, in writing, by the City.
  - 5.1.2.4 This Agreement is for reimbursement purposes only.
  - 5.1.2.5 Request for reimbursement shall be submitted via email to [SUSTPayments@sanidiego.gov](mailto:SUSTPayments@sanidiego.gov).
- 5.1.3 Request for Reimbursement may be submitted during the Term, except that the final Request for Reimbursement must be submitted within seven (7) calendar days of the end of the City's fiscal year. An alternative reimbursement schedule may be utilized only after Contractor requests and receives written approval in advance from the Contract Administrator.
  - 5.1.3.1 The City reserves the right to temporarily withhold or adjust the final payment, subject to the City's

approval of the final performance report, all financial disclosures, and any audits required of Contractor under this Agreement. The City's approval will not be unreasonably withheld.

## **ARTICLE VI**

### **SUSPENSION AND TERMINATION**

#### **6.1 City's Right to Suspend Payment**

If Contractor fails to perform any of its obligations included in this Agreement, the City shall have the right to suspend final payment to Contractor under this section until such time as Contractor is in compliance with the terms of this Agreement. If, as a result of Contractor's failure to perform, the City elects to withhold payment, the City shall give Contractor written notice of its intention to withhold reimbursement until Contractor has cured its noncompliance. Such notice shall provide Contractor with a description of the failure to perform that City has based its suspension of reimbursement. Upon the performance by Contractor of its obligations under this Agreement, the City shall resume reimbursement included above. If the deficiency is not satisfactorily corrected within thirty (30) calendar days, the Mayor or designee may use such findings as the basis for termination of this Agreement for cause under section 6.2 of this Agreement and San Diego Municipal Code section 65.0218(n).

#### **6.2 City's Right To Terminate**

Contractor's failure to comply with any terms or conditions of this Agreement may result in termination of the Agreement.

6.2.1 City's Right To Terminate For Default. Contractor's failure to satisfactorily perform any obligation required by this Agreement constitutes a default. Examples of default include a determination by the City that Contractor has: (1) failed to perform the services of the Project and this Agreement; and (2) failed to make sufficient progress in performance which may jeopardize full performance. The City shall promptly give Contractor written notice of the occurrence of the default, and shall allow Contractor thirty (30) days to cure the default, or to submit a written plan of action to cure such a default. Failure to cure the default or timely submit the plan of action within the thirty day (30) period, or failure to adhere to the plan of action, shall entitle the City to terminate this Agreement for cause in accordance with San Diego Municipal Code section 65.0218(11). If the default may endanger the public's health and safety, Contractor shall cure the default within twenty-four (24) hours of receipt of notice of the default. If Contractor fails to fully and timely cure the default, then

the City may, in its sole and absolute discretion, terminate this Agreement.

6.2.2 City's Right to Terminate For Cause. City may, at its sole option and or its Cause, terminate all or any portion of this Agreement by giving thirty (90) @rdays' written notice of such termination to Contractor. The termination of the Agreement shall be effective upon receipt of the Notice by Contractor. After termination of all or any portion of the Agreement, Contractor shall: immediately discontinue all affected performance (unless the notice directs otherwise); and complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's affected performance under the Agreement. After filing of documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimate, summaries, and such other information and materials created or received by Contractor in performing this Agreement, whether completed or in process. By accepting payment for completion, filing and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Agreement with regard to the affected performance.

6.2.3 City's Right to Terminate for Bankruptcy or Assignment for the Benefit of Creditors. If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to, or demand upon Contractor, terminate this Contract, and terminate each and every right of Contractor, and any person claiming rights by and through Contractor under this Contract.

### **6.3 Remedies Cumulative**

City's remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which City may be lawfully entitled in case of any breach or threatened breach of any provision of this Contract.

### **6.4 Contractor's Right To Terminate.**

Contractor may terminate this agreement for any reason after providing ninety (90) calendar days written notice of its intent to terminate to the City. Contractor shall transmit to the City all funds, books, records, data, equipment and other assets of the Project no later than ninety (90) calendar days of issuance of written notice of termination.

**ARTICLE VII**  
**EFFECTIVE DATE AND TERM**

Upon the execution of this Agreement by the parties and approval of this Agreement by the City Attorney in accordance with Charter Section 40, this Agreement shall be effective for five (5) years from the Effective Date, unless terminated earlier under the terms of this Agreement. In no event shall the term of this Agreement extend beyond June 30, 2028.

**ARTICLE VIII**  
**DOCUMENTS, RECORDS, AND REPORTS**

**8.1     Ownership of Documents.** Once Project is complete and final reimbursement made to Contractor, all documents shall be the property of the City.

**8.2     Documents and Records**

8.2.1   At any time and as often as the City deems necessary, Contractor and all subcontractors shall make available to the City for auditing, examination and copying at reasonable locations within the City of San Diego all data and records relating to all matters covered by this Agreement. Contractor and all subcontractors will permit the City to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered in this Agreement.

8.2.2   Contractor and subcontractors shall maintain such data and records for a period of five (5) years following receipt of the final payment of this Agreement. With respect to receipts, invoices, checks, payroll statements, bank statements, and all other evidence of payments for which Contractor is reimbursed by the City under this Agreement, Contractor shall maintain such documentation at its principal place of business in the City of San Diego for the required period of time. With respect to all records covered by this section, if Contractor does not make them available within the City of San Diego, then Contractor shall pay all City's travel related costs to audit records associated with this Agreement where records are maintained. The Contractor shall pay for the costs of any audit performed by or at the direction of the City.

**ARTICLE IX**  
**ACCEPTABILITY OF WORK**

The City shall decide all questions that may arise as to the quality or acceptability of the services performed, the manner of performance, the interpretation of instructions to Contractor, the acceptable completion of this Agreement, and the amount of compensation due. In the event Contractor believes that any requirement of the City interferes with or affects the independence of Contractor, Contractor shall confer with the City in order to resolve any possible conflict. In the event Contractor and the City cannot agree as to the quality or acceptability of the work, the manner of performance and/or the compensation payable to Contractor in this Agreement, the City or Contractor shall give to the other written notice. Contractor and the City shall each prepare a written report no later than ten (10) calendar days supporting its position and file the same with the other party. The City shall, with reasonable diligence, determine the quality or acceptability of the work, the manner of performance, and/or the compensation payable to Contractor. This is not intended to be in any arbitration dispute between the parties of this Agreement.

## **ARTICLE X SUBCONTRACTORS**

### **10.1 Subcontractors Use**

For purposes of this Agreement, the term "Subcontractor" means any person or entity with which Contractor contracts for the performance of services or the supplying of materials that will be paid for in whole or in part with funds received by Contractor pursuant to this Agreement. All persons assigned to perform any work related to this Contract, including any subcontractors, are deemed to be employees of Contractor, and Contractor shall be directly responsible for their work.

### **10.2 Required Language for Subcontractors**

10.2.1 Contractor shall ensure that all subcontracts entered into in connection with this Agreement contain language which requires Subcontractors to always comply with all applicable laws, statutes, ordinances, and regulations of City, county, state, and federal governments. This includes having subcontractors identify the City as an additional insured. Subcontractor shall also comply with all notices issued by the City under the authority of all current or future laws, statutes, ordinances, or regulations.

10.2.2 Subcontractor shall obtain all insurance coverage required of Contractor in this Agreement. Subcontractor shall maintain, in full



force and effect, such insurance coverage during all work performed in connection with this Agreement. Subcontractor shall not begin work on a subcontract until all insurance required of the Subcontractor under this Section has been obtained.

10.2.3 If the City is made a party to any judicial or administrative proceeding to resolve the dispute between Contractor and Subcontractor, Contractor shall defend and indemnify the City as described herein.

## **ARTICLE XI INFORMAL DISPUTE RESOLUTION**

If Contractor and the City have any dispute as to their respective rights and obligations under this Agreement, or the meaning or interpretation of any provisions, they shall first attempt to resolve such disputes by informal discussion between their respective representatives. Within five (5) calendar days of determining the existence of any dispute, the party determining there is a dispute shall give written notice of the existence of the dispute and the need to meet informally to resolve the dispute. The parties shall endeavor to meet within five (5) days of the other party's receipt of such notice, or at reasonable time.

## **ARTICLE XII INDEMNIFICATION**

Contractor agrees to indemnify, defend, and hold the City free and harmless from and against any and all actions, suits, proceedings, liability, claims, demands, liens, or judgments for death of or injury to any person or damage to any property whatsoever alleged to be caused, or caused, by any act or omission of the Contractor or any officer, contractor, agent, or employee of the Contractor and all expenses of investigating and defending against same.

## **ARTICLE XIII INSURANCE**

### **13.1 Insurance**

13.1.1 Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors. Contractor shall



provide, at a minimum, the following:

- **Commercial General Liability.** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- **Commercial Automobile Liability.** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
- **Workers' Compensation.** Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
- **Professional Liability (Errors and Omissions).** For consultant contracts, insurance appropriate to Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

### **13.2 Other Insurance Provisions**

13.2.1 The insurance policies are to contain, or be endorsed to contain, the following provisions:

- **Additional Insured Status.** The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

- **Primary Coverage.** For any claims related to this contract, Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.
- **Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.
- **Waiver of Subrogation.** Contractor hereby grants to City a waiver of any right to subrogation which the Workers' Compensation insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
- **Claims Made Policies** (applicable only to professional liability). The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

13.2.2 **Self Insured Retentions.** Self-insured retentions must be declared to and approved by City. City may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

13.2.3 **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to City. City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

13.2.4 **Verification of Coverage.** Contractor shall furnish City with original

certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

13.2.5 **Special Risks or Circumstances.** City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

13.2.6 **Additional Insurance.** Contractor may obtain additional insurance not required by this Contract.

13.2.7 **Excess Insurance.** All policies providing excess coverage to City shall follow the form of the primary policy or policies including but not limited to all endorsements.

13.2.8 **Subcontractors.** Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as the CG 20 38 04 13 endorsement.

## **ARTICLE XV NOTICE**

Any and all Notices and communications required or permitted by this Agreement must be in writing and may be sent by (i) messenger for immediate personal delivery; (ii) nationally recognized delivery service guaranteeing overnight delivery (i.e., United Parcel Service, Federal Express, etc.); (iii) registered or certified United States mail, postage prepaid, return receipt requested, to the address of the recipient Party, as designated below or (iv) electronic transmission, including email (which shall be followed by a hard copy delivered in accordance with one of the preceding clauses (i) through (iii) or via regular U.S. mail, unless the hard copy is waived by reply email from a named recipient representing the recipient Party in response to a Notice email). To conserve resources and reduce administrative burden, the Parties intend to deliver Notices and communications via email, and to confirm via reply email that the delivery of a hard copy is waived, whenever feasible. Notice to the City shall be addressed:

CITY OF SAN DIEGO  
Patrick Hadley, Deputy Director

2781 Caminito Chollas  
San Diego, CA 92105  
(619)527-7504  
phadley@sandiego.gov

Notice to Contractor shall be addressed:

GASLAMP QUARTER ASSOCIATION  
Attn: Michael Trimble, Executive Director  
614 Fifth Avenue, Suite E  
San Diego, CA 92101  
619-233-5227  
[michael@gaslamp.org](mailto:michael@gaslamp.org)

## ARTICLE XVI WAGE REQUIREMENTS

- 16.1 Living Wages.** This Agreement is subject to the City's Living Wage Ordinance (LWO), codified at San Diego Municipal Code sections 22.4201 through 22.4245. The LWO requires payment of minimum hourly wage rates and other benefits unless an exemption applies. San Diego Municipal Code section 22.4225 requires each Contractor to fill out and file a living wage certification with the City Manager within thirty (30) days of this Agreement. LWO wage and health benefit rates are adjusted annually in accordance with San Diego Municipal Code section 22.4220(b) to reflect the Consumer Price Index. Service contracts, financial assistance agreements, and City facilities agreements must include this upward adjustment of wage rates to covered employees on July 1 of each year. In addition, Contractor agrees to require all of its subcontractors subject to the LWO to comply with the LWO and all applicable regulations and rules.
- 16.2 Prevailing Wages.** Contractor shall ensure that all subcontracts entered into in connection with this Agreement contain language requiring subcontractors to at all times comply with all applicable laws, statutes, ordinances, and regulations of City, county, state, and federal governments. Subcontractor shall also comply with all notices issued by the City under the authority of all current or future laws, statutes, ordinances, or regulations.

Contractor's and subcontractors' obligations to comply with all applicable laws in performing this Agreement include, but are not limited to, San Diego Municipal Code section 22.3019 requiring the Contractor and each subcontractor to comply with, and cause its subcontractors to comply with, California Labor Code sections 1720 through 1861 (State of California prevailing wage law) for construction work performed or funded pursuant to this Agreement cumulatively exceeding \$25,000 and for alteration, demolition,

repair and maintenance work performed or funded pursuant to this Agreement cumulatively exceeding \$15,000, as further described in Exhibit D attached to this Agreement.

Under San Diego Municipal Code section 22.3019 ("PWO"), construction work performed or funded under this Agreement cumulatively exceeding \$25,000 and alteration, demolition, repair and maintenance work performed or funded under this Agreement cumulatively exceeding \$15,000 is subject to the State of California prevailing wage law set forth in California Labor Code sections 1720 through 1861 ("Prevailing Wage Law") and in undertaking any and all such work, the Contractor and its subcontractors shall comply with Prevailing Wage Law, including, but not limited to, the requirements set forth in this Exhibit E. This requirement to comply with Prevailing Wage Law is in addition to any requirement to pay "living wage" under San Diego Municipal Code sections 22.4201 through 22.4245 ("LWO") and Section 14.4 of this Agreement.

- 16.3 Higher Wage Rate Applies.** If both Prevailing Wage Law and the LWO are applicable to particular work, the Contractor must determine which per diem rate is highest for each classification of work between the applicable prevailing wage rate and living wage rate and pay the higher of the two rates to their employees. The LWO may apply to work that is not subject to Prevailing Wage Law.

## **ARTICLE XVII**

### **MISCELLANEOUS PROVISIONS**

- 17.1 Integrated Agreement.** This Agreement, including Attachments and Exhibits, contains all of the agreements of the parties and all prior negotiations. This Agreement cannot be amended or modified except by written agreement and mutually agreed upon by the City and Contractor.
- 17.2. Attorneys' Fees.** If either party brings any action or proceeding to enforce, protect, or establish any right or remedy arising out of or based upon this Agreement, including, but not limited to, the recovery of damages for its breach, the prevailing party in the action or proceeding shall be entitled to recovery of its costs and reasonable attorneys' fees.
- 17.3 Political Activities.** Contractor shall not use, and require its subcontractors not to use, any of the funds, personnel, or materials received in connection with this Agreement, to influence, or attempt to influence, any governmental decision or election in any manner, whatsoever. This prohibition shall apply to any decision of any kind to be made by any electorate, legislative body, agency, bureau, board, commission, district, or any other instrument of federal, state, or local government. The term, "influence or attempt to influence," shall mean the making, with the intent to influence, any

communication to, or appearance before, any officer, employee, or appointee of any governmental entity, as well as any communication made to any electorate, regarding any ballot measure or candidate election.

- 17.4 Counterparts.** This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all parties have executed the same page.

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

Date: June 22, 2023

CONTRACTOR

BY: 

Name: MICHAEL TRIMBLE

Title: EXECUTIVE DIRECTOR

Date: June 27, 2023

THE CITY OF SAN DIEGO

BY: 

Name: Claudia C. Abarca

Title: Director, Purchasing & Contracting

APPROVED AS TO FORM:

MARA ELLIOTT, City Attorney

BY: 

Name: RYAN P. GERRITY

Title: DEPUTY CITY ATTORNEY



**EXHIBIT A**  
**SCOPE OF SERVICES**

- 1) The Contractor shall maintain and operate the 5<sup>th</sup> Ave Promenade Project, which is located on Fifth Avenue from Broadway to K Street in the Gaslamp Quarter neighborhood.
- 2) The Contractor shall:
  - (a) Promenade Operations and Maintenance:
    1. Close the Promenade to vehicular traffic by removing and replacing bollards that open and close the promenade to vehicular traffic based on the following operating hours. Exceptions may apply based on police department activity or special events:
      - No less than seven days a week between the hours of 12:00 PM and 2:00 AM, 365 days a year
      - Bollards will be in place no earlier than 12:00 PM to 2:00 AM for the purposes of allowing pedestrian traffic only.
      - Bollards will be removed no later than 2:01 AM to 12:00 PM to allow vehicle access.
      - The Contractor may request a change to the operating hours, on a temporary or permanent basis. Any proposed change to the operating hours must be approved by the City in writing, and must fall within previously authorized closure hours and the established tow-away zone hours. The City retains the right to approve or reject a request to change the operating hours in its sole discretion. Contractor acknowledges that any expansion of the closure for the slow street area must comply with applicable requirements of state law, including Vehicle Code section 21101(f) and any then existing slow streets program adopted by the City.
      - Install and remove turn restriction signage daily in conjunction with bollard installation and removal.
    2. Exceptions to the operating hours may be determined by the San Diego Police Department or the City of San Diego's Special Events department with a minimum of 60 days advance notice. The Contractor shall accommodate permitted special events as determined by the City of San



Diego's Special Events department.

3. Provide agencies, as determined by the City of San Diego (San Diego Police Department, San Diego Fire Department) additional keys to access the Project in case of emergency.
4. Implement additional signage and barricades, approved by SDPD, as needed, to ensure safe and accessible pedestrian access at all times.
5. Assume all costs and responsibility associated with the operations and maintenance.
6. Sidewalk Safety Hazards: For purposes of this Agreement, all sidewalk safety hazards which are observed in the course of providing services, as described in this Agreement shall be barricaded immediately and repaired. "safety hazard" includes, but is not limited to, the following conditions: cracked, raised, uneven, damaged, or unsafe sidewalks or curbs; damaged meter boxes; and damaged or unsafe street vaults and grates.
7. At the direction of the City's authorized contract administrator, provide for services that the City and the Contractor find reasonable and necessary from time to time to accomplish the intent of this Agreement.

(b) Storage and Inventory of Materials

1. Securely store bollards and any other materials needed to operate the Promenade on the City-installed sidewalk rack as identified in the Site Plan.
2. Ensure there are always replacement bollards available. The Contractor shall replace damaged, broken, or lost barricades in a timely manner and ensure there is always adequate inventory to maintain Promenade operations.
3. The Contractor shall assume all costs associated with storage, maintenance, and replacement of materials.

(c) Transportation Coordination

1. Coordinate with the Transportation Department on Promenade operations. This includes but is not limited to traffic control measures, sidewalk hazards, and other streetscape improvements that impact the public right of way:
  - Graffiti Control: All graffiti observed on private property shall be reported for repair within twenty-four (24) hours via the City's Get It Done application at

<https://www.sandiego.gov/get-it-done>.

- Lighting Service: Street light lamps observed to be out or street light poles which have been damaged shall be immediately reported for via the City's Get It Done application at <https://www.sandiego.gov/get-it-done>. For urgent street-related issues, dial 619-527-7500

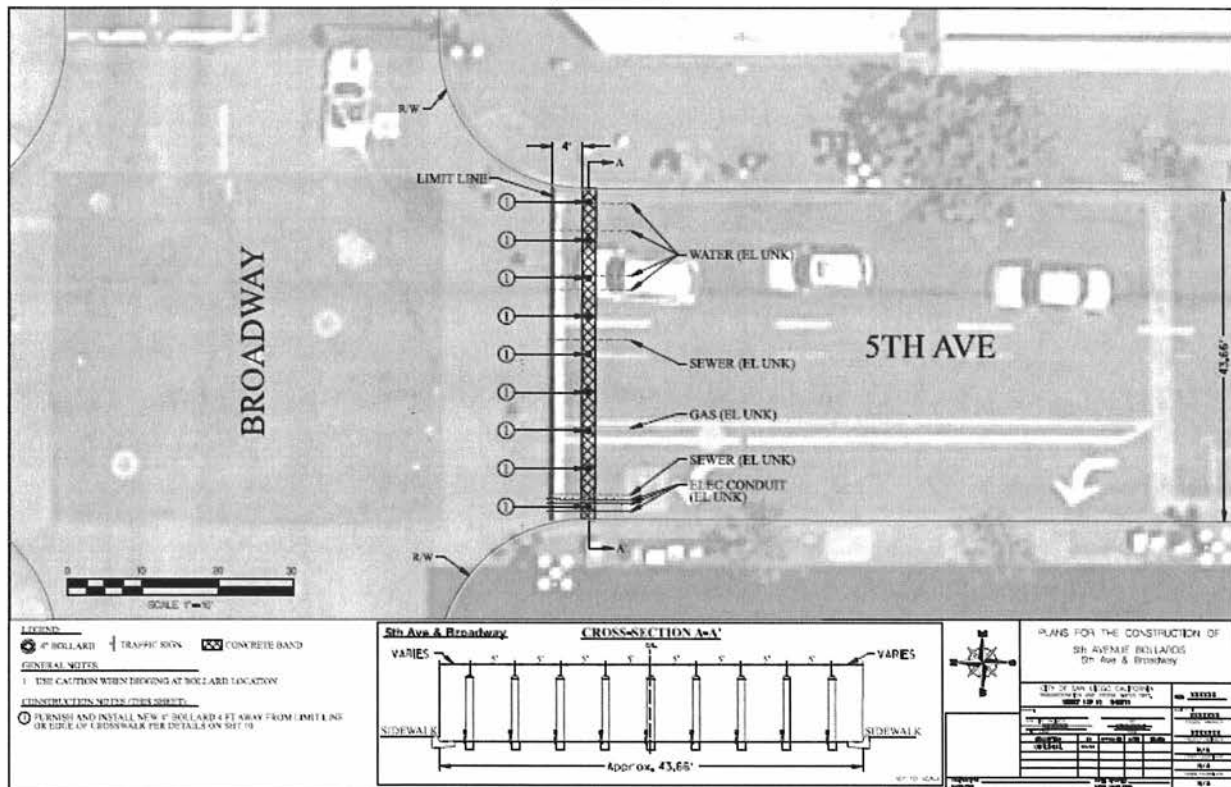
(d) SDPD Coordination:

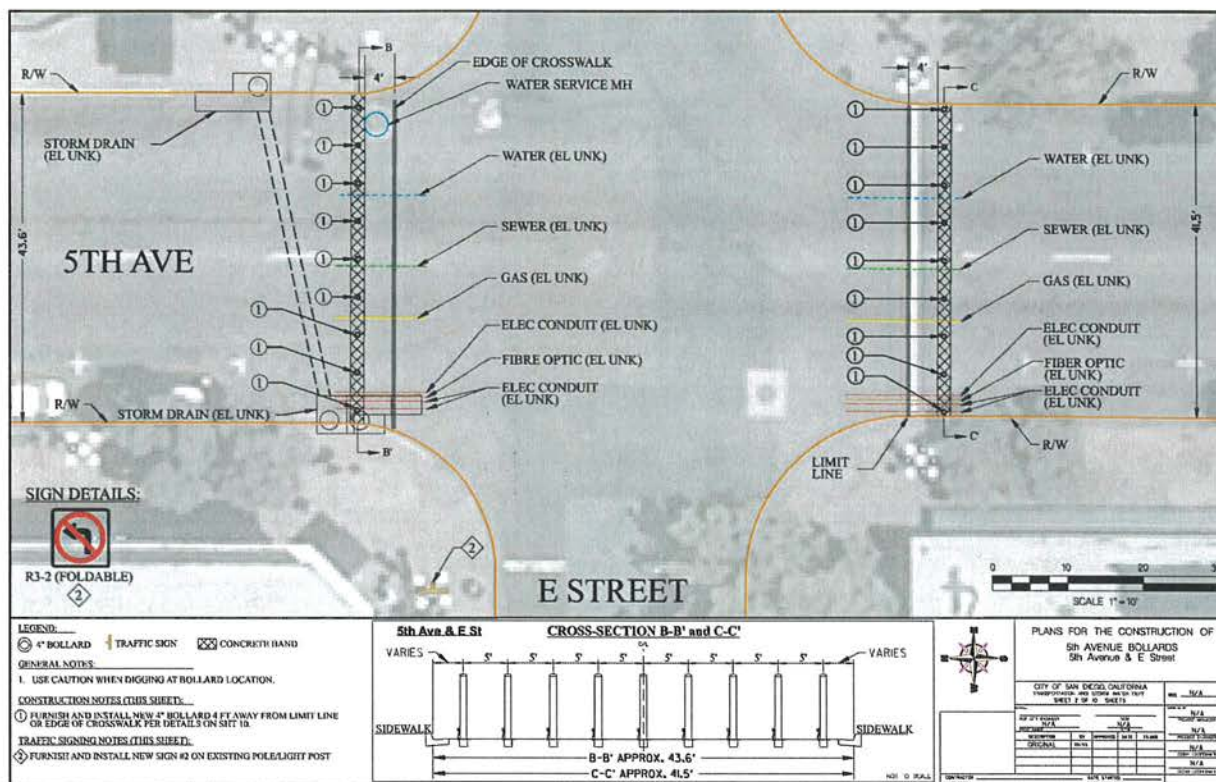
1. Coordinate with the San Diego Police Department and San Diego Fire Department to ensure there is adequate and rapid access to the Project in case of emergency.
2. Coordinate with SDPD to tow unauthorized vehicles. The Contractor shall assume all costs and responsibility associated with towing of unauthorized vehicles and coordination with public safety departments. The Contractor shall follow local ordinances, laws, rules and regulations related to towing of vehicles including entering into a Tow Authorization Agreement with SDPD.

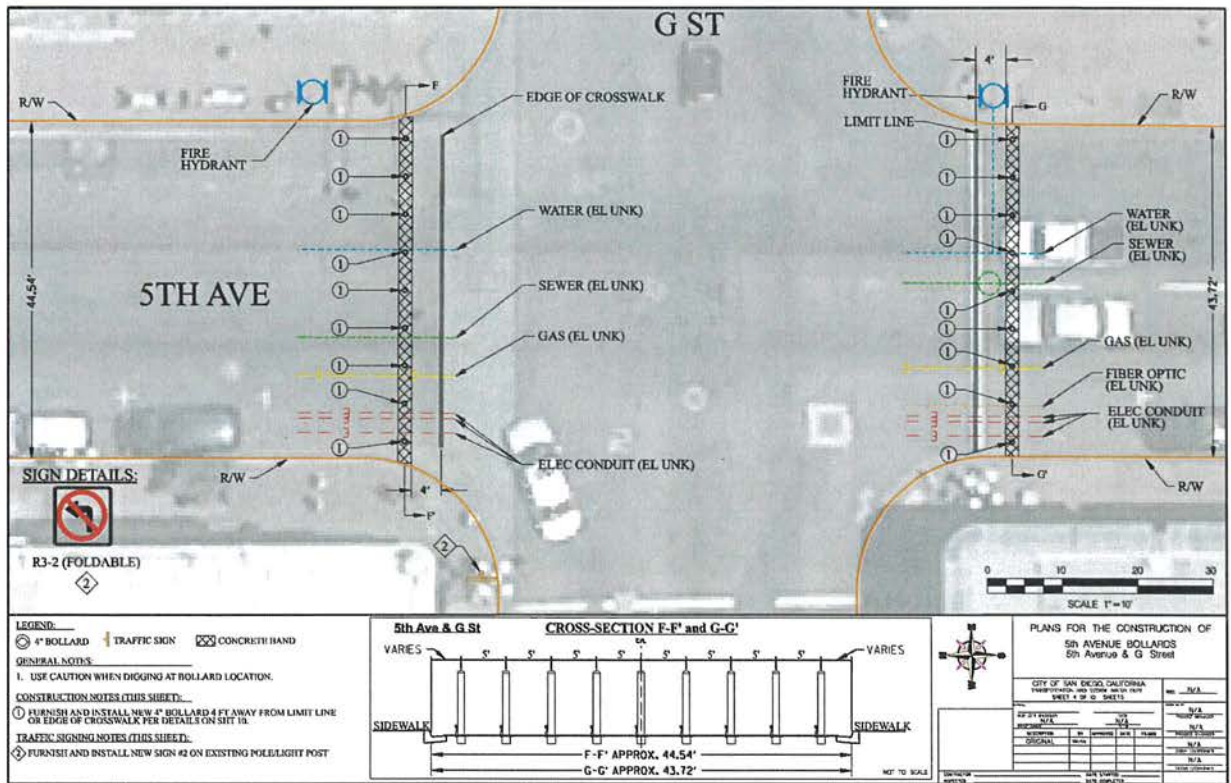
(e) Special Events Coordination:

1. Coordinate with the Office of Special Events and external event organizers to accommodate special events as event inquiries are received by the City of San Diego. The Contractor shall accommodate special events that are permitted by the City of San Diego.
2. Meet with the City of San Diego on a bi-monthly basis to monitor and coordinate Project operations including special events, transportation, or public works projects that may impact the Project.

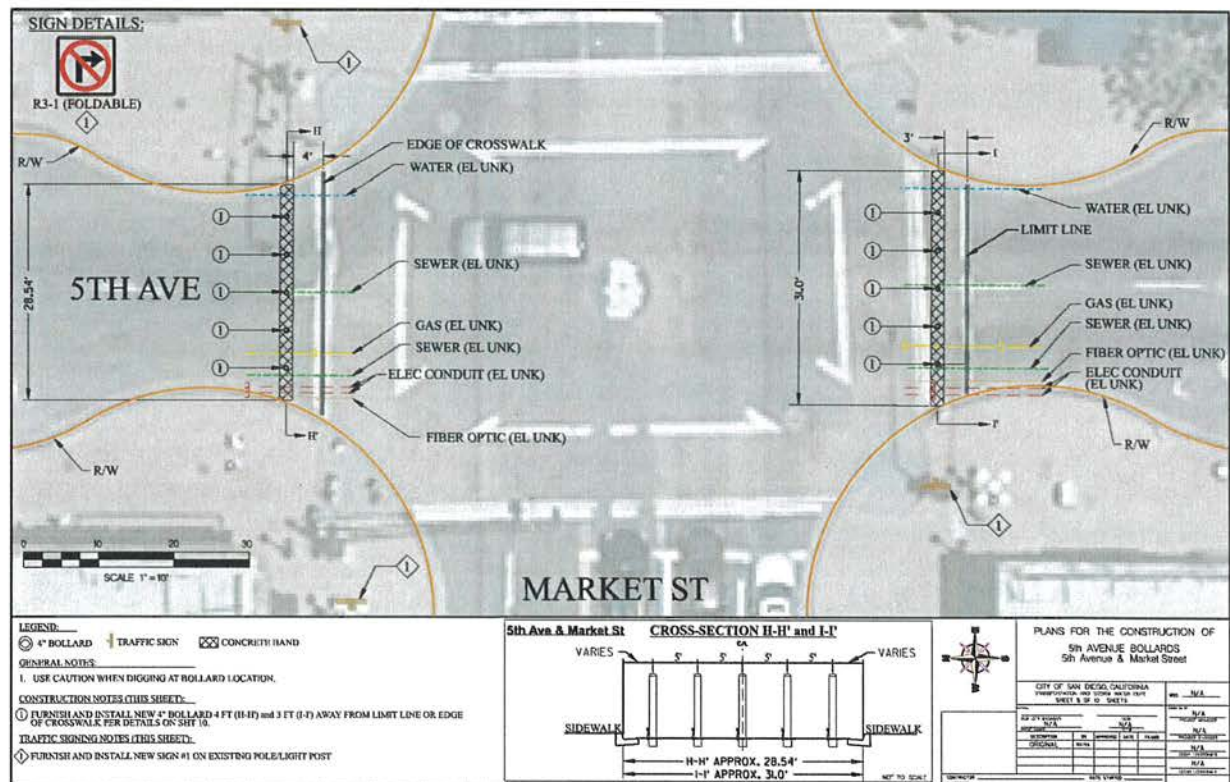
**EXHIBIT B**  
**SITE PLAN**

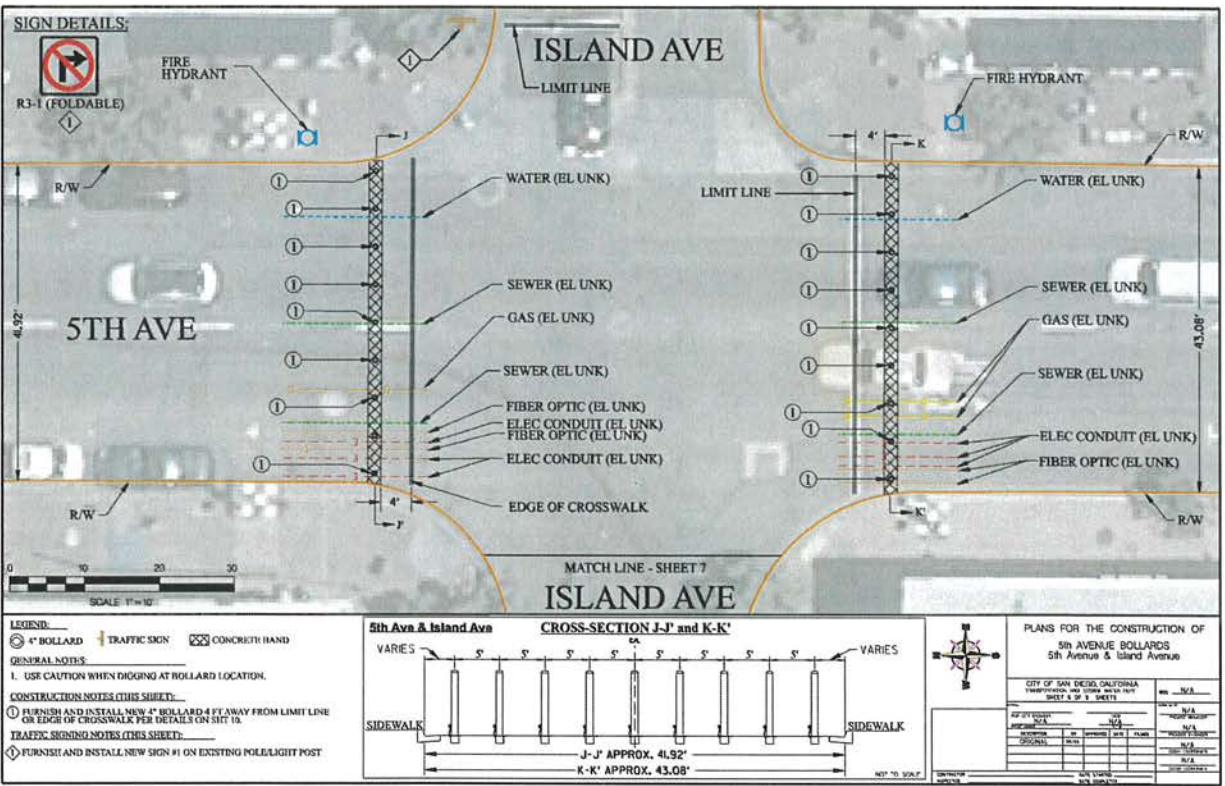








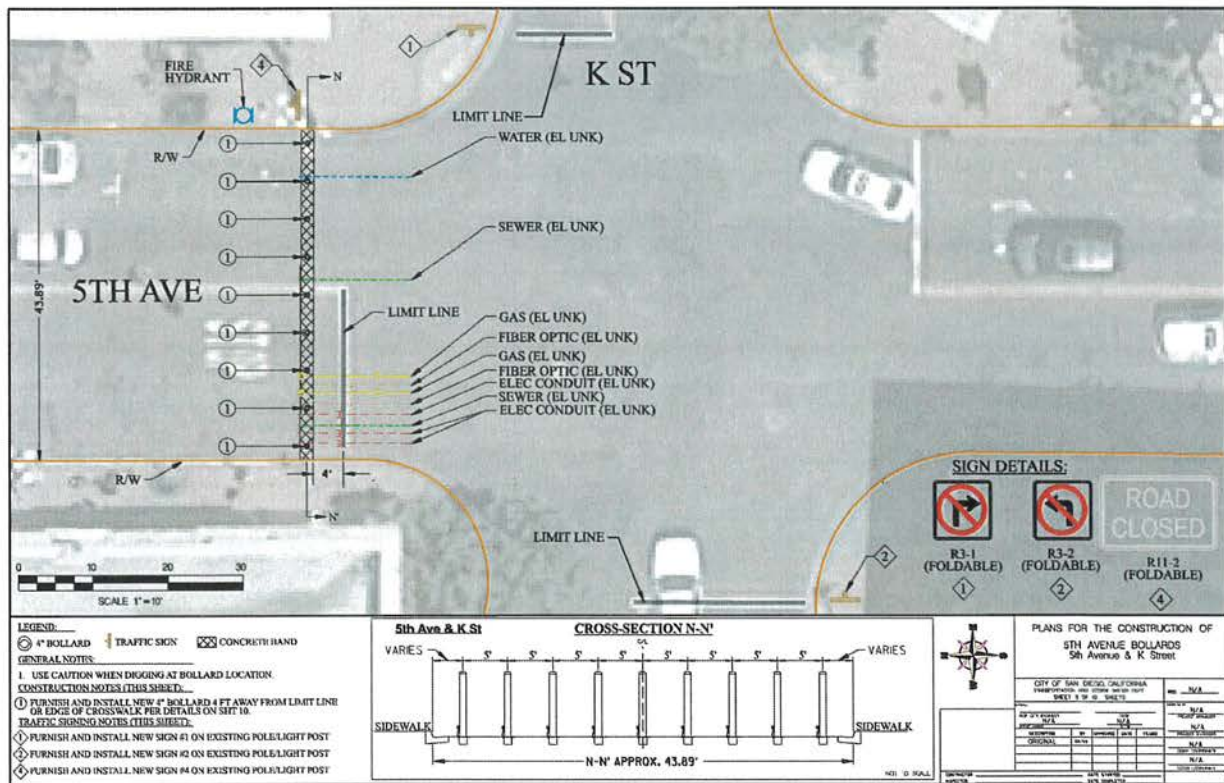












## BOLLARD DETAIL

### OPTIONS

**Bollard Material (3" Nominal Size)**

<input type="checkbox"/>	PSS04000	Sch 10	Stainless Steel
<input type="checkbox"/>	PSS04040	Sch 40	Stainless Steel
<input type="checkbox"/>	PSS04080	Sch 80	Stainless Steel
<input type="checkbox"/>	PCS04040	Sch 40	ASTM A-33 Carbon Steel
<input type="checkbox"/>	PCS04080	Sch 80	ASTM A-33 Carbon Steel

☐ Stainless Steel Rollered Flange  
☐ Polished #4 Flange

☐ As Specified\_\_\_\_\_

Carbon Steel Bolted Finish  
Powdercoat RAL # \_\_\_\_\_

☐ As Specified \_\_\_\_\_

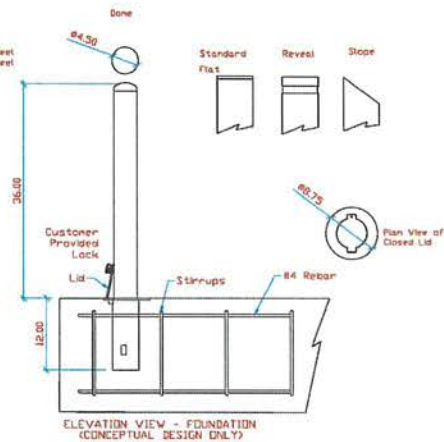
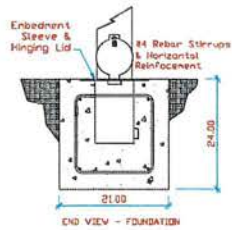
Stainless Steel Rolled Material  
 D Type 304

- Type 304
- Type 316

**Bollard Corp.**  
Office

☐ Lone  
☐ Standard flat

Reveal  
Sloped


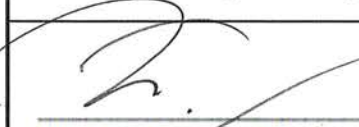


ELEVATION VIEW - FOUNDATION  
(CONCEPTUAL DESIGN ONLY)

PLANS FOR THE CONSTRUCTION OF  
5TH AVE BOLLARD  
BOLLARD DETAIL

[illegible]

**EXHIBIT C**  
**CONFLICT OF INTEREST CERTIFICATION**

<b>FORM CIC</b>	
	
<b>CONFLICT OF INTEREST CERTIFICATION</b>	
<p>Any vendor, proposer, bidder, consultant, or contractor (Contractor) who supplies goods or provides services to the City of San Diego must sign and date this certification and comply with the requirements described herein.</p>	
<p>Contractor is required to comply with all applicable local, state, and federal conflict of interest laws and regulations relating to public contracts including, but not limited to, California Government Code sections 1090 through 1099, California Government Code sections 81000, et. seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code sections 27.3501 through 27.3595. Compliance with these laws and regulations may require Contractor to timely file a statement of economic interests with the Filing Officer of the City of San Diego disclosing relevant financial interests.</p> <p>Contractor shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or appears to be, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships.</p> <p>A violation of any conflict of interest law is grounds for immediate termination of a contract with the City of San Diego.</p>	<div style="border: 1px solid black; padding: 2px;"><b>OFFICE USE ONLY</b></div> <div style="border: 1px solid black; padding: 2px; height: 100px;">Date Received</div>
<div style="text-align: center;"> _____ Signature of Authorized Representative</div> <div style="text-align: center;"><u>MICHAEL TRIMBLE</u> _____ Printed/Typed Name</div> <div style="text-align: center;"><u>EXECUTIVE DIRECTOR</u> _____ Contractor Name</div> <div style="text-align: center;"><u>JUNE 22, 2023</u> _____ Date</div>	



## EXHIBIT D

### WAGE REQUIREMENTS: SERVICE AND MAINTENANCE CONTRACTS EXECUTED ON OR AFTER JANUARY 1, 2015

By signing this Contract, Bidder certifies that he or she is aware of the wage provisions described herein and shall comply with such provisions before commencing services.

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

**1. Compliance with Prevailing Wage Requirements.** Pursuant to sections 1720 through 1861 of the California Labor Code, Bidder 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 of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

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

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

during the life of this Contract, such wage rate shall apply to the balance of the Contract.

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

3. **Payroll Records.** Bidder and its subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Bidder shall require its subcontractors to also comply with section 1776. Bidder and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Bidder is responsible for ensuring its subcontractors submit certified payroll records to the City. Bidder and its subcontractors shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

4. **Apprentices.** Bidder and its subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Bidder shall be held responsible for their compliance as well as the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.

5. **Working Hours.** Bidder and its subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

6. **Required Provisions for Subcontracts.** Bidder shall include at a minimum a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

7. **Labor Code Section 1861 Certification.** Bidder in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Contract, Bidder certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract."

8. **Labor Compliance Program.** The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or

other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.

**9. Contractor and Subcontractor Registration Requirements.** This project is subject to compliance monitoring and enforcement by the DIR. A Bidder or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or enter into any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Section 1725.5. In accordance with Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

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

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

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

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

**11. List of all Subcontractors.** The City may ask Bidder for the most current list of subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this contract at any time during performance of this contract, and Bidder shall provide the list within ten (10) working days of the City's request. Additionally, Bidder shall provide the City with a complete list of all subcontractors utilized on this contract (regardless of tier), within ten working days of the completion of the



contract, along with their DIR registration numbers. The City shall withhold final payment to Bidder until at least 30 days after this information is provided to the City.

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

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

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

**12.3. List of all Subcontractors.** The Bidder shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in section 11 above. (Labor Code section 1773.3).

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

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

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

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

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

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



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

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

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

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

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

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

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

**C. Highest Wage Rate Applies.** Bidder is required to pay the highest applicable wage rate where more than one wage rate applies.

**LIVING WAGE ORDINANCE  
CERTIFICATION OF COMPLIANCE**  
REQUIRED BY SAN DIEGO MUNICIPAL CODE §22.4225(c)

**COMPANY INFORMATION**

Company Name: GASLAMP QUARTER ASSOCIATION

Company Address: 614 5<sup>th</sup> AVE SUITE 'E' SANDIEGO CA 92101

Company Contact Name: MICHAEL TRIMBLE

Contact Phone: 760 807-2525 cell

**CONTRACT INFORMATION**

619 233-5227 office

Contract Number (if no number, state location): CA, SANDIEG

Start Date: JULY 1, 2023

Contract Title (or description): MAINTENANCE & OPERATION 5<sup>th</sup> AVE PROMENADE

End Date: JUNE 30, 2024

Purpose/Service Provided: LABOR & MANAGEMENT

**TERMS OF COMPLIANCE**

A contractor or subcontractor working on or under the authority of an agreement subject to the Living Wage Ordinance [LWO] must comply with all applicable provisions unless specifically approved for an exemption. Basic requirements of the LWO are:

- (a) Pay covered employees the current fiscal year hourly wage rate;
- (b) If any lesser amount is applied toward the health benefits rate, add this difference to the hourly wage rate as cash;
- (c) Provide minimum of 80 compensated leave hours per year for illness, vacation, or personal need at the employee's request and permit 80 additional unpaid leave hours for personal or family illness when accrued compensated leave hours have been used;
- (d) Annually distribute a notice with the first paycheck after July 1 to inform all covered employees of LWO requirements, their possible right to Federal Earned Income Tax Credit, and possible availability of health insurance coverage under the Affordable Care Act;
- (e) Prohibit retaliation against any covered employee who alleges noncompliance with the requirements of the LWO;
- (f) Permit access for authorized City representatives to work sites and records to review compliance with the LWO; and
- (g) Maintain wage and benefit records for covered employees for 3 years after final payment.

If a subcontractor fails to submit this completed form, the prime contractor may be found in violation of the LWO for failure to ensure its subcontractor's compliance. This may result in a withholding of payments or termination of the agreement.

**CONTRACTOR CERTIFICATION**

By signing, the contractor certifies under penalty of perjury under laws of the State of California to the following:

- (a) comply with the requirements of the Living Wage Ordinance; and
- (b) will perform at least fifty percent (50%) of the work with its own employees.



Name of Signatory

MICHAEL TRIMBLE

Signature

EXECUTIVE DIRECTOR

Title of Signatory

JUNE 22, 2023

Date

**FOR OFFICIAL CITY USE ONLY**

Date of Receipt:

LWO Analyst:

Contract Number: