

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

SUBJECT: INFORMATION TECHNOLOGY PROCUREMENT THROUGH SAN DIEGO
DATA PROCESSING CORPORATION

POLICY NO.:

EFFECTIVE DATE:

BACKGROUND:

The City of San Diego created the San Diego Data Processing Corporation (“SDDPC”) in 1979 as a 501(c)(3) nonprofit public benefit corporation, with the City as the sole member of the Corporation. The primary purpose of SDDPC is to provide data processing services (and related information technology services) to the City and other public agencies, with authority to purchase and otherwise acquire property to fulfill its purpose. The City has regularly used SDDPC to procure information technology related goods and services through contracts entered into between SDDPC and third party vendors and service providers.

PURPOSE:

It is the intent of the City Council that when the City uses SDDPC to procure information technology related goods and services that the City follows the procedures described in this Council Policy.

POLICY:

The City process for approval and authorization for procurement of information technology (“IT”) goods and services through SDDPC, is set forth in this Policy. The City will not be a party to a contract for IT goods and services between SDDPC and a third party vendor or a third party supplier.

A. IT Governance Approval

All City purchase requests for IT goods and services procured through SDDPC will be validated and approved by the Information Technology Business Leadership Group’s (“IT BLG”) program management office (as described elsewhere in IT BLG governance documents) in accordance with the IT BLG governance process.

B. City Budgetary Approval

During the City’s annual budget process, City departments will submit to the City Manager appropriations requests for all IT projects and the City Manager will approve, deny, or modify such requests and then submit to the City Council an appropriations ordinance that includes a request to appropriate funds for the approved IT projects. Individual IT projects that exceed One Million Dollars (\$1,000,000) for goods, professional services, or consulting services will be separately identified and

listed in the City Manager's proposed budget and the appropriations ordinance will contain a specific reference to the approval of such IT projects.

C. City Council Approval

The City Council will approve, deny, or request a modification of the budget for IT projects and approve any such IT projects through approval of the annual budget.

D. Service Requests

For IT projects approved by the City Council in accordance with the provisions of this Council Policy, an individual authorized by the City Manager will execute and send a service request to SDDPC using an approved service request form to provide the procurement services.

E. SDDPC Approval

SDDPC will follow its Board approved procurement policies to procure the goods, professional services, or consulting services identified in the City's submitted service request form.

F. IT Procurement in Excess of One Million Dollars (\$1,000,000)

City Council approval is required for any IT project in excess of One Million Dollars (\$1,000,000) to be procured through SDDPC that is not separately listed and approved as part of the City Council's approval of the City's budget. The originating department will route an approved City Council docketing request form, following the City's procedures, and the IT project will be presented to the City Council with a request for the City Council to approve the use of SDDPC to provide the necessary procurement services for the IT project. If the Council approves the IT project, then the City will process a duly authorized service request form and deliver it to SDDPC. Upon receipt of the duly authorized service request form, SDDPC will follow its Board approved procurement policies to procure the goods, professional services, or consulting services.

HISTORY:

Service Level Agreement

By and Between

City of San Diego (City)

and

San Diego Data Processing Corporation (SDDPC)

for

Fiscal Year 2010 (FY2010)

v2.0 Amended
(Rev. 01/06/2010)

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A. INTRODUCTION

The purpose of this Service Level Agreement (SLA) is to document the Information Technology (IT) services and service levels agreed upon between the City of San Diego (City) and San Diego Data Processing Corporation (SDDPC). This document is intended to provide the scope of services, expected service levels, associated rates and/or fees, and reporting requirements necessary to meet the City's requested IT service needs. [Note: Appendix A contains definitions of terms and abbreviations used within this SLA.

1. Term of Agreement

The Term of this Service Level Agreement (SLA) for Fiscal Year 2010 shall be from July 1, 2009, through June 30, 2010. The Term of this Amendment (Version 2.0) shall be from its Effective Date (as defined in Section H) through June 30, 2010.

2. Primary Points of Contact

The City's Director of Information Technology (DIT) or Designee shall be the City's primary point of contact; and SDDPC's President & Chief Executive Officer (CEO) or Designee shall be SDDPC's primary point of contact. Specific operational points of contact may be provided for each defined service below, as appropriate.

3. Operations Performance Metrics and Reporting

SDDPC shall report performance metrics identified in the subsequent operational areas of this document to the Department of Information Technology (DoIT) on at least a quarterly basis; where some metrics may be reported monthly at SDDPC's discretion. The quarterly SDDPC Operations Metrics report will be submitted to the City DoIT no later than the third Friday following the end of each quarter. In addition to directly providing the quarterly metrics, SDDPC shall make the data available online to City staff on the Intranet, and maintain online access to a history of the prior two years worth of metrics, beginning with the FY2009 Q4 metrics and after. The reported metrics will consist of monthly figures (except Application metrics, which consist of quarterly figures) showing the target and actual results for each month. In any month where the target has not been achieved, reasons will be noted. The DoIT is responsible for monitoring SDDPC's performance under this SLA.

4. Contracts for SDDPC to Obtain Goods and Services from Third Parties

SDDPC shall not enter into any contract to outsource to any third party vendor any information technology function identified by City as a core function for City operations without first obtaining the written consent of the Mayor or his designee. For purposes of this Agreement, "Core Functions" shall include any of the Services described in Section 3 of the Master Services Agreement between the City and the Corporation, dated as of [REDACTED], 2010, attached hereto as Exhibit 1. SDDPC shall not enter into any contract or agreement with third parties containing a provision requiring binding arbitration to resolve disputes without first obtaining the consent of the City Attorney of the City of San Diego and the Mayor or his designee.

B. ENTERPRISE SUPPORT SERVICES

Enterprise Support Services include the following service categories:

(A) Data Center Services, which includes, but is not limited to, the following service areas: (a) mainframe, (b) storage device and server hosting (commonly known as collocation services), (c) application hosting, (d) enterprise database environment(s), (f) Interactive Voice Response system hosting, (g) Enterprise Resource Planning infrastructure (for the City's "OneSD" system), (h) Internet and Intranet (Web) infrastructure, (i) enterprise document management environment, (j) enterprise messaging environment (electronic mail), and (k) enterprise file and print environment. For the purposes of determining the total cost of services and applying rates and fees to the Enterprise Infrastructure Support Services, "Data Center" facilities housing enterprise infrastructure equipment will be defined and designated for FY2010 as the SDDPC Data Center.

(B) Help Desk Services and Desktop Support Services, which includes, but is not limited to, the following service areas: (a) centralized Help Desk (call center), (b) remote and onsite Desktop Support for PC systems and applications, (c) remote management of desktop software and configurations, (d) enterprise and desktop Anti-Virus and Anti-SPAM updates and management, and (e) hardware maintenance for desktop and laptop PC systems and printers.

(C) Network and Telecommunications Services, which includes, but is not limited to, the following service areas: (a) local area and wide area data network, (b) voice telecommunications network, (c) remote access capability into the City's network, and (d) integrated communications.

(D) Security Services, which includes the responsibility of protecting the City's Network Services, Firewalls, Computing Infrastructure, and applications developed on behalf of the City from intrusion from outside sources.

(E) Professional Services, which includes, but is not limited to, application life-cycle management, program and project management, and information technology consulting services.

1. Data Center Services - Server and Storage Device Hosting (Collocation)

1.1 Expected Service and Performance Levels

For Data Center Services - Server and Storage Hosting (Collocation), the City requires 99.7% monthly availability from SDDPC for the hosted resources as measured by each hosted device being in-service ("up") and accessible via SANNET; excluding approved, scheduled maintenance.

1.2 Points of Contact

The City's point of contact for Server and Storage Device Hosting Services is: Alan Watkins.

The SDDPC point of contact for Server and Storage Device Hosting Services is: Gary Linares.

1.3 Reporting Detail

On a quarterly basis, SDDPC shall provide the City with a report showing current utilization for the SDDPC Data Center used for server and storage hosting, including square footage and rack space. On a semi-annual basis, SDDPC shall identify in a written report to the City, all servers and storage devices for which SDDPC is providing collocation or hosting services, including the City department.

On a monthly basis, SDDPC shall provide the City with a report showing the expected and actual service and performance levels, and provide a written explanation for service and/or performance levels that are not meeting targets.

SDDPC shall provide the City with all monthly reports no later than ten (10) business days after the last day of each month. SDDPC shall provide the City with all quarterly reports no later than 15 working days after the last day of each quarter.

2. Data Center Services – Enterprise Storage

2.1 Summary Description of Service

Enterprise Storage (also known as Fabric Attached Storage or FAS) is used for storage of data that is accessed by applications in all production environments, excluding the mainframe. The Enterprise Storage service explicitly includes data backup services in addition to disk storage space. Enterprise Storage is not a required service and may not be automatically included in SDDPC quotes for services. No City data will be automatically moved into this environment without advance DoIT approval, including approval of the costs.

2.2 Expected Service and Performance Levels

For Data Center Enterprise Storage services, the City requires 99.8% monthly availability from SDDPC for the storage resources as measured by the online accessibility and availability from any SANNET-connected client.

2.3 Points of Contact

The City's point of contact for Enterprise Storage Services is: Alan Watkins.

The SDDPC point of contact for Enterprise Storage Services is: Gary Linares.

2.4 Reporting Detail

On a monthly basis, SDDPC shall provide the City with a report showing available capacity and current utilization data for all enterprise storage devices, including allocated and actual space used, and also provide details for utilization based on the following categories: major system or application, Oracle databases, SQL Server databases, and identify the City department utilizing any non-enterprise, department-specific storage devices. Individual or group file storage is identified separately under the CISO services below.

On a monthly basis, SDDPC shall provide the City with a report showing the expected and actual service and performance levels, and provide a written explanation for service and/or performance levels that are not meeting targets.

SDDPC shall provide the City with all monthly reports no later than ten (10) business days after the last day of each month.

3. Data Center Services – Application Hosting

3.1 Expected Service and Performance Levels

For Data Center Application Hosting environment services, the City requires 99.5% monthly availability from SDDPC as measured by server availability (i.e., server is reachable and available). This service uptime applies only to the Application Hosting enterprise environment provided by SDDPC. Hosted applications themselves are managed by the responsible City department (or contractor) and therefore are not subject to uptime metrics, unless there is a specific, separate agreement between the City and SDDPC covering SDDPC's management and administration of a particular application.

3.2 Points of Contact

The City's point of contact for Application Hosting Services is: Alan Watkins.

The SDDPC point of contact for Application Hosting Services is: Jill O'Dea.

3.3 Reporting Detail

On a monthly basis, SDDPC shall provide the City with a report showing available and allocated capacity, and current utilization data for the application hosting environment, and also provide details for utilization including, CPU and memory, and identify the application hosted and the City department.

On a monthly basis, SDDPC shall provide the City with a report showing the expected and actual service and performance levels, and provide a written explanation for service and/or performance levels that are not meeting targets.

SDDPC shall provide the City with all monthly reports no later than ten (10) business days after the last day of each month.

4. Mainframe Services

4.1 Summary Description of Service

Mainframe Services include SAS, TSO, IMS/DB2/Batch transaction processing, Netview Access services, file transfer for uploads and downloads between the IBM mainframe and other platforms, mainframe print services; and data warehousing, storage management, backup, and recovery of workstation and server data; and database services for support of the mainframe database infrastructure.

4.2 Expected Service and Performance Levels

For Mainframe services, the City requires 99.8% monthly system availability from SDDPC as measured by IMS availability.

4.3 Points of Contact

The City's point of contact for Mainframe Services is: Alan Watkins.

The SDDPC point of contact for Mainframe Services is: Gary Linares.

4.4 Reporting Detail

On an annual basis as part of the cost and budget preparation process, SDDPC shall provide the City with a report showing average annual utilization data for the mainframe services environment, identifying the application (where possible) and City department using the services. Non-City average annual utilization shall be included for determining the City's share of the costs. On a monthly basis, SDDPC shall provide the City with a report of overall mainframe utilization, including the average daily TSO and IMS transactions.

On a monthly basis, SDDPC shall provide the City with a report showing the expected and actual service and performance levels, and provide a written explanation for service and/or performance levels that are not meeting targets.

SDDPC shall provide the City with all quarterly reports no later than 15 working days after the last day of each quarter. SDDPC shall provide the City with all monthly reports no later than ten (10) business days after the last day of each month.

As part of the City's annual budget process, SDDPC shall provide the City with actual Mainframe Services usage data based on online transactions (and other available factors where appropriate) for the 52-week period from October 1st through September 30th, summarized at the most detailed level available using City cost structures or equivalent SDDPC structures (such as application code) that map to City cost structures. Mainframe Services usage data for non-City entities may be summarized by organization (rather than by application). SDDPC shall provide this data to the City in Microsoft Excel or comparable format by October 20th of each year.

5. Enterprise Oracle Database Services

5.1 Summary Description of Service

The Enterprise Oracle Database environment includes the infrastructure, server network connectivity, Oracle licensing for City users, installation and maintenance of the Oracle system (software), and Database Administration (DBA) support (as described below). Special Oracle database requests and specific application development or support are available at additional cost, negotiated between the requesting department, DoIT, and SDDPC; using the Professional Services tiered labor rates.

5.2 Expected Service and Performance Levels

For Enterprise Oracle Environment, the City requires 99.5% monthly system availability from SDDPC as measured by Oracle database system availability, using the Oracle monitoring software tool.

At a minimum, SDDPC shall perform the “Shared DBA Support” tasks which include, but are not limited to, the activities and tasks listed below:

- a) Daily Tasks
 - 1) Monitor resource utilization
 - 2) Manage database storage requirements
 - 3) Manage daily recoveries and backups
 - 4) Provide disaster recovery support
 - 5) Database reorganization
 - 6) Assist project and application DBAs with database system issues
 - 7) Physical capacity planning and management
 - 8) Implement new database instances
 - 9) Maintain and upgrade database software
- b) Long-Term Tasks
 - 1) Review and Update Standards & Procedures for:
 - 2) Daily recoveries, backups, disaster recovery
 - 3) Database design/build and reorganization
 - 4) Database software patches & upgrades
 - 5) Conduct periodic testing of procedures
 - 6) Develop strategies, standards & procedures for database utilities and tools

5.3 Points of Contact

The City’s point of contact for Enterprise Oracle Database Services is: Alan Watkins.

The SDDPC point of contact for Enterprise Oracle Database Services is: Jill O’Dea.

5.4 Reporting Detail

On a monthly basis, SDDPC shall provide the City with available and allocated capacity, and current utilization data for the Enterprise Oracle Database Services environment and also provide details for utilization including CPU, memory, storage, identify the database hosted, maximum concurrent users, and the customer.

On a monthly basis, SDDPC shall provide the City with a report showing the expected and actual service and performance levels and provide the City with a written explanation for service and/or performance levels that are not meeting targets.

SDDPC shall provide the City with all monthly reports no later than ten (10) business days after the last day of each month.

As part of the City's annual budget process, SDDPC shall provide the City with a report showing actual Enterprise Oracle Database Services usage data based on CPU, memory, storage (and other available factors where appropriate), for the 52-week period from October 1st through September 30th, summarized at the most detailed level available using City cost structures or equivalent SDDPC structures (such as application code) that map to City cost structures. Enterprise Oracle Database Services usage data for non-City entities may be summarized by organization. SDDPC shall provide this data to the City in Microsoft Excel or comparable format by October 20th of each year.

6. Enterprise SQL Server Database Services

6.1 Summary Description of Services

The Enterprise SQL Server Database environment includes the infrastructure, server network connectivity, Microsoft SQL Server licensing for City users, installation and maintenance of the SQL Server system (software), and Database Administration (DBA) support (as described below). Special SQL Server database requests and specific application development or support are available at additional cost, negotiated between the requesting department, DoIT, and SDDPC; using the Professional Services tiered labor rates.

6.2 Expected Service and Performance Levels

For Enterprise SQL Server Environment, the City requires 99.5% monthly system availability from SDDPC as measured by SQL Server database system availability, utilizing SQL Server monitoring software tools.

At a minimum, SDDPC shall perform the "Shared DBA Support" tasks which include, but are not limited to, the activities and tasks listed below:

a) Daily Tasks

- 1) Monitor resource utilization
- 2) Manage database storage requirements
- 3) Manage daily recoveries and backups
- 4) Provide disaster recovery support
- 5) Database reorganization
- 6) Assist project and application DBAs with database system issues
- 7) Physical capacity planning and management

- 8) Implement new database instances
 - 9) Maintain and upgrade database software
- b) Long-Term Tasks
- 1) Review and Update Standards & Procedures for:
 - 2) Daily recoveries, backups, disaster recovery
 - 3) Database design/build and reorganization
 - 4) Database software patches & upgrades
 - 5) Conduct periodic testing of procedures
 - 6) Develop strategies, standards & procedures for database utilities and tools

6.3 Points of Contact

The City's point of contact for Enterprise SQL Server Database Services is: Alan Watkins.

The SDDPC point of contact for Enterprise SQL Server Database Services is: Jill O'Dea.

6.4 Reporting Detail

On a monthly basis, SDDPC shall provide the City with a report showing available and allocated capacity, and current utilization data for the Enterprise SQL Server Database Services environment, and also provide details for utilization including CPU, memory, storage, identify the database hosted, maximum concurrent users, and the customer.

On a monthly basis, SDDPC shall provide the City with a report showing the expected and actual service and performance levels and provide a written explanation for service and/or performance levels that are not meeting targets.

SDDPC shall provide the City with all monthly reports no later than ten (10) business days after the last day of each month.

As part of the City's annual budget process, SDDPC shall provide the City with a report showing actual Enterprise SQL Server Database Services usage data based on CPU, memory, storage (and other available factors where appropriate), for the 52-week period from October 1st through September 30th, summarized at the most detailed level available using City cost structures or equivalent SDDPC structures (such as application code) that map to City cost structures. Enterprise SQL Server Database Services usage data for non-City entities may be summarized by organization. SDDPC shall provide this data to the City in Microsoft Excel or comparable format by October 20th of each year.

7. Server Administration Services

7.1 Summary Description of Service

Server Administration Services apply to management of departmental servers that are not part of the enterprise infrastructure environment and includes, but is not limited to, system documentation, performance monitoring and analysis, anti-virus management, UPS (un-interruptible power system) monitoring, operating system management and updates, system forecast planning, job scheduling, system backup and recovery, and other related tasks as defined by the requesting department.

7.2 Expected Service and Performance Levels

Specific services and performance measures must be determined and documented in discussions and mutual agreement between the City and SDDPC at the time Server Administration services are requested, and may vary on a case-by-case basis.

The requesting City department will work together with the DoIT in determining the appropriate level of services to be requested from SDDPC.

7.3 Points of Contact

The City's point of contact for Server Administration Services is: Noel Gilchrist.

The SDDPC point of contact for Server Administration Services is: Bill Riley.

7.4 Reporting Detail

On a semi-annual basis, in October and April each year (no later than the 20th of the month), SDDPC shall provide the City with a list of all servers for which Server Administration Services are currently being provided and provide copies of any agreements reflecting services and performance measures.

On a monthly basis, SDDPC shall provide the City with a report showing the expected and actual service and performance levels (as applicable for specified Server Administration Services), and provide a written explanation for service and/or performance levels that are not meeting targets.

SDDPC shall provide the City with all monthly reports no later than ten (10) business days after the last day of each month.

8. Wide Area Network (WAN) Services - SANNET

8.1 Summary Description of Service

SDDPC provides and manages a private wide area data network called SANNET (San Diego Network), connecting all major City facilities and a majority of all City facilities with varying levels of network bandwidth capacities. SDDPC also provides the City with access to the Internet through SANNET.

8.2 Expected Service and Performance Levels

For SANNET services, the City requires 99.9% monthly availability of the Wide Area Network (WAN) from SDDPC and its contract service providers as measured at the router, based on each of the core backbone locations that serve the City. In addition, the City requires 99.7% monthly availability from SDDPC or its contract service providers for the non-backbone WAN locations that serve the City, as measured using switch port minutes. Routine system maintenance may be performed during the approved daily two-hour service window. Planned network downtime outside of SDDPC's control for the WAN Upgrade Project, as applicable, will not be included in the monthly availability measurement.

Specifically for Internet and Web services, the City requires 99.9% monthly availability of the network access from SDDPC's Internet Service Provider (ISP) based on external and public ability to access the City's production Web server (hosted by SDDPC). The City may test this availability by using Internet and Web access through another public ISP; however, SDDPC must still monitor the service and ensure the availability requirement is met. Planned network downtime by the ISP and outside of SDDPC's control, as applicable, will not be included in the monthly availability measurement.

The City requires SDDPC to resolve 95% of critical data network trouble calls within eight (8) hours and to resolve 90% of standard data network trouble calls within 24 hours. "Critical" and "Standard" are defined in the following table:

Critical Data Network	Twenty percent (20%) or more of network devices are unable to connect to the network or an entire site is unable to connect to the network. Response and resolution times are on a 24 hours per day, 7 days per week basis.
Standard Data Network	A device is unable to connect to the network. Response and resolution times are on a business day basis.

8.3 Points of Contact

The City's point of contact for Wide Area Network (SANNET) Services is: Alan Watkins.

The SDDPC point of contact for Wide Area Network (SANNET) Services is: Mike Straw.

8.4 Reporting Detail

On a quarterly basis, SDDPC shall provide the City with a report showing total network capacity utilization based on the number of assigned and active ports vs. available ports for each network switch by City location (building/site). This report does not require the identification of which City departments are assigned and using the network ports.

On a monthly basis, SDDPC shall provide the City with a report showing utilization of the Gigabit-Ethernet (GigE) backbone and circuits providing internet connectivity.

On a monthly basis, SDDPC shall provide the City with a report showing the expected and actual service and performance levels, and provide a written explanation for service and/or performance levels that are not meeting targets.

SDDPC shall provide the City with all monthly reports no later than ten (10) business days after the last day of each month.

As part of the City's annual budget process, SDDPC shall provide the City with a current inventory of active network connections for City departmental servers (not located within a SDDPC Data Center), available ports for City designated conference and training facilities, and active network connections for all other types of devices, identifying the location, server name (where appropriate) and City department. This inventory shall utilize City cost structures or equivalent SDDPC structures (such as application code) that map to City cost structures. SDDPC shall provide this data to the City in Microsoft Excel or comparable format by October 20th of each year.

9. Telecommunications and Voice Network Services

9.1 Summary Description of Service

SDDPC provides and manages a private voice network for the City, including complete telephonic services for internal 5-digit dialing and voice mail. In addition, SDDPC manages external (long distance) telephone services and optionally may acquire other telecommunications services as defined and requested by City departments, which may include dedicated facsimile (fax) lines, direct-dial external phone lines, modem lines, other data lines, and interconnection between wireless services and SANNET. Fixed-price costs and allocations for SDDPC telephone services does not include the cost of instruments and devices (phones, fax machines, modems, etc.), installation or usage costs.

The City and SDDPC acknowledge that the current Octel voice mail system is beyond the manufacturer's "end of life" and is no longer directly supported by either the manufacturer or SDDPC's telecommunications service provider (currently NEC), except on a "best effort" time-and-materials basis. The City and SDDPC agree to develop a replacement and migration plan in the first quarter of FY2010, to implement a new voice mail system either during FY2010 (if funding is available) or at the beginning of FY2011. In addition, the overall telephone infrastructure equipment is outdated and also needs replacement. SDDPC had recommended upgrading to "Voice over IP" (VoIP); however, the City was unable to fund this effort in FY2010.

9.2 Expected Service and Performance Levels

For the Telecommunications and Voice Network, the City requires "best effort" availability from SDDPC and its contract service providers, based on the age and serviceability of the current telephone and voice system. System availability for external services beyond SDDPC's control is excluded from this performance metric.

9.3 Phone (Voice Network) Trouble Calls - Time to Resolve

The City requests SDDPC to resolve 95% of critical phone (voice network) trouble calls within eight (8) hours and to resolve 95% of standard phone (voice network) trouble calls within 24 hours. **Due to the outdated telecommunications infrastructure and limited availability of spare parts, SDDPC only commits to providing, and the City agrees to accept, “best effort” to meet these performance metrics.** “Critical” and “Standard” are defined in the following table:

Critical Voice Network	Twenty percent (20%) or more of telephones are unable to connect to the voice network, make or receive calls or an entire site is unable to connect to the network or any voice mail system problem affecting ten percent (10%) or more users. Response and resolution times are on a 24 hours per day, 7 days per week basis.
Standard Voice Network	A voice device or telephone is unable to connect to the network, make or receive calls. Response and resolution times are on a business day basis.

9.4 Points of Contact

The City’s point of contact for Telecommunications and Voice Network Services is: Alan Watkins.

The SDDPC point of contact for Telecommunications and Voice Network Services is: Mike Straw.

9.5 Reporting Detail

On a monthly basis, SDDPC shall provide the City with a report showing total call volumes, and SDDPC shall provide, upon request by a City department, a monthly phone usage report.

On a monthly basis, SDDPC shall provide the City with a report showing the expected and actual service and performance levels, and provide a written explanation for service and/or performance levels that are not meeting targets.

SDDPC shall provide the City with all monthly reports no later than ten (10) business days after the last day of each month.

As part of the City’s annual budget process, SDDPC shall provide the City with a current inventory of active telephone connections, numbers and other system features as appropriate, identifying the location, assigned number and City department. This inventory shall utilize City cost structures or equivalent SDDPC structures (such as application code) that map to City cost structures. SDDPC shall provide this data to the City in Microsoft Excel or comparable format by October 20th of each year

10. Interactive Voice Response (IVR) System Services

10.1 Summary Description of Service

SDDPC provides and manages an enterprise Interactive Voice Response (IVR) system within the telecommunications and voice network. The IVR system runs custom-developed IVR applications, which are also dependent on other systems, such as a PBX, voice and data network, the mainframe or other database system. Fixed-price costs for the IVR system include maintenance and updates of the base IVR operating system and application development software; and does not include actual IVR application development or maintenance.

10.2 Expected Service and Performance Levels

The City requires 99.0% monthly Interactive Voice Response (IVR) system availability from SDDPC. IVR maintenance will be performed during the 1% downtime threshold (approximately 100 minutes per week). Application availability may vary based on other dependent system availability.

10.3 IVR Trouble Calls – Time to Resolve

The City requires SDDPC to resolve 95% of critical IVR trouble calls within four (4) hours and to resolve 95% of standard IVR trouble calls within eight (8) hours. All after-hours IVR support requests will be considered emergency calls by the Help Desk. “Critical” and “Standard” are defined below:

Critical IVR	The entire IVR system is non-operational or Planfinder, PDR Inspection Line or Water Line is non-operational. Response and resolution times are on a 24 hours per day, 7 days per week basis.
Standard IVR	An IVR application, other than one identified above as critical, is non-functional.

10.4 Points of Contact

The City’s point of contact for IVR System Services is: Alan Watkins.

The SDDPC point of contact for IVR System Services is: Lynn Phelps.

10.5 Reporting Detail

On a monthly basis, SDDPC shall provide the City with a report showing available capacity and current utilization data for the Interactive Voice Response System, and also provide details for utilization including peak times, daily call usage and line usage, and identify the application hosted and the City department.

On a monthly basis, SDDPC shall provide the City with a report showing the expected and actual service and performance levels, and provide a written explanation for service and/or performance levels that are not meeting targets.

SDDPC shall provide the City with all monthly reports no later than ten (10) business days after the last day of each month.

As part of the City's annual budget process, SDDPC shall provide the City with a report showing actual Interactive Voice Response System usage data based on call and line usage, storage (and other relevant factors where appropriate), for the 52-week period from October 1st through September 30th, summarized at the most detailed level available using City cost structures or equivalent SDDPC structures (such as application code) that map to City cost structures. Interactive Voice Response System usage data for non-City entities may be summarized by organization. SDDPC must provide this data to the City in Microsoft Excel or comparable format by October 20th of each year.

11. Wireless Services

11.1 Summary Description of Service

Wireless Services provided by SDDPC shall consist of the connection into SANNET from outside wireless service providers, and also the provision of internal wireless access points connected to SANNET within City facilities. Due to security concerns, all wireless applications shall be pilot tested in a secure environment prior to being placed into operational production, to ensure that necessary and appropriate application and network security measures are in place and maintained.

Wireless applications requiring connections into SANNET shall be handled as projects and must be coordinated between the requesting department, DoIT, the Communications Division (General Services Department) and SDDPC. The appropriate wireless technology and access methodology will be determined based on the stated business requirements presented and approved through the City's IT governance process, and must be presented to and approved by the SDDPC Architecture Review Committee. Wireless projects shall be charged on a time-and-materials (cost-recovery) basis, using SDDPC's Professional Services tiered labor rates.

11.2 Expected Service and Performance Levels

To be negotiated based upon identification of services.

11.3 Points of Contact

The City's point of contact for Wireless Services is: Alan Watkins.

The SDDPC point of contact for Wireless Services is: Mike Straw.

11.4 Reporting Detail

To be negotiated based upon identification of services.

12. Remote Access Services

12.1 Summary Description of Service

Remote Access Services provided by SDDPC consist of Citrix, AS5300, and “dial-up” (using DSL or Cable) modem connections, and also includes Virtual Private Network (VPN) connections. Citrix uses secured access through a public Internet connection. Management and support of the Citrix server environment, including the client application software running in the Citrix environment, is included in the rates for Citrix access.

Citrix access service includes the related Citrix software licenses, RSA SecurID authentication tokens, Microsoft Remote User Access Licenses, and issuance of a specific access phone number for those employees accessing Citrix using a dial-up connection outside of the local calling area. In addition, Citrix access service includes Help Desk telephone technical support for software installation and troubleshooting while using Citrix remotely; however, in-home support is not provided.

AS5300 access service includes the RSA SecurID authentication tokens, Microsoft Remote User Access Licenses, issuance of a specific access phone number for those employees outside of the local calling area, and Help Desk telephone support for connection troubleshooting; however, in-home support is not provided.

12.2 Expected Service and Performance Levels

The City envisions continued use of existing remote access technologies, which includes AS5300 dial-up and Citrix. SDDPC will identify any upgrades or changes necessary to maintain the existing technologies.

12.3 Points of Contact

The City’s point of contact for Remote Access Services is: Alan Watkins.

The SDDPC point of contact for Remote Access Services is: Bill Riley for Citrix, and Mike Straw for AS5300, dial-up, and VPN.

12.4 Reporting Detail

To be determined upon the identification of the services.

13. INet (Internet and Intranet) Services

13.1 Summary Description of Service

Internet and Intranet (INet) services include infrastructure support for the shared INet environment, common infrastructure and common applications or services used throughout the City to deliver INet applications and services to City departments and employees and to the public. INet services include support for the deployment of website content and maintenance of a limited number of web applications developed by SDDPC and/or integrated into the City’s INet environment, and to investigate potential new web

technologies at the direction of the DoIT. SDDPC Program Management and Project Management services are included in INet services to ensure timely, accurate, and proactive web application support services.

13.2 Expected Service and Performance Levels

For the Internet and Intranet (INet) Environment, the City requires 99.5% monthly availability of INet servers, systems, and applications, based on ability to access INet services from client systems.

13.3 Points of Contact

The City's point of contact for INet Services is: Ellen Schauer.

The SDDPC point of contact for INet Services is: Frank Camacho.

13.4 Reporting Detail

On a monthly basis, SDDPC shall provide the City with a status report indicating major project activities, key milestones, critical issues financial summary, expenditures to-date, project expenditures vs. budget and exception log.

On a monthly basis, SDDPC shall provide the City with a report showing the expected and actual service and performance levels and provide the City with a written explanation for service and/or performance levels that are not meeting targets.

SDDPC shall provide the City with all monthly reports no later than ten (10) business days after the last day of each month.

14. Document Management Infrastructure Services

14.1 Summary Description of Service

The following hardware and software components are considered to be part of the Document Management (DM) Computing Infrastructure.

Document Management Infrastructure Services also includes resources that provide ongoing support and maintenance for City's shared document management applications that SDDPC has developed and/or integrated into the City's DM environment.

The applications and services described below are meant to be as comprehensive as possible but are not exhaustive. New applications and/or services are expected to come online during the term of this agreement and will be deployed to the Citywide DM environment. The resources funded under this allocation are intended to provide support for the deployment and ongoing maintenance of these applications and services.

The following applications and services are considered to be part of DM Application Support:

- a) Documentum License management and Maintenance Contract Support (Citywide and departmental)
- b) Site Caching Services maintenance
- c) SDSHARE consultation on new site development (not to exceed 4 hours per department)
- d) Support of Phase I e1472 EDMS deployment

14.2 Citywide Documentum Infrastructure and Application Environment Support

SDDPC shall be accountable for the management, operational support and maintenance of Documentum. This environment consists of servers, operating systems, middleware and core application software which support citywide document systems. SDDPC support activities funded within the rate will include but are not limited to daily system monitoring, user logon maintenance, defect correction coordination, technical training, file store maintenance and Oracle database maintenance.

The following hardware and software components are considered to be part of the DM Citywide Documentum Infrastructure and Application Environment:

- a) Documentum Application Server
- b) Development and Test Documentum Environments
- c) Documentum Site Caching Services Production Server
- d) Documentum Tool Set
- e) Documentum Oracle Database Software

14.3 SDIMAGEBANK- AXACORE Infrastructure Support

In support of the City's business requirements for large format image storage and retrieval SDDPC will be accountable for infrastructure support for the City's shared AXACORE environment. SDDPC support activities funded within the rate will include, but are not limited to, daily system and file store (FAS) connectivity monitoring.

The following hardware and software components are considered to be part of the DM SDIMAGEBANK- AXACORE Computing Infrastructure:

- a) AXACORE server appliance
- b) AXACORE XDOC application including FAS file store.

14.4 SDSHARE- SharePoint Infrastructure and Application Environment Support

SDDPC will be accountable for the management, operational support and maintenance of the shared Citywide SDSHARE SharePoint Infrastructure to support the City's business requirements. This environment consists of servers, operating systems, and software which

leverage the City's investment in Microsoft Core Cal software licensing. SDDPC supported activities funded within the rate will include but are not limited to daily system monitoring, defect correction coordination, file store maintenance and SQL database maintenance.

The following hardware and software components are considered to be part of the DM SDSHARE SharePoint Infrastructure and Application Environment:

- a) Windows SharePoint Services (WSS) and Microsoft Office SharePoint Server (MOSS 2007) production environment
- b) Windows SharePoint Services (WSS) and Microsoft Office SharePoint Server (MOSS 2007) Development and Test SharePoint Environment
- c) SharePoint SQL Database Environment including standard FAS file store (Production and Development)

14.5 Electronic Docket Management System (EDMS) Infrastructure and Application Environment Support

SDDPC will be accountable for the management, operational support and maintenance of the Docket Management System (also known as "e1472"). This environment consists of servers, operating systems, and core application software. SDDPC support activities funded within the rate will include but are not limited to daily system monitoring, user logon maintenance, defect correction coordination, technical training, and SQL database maintenance.

The following hardware and software components are considered to be part of the DM Electronic Docket Management System (EDMS) Infrastructure and Application Environment:

- a) SIRE Application Server
- b) SIRE Agenda Plus
- c) SIRE Granicus Interface
- d) SIRE Scan and Capture

14.6 Expected Service and Performance Levels

Specifically for the Enterprise Document Management (DM) Environment, the City requires 99.5% monthly availability of DM servers, systems, and applications, based on the availability of the applications on the servers.

14.7 Points of Contact

The City's point of contact for Document Management (DM) Infrastructure Services is: Phyllis Chapin.

The SDDPC point of contact for Document Management (DM) Infrastructure Services is: Brad Lind.

14.8 City Responsibilities

The City will:

- a) Provide overall direction, approve City requirements and approve the budget, work plan and costs that are included in the DM services.
- b) Work with SDDPC to identify business requirements and develop options for providing the services and support to ensure that the resources approved in the annual budget and work plan will support the City's business requirements.
- c) Provide general oversight and priorities for the services identified as DM Computing Infrastructure.
- d) Provide detailed oversight and direction for the services identified as DM Application Support.
- e) Coordinate City staff to support the testing and implementation of hardware and software upgrades and application deployments.
- f) Review recommendations pertaining to the architecture and standards used for these environments and provide clear direction to SDDPC.

14.9 Reporting Detail

Detailed work plans and budgets will be developed for each area described above. On a monthly basis, provide a report showing costs and support and maintenance activities for each area.

On a monthly basis, provide available and allocated capacity, and current utilization data for the Document Management Infrastructure Services environment.

On a monthly basis, provide a report showing the expected and actual service and performance levels. Provide an explanation for service and/or performance levels that are not meeting targets.

C. ENTERPRISE RESOURCE PLANNING (ERP) SYSTEM INFRASTRUCTURE SERVICES

1. ERP Infrastructure Support Services

Documentation of the specific ERP Infrastructure, including systems and network architecture, and inventory of all hardware and software components, shall be kept current by SDDPC using ITIL-based standards and shared with the City in an online collaboration forum. For reporting of performance metrics, the ERP Infrastructure shall include the core ERP environments (Development, QA and Test, and Production), hardware, operating system and infrastructure utilities software, and related SQL Server environment.

1.1 Expected Service and Performance Levels

- a) Due to the unique nature of the new ERP system, the following terms are defined as follows, specifically relating to the ERP system and this section of the SLA; and are not part of the general definitions of terms provided in the Appendix to this SLA.
- 1) “Instance” – A single installation of an SAP system. It includes both the SAP programs and a back-end database.
 - 2) “Client” – A working environment within an Instance, which shares the same programs and database tables (e.g., ECC Core Component, NetWeaver BI, NetWeaver Portal).
 - 3) “System Landscape” – A mapping of clients to servers (physical and/or virtual).
- b) The required service levels for the City’s ERP Instance during its first year of operation are as follows:
- 1) SDDPC shall be accountable and responsible for the management, operational support, and maintenance of the ERP platform hardware and software to support the City’s business requirements. This ERP infrastructure environment consists of servers (both physical and virtual), operating systems, databases, and core SAP application software.
 - 2) SDDPC and the City must take into account special considerations related to the ERP system when planning and executing actual support tasks, as outlined below:
 - i) Complexity of ERP applications and their close integration across operational departments require coordinated management between those responsible for infrastructure support, application support, and business process support.
 - ii) ERP applications are complex and highly integrated distributed system that constantly need tuning for best performance. This cannot be done at the technical level (infrastructure) alone, but needs to consider business processes as well.
 - iii) ERP systems are constantly evolving during their life cycle. The application is upgraded regularly for new functionality and for fixing software bugs. Business optimization and business changes demand frequent modifications of the application.
- c) For ERP Infrastructure QA and Test and Production Environments, the City requires 99.5% monthly system availability as measured by Client availability. The City also requires change management notification at least five (5) business days in advance of planned and scheduled maintenance that impacts any of the

hosted ERP resources, for each of the three environments separately – Development, QA and Test, and Production. The City must notify SDDPC at least two (2) business days in advance of the planned and scheduled maintenance, if the City needs such maintenance to be delayed or cancelled.

1.2 Points of Contact

The City's point of contact for ERP System Infrastructure Services is: Howard Stapleton.

The SDDPC point of contact for ERP System Infrastructure Services is: Rick Knode.

1.3 Reporting Detail

On a monthly basis, SDDPC shall provide the City with a report showing availability and allocated capacity, and current utilization data for each server in both the ERP QA and Test and Production environments, and provide details for utilization including CPU, memory, and storage.

On a monthly basis, SDDPC shall provide the City with a report showing the expected and actual service and performance levels, and provide a written explanation for service and/or performance levels that are not meeting targets.

SDDPC shall provide the City with all monthly reports no later than ten (10) business days after the last day of each month.

D. CENTRAL INFRASTRUCTURE SUPPORT (CISO) SERVICES

Central Infrastructure Services include: Service Desk Support Services (incorporating both Help Desk and Desktop Support), Hardware Maintenance, Computing Infrastructure Support Services, File and Print, Electronic Messaging, and Active Directory Administration – all as part of the Computing Infrastructure Support Organization (CISO).

1. Service Desk Support Services

All repair and troubleshooting requests are to be called in to the City of San Diego IT Help Desk (at 858-581-9900 or x19900 internally) by the City end-users. SDDPC shall provide Help Desk services 24 hours per day, seven days per week (24/7), including City holidays. For CISO Services, "normal business hours" are defined as Monday through Friday, 7:00am through 5:30pm, excluding City holidays.

During normal business hours, SDDPC Help Desk staff shall provide first-level troubleshooting during the initial call to resolve problems, which include voice mail and telephone support, password resets, and network or desktop and laptop PC problems. Those calls to the Help Desk that are not resolved at the first level shall be dispatched by the Help Desk to an appropriate support staff within 30 minutes of the initial/first call. SDDPC support staff assigned a Help Desk call shall contact the end user within 30 minutes of the call being dispatched to them.

Some Help Desk calls are assigned to City department IT support staff for resolution. The City IT support staff shall contact the end user within 60 minutes of the call being assigned to them. The SDDPC Help Desk shall manage these referred calls until the trouble ticket is accepted by the City department IT staff, after which, the City department IT staff are responsible for managing the trouble ticket through resolution. After a trouble ticket has been accepted by the City department IT staff (by updating the online trouble ticket status), the City department shall indicate the trouble ticket status as “work in progress” when they have contacted the end-user customer; and the ticket will not be closed by SDDPC until notified of its resolution by the City department. The City department IT staff assigned to a trouble ticket, shall notify the SDDPC Help Desk within two hours of its resolution, including any relevant updates of the action taken.

During off-hours (weekdays from 5:30pm to 7:00am, weekends, and City holidays), only emergency calls will be dispatched by the SDDPC Help Desk. All other calls received during off-hours will be dispatched at 7:00am on the next business day. Emergency calls must be identified as such during the end user’s initial contact with the SDDPC Help Desk. If appropriate, support staff will respond to the problem site within two hours from receipt of the emergency dispatch notification, with the exception of Desktop and Field Support which will be handled on a best-effort basis.

1.1 Expected Service and Performance Levels

a) First Call Resolution

The City requires first call resolution on 65% of all non-hardware related trouble calls on the first phone contact with the Help Desk. Resolution is defined as the incident being corrected and the ticket status being put in a resolved state.

b) Time to Dispatch

The City requires time to dispatch is: 90% of all calls to the Help Desk within 30 minutes of the initial call from the client; 95% within 45 minutes; and 100% within 60 minutes. (This does not include calls resolved on the first call to the Help Desk.) “Time to dispatch” is defined as the assignment of the call to the appropriate technician, SDDPC, City or other contractor.

c) Customer Satisfaction

The City and SDDPC will share responsibility for soliciting end-user satisfaction via acceptability surveys. The City shall have the right to manage how, when, to whom, and the content of the surveys (with input from SDDPC), and for collecting and maintaining the raw results.

d) Desktop Support Services

Desktop Support Services includes second level support provided either remotely or onsite by SDDPC support staff to resolve trouble tickets dispatched by the Help Desk. Some types of support may require assistance and response from outside vendors or other third parties.

The City requires the following resolution times, based on priority and type of service identified:

Priority	Service Definition	SLA to Resolution
High (during Normal Business Hours)	Business Critical system failure (considered an emergency)	85% in 4 hours
High (during Normal Business Hours)	Business Critical system failure	95% in 8 business hours (1 business day)
High (during off-hours)	Business Critical system failure	City & SDDPC joint “best-effort basis” until next business day
All Others	Non-critical business impact	85% in 2 business days
All Others	Non-critical business impact	98% in 4 business days
Service Requests (not break-fix trouble calls)	Install, Add, Move (standard equipment, less than 10 in one request per month)	95% in 5 business days (excluding delays in service referred to outside vendors)

All of these service levels are based on the hardware and software meeting the City standard specifications. In situations where necessary City resources (staff or location/site access) are not available when needed for SDDPC to provide assistance, then the delayed time period waiting for availability will not count toward the above resolution time commitments.

All incident/call escalations involving Public Safety and/or DoIT will be dispatched to DoIT support staff. Some incidents received by the Help Desk involving business applications are assigned to the City department staff for resolution. When the incident is escalated to City staff, the City staff is responsible for accepting the ticket and closing the ticket when completed. The City and SDDPC shall be jointly responsible for maintaining an accurate application support matrix, used in directing service calls to the correct resources. Also, the City is responsible for providing and maintaining a system outage priority matrix to assist in prioritizing incidents, updated at least annually (see system outage “Incident Priority Matrix” below).

Incident Priority Matrix

Ticket Type	Priority	Description
Problem (break-fix)	High	Total work stoppage on a critical system or operation; affecting multiple users
Problem (break-fix)	All Others (excludes Service Requests)	Minimal to significant interruptions in work flow and/or waiting for action by third parties; affecting one or more users.

1.2 City Responsibility

- a) The DoIT is responsible for providing Desktop services for the following departments:
 - 1) Office of Homeland Security
 - 2) Department of Information Technology
 - 3) Fire-Rescue Department
 - 4) Police Department

1.3 Points of Contact

The City's point of contact for Service Desk Support Services is: Noel Gilchrist.

The SDDPC point of contact for Service Desk Support Services is: Cynthia Monroe for Help Desk and Bill Riley for Desktop Support.

1.4 Reporting Detail

- a) Upon execution of this SLA, SDDPC shall provide the City with an Organization Chart containing the names and titles of key personnel who provide Service Desk Support Services (including Help Desk and Desktop Support).
- b) On a monthly basis, SDDPC shall provide the City with a raw data file in Excel format (not a formatted report), to be used for reporting and acceptability surveys, which includes:
 - 1) Incident Number
 - 2) User Name
 - 3) User Phone
 - 4) User Location
 - 5) Asset Number (SysID)
 - 6) Short Incident Description
 - 7) Incident type
 - i) Hardware
 - ii) Software
 - iii) Password Reset
 - iv) Business Application
 - 8) Status (highlighting any incidents outside of SLA requirements)
 - 9) Method of resolution (resolved via remote access vs. on-site)
 - 10) Time to resolution (if resolved)

- 11) City Department number
- b) On weekly basis, SDDPC shall provide the City with a digital report of unresolved trouble tickets (also called an “Aging Report” by SDDPC), showing:
 - 1) Incident Number
 - 2) Date Incident Reported and Created
 - 3) Short Description
 - 4) Reporting Department
 - 5) Assigned To
- c) On a monthly basis, SDDPC shall provide the City with a report of “number of calls resolved on first call” through the SDDPC Help Desk.
- d) On a monthly basis, SDDPC shall provide the City with a report of “number of calls referred” to the following service/support areas or providers:
 - 1) Department of IT
 - 2) Business Department
 - 3) Outside Vendor
- e) On a monthly basis, SDDPC shall provide the City with a report of phone call statistics into the SDDPC Help Desk, as follows:
 - 1) Number of calls abandoned
 - 2) Average call wait time

2. Hardware Maintenance Services

As part of the City’s annual budget process, SDDPC shall provide the City with all costs associated with extending the base warranty for network and desktop laser printers from 1 year to 3 years, to be included in covered maintenance services for the upcoming fiscal year, at the City’s discretion. All non-laser printers will be maintained over their original warranty period, after which time they will be maintained on a time-and-materials basis.

2.1 Covered Desktop Equipment – First 36 Months of In-Service Life

Desktop PCs and HP and Compaq Workstations – Existing and newly purchased desktop PCs and HP and Compaq workstations are covered by contract maintenance through a third-party agreement. The following system components are covered: central processing unit; case, motherboard and power supply; display; unlimited memory; internal and external floppy drives; unlimited hard drives; internal and external CD, CDRW and DVD drives; floppy drive controllers; all cards; keyboard; mouse and adapter; internal or external modems; internal and external Zip/Jaz drives; surge suppressor; and, uninterruptible power supplies. Other types of items are not covered. For any question regarding whether an item is covered or not, the terms of the current contractual agreement with the maintenance service provider in effect at the time shall take precedence over this SLA.

Laptop and Tablet PCs – Existing and newly purchased laptop and tablet PCs are covered by contract maintenance. The docking station and applicable above-listed desktop PC components are covered; batteries are not covered.

Thin Client Devices – Existing and newly purchased HP and Compaq thin client devices are covered by contract service at the City's option.

2.2 Covered Printer Equipment – First 36 Months of In-Service Life

Network Laser Printers – Existing and newly purchased laser printers are covered by contract maintenance. Consumable components are not covered.

Desktop Laser Printers – Existing and newly purchased laser printers are covered by original warranty maintenance. Consumable components (such as toner and paper) are not covered.

2.3 Covered Printer Equipment – First 12 Months of In-Service Life

Desktop Dot Matrix Printers, Inkjet Printers and All-in-One Devices – Existing and newly-purchased dot matrix printers, inkjet printers and all-in-one devices are entitled to original warranty maintenance. Consumable components (such as ink and paper) are not covered.

2.4 Expected Service and Performance Levels

a) Service Hours

The standard service hours for desktop equipment are from 7:00 am to 5:00 pm, Monday through Friday, excluding City holidays. Service requests for maintenance outside normal service hours will be performed on a time-and-materials basis.

b) Repair Times and Procedures

After a trouble ticket has been escalated to a certified hardware technician, within approximately thirty (30) minutes of receiving the trouble ticket, the hardware technician must contact the Customer by telephone to acknowledge the ticket and schedule the repair. If the hardware technician is unable to repair the problem within the time period set forth under this SLA, an offer to supply a loaner of similar form, fit, and function will be supplied.

Response is required to repair standard printer trouble calls within eight (8) hours and standard microcomputer/PC trouble calls within the agreed upon service levels (defined above under Tier 1 Support Services).

2.5 Points of Contact

The City's point of contact for Hardware Maintenance Services is: Noel Gilchrist.

The SDDPC point of contact for Hardware Maintenance Services is: Jim Carpenter.

2.6 Reporting Detail

- a) On a monthly basis, SDDPC shall provide the City with a report of the following hardware maintenance services:
- 1) Total number of calls/tickets received
 - 2) Total number of calls/tickets closed (including those received in prior months)
 - 3) For each type of covered equipment, length of time (in business hours) to resolve calls/tickets within SLA requirements, with an explanation for those calls/tickets that were resolved beyond the SLA time limits
 - 4) For Desktop and Laptop Equipment Repairs, provide the following data by component type:

Device	Component	Mfg's Warranty	Extended Warranty	Time & Materials	No Parts Needed
Desktops & Laptops	Motherboard (including on-board sound, graphics, & NIC)				
	RAM / Memory				
	Hard Drive				
	Power Supply				
	Other Peripherals (mouse, keyboard, non-integrated NIC)				
Monitors	n/a				
Printers	n/a				

- b) SDDPC shall provide the City with all monthly reports no later than ten (10) business days after the last day of each month.

3. Computing Infrastructure Support Services

Computing Infrastructure Support Services include the Altiris Enterprise system for remote desktop management, support, and software deployment; the Windows Software Update Service (WSUS) for automated Microsoft critical software and security definitions, updates, and patches for the Windows Operating System and Microsoft Office Suite; and enterprise Symantec Anti-Virus system and software management and updates.

3.1 Expected Service and Performance Levels

The City requires 99.8% monthly availability from SDDPC for the Altiris Environment based on 24 hours per day, 7 days per week. This 24/7 availability allows for an established maintenance window (downtime) from 6:00pm to 8:00pm daily, as needed. (Note: this approved two-hour maintenance window is different than the standard maintenance window for other services.) SDDPC shall coordinate with the DoIT for any modifications to this service window based on specific circumstances. During normal business hours, SDDPC

shall respond to all Altiris infrastructure calls from the City within 60 minutes and SDDPC shall resolve all Altiris infrastructure trouble calls within 8 business hours. Altiris technical support from SDDPC will be available during normal business hours. After-hours support can be made available on a time-and-materials basis, with sufficient prior notice to schedule required technical resources.

The City requires Windows Server Update Services (WSUS) technical support from SDDPC to be available during standard business hours. During off-hours, SDDPC will handle only emergency calls. SDDPC will dispatch all other off-hours calls the next business day. After-hours support can be made available on a time-and-materials basis, with sufficient prior notice (one business day) to schedule required technical resources.

The City requires Symantec technical support from SDDPC to be available during standard business hours. During off-hours, SDDPC will handle only emergency calls. SDDPC will dispatch all other off-hours calls the next business day. After-hours support can be made available on a time-and-materials basis, with sufficient prior notice (one business day) to schedule required technical resources.

SDDPC will ensure sufficient staff resources with the proper skill sets and levels to effectively perform these services and ensure adequate coverage for employee absences and turnover.

3.2 Points of Contact

The City's point of contact for Computing Infrastructure Support Services is: Noel Gilchrist.

The SDDPC point of contact for Computing Infrastructure Support Services is: Bill Riley.

3.3 Reporting Detail

During the first week of each quarter, SDDPC shall provide the City with a report of all devices on reporting as available in the Altiris Console.

4. File and Print Services

4.1 Summary Description of Service

a) As part of the File and Print Services, SDDPC shall:

- 1) Fully maintain, manage, and support the hardware and software infrastructure
- 2) Provide hosted file and print services in a secure, environmentally protected data center
- 3) Perform nightly backups of the file storage areas
- 4) Transfer and store backups off-site in secure vaults for disaster recovery

- 5) Update anti-virus patterns/signature files daily for file and print servers
 - 6) Install and test software security patches and service pack updates on a regular basis
 - 7) Monitor all servers in the File and Print infrastructure and notify the City of any unscheduled service interruptions as soon as possible
- b) File Recovery Services (from backup tapes) are not included in the annual fixed-cost allocations, except for rapid restoration of online file data; however, the service is available to City departments from the File and Print infrastructure on a time-and-materials basis by entering a Service Request, using the Professional Services tiered labor rates. SDDPC can recover files that have been deleted in error within 60 days of deletion. Older versions of an existing file can also be recovered up to 30 days from the most recent version.

4.2 Expected Service and Performance Levels

The City requires 99.8% monthly File and Print Service availability from SDDPC based on 24 hours per day, seven days per week. This 24/7 availability allows for an established maintenance window (downtime) from 6:00pm to 8:00pm daily, as needed. (Note: this approved two-hour maintenance window is different than the standard maintenance window for other services.) Upgrades and maintenance during this service window will be scheduled via the change management process, which includes City consent.

When consent for change management is requested by SDDPC, the City must respond to SDDPC within two (2) business days if it has any issues with the change.

4.3 Points of Contact

The City's point of contact for File and Print Services is: Noel Gilchrist.

The SDDPC point of contact for File and Print Services is: Bill Riley

4.4 Reporting Detail

- a) Upon execution of this SLA, SDDPC shall provide the City with an Organization Chart containing the names and titles of key personnel who provide File and Print Services.
- b) SDDPC shall provide the City with weekly status reports that include:
 - 1) Any scheduled outages for the coming week
 - 2) Post-mortem of any outage from the prior week
- c) SDDPC shall provide the City with monthly status reports that include:
 - 1) Files Server availability (refer to Section 4.2 above)
 - 2) Storage infrastructure availability
 - 3) Total Storage capacity available

- 4) Storage used by City department
- 5) Amount of change in total storage utilization since last report

5. Electronic Messaging and Active Directory Services

5.1 Summary Description of Service

- a) Electronic Messaging and Active Directory (AD) Services provided by SDDPC to the City include the enterprise Microsoft Exchange electronic messaging infrastructure, Microsoft Active Directory environment, and related network file storage that are defined as follows; except these services exclude the separate Exchange electronic messaging infrastructure within the City's Police Department computing environment.
 - 1) High-quota Microsoft Exchange mailbox servers.
 - 2) Standard-quota Microsoft Exchange mailbox servers.
 - 3) Hub Transport servers which handle Email flow within the SANNET system and deliver messages to a recipient's mailbox.
 - 4) Utility servers which provide (a) Global Address List (GAL) synchronization; (b) Free/Busy schedule publishing between the Citywide and Police Exchange systems, and (c) Snap Manager backup services for the Exchange environment.
 - 5) Internet Security and Acceleration (ISA) servers which are used to securely publish Outlook Web Access (OWA), Outlook Anywhere, and ActiveSync Internet access to Outlook clients.
 - 6) Client Access Servers (CAS) which support the OWA, Outlook Anywhere, and ActiveSync client applications, and also the POP2 and IMAP4 Email protocols.
 - 7) Multi-use servers which provide (a) temporary POP3 Email services to existing City applications that cannot currently use the Exchange 2007 POP3 services, and (b) MailScape monitoring and message statistics reporting for the enterprise Exchange environment.
 - 8) Edge servers which provide inbound SMTP/Internet (Simple Mail Transport Protocol) Email services.
 - 9) Mimosa NearPoint Email archiving system, including related Microsoft SQL Server index databases, IOR (Indexed Object Repository) servers, and the eDiscovery search tool.
 - 10) RightFax servers which provide Email-linked facsimile (fax) services via the enterprise Exchange system for the City's 619 and 858 area codes.
 - 11) Blackberry Enterprise Servers (BES) which provide wireless Email synchronization services between Exchange/Outlook Email accounts and Blackberry handheld devices.

- 12) Microsoft Active Directory (AD) domain controllers which provide AD authentication for user login to SANNET and a global catalog of network services for SANNET.
 - 13) Quest (previously NetPro) management server which provides administrative services for the AD and Exchange environments, including AD change auditing, access management, group policy (GPO) administration, AD backup and restore, and AD user password self-service.
- b) The City agrees to facilitate the development of a file size and storage management policy, with a goal to start implementation in FY2010, if feasible. The purpose of this policy is to more effectively manage network storage resources within planned capacity levels (estimated during the City's annual budget process) and to prevent unplanned growth of allocated storage space beyond existing capacity. SDDPC will provide technical assistance to the City in developing and implementing this policy.

5.2 Expected Service and Performance Levels

- a) The City requires 99.8% monthly Electronic Messaging Services and Active Directory (AD) Services availability from SDDPC based on 24 hours per day, seven days per week, excluding services related to Mimosa NearPoint, RightFax and the Blackberry Enterprise Server, for which the City requires 99.5% monthly availability from SDDPC. This 24/7 availability allows for an established maintenance window (downtime) is 6:00pm to 8:00pm daily, as needed. (Note: this approved two-hour maintenance window is different than the standard maintenance window for other services.) Upgrades and maintenance during this service window will be scheduled via the change management process, which includes City consent.
- b) If messaging services are being taken off line, even during the service window, SDDPC must send a message to the City users. Major messaging system upgrades, lasting longer than two hours, will be scheduled by SDDPC over a weekend (starting after 6:00 p.m. Friday evening) whenever possible.
- c) Any Service Requests submitted by the City to SDDPC for Adds, Moves or Changes related to Active Directory objects will be completed by SDDPC within 24 hours from the initial request.
- d) Additional services not covered by the defined CISO services and costs will be estimated and charged on a time-and-materials basis; and must follow SDDPC's standard change management process, which includes City consent.
- e) When consent for change management is requested by SDDPC, the City must respond to SDDPC within two (2) business days if it has any issues with the change.

5.3 Points of Contact

The City's point of contact for Enterprise Messaging and Active Directory Services is: Noel Gilchrist.

The SDDPC point of contact for Enterprise Messaging and Active Directory Services is: Gary Lee.

5.4 Reporting Detail

- a) Upon execution of this SLA, SDDPC shall provide the City with an Organization Chart containing the names and titles of key personnel who provide Exchange and Directory Services.
- b) SDDPC shall provide the City with weekly status reports that include:
 - 1) Any scheduled outages for the coming week
 - 2) Post-mortem of any outage from the prior week
- c) SDDPC shall provide the City with monthly status reports that include:
 - 1) Exchange Services availability
 - 2) Directory Services availability
 - 3) Total Email Storage available
 - 4) Total Email Storage used
 - 5) Amount of change in Email storage utilization since last report
- d) For monthly and quarterly reporting purposes, SDDPC shall record in the weekly reports all outages affecting Exchange or Directory Services availability. However, for purposes of meeting targeted metrics, the following outages will be excluded from availability computations:
 - 1) Scheduled and approved change management maintenance windows.
 - 2) Delays of Internet Email delivery due to the loss of external DNS, or Internet connectivity.

E. PROFESSIONAL SERVICES

Professional Services include: Application Portfolio Management, Application Services, Program Management Services, and Project Management Services. The range of standard services that may be requested on an hourly basis is provided for each professional service.

1. Application Portfolio Management

Application Portfolio Management is a new service offering for FY2010, requested by the City. Costs for Application Portfolio Management will be billed on a time-and-materials basis, upon approval of the DoIT. In FY2010, SDDPC is requested to develop the base application and configuration portfolio documentation.

1.1 Expected Service and Performance Levels

- a) Maintain comprehensive inventory documentation of supported applications and their deployment;
- b) Maintain documentation of requested software installation and moves;
- c) Maintain documentation of application costs and contractual services associated with applications including: software and hardware maintenance; third party consultant support fees; annual appliance fees; third party service and hosting fees listing name of vendor, length of maintenance contract, and date of renewal.
- d) SDDPC shall maintain application cost information including all contractual services associated with application software and hardware maintenance; third party consultant support fees; annual appliance fees; and third party service and hosting fees including name of the vendor, length of maintenance contract, and date of renewal.
- e) SDDPC shall provide staff with equipment required to perform the requested services, as defined in a separate Work Plan or other document that fully describes the services and deliverables to be provided to the City.

1.2 Points of Contact

The City's point of contact for Application Portfolio Management Services is Phyllis Chapin.

The SDDPC point of contact for Application Portfolio Management Services is Laura Atkinson.

1.3 Reporting Detail

- a) On a semi-annual basis, SDDPC shall provide the City with documentation of:
 - 1) Application configuration and environment;
 - 2) Inventory of supported application applications and their deployment;
- b) SDDPC shall provide the City with two semi-annual reports by January 30th and August 31st each year.
- c) On an annual basis, SDDPC shall provide the City with a report of the application portfolio detailing all applications supported including application name, application description, City department owner (customer number), type of application (custom, Commercial-Off-the-Shelf [COTS], or other), vendor names, product names, versions of product supported, and number and type of licenses supported;
- d) SDDPC shall provide the City with all annual reports by August 31st to plan for the following fiscal year.

2. Application Services

2.1 Expected Service and Performance Levels

Expected service and performance levels of the application hosting environment are detailed under Data Center Collection Services - Application Hosting (Section B.3).

The City requires that Help Desk calls escalated to Application Service for support comply with dispatch and resolution response metrics defined in Central Infrastructure (CISO) Services.

Contracted applications services availability shall be consistent with the system priority outage matrix provisioned under Central Infrastructure (CISO) Services.

All first and second level application support requests (application trouble tickets) shall have an associated Help Desk incident report. SDDPC agrees to help facilitate this process by informing City staff who make application support requests to initiate a Help Desk trouble ticket.

All changes shall follow established Change Management procedures and shall not be implemented without customer acceptance sign-off.

New application development and system enhancements shall comply with City IT governance, IT Project Management, and procurement policies.

All software installation and moves require City staff to submit a Service Request to SDDPC; and City staff should not initiate a Help Desk trouble ticket for this work.

All billable training shall be approved by the City in advance.

Consistent with Central Infrastructure (CISO) Services, the City is responsible for currency of the Priority Outage Matrix designating applications supported and the criticality of applications supported.

The City application business owner is responsible for reviewing and approving change management associated with all proposed application modifications.

The City is responsible for ensuring applications supported under Application Services are licensed, installation of applications is directed through a service request, and that application maintenance and support is provisioned.

SDDPC shall provide and update a listing of application specific key skill sets and common IT skill sets required to sustain an application;

SDDPC shall provide adequate staffing consistent with the City's funding, trained in the key skill sets required to sustain the application(s) being supported.

After one contract cycle (a minimum of one fiscal year) of production operation, an application or technology may be declared a City standard by the DoIT, and SDDPC is responsible for all labor and training costs required to sustain the necessary skill sets in support of City standard technologies and applications.

SDDPC shall follow all applicable change management and notification processes to ensure that adequate notification is given to business application owners or designated department contacts for any planned changes, including the underlying application hosting environment and all the applications provisioned in that environment.

SDDPC application analysts shall ensure required infrastructure environment coordination occurs between Application Services, Enterprise Infrastructure Support Services, Central Infrastructure (CISO) Services, and Wide Area Network Services.

Upon request, SDDPC shall provide the City with a copy of application services contracts.

SDDPC shall provide staff with equipment required to perform the requested services, as defined in a separate Work Plan or other document that fully describes the services and deliverables to be provided to the City.

2.2 Points of Contact

The City's point of contact for Application Services is Phyllis Chapin.

The SDDPC point of contact for Application Services is Laura Atkinson.

2.3 Reporting Detail

- a) Consistent with the application support matrix, application outages shall be reported to the City's primary contact and to the primary business owner.
- b) Within ten business days upon request, SDDPC shall provide the City with a report showing contracted verses actual service and performance levels providing an explanation for service and/or performance levels that do not meet targets.
- c) Within ten business days upon request, SDDPC shall provide the City with a report detailing application resource utilization, significant events, and issues.
- d) Within ten business days upon request, SDDPC shall provide the City with an Application Support Summary report indicating:
 - 1) Number of applications supported;
 - 2) Number of open and closed tickets that were escalated to application support;
 - 3) Number of tickets resolved on first call;
 - 4) Number of tickets escalated to second level support;
 - 5) Mean time to resolve;
 - 6) Number of tickets requiring more than 48 hours resolving.

- e) On an annual basis, on or by August 31st, SDDPC shall provide the City with a report of:
- 1) Key skill sets, application specific, and general IT skill sets required to sustain an application;
 - 2) Prior year actual billed applications services summarized to the most detailed level available that map to City cost structures;
 - 3) Billing of application services budgeted in prior year compared to applications support services billed to the activity level and summarized by labor rate and material code.
- f) Any of these applications support reports requested by the City that exceed four hours to create will be billed by SDDPC to the requesting department on a time-and-materials basis.

3. Program Management Services

3.1 Points of Contact

The City's point of contact for Program Management Services is George Brister.

The SDDPC point of contact for Program Management Services is Marlyn Webb.

3.2 Reporting Detail

- a) Separate work plans and budgets must be developed for each program and project area. The SDDPC Program Manager will provide regular periodic reports at least monthly on utilization, costs and support activities for each program and project. In addition, the SDDPC Program Manager will be responsible for the following:
- 1) Identify programs, key deliverables and schedules for City approval
 - 2) Identify and report program resources and billing rates
 - 3) Closely track program expenses and revenue
 - 4) Compile all project and operational data within their program area into a summary report on a periodic basis

4. Project Management Services

4.1 Expected Service and Performance Levels

- a) SDDPC Project Managers assigned to work on City IT projects are expected to have the requisite expertise as discussed above, and may be requested to perform activities within any of the 44 process groups contained in the PMI's PMBOK (Project Management Institute's Project Management Book of Knowledge). In addition, assigned project managers are expected to be familiar with and use the required and optional forms in the IT Project Management Framework. Framework checklists, processes, and guidelines should be used as appropriate.

- b) The City uses the Microsoft Office Suite of productivity tools, Microsoft Project, and Microsoft Visio tools in support of project management activities. SDDPC will provide the same set of tools to any project managers assigned to City IT projects. SDDPC tools will be the same version as the City's tools.
- c) The following Framework forms comprise the minimum document set for a City IT project with technical content managed by an SDDPC project management resource. The SDDPC project manager is expected to manage this document set with input from the City department assigned overall responsibility for project.
- 1) Charter
 - 2) Change Request
 - 3) Change Request Log
 - 4) Issues/Problems/Action Items/Decisions Log
 - 5) Microsoft Project Schedule
 - 6) Project Status Report – weekly or monthly at City's request; should include budget, schedule, change requests (including impacts), tasks and activities completed since last reporting period, tasks and activities planned during next reporting period, resource hours planned and spent, key decisions and action items completed, outstanding and pending decisions or action items, and risk/mitigation plans
 - 7) Meeting Agendas and Meeting Notes
 - 8) Risk Assessment Tool
 - 9) Risk Mitigation Log
 - 10) Statement of Work
 - 11) Sign-off

4.2 Points of Contact

The City's point of contact for Project Management Services is George Brister.

The SDDPC point of contact for Project Management Services is Marlyn Webb.

4.3 Reporting Detail

- c) Each project will include a Work Breakdown Structure (WBS). Although the WBS for each project may be unique do to the nature of the project, there shall be a WBS element for all major project deliverables. Project management services should be one of the standard WBS elements for each project.
- d) On a periodic basis SDDPC will provide a report on cost accumulated in the WBS. The period will be no less frequently than monthly, but may be more

frequent depending on project requirements. The report will provide the following information:

- 1) Rolled up cost for each WBS element
 - 2) Detailed cost for each WBS element
- e) The detailed cost for each WBS element that includes labor will include the name of each resource, the amount of time billed, and the cost. The project manager will ensure that all work performed is charged to the appropriate WBS element.
 - f) The detailed cost for each WBS element that includes items other than labor will include a description of the item along with the quantity, unit cost, and total cost for each item.
 - g) Billing will be aligned with the City's reporting periods. This is expected to be monthly in FY 2010. Monthly billings will include the same detail as the weekly reporting.

F. DELIVERABLES

1. Delivery of Deliverables as Part of any of the Services

SDDPC shall deliver to the City the Deliverables as described in specific Statements of Work, Service Requests or Work Plans, created pursuant to and for services described in this SLA. No such Delivery will be deemed given unless the City has actual knowledge of such Delivery. Upon the Delivery to the City of any Deliverables, the City will have the right to inspect each such Deliverable for a period of ten (10) business days after the City receives such Deliverable (the "Inspection Period"). If, upon inspection of the Deliverable, the City determines that such Deliverable is in compliance with relevant Acceptance Criteria, the City shall notify SDDPC in writing that the City has accepted such Deliverable. A Deliverable will be deemed to have met the relevant "Acceptance Criteria" if both of the following conditions exist: (i) such Deliverable is in substantial conformity with the specifications set forth in that portion of the SLA, Statement of Work, Service Request or Work Plan related to the respective Deliverable, and (ii) SDDPC is not in breach of any of the terms of this Agreement.

2. Nonconforming Deliverables; Opportunity to Cure

If, upon inspection of a Deliverable, the City determines that such Deliverable does not conform to the Acceptance Criteria (a "Nonconforming Deliverable"), the City shall notify SDDPC in writing of such nonconformity within the Inspection Period ("Notice of Nonconformity"). Delivery of a Notice of Nonconformity by the City to SDDPC shall constitute a rejection of the Deliverable. If a Deliverable is rejected by the City, SDDPC shall have the opportunity to cure the nonconformities in Nonconforming Deliverables ("Delivery Cure"), provided that such cure is completed and the cured Deliverables are re-delivered to the City within ten (10) business days from the date of the Notice of Nonconformity ("Delivery Cure Period"), at no additional cost to the City. In the event SDDPC conducts a Delivery Cure and delivers the ostensibly cured Nonconforming Deliverable to

the City, the City shall again have the right to inspect, accept or reject such Deliverable as if SDDPC were delivering the Deliverable for the first time, and such inspection and acceptance or rejection shall be governed by the terms and conditions set forth in this section. SDDPC shall have one Delivery Cure Period to remedy any nonconformities in Nonconforming Deliverables unless the Parties agree otherwise in writing. SDDPC shall bear all costs of Delivery Cure and re-delivery.

3. Acceptance

A Deliverable delivered by SDDPC to the City pursuant to Section F.1 above shall be deemed accepted (hereinafter "Acceptance") if all of the following conditions exist: (i) SDDPC has delivered such Deliverable to the City, (ii) such Deliverable is in compliance with the Acceptance Criteria set forth in the annual SLA, Statement of Work, Service Request or Work Plan, (iii) SDDPC is not in breach of any warranty with respect to such Deliverable, and (iv) the City has provided SDDPC with written notice of such Acceptance. The City shall not unreasonably withhold its Acceptance of any Deliverable from SDDPC.

4. Remedy if No Acceptance

In the event there is no Acceptance of a given Deliverable by the City, the City shall have the right, at its sole discretion, to do one or more of the following: (i) retain the use of such Deliverable (including any applicable documentation), whether conforming or nonconforming, with rights to the City as set forth in **Section ___** of this Agreement, and pay to SDDPC any payments due under outstanding milestone payments (if any) for which there has been Acceptance by the City of all Deliverables due on or before the due date for such payments, with no further fees to be paid to SDDPC thereafter for such Deliverables; (ii) extend the Delivery Cure Period; or (iii) suspend its performance; provided, however, that the City need not provide SDDPC any additional cure period, including but not limited to the Delivery Cure Period.

G. SEVERABILITY

If any provision of this Agreement is or becomes illegal, invalid or unenforceable, all other provisions shall not be affected but shall remain in full force and effect.

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FY2010 Service Level Agreement
 By and Between City of San Diego
 and San Diego Data Processing Corporation

H. APPROVAL SIGNATURES

We concur that San Diego Data Processing Corporation and the City of San Diego have agreed upon the foregoing Service Level Agreement (SLA), and following five Appendices (A – F), for Fiscal Year 2010, as amended in this Version 2.0. This Amendment shall become effective on the date last signed below (“Effective Date”):

Naresh Lachmandas, Information Technology Director
 City of San Diego

 Date

Hildred Pepper, Purchasing & Contracting Director
 City of San Diego

 Date

 _____, President & Chief Executive Officer
 San Diego Data Processing Corporation

 Date

APPROVED AS TO FORM AND LEGALITY:

Jan Goldsmith, City Attorney
 By:

Steve Lastomirsky, Deputy City Attorney
 City of San Diego

 Date

Don Del Rio, Corporate Counsel
 San Diego Data Processing Corporation

 Date

Appendix A

Glossary of Terms & Abbreviations

Unless specifically defined elsewhere in this Agreement, the following terms and abbreviations have the meaning indicated below:

- “AD” – Microsoft’s Active Directory (network object directory)
- “CAD” – Computer-Aided Dispatch
- “CADD” – Computer-Aided Design & Drafting
- “CEO” – Chief Executive Officer
- “CIO” – Chief Information Officer
- “CISO” – Computing Infrastructure Support Organization
- “CityNet” – The City of San Diego’s Intranet site
- “COO” – Chief Operating Officer
- “COTS” – Commercial Off-The-Shelf product
- “DBA” – Database Administrator
- “DM” – Document Management
- “ERP” – Enterprise Resource Planning
- “FAMIS” – Fixed Asset Management Information System
- “GCSS” – General/Citywide Support Services
- “INet” or “I-Net” – Internet and Intranet
- “IOR” – Indexing Object Repository (part of Mimosa’s NearPoint Email Archive system)
- “IT” – Information Technology
- “ITIL” – Information Technology Information Library
- “IVR” – Interactive Voice Response
- “LAN” – Local Area Network
- “MOU” – Memorandum of Understanding
- “MS” – Microsoft [Corporation]
- “NAS” – Network Attached Storage
- “PIQ” – Project Initial Quote
- “RFI / RFQ / RFP” – Request For Information / Quote / Proposal
- “SAN” – Storage Area Network
- “SANNET” – San Diego Network – the City’s internal/private network managed by SDDPC
- “SDDPC” – San Diego Data Processing Corporation

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“SLA” – Service Level Agreement

“SQL Server” – Microsoft’s implementation of a relational database using Structured Query Language (“SQL”)

“WAN” – Wide Area Network

“WSUS” – Windows Server Update Service (from Microsoft)

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Appendix B**SDDPC Problem Resolution Commitments**

PROBLEM TYPE	SEVERITY	% GOAL	RESOLUTION TIME
Data Network	Critical	95%	8 hours
	Standard	90%	24 hours
Voice Network	Critical	95%	8 hours
	Standard	95%	24 hours
IVR System	Critical	95%	4 hours*
	Standard	95%	8 business hours*
Enterprise File and Print Service	All	95%	4 business hours
		99%	8 business hours
Desktop Software Problems (includes remote Help Desk assistance and dispatched onsite assistance)	All	80%	3 business days
Servers	Mission Critical	85%	4 hours
	Expedited Service	85%	12 business hours
	Normal Business	85%	2 business days
Service Desk Calls dispatched (not resolved on first call to Help Desk)	All	90%	30 minutes
		95%	45 minutes
		100%	60 minutes
Desktop/laptop and notebook hardware <36 mo. (covered by service contract)	All	90%	16 business hours
Printer hardware <36 mo. (covered by service contract)	All	90%	8 business hours
Desktop and laptop and notebook and printer hardware >36 mo. (time-and-materials)	All	90%	16 business hours
Enterprise Exchange Infrastructure	All	95%	4 business hours
		99%	6 business hours
Citrix Infrastructure	All	95%	4 business hours
		99%	6 business hours
AS5300 Service	All	95%	8 hours
* may be extended if third-party support is required			

PROBLEM RESOLUTION DEFINITIONS:	
Respond	A technician will be on-site or begin remote diagnosis of the problem after receiving a call from the Help Desk.
Resolve	The problem will be repaired so that normal system operation is restored.
Data Critical	Twenty percent (20%) or more of network devices are unable to connect to the network or an entire site is unable to connect to the network. Response and resolution times are on a 24 hours per day, 7 days per week basis.
Voice Critical	Twenty percent (20%) or more of telephones are unable to connect to the network, make or receive calls or an entire site is unable to connect to the network or any voice mail system problem affecting ten percent (10%) or more users. Response and resolution times are on a 24 hours per day, 7 days per week basis.
Data Standard	A device is unable to connect to the network. Response and resolution times are on a business day basis.
Voice Standard	A voice device or telephone is unable to connect to the network, make or receive calls. Response and resolution times are on a business day basis.
IVR Critical	The entire IVR system is non-operational or Planfinder, PDR Inspection Line or Water Line is non-operational. Response and resolution times are on a 24 hours per day, 7 days per week basis.
IVR Standard	An IVR application, other than one identified above as critical, is non-functional.
LAN Server O/S	All operating system problems reported on SDDPC-managed LAN servers.
Server Critical	The criticality level is determined by the City's business operational requirement for the service with the highest level need for availability on a particular server, requiring immediate service (resolution needed within 8 hours or less).
Server Standard	The SDDPC server administrator determines that service can be scheduled (resolution period greater than 8 hours, based on the City's business operational requirements).
% Goal	The number of trouble tickets that are responded to <u>and</u> resolved each month divided by the total calls received for the month expressed as a percentage.
Contract	Resolution times listed are for PC hardware and LAN workstations covered under the third party maintenance contract. Equipment serviced on a time and materials basis will be completed after all contract clients are supported.

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FY2010 Service Level Agreement
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Appendix C**SDDPC FY2010 Rates for Services**

FY2009 Obj Acct	FY2010 GL Account	SDDPC Mat'l Code	Cost Basis	Description	FY2010 Final Rates
4981	513006	varies	Per Hour	Professional Services - Tier 1	\$41.00
		varies	Per Hour	Professional Services - Tier 2	\$55.00
		varies	Per Hour	Professional Services - Tier 3	\$74.00
		varies	Per Hour	Professional Services - Tier 4	\$85.00
		varies	Per Hour	Professional Services - Tier 5	\$98.00
		varies	Per Hour	Professional Services - Tier 6	\$107.00
		varies	Per Contract Terms	Specialized Outside Contract Labor	\$20.93
		varies	Per Hour	ERP Support Labor - Tier 3	\$78.00
		varies	Per Hour	ERP Support Labor - Tier 4	\$85.00
		varies	Per Hour	ERP Support Labor - Tier 5	\$98.00
varies	Per Hour	ERP Support Labor - Tier 6	\$112.00		
4982	513401	5	Annual Fixed Price	Mainframe [Citywide Allocation]	\$2,095,546
		5830	Annual Fixed Price	Oracle Enterprise Environment [Specified Allocations]	\$591,132
		7147	Annual Fixed Price	Interactive Voice Response (IVR) [Specified Allocations]	\$320,802
		6991	Weekly Server Fee	Server Hosting Fee (Dept Server in Data Center)	\$21.96
		7144	Annual Usage Rate	Enterprise Application Hosting Environment - [Small]	n/a
		7876	Annual Fixed Price	Enterprise Application Hosting Environment [Specified Allocations]	(varies by appl)
		7877	Annual Usage Rate	Enterprise Application Hosting Environment - [Large]	n/a
		7295	Annual Usage Rate	SQL Enterprise Environment - Small	\$6,471.77
		7878	Annual Usage Rate	SQL Enterprise Environment - Medium	\$12,943.54
		7879	Annual Usage Rate	SQL Enterprise Environment - Large	\$25,887.08
		4841	Weekly Per GB Fee	NAS Storage - Cost per GB (for the first Terabyte)	\$0.29
		7064	Weekly Per GB Fee	NAS Storage - Cost per GB (for > 1 terabyte)	\$0.06
49834	513402	7477	Annual Fixed Price	Centralized Desktop Support Services [Citywide Allocation]	\$6,703,885
4983	513001	7900	Annual Fee Per Device	Blackberry Enterprise Support	\$90.00
4984	513403	6912	Annual Fixed Price	Data Network Access/Service [Citywide Allocation]	\$8,247,066
		n/a	Weekly Per Unit	Server Network Access (included in Annual Fixed Price)	n/a
		193	Weekly Per Unit	LAN (no SANNET)	\$10.57

[Draft]

FY2010 Service Level Agreement
 By and Between City of San Diego
 and San Diego Data Processing Corporation

FY2009 Obj Acct	FY2010 GL Account	SDDPC Mat'l Code	Cost Basis	Description	FY2010 Final Rates	
4984	513403	197	Weekly Per Unit	Outside Customer	\$10.57	
		2154	Weekly Per Person	AS5300 Dial-Up Access (Telecommute - Basic)	\$15.27	
		5630	Per Event	One-Time Setup Fee (for AS5300)	\$100.00	
		1713	Weekly Per Person	Citrix Desktop (Telecommute - Full Access)	\$15.27	
		6850	Weekly Per Person	Citrix Applications (Internal - Thin Client)	\$15.27	
		5632	Per Event	One-Time Setup Fee (for Citrix)	\$330.00	
49841	513404	n/a	Annual Fixed Price	INet Services [Citywide Allocation]	\$1,012,423	
49842	513405	n/a	Annual Fixed Price	Doc Mgmt Infra Services [Citywide Allocation]	\$566,671	
4986	513002	n/a	Eliminated in FY2010	General/Citywide Support Services [Citywide Allocation]	n/a	
		Hardware Maintenance - Desktop Services w/8-Hour Resolution (SLA)				
		169	Weekly Per Unit	B/W Laser Printer (Networked or Desktop and Stand-alone)	\$2.98	
		4688	Weekly Per Unit	Color Laser Printer (Networked or Desktop and Stand-alone)	\$4.67	
		2621	Weekly Per Unit	Inkjet Printer	\$2.18	
		4702	Weekly Per Unit	Dot Matrix Printer	\$2.02	
		4700	Weekly Per Unit	Laser All-in-One Device	\$2.98	
		3020	Weekly Per Unit	Inkjet All-in-One Device	\$2.18	
		Hardware Maintenance - Desktop Services w/16-Hour Resolution (SLA)				
		175	Weekly Per Unit	Desktop PC	\$0.74	
		4685	Weekly Per Unit	Laptop PC (Blended)	\$1.21	
		4687	Weekly Per Unit	CADD Workstation (Compaq)	\$0.74	
		6929	Weekly Per Unit	Ruggedized Laptop PC	\$1.21	
		Servers - Maintenance				
		6728	Weekly Per Unit	Servers, 4 Hours, In Warranty	\$11.22	
		6729	Weekly Per Unit	Servers, 4 Hours, Out of Warranty	\$42.84	
		7339	Weekly Per Unit	Servers, 12 Business Hours, In Warranty	\$5.38	
		7340	Weekly Per Unit	Servers, 12 Business Hours, Out of Warranty	\$29.88	
		6732	Weekly Per Unit	Servers, 2 Business Days, In Warranty	\$2.95	
		6733	Weekly Per Unit	Servers, 2 Business Days, Out of Warranty	\$26.13	
5301	513406	6913	Annual Fixed Price	Voice Network Access/Service [Citywide Allocation]	\$2,613,075	

VOICE AND DATA NETWORK COMPONENTS	Rate Funded	Customer Funded
<ul style="list-style-type: none"> • Other Servers and gateways used by individual clients/LANs/depts. • Internet Access 	X X	
Exchange <ul style="list-style-type: none"> • Citywide System Administration • License Maintenance • Departmental Post Office Administration 	X X	X
Software Maintenance <ul style="list-style-type: none"> • Windows Server • Exchange 		X X
Ethernet Switches <ul style="list-style-type: none"> • New installs (hubs and switches) • Upgrade to existing hub (additional ports to fill existing capacity) • Upgrade or new hub and switch redesign, expansion beyond existing switch capability • Switching Ports 	X* X* X* X*	X* X* X* X*
Labor (applies to current fiscal year costs only) <ul style="list-style-type: none"> • SDDPC Network Technician <ul style="list-style-type: none"> ○ New Installs ○ Upgrade existing to capacity ○ Upgrade beyond existing capacity • Network Engineer labor <ul style="list-style-type: none"> ○ New Installs ○ Upgrade existing to capacity ○ Upgrade beyond existing capacity • Network Analyst <ul style="list-style-type: none"> ○ New Installs ○ Upgrade existing to capacity ○ Upgrade beyond existing capacity • Network technician time due to client requested adds, moves or changes • Project management labor hours. Includes project lead, team member, and engineering hours. • Pre-fields (non-construction related) 	X X* X X* X* X* X* X*	X X X* X* X X X X
Mainframe Upgrades and Replacements <ul style="list-style-type: none"> • IBM Cluster Controllers (DPC local) • Expansion kits • Engineering Design and installation of equipment at new sites 	X X	X
Network Services <ul style="list-style-type: none"> • Network Administration (IP address, LAA, etc) • Hub and switch port assignments • Inventory • Telephone billing and inventory and phone exception reports • Special reports and diagrams and analysis and billing requirements 	X X X X	X
Racking for Backbone Equipment Only <ul style="list-style-type: none"> • Equipment racks • Shelves • Client requested racking • Security cabinets 	X X X	X
Routers - Backbone Network Only <ul style="list-style-type: none"> • Router and WAN access, new installs 	X	

VOICE AND DATA NETWORK COMPONENTS	Rate Funded	Customer Funded
<ul style="list-style-type: none"> Upgrade to existing router (additional serial, TR, Ethernet ports) to fill existing capacity 	X*	X*
<ul style="list-style-type: none"> Expansion equipment at specific sites due to increased requirements redesign beyond existing capacity or new technology implementation 	X*	X*
Support Services <ul style="list-style-type: none"> TAC, Network Operating Center (NOC) Network engineering support (backbone design & implementation) Systems network support (MVS, VMS) Network data equipment repair and maintenance Project Management, needs analysis and network design per project or specific request 	X X* X X	X* X
Telephone Circuits <ul style="list-style-type: none"> Telephone or leased line installation costs (1MBs, 4.8-56K, T1 or higher) Monthly charges for circuits dedicated to a single user (i.e., water telemetry, fire & PD, CAD, radio circuits, etc.) Monthly charges for SANNET Network Circuits (9.6, T1, Frame Relay) acquired in prior years Monthly charges for SANNET Network Circuits (9.6, T1, Frame Relay) acquired in current year Monthly Charges for NEC Network acquired in prior years Monthly Charges for NEC Network acquired in current year 	X* X X*	X* X X* X* X*
Terminal Equipment <ul style="list-style-type: none"> Network Interface Cards - part of PC purchases or server Terminal Connection devices (baluns, media filters, transceivers, Micro MAUs, line cords, splitters) Print Sharing equipment-Baytech, EDSI 		X X X
Wiring and Cable <ul style="list-style-type: none"> Fiber & Level 5 riser (within building) <ul style="list-style-type: none"> New building Existing building Expansion beyond current capacity Wiring equipment (Interduct, patch panels, patch cords (for CSU/DSUs, fiber, etc., Krone blocks, wall jacks) <ul style="list-style-type: none"> New building Existing building Expansion beyond current capacity Horizontal wiring (to desktop from IDF closet) Cable, fiber and trenching between buildings when used only by a specific client (i.e., Chollas, landfill, Rose Canyon Operations, etc.) 	X* X* X* X* X* X* X* X*	X* X* X* X* X* X* X* X*
<p>*If the item was not included in the cost pool, then the customer must pay the current-year utilization cost until the ongoing cost can be incorporated into the cost pool the following fiscal year. If new equipment is required due to equipment capacity being reached, SDDPC will purchase the replacement hardware and the customer will fund the equivalent depreciation amount until such time as the ongoing cost can be incorporated into the cost pool the following fiscal year.</p>		

Not covered at SDDPC's expense are theft and the following scenarios:

- Temperature damage
- Humidity damage

Water damage

Smoke and Fire damage

Dust and debris. Metal dust from worn air-conditioning units and printer mechanisms, synthetic fibers from clothing, paper, and carpets and cement dust and other crystalline contaminants vented from the sub-flooring can cake in your equipment. These particles can cause shorts or clog filters, causing equipment to overheat. They can increase read/write errors leading to a "head crash".

Air-Flow

AC Power Quality

Personnel Access

Halon damage

Alternative use of room (storage of customer equipment such as bookcases, desks, mops, etc.)

Cable cut

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Appendix E

Inventory Records Update Responsibilities

SDDPC's SAP inventory determines the recurring charges for all network access connections and PC or server maintenance for which departments are billed. As a result, SDDPC needs to be notified of changes to department inventories that affect these charges. Maintenance charges cannot be credited for previous periods if SDDPC has not been informed of the change. Customers must use the service request process as described below to keep their server inventories current. Billing questions or requests for credits should be sent via email to SDDPCBillingInquiry@sddpc.org.

As changes occur in City departments, it is the City customer's responsibility to notify SDDPC via a SDDPC Service Request online form. The Service Request form is located on the SDDPC Website at (<https://apps.sandiego.gov/SRS/login.jsp>). Once the form is submitted, a Service Request number will be automatically emailed to the requester for tracking purposes.

For large sets of changes (more than 20), first print out a copy of the inventory list(s) to be updated. The inventory reports are located on the SDDPC Website at (www.sddpc.org) under the Customer Support and Reports section. Annotate the report and send it to the SDDPC Service Delivery Department (Mail Station RC-915). Then submit a Service Request form via the SDDPC Website indicating that an inventory request has been sent via interoffice mail.

Inventory changes will be completed within 10 days. An email notification referencing your Service Request number will be sent to you when the inventory updates have been completed.

If an asset has moved to another department, please indicate the new department number, the contact person for the new department, and the date the asset was moved.

For systems that have been transferred to another department, please indicate if a replacement system is now in place.

If a PC or printer has been removed and it was connected to the network, please indicate which system took over its data connection. If the data connection is no longer required, please submit a Service Request to SDDPC to have it disconnected. (All connections whether they are actively being used or not, are considered as active inventory for the purpose of fixed price allocations at the time in October when the annual inventory snapshot is taken).

When a new PC, printer, or scanner is purchased, an equipment number is assigned to the asset. Some basic data derived from the order is entered into SDDPC's SAP inventory system. If the value of the asset is >\$5,000.00, SAP information will be downloaded to the Comptroller's capital asset database, once the system has been billed to the department. Any information on PCs, printers, or scanners purchased outside of SDDPC is entered into the City's SAP system through the logistics module at the time of purchase.

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By and Between City of San Diego
and San Diego Data Processing Corporation

Be advised that updates to your SDDPC inventory are not provided back to the City Comptroller for any capital assets. Therefore, any capital asset inventory changes must be sent to SDDPC and the Auditor separately. (Note: Information is shared between SDDPC's SAP and the City's SAP system only when a new PC, printer, or scanner is purchased with a value >\$5,000.00.)

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Appendix F**SDDPC Staff Positions within Labor Tiers****Table #1**

Labor Tier	FY2010 Hourly Rate	SDDPC Staff Positions (with Material Code) Typically Billable
1	\$41.00	Data Entry Operator I/II (401) Data Entry Technician (401) GIS/CADD Technician I (501) Programmer/Analyst Trainee (1292) Technical Support Analyst I (529)
2	\$55.00	CADD Analyst I (2694) CADD Analyst II (270) Client/Server Analyst I (266) Database Administrator I (282) GIS Analyst I (506) GIS Analyst II (260) Network Administrator I (458) Programmer/Analyst I (410) Programmer/Analyst II (240) Systems Programmer I (281) Technical Support Analyst II (2136) Technical Support Analyst III (2137)
3	\$74.00	CADD Analyst III (271) Client/Server Analyst II (267) Database Administrator II (1313) Desktop Analyst III (457) GIS Analyst III (1320) Network Administrator II (459) Network Administrator III (467) Network Analyst III (1297) PD Network Administrator II (469) Programmer/Analyst III (412) Senior Programmer/Analyst (412) Systems Programmer II (1301) Technical Writer (423)
4	\$85.00	CADD Analyst IV (572) Client/Server Analyst III (444) Database Administrator III (443) GIS Analyst IV (1321) I&C Engineer (1308) Principal Analyst I (413) Program Manager I (460) Program Manager II (461) Programmer/Analyst IV (413) Project Manager I (1305) Project Manager II (1306) Systems Programmer III (1302)
5	\$98.00	Business Analyst IV (452)

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Labor Tier	FY2010 Hourly Rate	SDDPC Staff Positions (with Material Code) Typically Billable
		CADD Analyst V (2630) CADD Program Manager (1309) Client/Server Analyst IV (445) Database Administrator IV (1300) GIS Analyst V (2141) Network Architect (464) Program Manager III (462) Programmer/Analyst V (1291) Project Manager III (1307) Principal Analyst II (1291) Systems Programmer IV (1304)
6	\$107.00	Database Administrator V (2142) Project Manager IV (453) Resource Manager I (1280) Resource Manager II/III (440) Senior Technical Specialist (449)
ERP-3	\$78.00	ERP Programmer/Analyst III (481)
ERP-4	\$85.00	ERP Programmer/Analyst IV (482)
ERP-5	\$98.00	ERP Programmer/Analyst V (485)
ERP-6	\$112.00	ERP Resource Manager II/III (487)

Table #2

Labor Tier	FY2010 Hourly Rate	SDDPC Staff Positions Not Typically Billable, but May Charge with DoIT Approval in Advance
1	\$41.00	Administrative Assistant I/II General Maintenance Help Desk Specialist I Help Desk Support Help Desk Technician Inventory Control Specialist Network Services Technician I Production Control Analyst I Receptionist I/II Service Delivery Analyst I Stock/Delivery Clerk
2	\$55.00	Administrative Assistant III Billing Support Analyst I Buyer I Data Center Analyst Data Center Operations Analyst Desktop Support Analyst I/II Financial Analyst I Help Desk Specialist II/III Human Resources Assistant II Human Resources Rep I

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Labor Tier	FY2010 Hourly Rate	SDDPC Staff Positions Not Typically Billable, but May Charge with DoIT Approval in Advance
		Network Operations Center (NOC) Analyst I Network Services Technician II/III Operations Supervisor Production Control Analyst II Service Delivery Analyst II
3	\$74.00	Business Analyst II Buyer II Data Center Support/Analyst Desktop Support Analyst III Financial Analyst II Human Resources Rep II Legal Administrator Network Coordinator Network Engineering Analyst Network Support Engineer Network Operations Center (NOC) Analyst II Procurement Analyst Service Delivery Analyst III Senior Accountant
4	\$85.00	Billing Analyst III Buyer III Executive Admin Facilities Planner Financial Analyst III Information Security Administrator Network Engineer I Network Operations Center (NOC) Analyst III Supervising Technical Services Training Instructor
5	\$98.00	Finance Manager Human Resources Manager Information Security Officer Network Engineer II/III
6	\$107.00	Network Engineer IV Technical Services Manager I

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MASTER SERVICES AGREEMENT
BETWEEN
CITY OF SAN DIEGO
AND
SAN DIEGO DATA PROCESSING CORPORATION
FOR INFORMATION TECHNOLOGY SERVICES

FINAL

v.0.99 (Rev. 01/06/2009)

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**MASTER SERVICES AGREEMENT
BETWEEN THE CITY OF SAN DIEGO
AND SAN DIEGO DATA PROCESSING CORPORATION
FOR INFORMATION TECHNOLOGY SERVICES**

This MASTER SERVICES AGREEMENT (hereinafter “Agreement”) is made by and between the CITY OF SAN DIEGO, a municipal corporation (hereinafter “City”) and SAN DIEGO DATA PROCESSING CORPORATION, a California nonprofit public benefit corporation (hereinafter “SDDPC” or “Corporation”) (the City and SDDPC may each be referred to from time to time herein as the “Party” or together as the “Parties”).

RECITALS

WHEREAS, the City of San Diego created the San Diego Data Processing Corporation in 1979 as a 501(c)(3) nonprofit public benefit corporation, with the City as the sole member of the Corporation, for the purpose of providing information technology services to the City and to other public agencies as may be deemed appropriate by the SDDPC Board of Directors; and

WHEREAS, SDDPC provides to the City information technology services;

WHEREAS, the City and SDDPC have functioned under a prior Operating Agreement, as amended seven times since 1979 (the fifth and sixth amendments were erroneously numbered as the seventh and eighth amendments), with the seventh and most recent amendment being titled the “Amended and Restated Operating Agreement Between the City of San Diego and San Diego Data Processing Corporation for the Provision of Information Technology Services” dated as of September 14, 1999; and

WHEREAS, the City and SDDPC have agreed to execute this new Agreement to supersede and replace all prior agreements between them, including amendments; and

WHEREAS, the City and SDDPC have agreed that this shall be a non-exclusive Agreement and that the City shall not be required nor obligated to obtain its information technology services from SDDPC;

WHEREAS, SDDPC’s bylaws set forth certain compliance, reporting, and governance requirements that are separate from those contained in this Agreement;

NOW, THEREFORE, in consideration of the Recitals and mutual obligations of the parties herein expressed, City and SDDPC agree as follows:

1. ARTICLE I: PURPOSE OF AGREEMENT

The purpose of this Agreement is to establish the terms and conditions for SDDPC to provide the City with certain information technology (“IT”) services as further described herein, to define the roles and responsibilities of the Parties, and to describe a process for strategic sourcing of certain services.

2. ARTICLE II: ROLES AND RESPONSIBILITIES

2.1. Primary Contact

The City’s Director of Information Technology (“Director of IT”) shall act as the primary liaison and point of contact between the City and SDDPC’s Executive Director and shall have overall responsibility for day-to-day oversight of SDDPC’s performance under this Agreement. Notwithstanding the foregoing, the Director of IT may, in his or her sole discretion, delegate in writing any right or authority hereunder to other employees of the City.

2.2. Review and Approval of Information Technology Services

The Director of IT, in coordination with the City’s Information Technology Business Leadership Group (“IT BLG”) under the City IT Governance Policy (as amended), shall be responsible for reviewing and approving Citywide IT services and baseline service levels to be included in the annual Service Level Agreement (as described herein), ensuring that basic requirements for City business operations are met, and communicating these to SDDPC as part of the annual IT budget development process. The Director of IT, in coordination with the IT BLG, shall also be responsible for reviewing and approving department-specific IT services and service levels that expand or extend beyond the Citywide services, and to ensure consistency of service offerings and service levels across multiple departments.

2.3. Information Technology Architecture and Infrastructure

The Director of IT shall be responsible for developing and documenting enterprise IT architecture strategies, and for the review and approval of all IT architecture plans and standards, including those developed by SDDPC on the City’s behalf, through the City’s Infrastructure Manager or such other person as the Director of IT designates. The Director of IT shall have the right to designate which City-owned IT infrastructure equipment should be considered part of the enterprise infrastructure environment in relation to SDDPC’s Services, so that SDDPC can determine the related costs, as approved by the City in the annual SLA, for maintaining and supporting the designated enterprise infrastructure.

2.4. Information Technology Standards, Policies, and Strategic Planning

The City shall have the exclusive right and authority to set the City’s IT and telecommunications strategy and to determine any or all of the City’s requirements or business processes. The Director of IT shall be responsible for developing and approving IT standards, policies, and strategic direction, with technical input from SDDPC and within the

requirements of the City's IT governance policies and practices. The City will work jointly with SDDPC to implement approved IT standards, policies, and strategies. The City will also work jointly with SDDPC to review IT standards, policies, and strategies at least annually.

2.5. Service Request Procedures

During the Term (as defined in Article VI) of this Agreement, if the City wishes to have SDDPC purchase, add, change, or delete products, inventories, application access and Services, the City shall notify SDDPC by using the SDDPC online service request form ("Service Request Form"). SDDPC shall provide for the use of the City a Service Request Form which City personnel authorized by the employee's department director ("Authorized IT Purchasers") may access through the Customer Support login on the SDDPC web site (<http://www.sddpc.org/> – Customer Support) or other SDDPC designated websites. Service Requests shall be created by the City department initiating the request, but only after obtaining City defined approvals and submitted to SDDPC for action. The Department of Information Technology will post on the City's Intranet site (CityNet) the list of Authorized IT Purchasers who may enter Service Requests and notify SDDPC of updates when posted. The Department of Information Technology regularly maintains and updates this list, and requires semi-annual validation of Authorized IT Purchasers by departments.

Some service requests are only for obtaining cost estimates or quotes for good or services. Upon approval of such estimate or quote for services, those Authorized IT Purchasers are responsible for ensuring budgetary funds are available for SDDPC to invoice against.

2.6. Relationship Management

The Director of IT for the City and the SDDPC Board of Directors, along with SDDPC Management, shall meet on a monthly basis (as part of the SDDPC monthly Board meetings) to review and discuss the effectiveness and value of the Services provided to the City by SDDPC and to provide guidance to improve such effectiveness and value. Additionally, the Director of IT for the City shall discuss with the SDDPC Board the City's financial plans and operational plans related to this Agreement. SDDPC shall make available its Management to answer questions from the City's Director of IT regarding such plans and to discuss the general progress of the performance of this Agreement and their relationship.

2.7. Security Audits

The City, or its authorized representatives, shall have the right, at any time, with the provision to SDDPC of no less than twenty-four (24) hours notice, to perform a security audit of SDDPC's information handling processes, account management practices, and computer access control procedures and systems to determine SDDPC's level of vulnerability to attacks or intrusions from unauthorized personnel or criminals. The advance notice by the City will include details about the nature and scope of the security audit, to the extent determined to be relevant and necessary, at the City's sole discretion. The City agrees to schedule the time of the audit to minimize impacts to SDDPC operations; however, exigent

circumstances may dictate otherwise, to be in the best interests of the City. SDDPC agrees to fully cooperate with such security audits.

3. ARTICLE III: SERVICES

3.1. Types of Services Provided by SDDPC

3.1.1. Overview of Services and Service Level Agreement

Except as otherwise described herein, and subject to the City's discretion as provided for in the terms of this Agreement, SDDPC shall perform the services described in this Section 2 and further detailed in the annual Service Level Agreement ("Services"), in a manner commensurate with best industry standards and practices. In general, the City defines these Services within the following categories:

3.1.1.1. Help Desk Services and Desktop Support Services

Help Desk and Desktop Services include, but are not limited to, the following service areas: (a) centralized Help Desk (call center), (b) remote and onsite Desktop Support for PC systems and applications, (c) remote management of desktop software and configurations, (d) enterprise and desktop Anti-Virus and Anti-SPAM updates and management, and (e) hardware maintenance for desktop and laptop PC systems and printers.

3.1.1.2. Data Center Services

Data Center Services include, but are not limited to, the following service areas: (a) mainframe, (b) storage device/server hosting (commonly known as collocation services), (c) application hosting, (d) enterprise database environment(s), (f) Interactive Voice Response system hosting, (g) Enterprise Resource Planning infrastructure support (for the City's "OneSD" system), (h) Internet and Intranet (Web) infrastructure, (i) enterprise document management environment, (j) enterprise messaging environment (electronic mail), and (k) enterprise file and print environment.

3.1.1.3. Network and Telecommunications Services

Network and Telecommunications Services include, but are not limited to, the following service areas: (a) local area and wide area data network, (b) voice telecommunications network, (c) remote access capability into the City's network, and (d) integrated communications.

3.1.1.4. Security Services

Security Services include the responsibility of protecting the City's Network Services, Firewalls, Computing Infrastructure, and applications developed and supported on behalf of the City, from intrusion by outside sources and from

unauthorized activity by inside sources. Security Services include network management and maintenance applications and tools, and the use of appropriate encryption technologies, in concurrence and coordination with the Department of IT, to ensure SDDPC's best efforts, by all appropriate means, to monitor the City's network and systems for the prevention and detection of inappropriate use or access of systems and networks, which may include potential fraud or abuse of City data, systems or networks. SDDPC is responsible for notifying the Department of IT, as soon as practical, of any indications of security breaches.

SDDPC is responsible for monitoring and identifying potential security risks and making recommendations to mitigate them. The Department of IT is responsible for managing IT security services, including the decision for implementing any security recommendations from SDDPC and accepting the identified risks if recommendations are not implemented.

3.1.1.5. Professional Services

Professional Services include, but are not limited to, application life-cycle management, program and project management, and information technology consulting services.

3.1.2. Procurement for City

SDDPC shall procure all goods and services for its own use in providing the services outlined in the Agreement. All assets procured shall be the property of SDDPC. SDDPC may procure, as described herein, goods and services on behalf of the City ("Procured Services"). All assets procured as Procured Services shall be the property of the City.

SDDPC's procurement responsibilities shall include: Procurement of goods and services; evaluation of vendor proposals, qualifications and independence; negotiation of price and terms; obtaining the most favorable rates and discounts available; contract execution, contract administration; and distribution and installation of procured items, as required.

All procurement activities shall be subject to SDDPC's Board approved Procurement Policies which will reflect best practices including the use of competitive bidding for cost quotations and proposals, where appropriate. SDDPC may procure IT goods and services as described in Section 3.1.3 of this MSA. SDDPC and the City shall coordinate procurements in order to obtain benefits from volume purchases and to promote compatibility of IT and telecommunications resources among departments.

3.1.3. City Approvals for Procurement through SDDPC

Upon a request from one of the City's Authorized IT Purchasers to procure goods and services, SDDPC shall, prior to the issuance of any contract or purchase order, confirm that request for Procured Services complies with the City's requirements for

procurements made through SDDPC, as described in **Council Policy _____**. Once SDDPC confirms that the request is made by an Authorized IT Purchaser in compliance with the requirements of **Council Policy _____**, then any Procured Service contract that results from the City's procurement request will name SDDPC as a party to the contract and will not be deemed a City contract.

3.1.4. Contract Administration

The SDDPC Procurement Department will negotiate and prepare all of its contracts with appropriate legal review and proper Board approval, as required by SDDPC's Board approved Procurement Policies. SDDPC's responsibility for managing each of its contracts ("Contract Administration") shall include the following two primary duties: 1) ensure that the vendor is performing in accordance with the scope and terms of the contract; and 2) ensure invoices properly reflect the work performed and submit approved invoices to SDDPC's accounting department for vendor payment.

3.2. **Method of Requesting Services from SDDPC**

3.2.1. Annual SLA

The Parties agree to negotiate and enter into an annual Service Level Agreement ("SLA") which shall consist of statements of work for each of the Services to be provided under this Agreement and shall also set forth the rates for Services. The timeline and process for negotiating and approving the SLA coincides with the City's annual budget process and the rate setting process between the City and SDDPC.

3.2.2. New Services

If the City requests that SDDPC implement new services during the Term of this Agreement ("New Services"), provision of the New Services may involve different SDDPC pricing structures than those contained in annual SLAs. When a City department or group of departments wishes to enter into an agreement with SDDPC for services using different pricing structures than those contained in the then current SLA, such New Services and any pricing structure not contained in the SLA must be approved pursuant to the City's established IT governance process. Such additional agreements for New Services, if properly approved, will be considered an Addendum to the annual SLA. In order for these agreements to be valid or enforceable by either the City or SDDPC, they must be signed by an individual authorized by the Mayor to sign such agreements, and the City Council shall have appropriated funds necessary for such New Services.

3.3. **Manner of Providing Services**

3.3.1. Human Resources

3.3.1.1. SDDPC personnel located at its facilities

The majority of SDDPC personnel will be located at its primary facility. The personnel are non-City personnel and employed "at-will" and managed by the

SDDPC Management. The SDDPC Board of Directors provides direction to the Management through Board approved Human Resources and Management Policies. These Policies will be periodically reviewed by the Board and, when necessary to keep current with best practices, the Board will approve revised, updated Policies.

3.3.1.2. SDDPC Management/Employment Policies

SDDPC is legally responsible for the management of its own employees. The Board's approved Human Resource and Management Policies shall guide and direct the Management and includes such areas as EEOC, Termination, Discipline and Rules of Conduct, Time Reporting, Compensation and Benefits, Vacation, Holidays, Leaves of Absence and Employee Conduct.

3.3.1.3. Personnel Information

SDDPC shall share personnel related information at the request of the City on a quarterly basis. Such information will be limited to position, title and costs to the City. However, confidential information which relates to company owned performance reviews, disciplinary actions or other personal information protected under Federal or State law shall not be provided.

3.3.1.4. SDDPC personnel co-located or embedded at City Facilities

Some SDDPC personnel will perform their work and be co-located at or within City facilities.

(a) City Selection and Replacement of Personnel

SDDPC shall make available such personnel as both SDDPC and City deems necessary to properly perform all of SDDPC obligations under this Agreement. If any one of the SDDPC personnel are unable to perform the functions or responsibilities assigned to him or her in connection with this Agreement, or if he or she is asked to be replaced by the City, SDDPC shall promptly replace such person and reassign the functions or responsibilities to another person.

The Director of IT and the various representatives of City departments shall act as the primary liaisons between the City and the SDDPC management and shall have overall responsibility for day-to-day oversight of the City's business requirements under this Agreement.

3.3.1.5. Specialized Personnel

SDDPC agrees that as part of its provisions of Services, it shall ensure that all SDDPC personnel (and the personnel of any Subcontractors) are trained, qualified and available to perform all Services required in all work areas required under this Agreement.

3.3.1.6. Personnel Information

SDDPC shall share personnel related information at the request of the City. Such information will be limited to position, title and costs to the City. However, confidential information which relates to company owned performance reviews, disciplinary actions or other personal information protected under Federal or State law shall not be provided.

3.3.1.7. Office Space and Furnishings

Each City department shall make reasonably necessary office space, furnishings, storage space and safe work environment available to SDDPC's on-site personnel and equipment necessary to perform the required Services at all locations required under the Agreement. Office space, furnishings, storage space, and assets installed or operated on City's premises, and supplies allocated, are the exclusive financial responsibility of the City.

3.3.1.8. Training

SDDPC shall provide, and request that its subcontractors provide, all such training that supports the City's IT Standards to the employees of SDDPC and its subcontractors as may be necessary for them to perform all of SDDPC's duties under this Agreement and at levels of training equal to or greater than the average levels of training given to all SDDPC employees holding corresponding positions.

For training requirements on products and tools that are not City IT Standards, the City department will pay for that department specific training.

3.3.1.9. Security and Access

(a) SDDPC Requirements

All SDDPC personnel must pass a standard background clearance check upon being hired or as soon thereafter as a background clearance check can reasonably be administered. All SDDPC personnel will be provided a personalized card key for access into SDDPC facilities. Access cards will be approved and terminated by the SDDPC Human Resources Department. All SDDPC Personnel will be subject to all Board approved Human Resources and Security related policies including the Code of Business Conduct and Ethics Policy and Complaint Procedures, Employee Conduct Policies, Company Property; Confidential and Proprietary Information and Technology Use and Privacy.

(b) City Requirements

SDDPC personnel that are located at City sites will be approved and attain security badges from the City. SDDPC will review all requested security related City requirements and respond after evaluation of company policies.

3.3.1.10. Employment of SDDPC Employees

The City shall not employ or offer employment to any SDDPC employee while they are employed at SDDPC or for 6 months following their termination of employment at SDDPC without the written consent of SDDPC, except as otherwise provided under the Selective Sourcing & Transition Section (Article III Section 6).

3.3.1.11. SDDPC Employee Parking at Concourse Parkade

Unless otherwise prohibited by law, the City agrees to allow SDDPC employees to use the Concourse (Evan P. Jones) Parkade or other parking facilities used by the City for parking at the same rates as City employees and shall allow new SDDPC employees to apply for parking in the same manner and at the same rates as City employees, as long as the City has such an agreement at that facility.

3.3.2. Security and Protection of Information3.3.2.1. Protection of Sensitive Information and Data

SDDPC agrees to create and maintain a SDDPC Board approved Human Resources (“HR”) policy, intended to require that all applicable SDDPC employees protect the City’s sensitive information and data. This HR policy will require similar definitions, terms, and conditions as contained in City Administrative Regulation 90.64 regarding “Protection of Sensitive Information or Data” (“A.R. 90.64”). SDDPC further agrees to cause its employees, officers, directors, and agents to comply with such Board approved HR policy, where applicable to City computer systems which SDDPC staff manage, administer, monitor, update or otherwise support. This HR policy shall also require that SDDPC utilize its own related compliance form(s) for applicable SDDPC employees, to acknowledge compliance with this HR policy and protection of the City’s sensitive information or data. SDDPC further agrees to update its HR policy, from time to time, to maintain the same level of protections contained in City A.R. 90.64, as amended. SDDPC further agrees to include compliance by Subcontractors in this HR policy, utilize its best efforts to include similar provisions in its contracts with Subcontractors, and execute a compliance form by individual Subcontractor employees, if applicable.

As described in City A.R. 90.64, the City Department of IT will conduct semi-annual validations of all employees, volunteers, and contractors, including SDDPC employees and its Subcontractors, who have been approved for access to the City’s sensitive information or data. As part of this validation process, the City Department of IT will notify the SDDPC Human Resources Director of any updates required for

SDDPC staff or Subcontractors relating to accessing the City's sensitive information or data and completion of the appropriate acknowledgement form.

3.3.2.2. Confidential Information

SDDPC agrees that, except to the extent required under the provisions of the California Public Records Act (California Government Code section 6250 et seq.), it will not disclose and will maintain the confidentiality of all "Confidential Information" (as defined herein) in accordance with this Section 4.2. The term "Confidential Information" means all financial, technical, personnel and other information and all such copies which either party hereto considers or designates as "Confidential Information" that may be furnished or disclosed to, or acquired by, SDDPC in connection with the Services, including information that is of a confidential and proprietary nature to third parties that intend to or that do business with SDDPC. For purposes of this Agreement, Confidential Information does not include, and the obligations herein shall not apply to, information that: (i) is now or subsequently becomes generally available to the public through no fault of SDDPC; (ii) SDDPC can demonstrate was rightfully in its possession prior to disclosure to SDDPC by the City; (iii) is independently developed by SDDPC without the use of any Confidential Information provided by the City; or (iv) is released or approved for release by the City without restriction. SDDPC agrees to use reasonable care, but in all events at least the same degree of care that it uses to protect its own confidential and proprietary information of similar importance, to prevent the unauthorized use, disclosure or availability of the Confidential Information and agrees the City may require employees of SDDPC with access to the Confidential Information to sign a non-disclosure agreement. SDDPC agrees that, without the prior written consent of the City, it will not to use the Confidential Information for any purpose other than the performance of the Services set forth in this Agreement.

3.3.2.3. Additional Security Measures

At all times during the Term of this Agreement, SDDPC shall provide all Services, in a secure manner and in accordance with the City's security requirements, including network management and maintenance applications and tools, and the use of appropriate encryption technologies, to ensure the City of SDDPC's best efforts, by all appropriate means, in the prevention and detection of fraud, abuse, or other inappropriate use or access of systems and networks.

3.3.2.4. List of Personnel with Access

SDDPC will provide semi-annually, at no additional charge, a current list of SDDPC and Subcontractor personnel that have access to the City's systems, software, and data. Any City data or software accessed by SDDPC or Subcontractor personnel shall be used by SDDPC or Subcontractor personnel only in connection with SDDPC's obligations hereunder.

3.3.2.5. Background Checks

SDDPC shall conduct a background check conducted as defined in Section 3.3.1.9 and in SDDPC's Human Resources policies.

3.3.3. Intellectual Property and Licensing

3.3.3.1. Work for Hire

SDDPC agrees that all work product prepared for, or on behalf of, the City, including all original designs, plans, specifications, reports, documentation, and other informational materials, whether written or readable by machine, originated or prepared exclusively for the City pursuant to this Agreement ("Work Product") shall be "works for hire" within the meaning of the Copyright Act of 1976, as amended, and shall be the sole property of the City. SDDPC, its employees, officers, and directors, shall not assert any common law or statutory patent, copyright, trademark, or other intellectual property right in the Work Product. SDDPC agrees that it will use its best efforts, where reasonable, to negotiate similar "work for hire" provisions in any contract for services with a consultant or Subcontractor where the consultant or Subcontractor is preparing Work Product as defined in this Section 3.3. SDDPC shall promptly and fully disclose and deliver all Work Product to the City, in writing and, with respect to computer programs, in both source code and object code form, and with all available user manuals and other documentation, as requested by the City, provided, however, that the City acknowledges that in some cases, the source code or object code for Work Product prepared by consultants or Subcontractors may, depending on the terms of the contract with the consultant or Subcontractor, be placed in an escrow account or may not be available to the City without approval from the consultant or Subcontractor. In order for City to accurately account for Work Product, SDDPC shall, upon request from the Director of IT, provide the City, at no charge, current, updated documentation on SDDPC batch applications and scheduling, program specifications, solution designs and technical documentation, and test results. The City shall at all times have reasonable access to all SDDPC materials, premises and computer files containing the Work Product. SDDPC, its employees, officers, directors, and independent consultants and Subcontractor(s), shall not publish or use any Work Product for purposes unrelated to SDDPC's work on behalf of the City without the prior written consent of the City.

3.3.3.2. Intellectual Property Rights Assignment

SDDPC, its employees, officers, and directors, agree to promptly execute and deliver, upon request by City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Work Product, whether in the United States or a foreign country; and cooperate and assist in the prosecution of any action or

opposition proceeding involving said rights and any adjudication of the same. SDDPC agrees that it will use its best efforts, where reasonable, to include language similar to the preceding sentence in any contract with its consultants or Subcontractors where the consultants or Subcontractors will prepare Work Product. The City shall have the sole right to prosecute such applications and to take all other action concerning the Work Product, and SDDPC shall cooperate, as part of the Services, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

3.3.3.3. Subcontracting

For purposes of this Agreement, a subcontractor shall be defined as a secondary contractor who contracts with SDDPC to perform some or all of SDDPC's obligations under a prime contract with the City. In the event that SDDPC utilizes a Subcontractor or consultant for any portion of the Work Product, SDDPC agrees to use its best efforts, where reasonable, to have the agreement between SDDPC and the Subcontractor ("Subcontractor Agreement") include a statement that identifies that the Work Product is a "work-for hire" as defined in the Copyright Act of 1976, as amended, and that all intellectual property rights in the Work Product, whether arising in copyright, trademark, service mark or elsewhere, belongs to and shall vest solely with the City. Further, SDDPC also agrees to use its best efforts, where reasonable, to have the Subcontractor Agreement require that the Subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to the City, all title, rights and interests in and to the Work Product, including all copyrights and other intellectual property rights. City shall have the right to review any Subcontractor Agreement for compliance with this provision.

3.3.3.4. License Grant to SDDPC

The City hereby grants to SDDPC a limited, non-exclusive, non-transferable, royalty-free right and license to use the Work Product during the Term of this Agreement to the extent necessary and appropriate for the sole purpose of SDDPC's performance of the services (as described in this Agreement), subject to the terms and conditions of this Agreement. To the extent necessary for SDDPC to provide the Services, such license grant extends to Subcontractors and consultants designated by SDDPC provided that such Subcontractors or consultants first sign a written agreement to be bound by the terms contained herein applicable to the Work Product. SDDPC and its Subcontractors shall not (i) use any of the Work Product for the benefit of any person or entity other than the City or (ii) reverse assemble, reverse engineer, translate, disassemble, or decompile any portion of the Work Product without the prior written approval of the City, which may be withheld in the City's sole discretion.

3.3.3.5. Third Party Software

The City acknowledges and agrees that Third Party Software identified and agreed to by the Parties in writing from time to time may be subject to the standard commercial

terms for such Third Party Software. However, in all cases, SDDPC shall obtain all rights and licenses as may be necessary in order for the City, and its authorized representatives, to use, or receive the benefit of the use by SDDPC, of any Third Party Software in connection with the services. Further, SDDPC shall not embed any Third-Party Software in any Work Product, or create a derivative work of any Third-Party Software as Work Product, without the express, prior written consent of the City.

SDDPC agrees to use its best efforts, where reasonable, to secure for the City a perpetual, irrevocable, non-exclusive, royalty-free, fully paid-up, worldwide license to access, use, modify, copy, adapt, display, perform and create derivative works of, and otherwise receive the benefit of, such Third-Party Software as necessary and appropriate for the conduct of the City's business, administration and operations or for the City to receive the full benefit of the services.

3.3.3.6. Rights and Licenses

SDDPC shall obtain from third parties all rights and licenses required to perform the services described in this Agreement. SDDPC hereby grants and agrees to grant to the City, or shall cause to be granted by the licensor thereof, as the case may be, without additional charge, such licenses as may be necessary in order for the City, and its authorized representatives (including third-party service providers), to use, or receive the benefit of the use by SDDPC of such technology as is necessary to perform or use the Services.

3.3.3.7. Intellectual Property Warranty and Indemnification

SDDPC represents and warrants that all Work Product provided under this Agreement is original, not encumbered and does not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or is in the public domain. If Work Product provided hereunder becomes the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require SDDPC to produce, at SDDPC's own expense, new non-infringing Work Product as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. SDDPC further agrees to indemnify and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages of any type alleging or threatening that any services or Work Product provided under this Agreement infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party ("Third Party Claims of Infringement").

3.3.4. Independent Contractor

SDDPC shall at all times be an independent contractor under this Agreement. Nothing contained in this Agreement shall be construed to be or create a partnership or joint venture between the City and SDDPC or its successors or assigns.

3.4. Payment for Services

3.4.1. Rate Setting Process, Authorizing Work, Invoicing, and Financial Records

3.4.1.1. Rate Setting Process

The process for determining the rates and charges to the City from SDDPC for their services shall occur in the months of August to November for the following Fiscal Year. The City will identify a core rate-setting team to negotiate the rates and charges. The rate-setting team will be comprised of the following individuals: two or three (at the discretion of the Director of IT) high-level representatives from the Department of IT (including the Director of IT), one representative from the City's Information Technology Business Leadership Group ("IT BLG"), one representative from the Financial Management Department, and optionally, one representative from the Comptroller's office. SDDPC representatives on the rate-setting team will be designated by SDDPC's Executive Director (or, in the absence of the Executive Director, by SDDPC's Board of Directors), and shall include the CFO and senior level operational management. Another outcome of the rate setting process is an agreement on the method by which the specific services are billed to the City (i.e. fixed-price, time-and-materials).

3.4.1.2. Joint Responsibilities

(a) IT Strategic Direction

The Department of IT and SDDPC agree that, at the beginning of the rate setting process, they will work together to develop a joint IT strategic plan for the upcoming Fiscal Year that aligns with the City's business direction. Such plan shall define overall IT direction and initiatives to be incorporated into the rate setting process.

3.4.1.3. City Responsibilities

The City will initiate this process no later than the end of August and will provide a Project Manager to facilitate the process. The City will coordinate the projection of service requirements from City departments and identify the service and associated service level metrics anticipated for the upcoming Fiscal Year.

(a) Establish volume projections

The City will coordinate the inventory update process. The City will direct, via the Department of IT, that the departments will work with their corresponding SDDPC client contacts to establish the anticipated volumes for such things as labor, infrastructure usage, and other discretionary services. The inventory updates and the anticipated labor and infrastructure volumes will be completed no later than October 31st of each year.

(b) Annual Commitment

The establishment of rates for the upcoming Fiscal Year is based upon a commitment from the City to execute in accordance with the services and their associated volumes as established through the rate setting process. Commitment is subject to change at any time by the City, based on economic or other factors, and requires the City to provide notice of such change to SDDPC at least sixty (60) days in advance. Changes to these services or volumes will trigger negotiations for a change in the rates for the services identified during this process.

(c) Allocation Methodology

The City Comptroller and Financial Management Director are responsible for approving the allocation methodology to be used to distribute SDDPC's cost for services.

In addition, the costs for certain services have been designated by the Department of IT to be accumulated and charged on an allocation basis rather than the owning department because benefit is realized by all City departments. For changes to the components of cost to be included in this centralized approach, those changes must be vetted and approved by the Director of IT, the Financial Management Director, and the City Comptroller.

(d) Ensure Budget Funds

Upon agreement between the City and SDDPC of the amount and the distribution of fixed price services to be provided by SDDPC, the Department of IT is responsible for providing to SDDPC the allocations by specific accounting structure. In addition, the Department of IT, working in conjunction with the Financial Management Department, is responsible for ensuring that allocated funds are budgeted in the City accounts as provided.

(e) Ensure Inventory Accuracy

Each department within the City is responsible for confirming the accuracy of their respective inventory records that are maintained by SDDPC and used by the Department of IT for allocating fixed costs. City departments are to provide SDDPC with inventory updates via the service request process. SDDPC is responsible for posting updated on-line inventory records on a monthly basis.

3.4.1.4. SDDPC Responsibilities

(a) Establish Cost to deliver services by service area

Upon agreement between the City and SDDPC of the services that SDDPC will provide to the City for the upcoming Fiscal Year, SDDPC will determine the cost to provision such services by specific category. SDDPC is solely responsible for the determination of the cost to provision each service and to establish rates to

recover those projected costs. SDDPC will provide to the Department of IT the key cost components and staffing for each specific service to be provided and anticipated major capital investments by service category.

(b) Facilitate the development of the work plan

As part of the annual rate setting process, the Department of IT will direct the individual City departments to work with their SDDPC point of contact and develop their anticipated ongoing service requirements (maintenance and support) for the upcoming Fiscal Year. New initiatives and enhancements must be requested and approved separately through the City's IT BLG. The Department of IT will establish the information format to be used and the due date that the information must be submitted, provided that such information is to be completed no later than October 31st of each year. SDDPC client contacts will work with the department representatives to develop detailed work plans for the upcoming Fiscal Year. Upon completion, SDDPC will summarize and provide the information to the Department of IT, in a mutually agreed upon format.

Upon approval of the Fiscal Year budget, City departments will be responsible for approving their respective work plans. Such work plan approval shall be deemed as authorization for SDDPC to perform the activities identified in the work plan.

(c) Service Rate Schedules

SDDPC is responsible for providing to the Department of IT a schedule showing the specific services to be provided in the upcoming year, their associated pricing, and the billing methodology to be used (i.e., rate per hour, rate per week, annual fixed price, etc.).

(d) Professional Service Rates

SDDPC is responsible for establishing the categories or billing tiers for professional services to be charged to the City on a time and material basis. Such categories will be determined by SDDPC based on industry standard job classification system, such as Hay, and the grouping of similarly ranked positions into billing tiers. As part of the rate setting process, SDDPC is responsible for providing to the Department of IT a list of job titles, their respective tiers, and the billing rate to be charged.

(e) Fixed price services

As part of the annual rate setting process, the City and SDDPC will jointly determine the services that will be provided at a fixed price for the year rather than on a variable pricing structure based on specific usage. Services shall be fully described in the annual Service Level Agreement to be executed by the City and SDDPC no later than July 1 of each year.

3.4.2. Authorization of Work

3.4.2.1. City responsibilities

The City is responsible for obtaining all appropriate approvals within the City's governance structure prior to requesting services from SDDPC. In addition, the City is responsible for ensuring adequate budgeted funds exist to pay for such services. No enhancement tasks shall be performed without the City department first completing the required IT BLG approval process (including Form 1399). The SDDPC service request process or other system approved by the City shall be utilized to obtain services from SDDPC. The City shall designate to SDDPC the City personnel authorized to order goods and services from SDDPC.

3.4.3. Invoicing

3.4.3.1. Monthly billing required

For fixed price services, SDDPC will invoice the City in the months of July and January. For non-fixed price services, SDDPC will invoice the City on a monthly basis to align with the City's accounting period. SDDPC agrees to provide the invoices in an electronic form and post the charges electronically to the City's accounting system. Invoices will also be posted on the SDDPC website for viewing by City departments. Paper invoices will be provided upon request.

3.4.3.2. Payment terms will be Net 5 days

The City agrees to pay invoices within five (5) days of posting to the City's accounting system.

3.4.3.3. Dispute Resolution – 60 days

City departments will be responsible for reviewing SDDPC invoices on a timely basis and notifying SDDPC of any concerns or questions within ninety (90) days of the posting of the invoice. Inquiries are to be made in writing via the SDDPC Billing Inquiry mailbox at SDDPCBillingInquiry@sddpc.org. SDDPC is responsible for addressing all inquiries within five (5) working days. Items not resolved within thirty (30) days of submission to SDDPC will be referred to the department's IT manager or equivalent department contact and SDDPC's Director to negotiate a resolution. Items not resolved within sixty (60) days will be sent to the Director of IT and SDDPC's Executive Director for final resolution, in accordance with the dispute resolution process described in Article VI, Section 6.3.

Except in cases of fraud or for billing disputes that have been submitted in accordance with this Section 3.4.3, no changes will be made to SDDPC charges for concerns or questions made after ninety (90) days of the posting of the invoice.

3.4.3.4. City Budget shortfalls resolution

SDDPC acknowledges that budgeted funds must be available in the fund and general ledger account in order for charges to post to the City's accounting system. The City acknowledges that it is the responsibility of the City's Authorized IT Purchaser making a service request to ensure budgeted funds exist prior to requesting service from SDDPC. In the event that an SDDPC charge is rejected due to lack of budgeted funds, the City department that requested the service is responsible for initiating a budget transfer request within twenty-four (24) hours of notification of shortfall by SDDPC. The City agrees to prioritize the approval of such requested transfer and complete the budget adjustment within ten (10) business days of initial notification from SDDPC.

3.4.3.5. Financial Records

SDDPC shall maintain complete and accurate records and books of account with respect to this Agreement utilizing generally accepted accounting principles ("GAAP"), consistently applied and complying in all respects with all applicable City, State, or federal laws or regulations. Such records and books, and the accounting controls related thereto, shall be sufficient to provide reasonable assurance that: (a) transactions are recorded so as to allow the preparation of SDDPC's financial statements in accordance with GAAP and to maintain accountability for its assets; and (b) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Such records and books of account of SDDPC's business shall be maintained by SDDPC at its primary business office with access to such records and books of account to be provided from SDDPC's business office in San Diego, California and the City may examine and make extracts of information and copy any part thereof at any reasonable time during normal business hours. SDDPC shall retain and maintain accurate records and documents relating to performance of Services under this Agreement until the latest of (i) six (6) years after the final payment by the City to SDDPC hereunder; (ii) one (1) year following the final resolution of all audits or the conclusion of any litigation with respect to this Agreement; or (iii) such longer time period as may be required by applicable law or regulation.

3.5. Selective Sourcing and Transitions

3.5.1. Initial and Potential Requests for Proposals and Related Processes

The City acknowledges that, prior to execution of this Agreement, it issued requests for proposals ("RFPs") for some of the services currently being provided to the City by SDDPC and it is likely to issue additional RFPs for some of the other Services that are described in this Agreement. Additionally, the City may, but is not required to, issue RFPs throughout the term of this Agreement. The City further acknowledges that these RFPs would also allow SDDPC to compete along with other vendors, but SDDPC shall not have the obligation to do so. The purpose of such RFPs, if any, is to ensure that the

City is obtaining those certain services in a cost-effective manner. This provision sets forth the process and issues related to the issuance of such initial and future RFPs, if any.

3.5.2. Identified areas of initial RFPs

The City has announced preliminary plans to issue RFPs for various components of the services currently being provided by SDDPC, such as help desk and desk top support (RFP issued September 9, 2009, responses due October 23, 2009); telecommunications, including voice and data networks; mainframe; data center; and applications. Other than the RFP for the help desk and desk top support, no dates have been set for the issuance of these RFPs, and no final decisions have been made to issue them.

3.5.3. Scheduling and Communication for RFPs

Prior to the issuance of any future RFPs for any SDDPC Services being provided to the City as set forth in Article III, the City and SDDPC shall meet and discuss those services that would be subject to the RFP. The purpose of this meeting and process is to ensure business continuity at SDDPC and amongst the SDDPC staff and to further determine whether the Services in question could be provided by SDDPC through either benchmarking or a more cost-effective delivery model consistent with the cost saving goals to be achieved through the RFP process. If the City and SDDPC agree that a different SDDPC delivery model would be consistent with the City's goals, this Agreement or the Service Level Agreement ("SLA") in effect at the time shall be amended to include such a delivery model to be provided by SDDPC and the SDDPC budget and financial commitment from the City shall be adjusted accordingly.

In the event that, after completion of this meeting and process, the City concludes that an RFP for those subject Services should be issued, the City and SDDPC shall meet and discuss the scheduling and anticipated scope of the RFP. Notwithstanding the forgoing, in order to ensure the integrity and fairness of the RFP process, the City shall be under no obligation to divulge the specific content of the proposed RFP except to the extent necessary to ensure business continuity at SDDPC and amongst the SDDPC staff and enable SDDPC to make necessary corresponding budgeting and operational adjustments ("Permitted Discussions"). RFPs will be scheduled, if at all, in a manner consistent with the SDDPC budgeting processing such that any operational and financial changes resulting from the RFP could be accounted for in the SDDPC and City budgeting process. In addition, SDDPC shall be provided the opportunity to furnish input regarding the intent of the scope of the RFP to avoid and minimize (a) any potential risks in the overall operations and Services being provided to the City and (b) any adverse effects to the City under applicable third party vendor contracts which are being managed by SDDPC.

3.5.4. Information sharing prior to and during actual RFP

Prior to the issuance of an RFP, if any, SDDPC and the City shall continue to engage in Permitted Discussions, and in no event shall SDDPC be precluded from responding to an RFP because of its compliance in providing information related to the City's preparation

of an RFP. Under all circumstances, SDDPC shall have the right, but not the obligation, to respond to an RFP.

Once an RFP is issued by the City, SDDPC shall not be obligated to share information with the City that may relate to SDDPC's response to the RFP. The purpose of this provision is to ensure that SDDPC is provided with a fair basis to compete through the RFP process. Subject to the constraints of the California Public Records Act, the City shall seek to maintain in confidence such information previously provided by SDDPC to the City that is proprietary in nature as it relates to the services that are the subject of the RFP. Moreover, the City acknowledges that SDDPC's operational capacity could be negatively affected by the release of information related to the RFP and the award of the contract prior to the City's final decision on the award. Therefore, City shall use best efforts to maintain the confidentiality of the RFP process and preliminary decisions until such time as the award is made and the information regarding the award is made publicly available.

3.5.5. Transition and Financial Impact

If SDDPC is awarded a contract under an RFP, it shall continue to provide the services, described in the RFP, but shall provide the services under the terms and conditions set forth in the RFP response and accepted by the City when selecting the winning bid. Such RFP response, as may be modified through the RFP award process, shall constitute an amendment to the terms and conditions of this Agreement and the SLA, and the terms and conditions of the RFP response and amendment shall govern over inconsistent terms and conditions of this Agreement and the SLA.

If the scope of the Services previously provided by SDDPC is in any way reduced pursuant to an award to a third party under the RFP, SDDPC and the City shall meet and discuss a mutually agreed upon transition plan for the component of the Services in the RFP. City shall pay SDDPC for all Services reasonably provided up to the date of the award. In addition, City shall continue to pay for the Services reasonably provided by SDDPC during the transition period and any additional transition costs reasonably necessary to provide continuity of service during the transition. The City acknowledges that this may result in duplicative payments for Services during the transition period. SDDPC shall use best efforts to coordinate with the successful bidder to provide for an orderly transition of the services from SDDPC to the new provider.

The financial and operational impact to SDDPC resulting from the loss of any component of the Services shall be addressed during the next budget cycle.

4. ARTICLE IV: SDDPC BUDGET & FISCAL RESPONSIBILITY

4.1. Authorization of City's IT Expenditures with SDDPC

The City acknowledges that separate components of the annual proposed budget for City IT expenditures are submitted to the Department of Financial Management by each City department and are included (with appropriate modifications) as part of the Mayor's budget that is proposed to the City Council. Except as otherwise specified in the approved City budget policy or other applicable City policy, the Financial Management Director and the Director of IT are responsible for presenting the proposed citywide IT expenditures to the City Council for the upcoming year, including:

- (a) City IT Personnel and Non Personnel expenses,
- (b) SDDPC costs for services to provided to City departments,
- (c) Purchases to be procured through SDDPC, and
- (d) Services to be obtained from other sources.

The Financial Management Director will notify the Director of IT, SDDPC's Executive Director, and SDDPC's CFO of any changes within the citywide IT budget for the upcoming fiscal year to proposed City expenditures for SDDPC services.

4.2. Approval of SDDPC's Budget

The SDDPC annual budget shall be developed based on the estimated services to be provided to City and non-City customers, and the costs to deliver those services. The SDDPC ad hoc Budget Committee shall review the proposed SDDPC budget, and upon agreement, direct the SDDPC CFO to send the proposed budget to the City CFO for review. The SDDPC ad hoc Budget Committee will consider the City CFO input and direct changes to be made, if any. The SDDPC Board of Directors shall approve the SDDPC Budget in accordance with Article VIII, Section 1 (b) of the SDDPC Bylaws. SDDPC shall submit its Board-approved budget to the City CFO, or designee, as part of the Mayor's budget process (including City Council review), for information only, as part of the overall City budget.

4.3. Financial Reporting

SDDPC shall provide monthly financial reports to the City CFO in a format as directed by the City CFO. In addition, a monthly financial report will be provided to the SDDPC Board of Directors with copies distributed to the City Council and the City's CFO.

4.4. Annual Financial Audit

A financial audit shall be performed on an annual basis by the same audit firm as is used by the City of San Diego for its external audits. A completed audit shall be submitted by October 31st of each year to the Mayor, City Council, Chief Operating Officer, Chief Financial Officer, City Auditor, City Attorney, and Independent Budget Analyst. As part of the submission of the annual audit to the City, SDDPC's Executive Director and Chief

Financial Officer shall acknowledge, in writing, their responsibility for the completeness and reliability of the information contained in the report.

4.5. Taxes

All fees payable by the City to SDDPC hereunder shall be inclusive of all taxes imposed as of the Effective Date by any domestic or foreign taxing authority in respect of the provision of the Services hereunder, including any sales, use, excise, value-added, services, consumption, or other tax (collectively, "Sales Taxes"); provided, however, that the City shall not be responsible for, and such fees shall not include, any personal property taxes on property SDDPC owns or leases, for franchise taxes on SDDPC's business, and for any income taxes based on SDDPC's unrelated business taxable income, if any.

4.6. Only Payments

The fees set forth in this Article IV are the only payments to be made by the City to SDDPC under this Agreement. The City shall not pay SDDPC any additional fees, assessments, or reimbursements, and SDDPC shall be solely responsible for, and shall indemnify the City against, all costs and expenses incurred by SDDPC in meeting SDDPC's obligations under this Agreement, including labor expenses, hardware and software costs, and general business expenses (including travel, meals, entertainment, and overhead expenses).

4.7. Mid-Year Rate Adjustment

The Fiscal Year for SDDPC is July 1 to June 30 ("Fiscal Year"). In January of each year, SDDPC will provide a forecast of the expected financial results for the Fiscal Year. The forecast will be based on the first six months of actual performance and estimated revenues and expenses for the second half of the Fiscal Year, taking into account SDDPC's available net assets. "Net Assets" is defined as the difference between total assets and total liabilities. "Available Net Assets" is defined as the amount of Net Assets that "exceed 110% of the net book value of capital assets."

If the forecast indicates that operating revenues will exceed operating expenses by \$500,000 or more, or that operating expenses will be greater than operating revenue by \$500,000 or more, then SDDPC shall recalculate the current year rates with the goal of achieving a break-even financial position for the Fiscal Year. The Executive Director and CFO will meet with the Director of IT and the Financial Management Director to agree upon revised rates for the services to be provided in the remaining months of the Fiscal Year. The revised rates may potentially impact both fixed price and variable rate services provided by SDDPC.

4.8. Year-End Rate Adjustment

Any excess revenues or expenses remaining at the end of a fiscal year will result in an increase or decrease of SDDPC's net assets as of the end of that fiscal year. After SDDPC has closed its accounting records for that fiscal year, such excess revenues or expenses will

be incorporated into a rate adjustment as part of the next Mid-Year Rate Adjustment process, provided there are Available Net Assets as described above.

4.9. Audit Rights

4.9.1. Performance Audits

The City's Auditor, or its authorized representative or a third-party audit consultant, shall have the right, at any time, and with reasonable notice, to perform an audit with respect to SDDPC's performance hereunder. SDDPC shall grant City, or its authorized representative, the right to conduct an audit of SDDPC and (as authorized under its subcontracts) its Subcontractors' practices, the facilities used by SDDPC or its Subcontractors (as authorized under the relevant subcontract) to provide the Services, and related operational matters in order to verify compliance with the terms of this Agreement. Any such audit shall be conducted in a reasonable manner and after reasonable advance notice. For purposes of such audit, SDDPC shall, and shall cause its Subcontractors (where authorized under a relevant subcontract) to, provide the City and its representatives such information and assistance as requested in order to perform such an audit including full and complete access to personnel, and to all books, records, documents, data, or information as may be required in order for the City to ascertain any facts relevant to SDDPC's and its Subcontractor's operational and security obligations hereunder. If any such audit reveals an inadequacy or deficiency in SDDPC's performance as set forth in this Agreement, including performance in connection with any security obligations of SDDPC as set forth in this Agreement, then SDDPC shall immediately develop and provide to the City a reasonable and detailed corrective action plan for the City's approval, and immediately thereafter implement such plan. Upon the City's request, SDDPC shall provide the City with copies of all documents, data, or information in the possession or control of SDDPC that pertain to the Services. SDDPC shall provide such documents, data or information on such media as the City requests, including hard copy, optical or magnetic disk, CD, DVD, hard drive, flash drive, or tape. SDDPC shall use its best efforts to include this paragraph, with appropriate language substitution to reflect the correct identity of the parties, in any Agreement into which it enters with any Subcontractor providing Services under this Agreement.

5. ARTICLE V: PARTIES REPRESENTATIONS, WARRANTIES, AND RELATED COVENANTS

5.1. SDDPC Representations, Warranties, and Related Covenants

5.1.1. Organization, Corporate Power and Tax Filings

SDDPC represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of California with full power and authority to carry on the business in which it is engaged and to execute and deliver and carry out the provisions of this Agreement. SDDPC has filed, in accordance with applicable law, all federal and California state tax returns and filings including those filings required by the Attorney General of the State of California for nonprofit charitable corporations

("Filings"). During the term of this Agreement, SDDPC agrees that it shall timely file in accordance with applicable law all such tax returns and Filings.

5.1.2. Due Authorization and Effect of Agreement

SDDPC represents and warrants that no provisions of its Articles of Incorporation or Bylaws, or of any agreement, instrument, understanding, or judgment, decree, rule or regulation to which SDDPC is a party or by which SDDPC is bound, has been, or to the knowledge of SDDPC, will be, violated by the execution and delivery of this Agreement or the performance or satisfaction of any agreement or condition herein contained upon its part to be performed or satisfied, and all requisite corporate and other authorizations for such execution, delivery, performance and satisfaction have been duly obtained. Upon execution and delivery, this Agreement will be a legal, valid and binding obligation of SDDPC, enforceable in accordance with its terms.

5.1.3. No Conflict

SDDPC represents and warrants that the execution and delivery of this Agreement and the consummation of the transactions set forth herein are not events that, of themselves or with the giving of notice or the passage of time or both, could constitute on the part of the SDDPC a violation of or conflict with, or result in any breach of, or default under the terms, conditions or provisions of any judgment, law, regulation or of the Articles of Incorporation or Bylaws of SDDPC, or of any agreement or instrument to which SDDPC is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature on the assets of the SDDPC or on any of the issued and outstanding debt of the SDDPC, if any, as of the date of execution of this Agreement.

5.1.4. Performance of the Services

SDDPC represents and warrants that that all Services provided under this Agreement shall be provided in a timely, professional, and workmanlike manner consistent with the highest standards of quality and integrity and shall meet the performance standards required under this Agreement.

5.1.5. City Access and Availability of Records

SDDPC represents and warrants that it agrees to allow complete access, and shall make available to the City, all Corporation operational, and financial records and data pertaining to the Services provided pursuant to this Agreement as outlined in the annual SLA. Such access shall normally occur during regular business hours; however, with five (5) calendar days' advance written notice by the City, SDDPC shall make requested records or data available. SDDPC further agrees to provide to the City, in the manner and within the time limit requested by the Director of IT or designee, any reports or data deemed necessary by the City in connection with any of the IT services provided pursuant to this Agreement or the annual SLA. The City agrees to set reasonable time

limits for such requests based on the volume and complexity of the data requested from SDDPC.

5.1.6. Accuracy of Information

SDDPC represents and warrants that all financial statements, reports, and other information furnished by SDDPC to the City in connection with the award of this Agreement fairly and accurately represent the business, properties, financial condition, operations of SDDPC and contains no untrue statement of a material fact or omits any material fact necessary to make such information not misleading. Since the respective dates or periods covered by such financial statements, reports, or other information, there has been no material adverse change in the business, properties, financial condition, or results of operations of SDDPC.

5.1.7. Litigation and Service of Process

SDDPC represents and warrants that it shall notify the City Attorney, within fifteen (15) business days after it receives notice, of any such pending civil or criminal litigation. SDDPC shall notify the City Attorney, within five (5) business days in the event process is served on SDDPC in connection with this Agreement, including any subpoena of SDDPC's records, and shall send a written notice of the service together with a copy of the same to the City Attorney within seven (7) business days after such service.

5.1.8. Public Records Requests

SDDPC represents and warrants that it shall comply with any California Public Records Act ("CPRA") requests that SDDPC receives directly from the City which requests City information, data or documents. SDDPC shall cooperate timely and fully with the City and respond directly to the City. If SDDPC receives a CPRA request directly from a third party and such request is for City information, data or documents, it shall notify timely the City Attorney in writing and forward such CPRA request to the City Attorney. If SDDPC receives a CPRA request, and such request is for SDDPC information, data or documents, it shall determine through its own legal counsel its own appropriate legal response.

5.1.9. Compliance with Controlling Law

SDDPC represents and warrants that it shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement. In addition, SDDPC shall comply within a reasonable period with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations, if applicable.

5.1.10. Drug-Free Workplace

SDDPC represents and warrants that it shall comply with the City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference, if applicable.

5.1.11. ADA Compliance and Certification

SDDPC represents and warrants that it shall comply with the City's Americans with Disabilities Act Compliance/City Contracts requirements as set forth in City Council Policy 100-04, adopted by San Diego Resolution R-282153 and incorporated into this Agreement by this reference, if applicable.

5.1.12. Non-Discrimination Requirements

SDDPC shall comply with the non-discrimination requirements listed in this Section 5.1 of Article V, if applicable.

5.1.12.1. Compliance with the City's Equal Opportunity Contracting Program

SDDPC shall comply with the City's Equal Opportunity Contracting Program Requirements [attached hereto as Exhibit #1]. SDDPC shall not discriminate against any employee or applicant for employment on any basis prohibited by law. SDDPC shall provide equal opportunity in all employment practices. SDDPC shall ensure that its Subcontractors comply with the City's Equal Opportunity Contracting Program Requirements. Nothing in this Section shall be interpreted to hold SDDPC liable for any discriminatory practice of its Subcontractors.

5.1.12.2. Non-Discrimination Ordinance

SDDPC shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of Subcontractors, vendors or suppliers. SDDPC shall provide equal opportunity for Subcontractors to participate in subcontracting opportunities. SDDPC understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. This language shall be in contracts between SDDPC and any Subcontractors, vendors and suppliers.

5.1.12.3. Compliance Investigations

SDDPC agrees to provide to the City, within sixty calendar days of a request from the City, a truthful and complete list of the names of all Subcontractors, vendors, and suppliers that SDDPC has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by SDDPC for each subcontract or supply contract. SDDPC further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's

Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517.] SDDPC understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the SDDPC up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. SDDPC further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

5.1.13. Conflict of Interest

SDDPC represents and warrants that it shall comply with all applicable federal, state and local conflict of interest laws, regulations, and policies, including but not limited to California Government Code sections 1090, et. seq. and 81000, et. seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at sections 27.3501 to 27.3595.

5.2. City Representations, Warranties and related Covenants

5.2.1. Legal Authority

The City represents and warrants that it has all necessary rights, powers, and authority to enter into and perform this Agreement; that the execution, delivery, and performance of this Agreement by the City has been duly authorized by all necessary action of the City Council.

5.2.2. Timely Payments

City covenants to provide timely payment to SDDPC in connection with services to be rendered hereunder. The total of such payments shall not in any event exceed the approved budget amounts.

5.2.3. Budget

City covenants that it shall, to the extent possible, act promptly in considering SDDPC's proposed annual budget and shall take action deemed appropriate with regard thereto.

5.2.4. Filling of Vacancies

City represents and warrants that it will timely fill vacancies on the SDDPC's Board or take other actions required by SDDPC's Articles of Incorporation, SDDPC's Bylaws, this Agreement or applicable law.

6. ARTICLE VI: TERM, TERMINATION AND REMEDIES

6.1. Term

6.1.1. Initial Term

This Agreement shall commence on the Effective Date and shall end on the third anniversary of the Effective Date (the “Initial Term”), subject to annual appropriation by the City Council of funds for this Agreement during the Initial Term. The “Effective Date” shall be the date upon which the Agreement has been executed by duly authorized representatives of both Parties, approved by the City Attorney in accordance with San Diego Charter Section 40 and properly approved by City Council.

6.1.2. Extension of Term

This Agreement shall automatically renew for two, one-year extensions unless, no less than one hundred and twenty (120) days prior to expiration of either the Initial Term or the first one year renewal term (if an initial one year renewal has occurred), either Party serves written notice on the other of its desire to terminate, modify or amend this Agreement. If such notice is served, the term of this Agreement shall only be extended upon mutual written agreement by authorized representatives of the City and SDDPC prior to the expiration of the Initial Term or, if an automatic one-year renewal has occurred, this Agreement shall only be extended upon mutual written agreement by authorized representatives of the City and SDDPC prior to the expiration of the second one year renewal term.

Any renewal or extension of the Term of this Agreement shall be subject to the City Council’s appropriation of funds. Under no circumstances shall the total Term of this Agreement be more than five (5) years unless such an extension is approved by the City Council and complies with all requirements of the City Charter, Municipal Code, and any other applicable laws, regulations, or policies. For purposes of this Agreement, references to the “Term” shall mean the Initial Term and any extension allowed and authorized under the provisions of this Agreement.

6.2. Termination

6.2.1. City's Right to Terminate for Convenience

The City may, at its sole option and for its convenience, terminate all or any portion of the Services agreed to pursuant to this Agreement by giving one hundred twenty (120) days’ prior written notice of such termination to SDDPC. Such notice shall be delivered by certified mail with return receipt for delivery to the City. The termination of the Services shall be effective upon 120 days from receipt of the notice to SDDPC. After termination of this Agreement, SDDPC shall complete any and all additional work necessary for the orderly filing of documents and closing of SDDPC’s Services under this Agreement. For Services satisfactorily rendered in completing the work, SDDPC shall be entitled to fair and reasonable compensation for the Services it performed before the effective date of termination. After filing of documents and completion of performance,

SDDPC shall deliver to the City all documents or records related to SDDPC's Services. By accepting payment for completion, filing and delivering documents as called for in this paragraph, SDDPC discharges the City of all of the City's payment obligations and liabilities under this Agreement.

6.2.2. City's Right to Terminate for Cause

Any material breach by SDDPC of the terms, conditions, representation, warranties, agreements or covenants of SDDPC herein contained shall be grounds for termination of this Agreement. Once a material breach has occurred the City shall first provide a written notice to SDDPC of the specific breach and allow SDDPC a thirty (30) day cure period from the date the notice is received by SDDPC to correct the specific breach prior to the City terminating this Agreement. If SDDPC is not able to cure or correct the breach within the thirty (30) day cure period, then the City may, in its sole discretion, either waive the specific breach or terminate this Agreement in accordance with the terms of this Agreement.

6.2.3. Termination for Lack of Budgeted or Appropriated Funds

In the event that either no funds or insufficient funds are appropriated and budgeted in any Fiscal Year for payments to be made under this Agreement, the City shall notify SDDPC at least one hundred twenty (120) days in advance of such occurrence and the Term of this Agreement shall terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted.

6.2.4. Additional Remedies

The foregoing remedies of City are in addition to and not exclusive of any other remedy recognized by law.

6.2.5. Partial Termination

If the City elects to terminate a portion of the Services but not all Services, SDDPC shall perform its Transition obligations hereunder to the extent applicable to such terminated Services.

6.2.6. SDDPC's Right to Withhold Services

Notwithstanding the provisions of Section 6.3.2 below, SDDPC may temporarily refuse to perform its obligations hereunder if the City fails to provide SDDPC with payments under this Agreement, excluding items under dispute and excluding pre-paid items that are part of semi-annual fixed cost allocation payments, that constitute more than two million dollars (\$2,000,000) of properly invoiced amounts.

6.3. Dispute Resolution

6.3.1. Procedures

If a dispute between the Parties arises, representatives of each Party designated, respectively, by the Director of IT and SDDPC's Executive Director, shall immediately meet and negotiate in good faith the resolution of such dispute. If such dispute cannot be promptly resolved, the Director of IT and SDDPC's Executive Director shall meet and negotiate in good faith in order to resolve such dispute within ten (10) days after the date that written notice of dispute is delivered by the disputing Party to the other Party. If the Director of IT and SDDPC's Executive Director resolve the dispute, they shall reduce the resolution to writing and each Party shall commence the resolution of the dispute in accordance therewith. In the event the Director of IT and SDDPC's Executive Director fail to resolve the dispute within ten (10) days after the referral of the dispute to them, the Parties shall refer the dispute to the City's IT BLG and the Chair of the SDDPC Board of Directors ("Chair") for discussion and resolution at the IT BLG's next regularly scheduled meeting. In the event that the IT BLG and Chair fail to resolve the dispute within ten (10) days after the scheduled meeting, then the Chair shall call a Special Board Meeting of SDDPC within twenty (20) days after the meeting of the IT BLG and the Chair. Notice of such Special Board Meeting shall be provided to the Mayor of the City, and the Mayor or the Mayor's designee may appear at the Special Board Meeting to discuss a potential resolution of the dispute. If the Board and the Mayor or the Mayor's designee fail to agree on a resolution of the dispute, the dispute may be resolved through any form of alternative dispute resolution as the Parties mutually agree, or referred to a court of competent jurisdiction in the County of San Diego, State of California.

6.3.2. No Termination or Suspension of Services

Notwithstanding anything to the contrary contained herein, if any dispute arises between the Parties and regardless of whether or not it requires at any time the use of any dispute resolution procedures established by the Parties in writing, in no event nor for any reason shall SDDPC interrupt the provision of Services to the City, disable any hardware or software used to provide Services, or perform any other action that prevents, impedes, or reduces in any way the provision of Services or the City's ability to conduct its activities, unless: (i) authority to do so is granted by the City or conferred by a court of competent jurisdiction; (ii) the Term of this Agreement has been terminated or has expired as provided for herein; or (iii) as specified in Section 6.2.6 of this Article.

7. ARTICLE VII: INDEMNIFICATION; LIMITATIONS OF LIABILITY; INSURANCE

7.1. Indemnification

7.1.1. SDDPC Indemnification of City

SDDPC shall indemnify and hold harmless the City and its respective officers, officials, agents, attorneys and employees from and against any and all damages, claims, losses, liabilities costs and expenses of every kind and description, contingent or otherwise,

excluding attorney fees, arising out of, related to, or resulting from, the business or operations of SDDPC and the performance by SDDPC of the Services provided to City as set forth in this Agreement caused by any negligent act or omission of SDDPC, any party providing services for or on behalf of SDDPC, or anyone directly or indirectly employed by or on behalf of SDDPC or its consultants, contractors or subcontractors.

7.1.2. City Indemnification of SDDPC

City shall indemnify and hold harmless SDDPC and its officers, directors, agents, attorneys and employees from and against any and all claims damages, losses, liabilities costs and expenses of every kind and description, contingent or otherwise, excluding attorney fees, arising out of, related to or resulting from the performance by the City of its obligations to SDDPC set forth in this Agreement caused by any negligent act or omission of City, or by any contractor or subcontractor of City, or anyone directly or indirectly employed by City or its consultants, contractors or subcontractors.

7.2. Insurance

At its own expense, SDDPC shall take out and maintain in full force and effect at all times during the Term of this Agreement the following policies of insurance:

- (a) Commercial general liability insurance for personal for personal injury, bodily injury, and property damage, with limits of two million dollars (\$2,000,000) per occurrence, subject to an annual aggregate of two million dollars (\$2,000,000) for general liability, completed operations, and personal injury.
- (b) For all of SDDPC's employees who are subject to this Agreement, Workers= Compensation Insurance as required by the State of California and Employers' Liability Coverage in an amount of not less than one million dollars (\$1,000,000) per occurrence.
- (c) Automobile insurance for all of SDDPC's automobiles, including owned, hired, and non-owned automobiles, for bodily injury, and property damage providing coverage to a combined single limit of one million dollars (\$1,000,000) per occurrence.
- (d) Errors and omissions insurance in an amount not less than two million dollars (\$2,000,000) per claim with an annual aggregate of two million dollars (\$2,000,000).

All insurance required by this Agreement shall be issued only by insurers rated "A-, VII" or better in the most recent edition of the AM Best Key Rating Guide, which are licensed to do business in the State of California.

8. ARTICLE VIII: GENERAL PROVISIONS

8.1. Law Governing the Agreement

This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California. Any action or suit brought by the parties relating to this Agreement shall be brought and conducted solely and exclusively in the courts of the County of San Diego. SDDPC hereby consents to the in *personam* jurisdiction of such court, waives any objection to venue in such court, and waives any claim that such forum is an inconvenient forum.

8.2. Headings

Article and section headings contained in this Agreement are included for convenience and ease in understanding this document. The Parties hereto intend that the terms of this Agreement, exclusive of such headings, be liberally construed to affect its purpose. Except insofar as they indicate an entirely contradictory construction not intended by the Parties, article and section headings are not to be considered in construing the terms of this Agreement.

8.3. Counterparts

This Agreement may be executed in any number of copies all of which, whether taken severally or collectively, shall be treated as a single original of this Agreement.

8.4. Waivers

Failure of either Party to object to any default or to any other act or omission of the other which is in violation of the terms of this Agreement shall not be deemed to be a waiver of the right to object to any subsequent default, act or omission, whether similar or dissimilar.

8.5. Notice

All notices, demands or other communications required by this Agreement shall be made in writing and will be deemed to have been duly given when: i) delivered by hand with written confirmation of receipt; ii) sent by facsimile transmission with a facsimile confirmation receipt, iii) when received by addressee, if sent by a nationally recognized overnight delivery service (receipt requested) in each case to the appropriate address set forth herein, or iv) deposited in the United States mail, postage prepaid. Any notice, demand or other communication made solely by mail in the manner prescribed in this paragraph shall be deemed to have been given and to be effective three (3) business days after the date of mailing the notice. Every notice shall be addressed to the party to whom they are directed at the following addresses, or at such other addresses as may be designated by notice from such party:

shall not affect any other provision hereof. This Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

8.9. Amendment

This Agreement may not be amended except by a written instrument executed by both Parties. No waiver, change, modification, consent or discharge shall be affected, except by an instrument in writing executed by or on behalf of the party against whom enforcement of any waiver, change, modification, consent or discharge is sought.

8.10. Further Assurances

The Parties hereto agree that they shall prepare and deliver all further documents and do all further acts necessary and desirable to accomplish the purposes of this Agreement.

8.11. Interpretation

The Parties agree and acknowledge that they have participated jointly in the negotiation and drafting of this Agreement. Any rule of construction or interpretation otherwise requiring this Agreement to be construed against any party by virtue of the authorship of this Agreement shall not apply to the construction or interpretation of this Agreement.

8.12. Force Majeure

Neither Party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections or any other cause beyond the reasonable control of the Party whose performance is affected.

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APPROVAL SIGNATURES

IN WITNESS WHEREOF, this Master Services Agreement is executed by San Diego Data Processing Corporation, pursuant to a duly adopted resolution of its Board of Directors, and by the City of San Diego, acting by and through its Purchasing & Contracting Director, pursuant to Resolution No. _____ authorizing such execution.

Dated this _____ day of _____, 2010.

THE CITY OF SAN DIEGO

By:

Hildred Pepper, Purchasing & Contracting Director

SAN DIEGO DATA PROCESSING CORPORATION

By:

_____, Executive Director

The foregoing Agreement is HEREBY APPROVED as to FORM AND LEGALITY,

THE CITY OF SAN DIEGO

Jan Goldsmith, City Attorney

By:

Steven Lastomirsky, Deputy City Attorney

Date

SAN DIEGO DATA PROCESSING CORPORATION

By:

Don Del Rio, General Counsel

Date

Exhibits

1. City Equal Opportunity Contracting Program Requirements

INTRODUCTION:

This document contains a consolidated summary of the input comments the MSA Team received from various stakeholders during the initial phases of this effort, with the MSA Team's recommendations (action taken) and the related document(s) where the items are addressed. The primary set of documents amended or created by the MSA Team, to be used in the review and approval process, are listed below. For reference purposes, the matrix on the following pages will refer to the document number listed here, included in a legend at the top of each page.

- #0 – MSA Team Recommendations Matrix (this document)
- #1 – SDDPC Bylaws
- #2 – SDDPC Board – Governance Program and Training Policy *
- #3 – SDDPC Board – Executive Director Selection, Compensation, Performance, and Separation Policy *
- #4 – SDDPC Board – Budget & Fiscal Policy *
- #5 – City-SDDPC Master Services Agreement (MSA) [formerly the Operating Agreement (OA)]
- #6 – City-SDDPC FY2010 Amended Service Level Agreement (SLA)
- #7 – MSA Team Document Matrix

There will be other internal policies and procedures created by both the City and SDDPC in order to implement operational processes directed by or derived from the primary set of controlling documents above. The creation and approval of those policies and procedures will follow the processes established by each entity, which will usually not include the wide range of stakeholders involved in the MSA Team's efforts.

* The three SDDPC Board Policies will be reviewed and approved by the City Council (as the Sole Member).

City/SDDPC Master Service Agreement (MSA) Team
Input/Recommendations/Actions Matrix

ATTACHMENT #1

Ref #	Input / Comment	Who Commented	MSA Team's Recommendation	Related Document(s)
Document Legend: #1 = SDDPC Bylaws; #2 = SDDPC Governance Policy; #3 = SDDPC Executive Director Selection/Compensation Policy; #4 = SDDPC Budget & Fiscal Policy; #5 = MSA; #6 = FY2010 SLA				
TIER ONE ISSUES				
CATEGORY #1:		City as Member		
1	Clarify City's role as a customer vs. member	SDDPC Board; Councilmember Emerald	Member role defined in Bylaws; Customer role defined in MSA and clarified in annual SLA	#1, #3, & #5
CATEGORY #2:		Governance		
2	Change SDDPC senior executive from CEO to Executive Director	SDDPC Board	Change applicable documents to replace CEO title with Executive Director	#1, #2, #3, #4, & #5
3	Manage SDDPC CEO compensation – tighter controls needed	Councilmembers; Auditor (Item #15a); SDDPC Board	Implement strict selection & performance policy, place cap on compensation, and eliminate bonus; range of \$180K to \$225K (cap); based on other City agency CEOs	#1 & #3
4	Make SDDPC consistent with SEDC and CCDC in terms of hiring and firing of CEO, including contract terms	Councilmembers Gloria & Faulconer; Audit Committee; Auditor (Item #15a); COO	SDDPC Executive Director hired/fired by SDDPC Board, with input from Mayor and Council	#1 & #3
5	Make SDDPC consistent with SEDC and CCDC by creating standing audit committee	Councilmembers Gloria & Faulconer; Audit Committee; Auditor (Item #15a); COO	Create SDDPC Audit Committee consistent with SEDC/CCDC	#1
6	Define Board composition – make City members of the Board voting members	Councilmembers; COO	City Board members have full voting rights and are included in closed sessions; non-City Board members appointed by Mayor and confirmed by City Council	#1

City/SDDPC Master Service Agreement (MSA) Team
Input/Recommendations/Actions Matrix

ATTACHMENT #1

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7	Address/clarify governance issues, including Board appointments, Board training, Board reporting to City/Member, Board and City policymaking & Board and City communications	SDDPC Board	SDDPC policies created as outlined in updated Bylaws	#1, #2, and internal SDDPC policies/procedures
8	Ensure IT BLG integration into the IT decision-making process	Councilmember Emerald	City IT governance process manages the prioritization of City's IT projects; IT BLG proposes IT project priorities to FM/COO for funding	#5, #6, and internal City policies/procedures
CATEGORY #3: Budget & Finance				
9	Include SDDPC in regular budget process; clarify role of City and SDDPC in City budget framework	Councilmember Gloria; SDDPC Board; IBA	SDDPC budget is presented to City Council as information item; Citywide IT budget, including SDDPC portion, presented to City Council for approval as part of City budget	#1 & #5
10	Ensure Council input regarding use of excess revenues over expenses; clarify process, including potential refund, and role for Council	Councilmember Gloria; Auditor (Item # 3); SDDPC Board	Implement mid-year rate adjustment process; eliminated refund process	#5 & #4
11	Ensure pass-through purchases are properly and clearly authorized by Council as required by the Municipal Code and Charter; include authorization for payment in Appropriation Ordinance	Councilmembers; Auditor (Items # 5 & 6)	Adopt a City Council policy related to IT Procurement through SDDPC; MSA complies with Municipal Code	#5 and internal City IT governance policies

City/SDDPC Master Service Agreement (MSA) Team
Input/Recommendations/Actions Matrix

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CATEGORY #4: Reporting				
12	The CEO shall provide an annual report to the Mayor and City Council on SDDPC's compliance with its Bylaw requirements	Auditor (Item # 15c)	Amended Bylaws include this provision for the Executive Director	#1
13	SDDPC shall provide to the Mayor and City Council an annual report on its performance, including its strategy, current year's goals, status of major projects, and comparison of prior year's goals to performance	Auditor (Item # 15d)	Amended Bylaws and policies include these provisions	#1 and #4
TIER TWO ISSUES				
CATEGORY #1: City as Member				
14	City management, in consultation with the City Attorney, should advise the City Council on the appropriate action to be taken regarding delegation of member rights	Auditor (Item # 16)	Amended Bylaws address this area	#1
15	Identify a process for determining overall value to the City	SDDPC Board	Outside of the scope of MSA team	N/A
CATEGORY #2: Governance				
16	Allow RFP for services when SDDPC does not have expertise	Councilmembers Gloria & Faulconer	MSA states that City has non-exclusive relationship; also added new section on selective sourcing of IT services	#5
17	Have court stenographer record closed session meetings	Councilmember Frye	Closed sessions will be recorded via audiotape	#1

City/SDDPC Master Service Agreement (MSA) Team
Input/Recommendations/Actions Matrix

ATTACHMENT #1

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18	Design controls to ensure a review of compliance with the Operating Agreement terms is performed annually	Auditor (Item # 2)	Annual reporting requirements contained in Bylaws	#1
19	Consult with the City Attorney and amend the Operating Agreement to a more traditional professional services contract to provide the City with specific IT services and as-needed services. The agreement should have a fixed term and incorporate appropriate levels of approval at the City prior to SDDPC processing a request for services.	Auditor (Item # 13)	MSA implements these comments	#5
20	The Board shall approve the compensation of the CFO unless increases in compensation are applicable to all employees	Auditor (Item # 15b)	Amended Bylaws implement these comments	#1
21	Allow appropriate corporate governance flexibility	SDDPC senior team	Amended Bylaws allow for this within SDDPC policies	#1 and SDDPC internal policies
22	Establish and clarify communications process	SDDPC senior team	MSA and other documents provide clarification of roles, relationships, responsibilities and communication between the City and SDDPC	#5, #6, and City internal policies
23	Define/clarify indemnification and termination terms	SDDPC Board	MSA clarifies indemnification and termination terms.	#5
24	Establish term of contract (five years)	SDDPC Board	MSA establishes a three-year term with two one-year extensions	#5

City/SDDPC Master Service Agreement (MSA) Team
Input/Recommendations/Actions Matrix

ATTACHMENT #1

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25	Address security issues for necessary continuation and transition of services	SDDPC Board	MSA addresses through selective sourcing section roles and responsibilities and communication	#5
26	Clarify relationship between MSA and SLA	SDDPC senior team; IBA; IT BLG	MSA and revised SLA clarifies their specific focus and purpose	#5 & #6
27	Clarify how to set policies acceptable to the City	SDDPC senior team	Bylaws provide for the City to approve key policies; City representatives as voting SDDPC board members facilitates policymaking	#1
CATEGORY #3: Budget & Finance				
28	Address potential issue of "double-billing" City for services	COO	Covered in MSA as part of the rate adjustment process; billable/ non-billable positions clearly identified in SLA	#5
29	Define/clarify SDDPC written policies related to reimbursements to vendors and retention of bid documents	Auditor (Item # 1)	SDDPC will revise policies to address this area upon approval of the MSA	SDDPC internal procurement policies
30	Modify the Operating Agreement to define costs which are unallowable without a justification of benefit to and approval by the City, including the procurement of capital assets	Auditor (Item # 4)	IT related capital will be vetted with the Dept of IT during the rate process; non-IT capital items are reviewed by City CFO for input and approved by SDDPC Board; Department of IT will manage annual budget process with SDDPC	#5 & #4

City/SDDPC Master Service Agreement (MSA) Team
Input/Recommendations/Actions Matrix

ATTACHMENT #1

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31	Amend Operating Agreement, requiring SDDPC to create a dedicated public vendor webpage for posting (a) requests for quotes or proposals; (b) results of requests for quotes or proposals; and (c) justifications for sole source / sole responder vendor contracts	Auditor (Item # 7a)	SDDPC will revise policies to address this area upon approval of the MSA	SDDPC internal procurement policies
32	Amend Operating Agreement, requiring SDDPC to set standard minimum response times to requests for quotes or proposals	Auditor (Item # 7b)	SDDPC will revise policies to address this area upon approval of the MSA	SDDPC internal procurement policies
33	Amend Operating Agreement, requiring SDDPC to re-advertise for requests for quotes or proposals if an insufficient number of responses are received from vendors for contracts exceeding a specific value, such as \$250,000	Auditor (Item #7c)	SDDPC will revise policies to address this area upon approval of the MSA	SDDPC internal procurement policies
34	Amend Operating Agreement, requiring SDDPC to set fixed terms for contracts	Auditor (Item # 7d)	SDDPC will revise policies to address this area upon approval of the MSA	SDDPC internal procurement policies
35	The City should establish encumbrances for IT BLG approved new project costs procured through SDDPC to ensure actual costs do not exceed approved budgeted costs.	Auditor (Item # 12)	City IT governance and City processes will provide controls; project managers are responsible for proper monitoring and managing costs; monthly or quarterly reports provided to City IT BLG	City internal IT governance policies

City/SDDPC Master Service Agreement (MSA) Team
Input/Recommendations/Actions Matrix

ATTACHMENT #1

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36	Amend the Operating Agreement to establish a timeline for execution of the annual SLA and to establish the level of City approval required prior to making payments if an SLA is not executed within the timeframe.	Auditor (Item # 14)	MSA, amended SLA, and SDDPC Budget & Fiscal policy implement these comments	#5 & #4
37	Establish process for business continuity and stability	SDDPC Board & senior team	90 day notice for business (service) termination; process for RFPs is outlined in MSA	#5
38	Establish process for RFPs with separate MSAs/SLAs or other mechanism (including timing and confidentiality of data)	SDDPC senior team	Rules of engagement for selective sourcing outlined in MSA; separate SLAs organized by the IT service areas/towers	#5
39	Clarify process of setting rates v. budget	SDDPC Board; IBA; IT BLG	MSA, Bylaws and Budget & Fiscal Policy clearly define budget and rate setting processes	#1, #5, & #4
40	Clarify procurement process and policies/differences between City and SDDPC	SDDPC senior team	Differences reviewed and re-confirmed; key component of purpose of SDDPC	#5, City internal policies, and SDDPC internal policies
41	Avoid duplication of services	Councilmember Emerald	City IT governance process will address this	City internal IT governance policies
CATEGORY #4: Reporting				
42	Provide monthly or quarterly budget updates from SDDPC to City	Councilmembers Frye & Gloria; IBA	Bylaws, MSA and SDDPC Budget & Fiscal policy clearly define reporting requirements	#1, #5, & #4
43	Address recommendations from City's performance audit	COO; Auditor (Items 1-16)	Each audit recommendation is addressed throughout the amended documents	#1, #5, City internal policies, and SDDPC internal policies

City/SDDPC Master Service Agreement (MSA) Team
Input/Recommendations/Actions Matrix

ATTACHMENT #1

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44	Amend Operating Agreement, requiring SDDPC to submit annual reports to the City summarizing competitive practices	Auditor (Item # 7e)	Covered in annual meeting requirement outlined in the Bylaws	#1
45	SDDPC's CEO and CFO shall certify to the City that SDDPC management assumes full responsibility for the completeness and reliability of the information contained in the financial report	Auditor (Item # 15e)	Bylaws, MSA and SDDPC Budget & Fiscal policy implement these comments	#1 & #4
46	Identify customer satisfaction measures	SDDPC Board	Outlined in MSA and clarified in annual SLA (service metrics)	#5 & #6
47	Establish clear reporting requirements	SDDPC senior team	Several reporting requirements have been defined and included in the MSA, Bylaws and SLA	#1, #5, & #6



THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: January 6, 2010

TO: Council Committee on Rules, Open Government, and Intergovernmental Relations

FROM: Jay M. Goldstone, Chief Operating Officer 

SUBJECT: Agenda Item for Meeting of January 13, 2010 – Update on Master Services Agreement with San Diego Data Processing Corporation and Related Corporate Governance Documents, Including Bylaws and Policies

The purpose of this memorandum is to provide an Executive Summary of the actions taken and the recommendations made by the team that has worked on updating the Master Services Agreement (MSA) between the City of San Diego (City) and San Diego Data Processing Corporation (SDDPC), and other related documents.

INTRODUCTION

In April 2009, the City and SDDPC formed a joint team (MSA Team) to update the current agreement governing Information Technology (IT) services provided by SDDPC to the City, and to address issues later raised by the City Auditor and others. The MSA Team members included:

Nader Tirandazi, Financial Management Director
Naresh Lachmandas, Director of Information Technology (since September 2009)
Alan Watkins, Department of IT
Steve Lastomirsky, City Attorney's Office
Laura Atkinson, Director of Customer and Application Services, SDDPC
Don Del Rio, General Counsel, SDDPC
Joyce Russell, Chief Financial Officer, SDDPC (since November 2009)
Steve Alexander, Consultant Facilitator

Between July and September 2009, the team met with several stakeholders to gather input on provisions that should be addressed, including the IT Business Leadership Group (IT BLG), Mayor's Office, Chief Operating Officer, Chief Financial Officer, SDDPC Board of Directors, SDDPC management team, City Attorney's Office, Independent Budget Analyst, and held a briefing before the Rules Committee on September 2, 2009.

From September through December 2009, the MSA Team worked to incorporate the combined input into an updated set of documents that include not only the Master Services Agreement, but also amended SDDPC Bylaws, new or amended SDDPC policies, amended Service Level Agreement (SLA), and creation of internal operating policies and procedures related to IT governance. The results of this effort are now ready for review and approval by the appropriate stakeholders. The summary of input received from the various stakeholders, along with the MSA Team's proposed recommendations, is provided in Attachment #1. A matrix of identified major issues with a cross-reference to the related documents is provided in Attachment #6.

SUMMARY

It is recommended that the attached set of documents that incorporate all of the input from the various stakeholders be approved by the City and/or SDDPC Board, as appropriate. The MSA Team took great care, through extended discussions and review, to place the agreement or policy language into the correct document(s). Where appropriate, there are cross-references between documents within their content, so as to reduce any duplication of definitions, policies, procedures or other terms and conditions. The documents can be divided into those which relate to the City as the sole Member of SDDPC (a public non-profit corporation), and those which relate to the City as a Customer of SDDPC for IT services. The first are the SDDPC Bylaws and SDDPC policies, which cover the "City as a Member" role. The second are the MSA, City Council Policy on IT Procurement, and Service Level Agreement (SLA), which cover the "City as a Customer" role. The MSA Team also grouped the summary of stakeholder input comments (Attachment #1) into four categories: (1) City as Member, (2) Governance, (3) Budget & Finance, and (4) Reporting.

As written, this set of documents, and other related operational policies to be implemented by both SDDPC and the City after these have been executed, provide clarification of (a) the different roles and responsibilities between the City and SDDPC, (b) the City's authority in the selection and compensation of SDDPC's Executive Director, (c) the review and approval processes for the SDDPC budget and setting rates for the City IT budget, (d) the policies and procedures related to IT procurement and the City's governance process for required approvals, and (e) the terms and conditions for ongoing IT services, in light of the City's current efforts to selectively source those services through competitive bidding processes.

The approval processes for these documents to become effective will vary slightly after approval to proceed is received from the Rules Committee, in the sequences listed here. First, the SDDPC Bylaws only requires approval by the City Council, acting as the Member of SDDPC. Second, the three, proposed SDDPC Policies need to be approved by the City Council and then adopted by the SDDPC Board. Third, the Master Services Agreement is a contract that must first be approved by the SDDPC Board to be executed by their Executive Director or designee, then it must be approved by the City Council to authorize the Mayor, acting through the Purchasing & Contracting Director, to execute the agreement on behalf of the City. Finally, the City Council Policy on IT Procurement only requires approval by the City Council. Since the amended Fiscal Year 2010 Service Level Agreement is an operational and service performance document and does not require City Council approval, it is not included in this package and it will be executed separately between the SDDPC

January 6, 2010

Executive Director and the Mayor, acting through the Purchasing & Contracting Director and the Director of Information Technology.

REQUESTED ACTION

The Rules Committee is requested to approve that the SDDPC Bylaws, three SDDPC Policies, Master Services Agreement, and City Council Policy on IT Procurement be taken forward for necessary City and SDDPC approval routing, concluded by review and approval by the full City Council.

JG:aw

cc: Honorable Mayor Jerry Sanders
Jan Goldsmith, City Attorney
Naresh Lachmandas, Director of Information Technology
Mary Lewis, Chief Financial Officer
Hildred Pepper, Purchasing & Contracting Director
Andrea Tevlin, Independent Budget Analyst
Nader Tirandazi, Financial Management Director
Laura Atkinson, Director of Customer & Application Services, SDDPC
Don Del Rio, General Counsel, SDDPC
Joyce Russell, Chief Financial Officer, SDDPC

- Attachment(s):
1. MSA Team Input & Recommendations Matrix
 2. Sixth Amended and Restated SDDPC Bylaws
 3. SDDPC Policies (3):
 - (a) Budget and Fiscal Policy
 - (b) Executive Director Selection, Compensation, Performance, and Separation Policy
 - (c) Board Governance Program – Training Policy and Guidelines
 4. Master Services Agreement
 5. City Council Policy on IT Procurement
 6. Cross-Reference Documents Matrix
 7. Draft Amended FY2010 Service Level Agreement (SLA)



City & SDDPC Bylaws, Master Services Agreement, and Related Documents

City Council Committee on
Rules, Open Government, and
Intergovernmental Relations

January 13, 2010



City/SDDPC MSA Team

- City Representatives
 - Nader Tirandazi (*Financial Management Director*)
 - Naresh Lachmandas (*Director of Information Technology*)
 - Alan Watkins (*Department of IT*)
 - Steve Lastomirsky (*City Attorney's Office*)
- SDDPC Representatives
 - Laura Atkinson (*Director of Customer & Application Services*)
 - Don Del Rio (*General Counsel*)
 - Joyce Russell (*Chief Financial Officer*)
- Facilitator
 - Steve Alexander



Overview of Presentation

- Purpose of Meeting
 - Overview of Documents
- Input, Creation, & Review Process
- Expected Outcomes
- Issues & Recommendations
 - Best practices, comparison with SEDC/CCDC
- Next Steps & Timeline for Approvals



Key Stakeholders

- Mayor/COO
- IT Business Leadership Group (IT BLG)
- City Council
- IBA
- City Attorney's Office
- Financial Management
- SDDPC Board of Directors
- SDDPC Management
- Department of IT
- City Purchasing & Contracting
- Comptroller's Office
- Other City Departments



Input, Creation, & Review Process

- MSA Team Established Goals & Objectives
- Obtained Input from Key Stakeholders
 - Incorporated into various documents
- Reviewed Draft Documents with Key Stakeholders
- Obtaining Approval to Adopt Documents



Expected Outcomes

- Understand MSA Team's Recommendations
- Understand Roles & Responsibilities
 - Mayor & City Council
 - SDDPC Board of Directors
- Approval from Rules Committee to Proceed
- Understand Milestones for Final Approvals



Issues & Recommendations

- Key Issues & Recommendations
 - Separation of Roles
 - City as Member
 - City as Customer
 - Categorized
 - City as Sole Member (of SDDPC as a Corporation)
 - Governance
 - Budget & Finance
 - Reporting
- Additional Issues & Recommendations



Approval Milestones

- SDDPC Bylaws
 - Rules Committee
 - Full City Council
- City-Approved SDDPC Board Policies
 - (1) Executive Director Selection, Compensation, Performance, & Separation Policy
 - (2) Board Governance Program – Training Policy & Guidelines
 - (3) Budget & Fiscal Policy
 - Rules Committee
 - Full City Council (approval)
 - SDDPC Board of Directors (adoption)



Approval Milestones (con.)

- City Council Policy on IT Procurement
 - Rules Committee
 - Full City Council
- Master Services Agreement
 - Rules Committee
 - SDDPC Board of Directors
 - Mayor & Chief Operating Officer
 - Full City Council
 - City Purchasing & Contracting Director



Approval Milestones (con.)

- Service Level Agreement (SLA)
 - City Purchasing & Contracting Director
 - SDDPC Management Team
 - City Director of IT



Input, Comments, & Questions

**SAN DIEGO DATA PROCESSING CORPORATION (SDDPC)
BOARD GOVERNANCE PROGRAM -
Training Policy and Guidelines**

I. Introduction

This City approved SDDPC Board Governance Program (“Training Policy”) shall be adopted and implemented by the SDDPC Board based on the guidelines and requirements provided below. The purpose of this Training Policy is to offer to each SDDPC Board member a proper introduction and understanding of the SDDPC business and governance model. Any future changes to this Training Policy shall require the approval of the Member or the Member’s Designee. Any defined terms that are not separately defined within this Policy shall have the same meaning as set forth in either SDDPC’s Bylaws or the Master Services Agreement between the City and SDDPC.

II. New Board Member Orientation:

1. Governance Orientation.
 - a. Introduction and a annual training with SDDPC Corporate Counsel to provide:
 - i. Overview of governance model and introduction to Articles of Incorporation, Bylaws and Master Service Agreement (“MSA”).
 - ii. Review of fiduciary duties of a non-profit Board member.
 - iii. Transparency and Public Accountability including Brown Act, Public Records Act and other transparency and public accountability requirements.
 - b. Introduction and meeting with SDDPC Senior Management in the areas of HR, Finance and Procurement, including review of Corporation policies and internal controls in those areas.
2. Introductory Operational Orientation.
 - a. Meeting with Executive Director and senior operational management.
 - b. Tour of facility and data center.
 - c. Overview of all IT service areas and history.

III. Board Member Required Form 700:

1. Required by City Ethics Commission.
2. Initial form 700 filing required by City for each new Board member, annual filing and departure filing.

IV. Board Conflict of Interest Issues:

1. Fair Political Practices Act/City Ethics Code Conflict Issues.
2. 1090 Conflict of Interest.
3. Common Law Conflict of Interest.

V. Board Ethics Exam Every Two Years:

1. Required by City Ethics Commission.

VI. Board Performance Measures:

1. Attendance at regular meetings.
2. Compliance with Corporation's Articles of Incorporation, Bylaws, Policies and MSA.
3. Understanding of approvals in areas of procurement and financial management, including audit functions (Financial and Pension Audit).
4. Participation in development of SDDPC strategic plan and verification of alignment with the City.
5. Verification and recalibration of corporate-wide salary and compensation for all staff based on industry standards using Hay Group, a global management consulting firm specializing in compensation studies.
6. Relationship building with Executive Director, Senior Management and City Officials.
7. Management and performance evaluation of Executive Director.

SAN DIEGO DATA PROCESSING CORPORATION BUDGET AND FISCAL POLICY

Introduction: This City approved SDDPC Board Budget and Fiscal Policy shall be adopted and implemented by the SDDPC Board based on the guidelines and requirements provided below. The purpose of this policy is to define the financial relationship between San Diego Data Processing (SDDPC) and the City of San Diego (City) and to document the requirements for the development, approval, execution, and monitoring of the SDDPC annual operating budget (that includes both City and non-City business). This policy outlines the criteria for budgetary decision making and sets the standards for budgetary practices, rate setting, fiscal performance, and financial reporting. Any defined terms that are not separately defined within this Policy shall have the same meaning as set forth in either SDDPC's Bylaws or the Master Services Agreement between the City and SDDPC.

Objective: The objectives of this policy are to distinguish the financial relationship between the City as a member and the City as a Customer and to formalize the requirements for the:

- Rate and Budget Development and Approval
- Mid-Year and Year-End Rate Adjustment
- Financial Reporting
- Annual Financial Audit
- Internal Financial Controls

POLICY

Overall Budget Principle

SDDPC shall develop, adopt, and operate under a balanced Annual Operating Budget (Budget) for each Fiscal Year. A Budget is considered balanced when total budgeted expenditures are equal to or less than total budgeted revenues, plus available net assets. Net Assets is the difference between Total Assets and Total Liabilities. Available Net Assets are defined as the amount of Net Assets that exceed "110% of the net book value of Capital Assets". The budget shall be prepared on an accrual basis of accounting whereby revenues are recognized when earned and expenses are recorded when incurred.

1) **Budget and Rate Development:**

- a) **Rate Setting Process:** An annual Rate Setting Process (Rate Process) will occur between August and December for the next Fiscal Year. The objectives of the Rate Process are to determine the volume of services to be requested by the City and SDDPC's cost to provide those services. The rates are set to recover SDDPC costs on an annual balanced-basis as described above.
- b) The Department of Information Technology (Department of IT) and SDDPC will develop a joint IT strategic plan for the upcoming Fiscal Year that aligns with the City's business direction. Such plan shall define overall IT direction and initiatives to be incorporated

into the Rate Process. A core rate-setting team will be comprised of City and SDDPC representatives, who will negotiate services, service levels, pricing, and the method by which specific services are billed to the City (i.e. fixed price, time and material, etc).

- c) City representatives will include:
 - i) 2 to 3 high level personnel from the Department of IT, including the Director of Information Technology (Director of IT);
 - ii) Financial Management Director.
- d) SDDPC representatives will be designated by the Executive Director and will include:
 - i) Senior Operational Management;
 - ii) The Chief Financial Officer (CFO).
- e) City responsibilities within the Rate Process will include:
 - i) Initiating the Rate Process and establishing the timetable for completion of the process;
 - ii) Providing a Project Manager to facilitate the process;
 - iii) Directing the individual City departments to work with their SDDPC point of contact and develop their anticipated service requirements and work plans for the upcoming Fiscal Year;
 - iv) Coordinating and providing the City departments' inventory updates;
 - v) Identifying the services and associated metrics anticipated for the upcoming Fiscal Year;
 - vi) Projecting the volume of labor and infrastructure services to be procured in the upcoming Fiscal Year;
 - vii) Establishing the allocation methodology to be used to distribute SDDPC's cost for services.
- f) SDDPC's responsibilities within the Rate Process will include:
 - i) Working with City departments to develop anticipated service requirements and detailed work plans for the upcoming Fiscal Year;
 - ii) Determining the cost to provision the identified services by specific category;
 - iii) Providing key cost components and staffing for each specific service category;
 - iv) Identifying anticipated major capital investments by service category;
 - v) Establishing the categories or billing tiers for professional services;
 - vi) Providing a list of job titles, their respective tiers, and the associated billing rate;
 - vii) Supplying an overall summary rate schedule that includes service title, rates/amounts, and the billing methodology to be used – i.e. rate per hour, rate per week, annual fixed price, etc.
- g) The core rate team will negotiate and agree upon the rates to be charged for SDDPC services in the following Fiscal Year. If the team is unable to reach agreement, the Dispute Resolution process will be followed as outlined in the Master Services Agreement between the City and SDDPC.
- h) Upon completion of the Rate Process, the City departments will submit their budgets to the City's CFO, or designee, and follow the Mayor's budget process. The development

of the City budget is an iterative process and the Director of IT will notify the SDDPC Executive Director and CFO of any changes to the services and/or volume of services that the City plans to obtain from SDDPC. The Director of IT will present to City Council the proposed citywide IT expenditures that are included in the Mayor's proposed budget. Any City Council recommended changes related to SDDPC services will be communicated to the City's Financial Management Director, who will present the recommendations to the SDDPC Board of Directors (Board) at the next regularly scheduled meeting of the Board or at a special meeting of the Board. The FM Director will provide the Director of IT and SDDPC with the final, Council-approved citywide IT expenditure budget for SDDPC services by June 25th of each year.

- i) **Preliminary Operating Expense Budget.** As part of the Rate Process, SDDPC will develop a preliminary Operating Expense Budget based on customer defined services and associated volumes, service levels, and the estimated cost to deliver those services. Volume projections and cost estimates shall be based on information available at the time that the preliminary budget is developed and will be used to establish the pricing for services as described above in the Rate Process.
 - i) The preliminary Operating Expense Budget, along with the preliminary rates, will be presented to the Board's Budget Committee (Budget Committee) for review and input. Information to be provided to the Budget Committee includes:
 - (1) Staffing levels
 - (2) Cost assumptions including inflation factors, salary program, etc.
 - (3) Capital
 - (4) Service volumes
 - ii) Material changes in pricing structures or service line requires approval of the Board of Directors.
- j) **Annual Operating Budget.** Subsequent to the Rate Process, upon completion of the City's preliminary budget review process, the City CFO, or designee, will provide to SDDPC by February 15th of each year, the preliminary citywide IT expenditures by SDDPC's SAP material code number, general ledger account, and cost/object (City department commitment level). Upon receipt of this information, SDDPC will develop a proposed Budget.
 - i) The Budget will include the following components:
 - (1) Operating Revenue by Service Category
 - (2) Operating Revenue by Key Customer
 - (3) Operating Expenses by Major Cost Classification
 - (4) Procured Services Revenue and Expense
 - (5) Capital Purchases
 - (6) Change in Net Assets
 - (7) Staffing

2) Budget Approval Process:

- a) SDDPC Budget Committee Approval: The proposed Budget will be presented to the SDDPC Budget Committee for review and input. The material presented shall include comparison of proposed Budget to prior Fiscal Year actual results and current year Budget.
- b) City CFO Review: Upon agreement from the SDDPC Budget Committee, the SDDPC CFO will prepare and submit the draft proposed Budget to the City's CFO for review and comment.
- c) Board Approval: The SDDPC Budget Committee will consider the City's CFO comments and direct any changes to be made. Upon SDDPC Budget Committee approval, the proposed Budget will be presented to the Board for approval.
- d) Mayor's Budget Process: The Board-approved Budget will be submitted to the City's CFO, or designee, as part of the City of San Diego's Mayor's budget process. Information will be provided in the format requested by the City's CFO, or designee, and will include salary and wage ranges for each of job classification, salary components, and actual executive salaries and bonuses. The Budget is for information only as part of the overall City budget.
- e) City Council Review: On an annual basis, the Board-approved Budget shall be presented to the City Council, as an information item only, in a format as directed by the City's CFO, or designee, and include both City and non-City business. If requested, the Budget will also be presented to the City Council's Budget and Finance Committee as an information item, prior to presenting it to the full City Council.
- f) Final Approval: The Board has final approval authority for the SDDPC Budget.
- g) Final City Budget: The City's CFO, or designee, will provide to SDDPC by June 25th of each year, the final approved citywide IT expenditures for SDDPC services by SDDPC's SAP material code number, general ledger account, and cost/object.
- h) Budget Appropriation Ordinance: The City's CFO will incorporate the language necessary within the Appropriations Ordinance authorizing the City to pay SDDPC for services provided during the Fiscal Year.
- i) Changes to Approved Budget: SDDPC Board will manage the affairs of the company and provide services within the parameters of the approved Budget. Revenue and expense variances exceeding 10% of approved amounts will be detailed in the monthly financial report to the Board, as described below. Board approval is required to incur actual expenses in excess of budgeted expenses, unless such expenses are less than actual revenues. However, Board approval is also required to incur expenses by major category in excess of 10% of approved Budget. For example, if the approved Budget for Software is \$2.0 million, Board approval is required to expend more than \$2.2 million in Software for the year.

3) Mid-Year Rate Adjustment

- a) The Fiscal Year for SDDPC is July 1 to June 30. In January of each year, SDDPC will prepare a forecast of the expected financial results for the current Fiscal Year. The forecast will be based on the first six months of actual performance and estimated revenues and expenses for the second half of the Fiscal Year.
- b) If the forecast indicates that operating revenues will exceed operating expenses by \$500,000 or more, or that operating expenses will be greater than operating revenue by \$500,000 or more, then SDDPC shall recalculate the current year rates with the goal of achieving a break-even financial position for the Fiscal Year. The Executive Director and CFO will meet with the City CFO or designee and the FM Director to agree upon revised rates for the services to be provided in the remaining months of the Fiscal Year. The revised rates may potentially impact both fixed price and variable rate services provided by SDDPC.
- c) Any excess revenues or expenses remaining at the end of a Fiscal Year will result in an increase or decrease of SDDPC's net assets as of the end of that Fiscal Year. Such excess revenues or expenses will be incorporated into a rate adjustment as part of the next Mid-Year Rate Adjustment process, provided there is Available Net Assets as described above.

4) Financial Reporting

- a) **Board Reporting:** A Financial Report reflecting the results of operations for the prior month(s) will be presented to the Board at their regularly scheduled meetings for their review and approval. Information to be provided includes current month and year-to-date performance for Actual versus Budget for the following items:
 - i) Operating Revenue by Service Category
 - ii) Operating Expenses by Major Cost Classification
 - iii) Procured Services Revenue and Expense
 - iv) Capital Purchases
 - v) Change in Net Assets
 - vi) Staffing
 - vii) On a quarterly basis, the financial report should also include actual versus budget detail of "Other expenses" and "Professional Memberships and Dues" expenses for the Executive Director and his or her direct reports. Any exceptions to the Professional Memberships and Dues policy should also be reported to the Board on a quarterly basis as part of the financial report.
- b) **Reporting to the City:** A copy of the Financial Report described above shall also be provided to the City's CFO, or designee, and each member of the City Council.
- c) In addition, SDDPC will provide monthly financial reports to the City's CFO, or designee, in a format as directed by the City's CFO, or designee.

5) **Annual Financial Audit**

- a) A financial audit shall be performed on an annual basis by the audit firm used by the City of San Diego. The audit shall be completed and presented to the Board of Directors for approval no later than October 31st of each year. Upon Board approval, the audit report shall be submitted to the Mayor, each member of City Council, Chief Operating Officer, Chief Financial Officer, City Auditor, and Independent Budget Analyst.
- b) As part of the submission, the Executive Director and CFO shall certify their responsibility for the completeness and reliability of the information contained in the financial report.

6) **Internal Financial Controls**

- a) SDDPC will implement and maintain internal financial controls throughout its business processes and practices in order to provide reasonable assurance regarding the achievement of the following objectives:
 - i) Effectiveness and efficiency of operations;
 - ii) Reliability of financial reporting;
 - iii) Prevention, deterrence, and detection of fraud;
 - iv) Compliance with applicable laws and regulations.

**Comparison of
IT Budget Rate-Setting Process (City as Customer) vs.
SDDPC Budget Approval Process (City as Corporate Member)**

CITY AS A CUSTOMER	CITY AS A MEMBER
<u>SDDPC Rate-Setting Process</u> (Component of Citywide IT Budget)	<u>SDDPC Budget Approval Process</u> (As a Non-Profit Corporation)
1. Department of IT and SDDPC develop joint IT strategic plan for upcoming Fiscal Year, including capital IT expenditures (August)	1. SDDPC Proposed Expense Budget, including capital IT expenditures, Approved by SDDPC Board Committee (October/November)
2. Director of IT identifies Citywide IT services and associated metrics (September/October)	2. City CFO, or Designee, Reviews and Comments on Proposed SDDPC Budget (January/February)
3. SDDPC Develops Proposed Expense Budget for City IT services (October/November)	3. SDDPC Board Adopts Preliminary Budget (February/March)
4. Director of IT and Financial Management Director agree to Rates/Pricing of IT Services (November/December)	4. Preliminary Budget Submitted to City CFO, or Designee, to be forwarded to City Council as Information Only (March)
5. Financial Management Director and Director of IT present Proposed Citywide IT Budget to Council for Approval, highlighting SDDPC expenses as part of total (April/May)	5. SDDPC presents its Proposed Budget to City Council for review as Information Item only; as determined by City Council President, separately from the Citywide IT Budget presentation (May/June)
6. Changes to Proposed Citywide IT Budget related to SDDPC given to Director of IT and SDDPC by Financial Management Director (May/June)	6. SDDPC Board Adopts Final Budget (June)

San Diego Data Processing Corporation (SDDPC) Executive Director Selection, Compensation, Performance and Separation Policy

I. Introduction:

- a. This City approved policy shall be adopted and implemented by the SDDPC Board of Directors (“Board”) based on the guidelines and requirements provided below (“Executive Director Selection and Compensation Policy”). The purpose of this policy is to provide City participation and input into the selection, compensation, performance evaluation and separation of the SDDPC Executive Director. The City’s appointed Board of Directors will be responsible for managing the Executive Director pursuant to the Corporation’s Bylaws and related governance documents. Any future changes to this Executive Director Selection and Compensation Policy shall require the approval of the Member or the Member’s designee. Any defined terms that are not separately defined within this Policy shall have the same meaning as set forth in either SDDPC’s Bylaws or the Master Services Agreement between the City and SDDPC.

II. Hiring and Selection:

- a. Search and Selection: The Board shall initiate the search for an Executive Director and work with the SDDPC HR Director to develop the experience, background requirements and selection criteria for the position. The HR Director will follow all State and federal law requirements regarding Equal Employment Opportunity and all Board approved Human Resource Policies.
- b. Review and Screening: The Board will designate an Ad Hoc Committee to work with the HR Director, review resumes and select a maximum of three candidates. The Board will interview these candidates and select the top two based on the established experience, background requirements and selection criteria.
- c. City Participation: The Ad Hoc Committee and HR Director will direct the top two candidates to the City COO and CFO. Each of the above will conduct individual interviews and provide their feedback to the Ad Hoc Committee and HR Director.
- d. City Recommendations: Based on the City’s interviews and feedback, the Ad Hoc Committee and HR Director will rank the candidates and report their ranking to the Board who will vote and select the preliminary candidate for the Executive Director position.
- e. Final Candidate: The Mayor and City Council or their respective designees will meet the final candidate and provide the Ad Hoc Committee and HR Director with their recommendations. If these recommendations are consistent with the Board’s final selection, the Board will authorize and approve an Executive

Director Employment Contract as an “at will” agreement which will contain termination provisions for failure to achieve minimum performance standards and for violation of any Corporation policies or unlawful acts.

III. Compensation/Benefits:

- a. Base Salary: The Board will establish the annual base salary of the Executive Director between a minimum of \$180,000 and a maximum of \$225,000.
- b. Benefits: The Executive Director will receive the standard benefits that are offered to all SDDPC regular employees.
- c. Bonus (includes any and all other merit pay of any kind, other than base salary): There shall exist no other bonus or merit pay.

IV. Performance Evaluation:

- a. The Board will complete an annual Executive Director written performance review of both essential functions and performance goals.
 - i. Performance reviews will include, but not be limited to:
 - 1. Board’s observations of Executive Director’s performance.
 - 2. 360 Participation Surveys (initial 6 month Survey and annual Survey thereafter).
 - 3. Direct feedback from City Officials, Employees, Mayor, City Council, City COO, CFO, Members of the ITBLG and SDDPC Senior Management.
 - 4. Employee Satisfaction Survey Input.
 - 5. Customer Satisfaction Survey Input.
 - 6. Compliance with Executive Director Employment Contract, performance standards and attainment of performance goals.
- b. Board of Directors will document performance as required by SDDPC Policies.

V. Separation/Termination:

- a. Voluntary - pursuant to the Executive Director Employment Contract.
- b. Involuntary - It shall be the responsibility of the Board of Directors to properly establish written performance goals, manage the Executive Director’s performance and provide for regular written performance reviews, including City participation and input as provided in this policy.

SIXTH AMENDED AND RESTATED BYLAWS
OF
SAN DIEGO DATA PROCESSING CORPORATION, INC.

ARTICLE I: NAME

The name of this nonprofit public benefit Corporation is the San Diego Data Processing Corporation, Inc (“Corporation”).

ARTICLE II: OFFICE

Section 1. Principal Office. The principal office for the transaction of the business of the Corporation shall be located at such place in the City of San Diego, California, as the Board of Directors of the Corporation (“Board”) shall from time to time fix and designate.

Section 2. Other Offices. Branch or subordinate offices may be established by the Board at any place or places within the City of San Diego at any time.

ARTICLE III: NONPARTISAN ACTIVITIES

This Corporation has been formed under the California Nonprofit Public Benefit Corporation Law as set forth at California Government Code Section 5002 et. seq. (the “Law”) for a charitable purpose and it shall be nonprofit and nonpartisan. No substantial part of the activities of the Corporation shall consist of the carrying on of propaganda or otherwise attempting to influence legislation. The Corporation shall not participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office.

ARTICLE IV: DEDICATION OF ASSETS

The properties and assets of the Corporation are irrevocably dedicated to charitable purposes. No part of the net earnings, properties, or assets of this Corporation, on dissolution or otherwise, shall inure to the benefit of any private persons. Upon liquidation, dissolution, or winding up of the Corporation, its assets remaining after payment or provision for payment of all debts and liabilities of the Corporation shall be distributed to the City of San Diego, to be used solely for charitable purposes, or if the City of San Diego does not accept the assets or is not then in existence, all remaining properties and assets of the Corporation shall be distributed and paid over to an organization dedicated to charitable purposes which has established its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

ARTICLE V: MEMBER

Section 1. Member. The City of San Diego (“City”) shall be the sole Member (“Member”) of the Corporation.

Section 2. Actions. The Member shall act through the Council of the City of San Diego (“City Council”) and take any and all action and exercise any and all powers provided by the laws of the State of California, the City Charter, the San Diego Municipal Code, the articles of incorporation of the Corporation (“Articles”) and these bylaws (“Bylaws”). The Member may also act through its duly authorized designee (“Designee”) if that authority to act has been conveyed to Designee by resolution or ordinance of the Member acting by and through the City Council, or if such delegation of authority is described in these Bylaws and these Bylaws are adopted by the Member acting by and through the City Council. Once authority to act has been conveyed to the Designee, the Member may not perform the same function delegated to the Designee. The Member may rescind all or a part of the Designee’s delegated authority by resolution of the Member acting by and through the City Council, provided that, if the Member, acting by and through the City Council adopts these Bylaws, and any delegation of authority is described in these Bylaws, then the City Council will need to adopt a resolution amending the Bylaws, as appropriate, in order to rescind such delegation of authority.

Section 3. Delivery of Notice. The delivery of written notice to the Member, as required by any provision of these Bylaws, may be fulfilled by the delivery of such notice to the Designee, or if there is no Designee, to each Member of the City Council and the Mayor or the Mayor’s designee, in each case either personally or by mail or by other means of written communication, including facsimile or electronic mail message. The requirement of written notice shall be waived as to any recipient who, at or prior to the time of the meeting that is the subject of the notice, files with the Secretary of the Corporation a written waiver of notice. The waiver may be given by facsimile or by means of electronic mail message. The requirement of written notice shall also be waived as to any recipient who is actually present at the meeting that is the subject of the notice at the time such meeting convenes.

Section 4. Meetings of Member. There shall be an annual meeting of the Member held at the first City Council meeting held in the month of February each year. The Corporation’s Executive Director, Chief Financial Officer (“CFO”) and the Chair of the Board shall present to the Member, acting by and through the City Council or to such committee of the City Council as the City Council designates, an annual report of the Corporation which shall provide an assessment of the Corporation and describe its operations and financial outlook and include a copy of its Strategic Plan for its past and present Fiscal Year as provided for in Article VII of these Bylaws, and such other issues related to technology, fiscal outlook and operations, the status of major projects, a summary of Bylaws compliance during the preceding Fiscal Year, a summary of competitive practices, and other pertinent topics as directed by the Member (“Annual Report”). A special meeting of the Member may be held upon call by the Member, acting through a resolution of the City Council. The chair of the Board (“Chair”), or, if the Chair is unable to act, any Vice Chair of the Board or any two Directors of the Corporation, may request that the City Council, acting as the Member, hold a Special Meeting, but such a meeting may be held at the discretion of the Member, acting by and through the City Council. If the Member, acting by and through the City Council, fails to hold an annual meeting in February of any year, then, no later than March 1, the Corporation shall send a written copy of its Annual Report via both regular U.S. Mail (or by hand delivery) and electronic mail to each member of the City Council and the Mayor or the Mayor’s designee.

(a) Notice of Meetings. Written notice of each annual meeting of the Member shall be posted no less than seventy-two (72) hours prior to the meeting, or as otherwise required in accordance with the requirements of the Ralph M. Brown Act as set forth at California Government Code Section 54950 et. seq. (“Brown Act”). Notice of special meetings of the Member shall be provided to the City Council not fewer than ten (10) or more than ninety (90) days before such meeting. Such notice shall specify the place, day and hour of such meeting, and shall also state the general matter of the business or proposals to be considered or acted upon at such meeting. Such notice shall also be given to the Member’s Designee, if a Designee has been designated.

(b) Quorum. The presence in person of a majority of the City Council at a duly called and noticed meeting of the Member shall constitute a quorum for the transaction of business at all annual or special meetings of the Member.

(c) Action. Member action at an annual or special meeting of the Member shall be effective upon written notification to the Corporation by the Member or its Designee.

Section 5. Voting. The Members of the City Council entitled to vote at any meeting of the Member shall vote, at any meeting of the Member, by voice or electronic ballot. Each member of the City Council entitled to vote shall be entitled to cast one vote on each matter submitted to a vote of the Member. Cumulative voting is prohibited. If a quorum is present, the affirmative vote of a majority of the members of the City Council represented at the meeting, entitled to vote and voting on any matter, shall be the act of the Member, unless the vote of a greater number or voting by classes is required by the Articles of Incorporation, these Bylaws, or the Law.

Section 6. Action without a Meeting. Any action required or permitted to be taken by the Member may be taken without a meeting, if the Member consents in writing to the action, provided that such an action complies with all provisions of the Brown Act. The written consent or consents shall be filed with the minutes of the proceedings of the Member. The action by written consent shall have the same force and effect as a vote of the Member at a duly called and noticed annual or special meeting of the Member.

ARTICLE VI: BOARD OF DIRECTORS

Section 1. Powers. Subject to limitations of the Articles, these Bylaws, and of the laws of the State of California as to action to be authorized and approved by the Member, and subject to the duties of the Directors as prescribed by these Bylaws, all powers of the Corporation shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be controlled by, the Board. Without prejudice to such general powers, but subject to the same limitations, it is hereby expressly declared that the Directors shall have the following powers:

(a) To appoint, remove, and set the compensation of the Executive Director of the Corporation, subject to any procedures set forth in these Bylaws, including Article VIII, Section 2(b), and to proscribe such powers and duties for the Executive Director that are not inconsistent with the law, the Articles, or these Bylaws.

(b) To change the principal office for the transaction of the business of the Corporation as provided in Article I hereof, to designate any place within the City of San Diego for the holding of any meeting of the Member and to adopt, make and use a corporate seal.

(c) To borrow money and incur indebtedness on behalf of and for the purpose of the Corporation, and to cause to be executed and delivered therefore, in the corporate name, promissory notes, or other evidences of debt and instruments securing the payment of the sum.

Section 2. Number of Directors. The authorized number of Directors shall be seven (7), all of whom, except as provided in Article VI, Section 3(a), shall be appointed by the Mayor or the Mayor's designee and confirmed by the City Council, acting in its capacity as the Member.

Section 3. Qualifications of Directors and Appointment Process for City Employee Board Members.

(a) Three members of the Board of Directors shall be City employees. One of those three City employee Board members shall be the City's Director of Information Technology, who shall be a member of the Board of Directors with all rights and privileges, including voting rights, of the other members of the Board. The Director of Information Technology shall become a member of the Board upon commencement of employment as the City's Director of Information Technology, and shall not require separate appointment or approval by the City Council. In addition to the City's Director of Technology, the Mayor or his designee, shall have the authority to appoint two other City employees to the Board. Those two City Employee Board members shall have no less than the rank of a director of a City department. Appointments of those two City employees to the Board shall not need to be approved by the City Council. The Member, acting by and through the City Council, by adopting these Bylaws, hereby designates the Mayor or the Mayor's designee as the Member's Designee to appoint the City employee Directors as provided for in this Article VI, Section 3.

(b) All Directors other than City employee Directors described in this Article VI, Section 3(a) shall be persons whose professional background or experience is in the field of technology (e.g. information technology, data processing, telecommunications, science and engineering). This background or experience may be satisfied by any of the following titles or functional equivalent in substantive job duties: chief technology officer, chief information officer, director of information technology, chief executive officer, chief financial officer, attorney, certified public accountant, chief operations officer, or high level business manager of an entity engaged in the field of information technology.

Section 4. Election, Designation and Term of Office for City Employee Directors. The Three Members of the Board of Directors who are City employees shall be appointed as described in Article VI, Section 3(a) of these Bylaws and shall serve until removed from office or otherwise replaced by action of the Mayor.

Section 5. Election, Designation and Term of Office for non-City Employee Directors.

Directors, other than City employee Directors, shall serve for a term of two years and may not serve more than three consecutive terms. Each two year term of a Director shall begin on March 1 of the year that the Director is appointed by the Mayor and confirmed by the City Council at the Member's annual meeting in February. Notwithstanding the foregoing, if a Director is appointed by the Mayor and confirmed by the Member, acting by and through the City Council, in order to fill a vacancy on the Board, then the Director may serve a partial term which shall expire on the following March 1. If a Director serves such a partial term, then he or she may serve, if appointed by the Mayor and confirmed by the City Council, as provided for herein, a maximum of three successive two year terms in addition to the partial term. A Director shall serve until his or her successor is appointed and qualified, but under no circumstances shall a Director serve for more than six consecutive years unless the Law otherwise requires or as otherwise allowed in this Article VI, Section 5. A Director who has served three consecutive terms shall be ineligible for reappointment for two years after leaving the Board, and may then be reappointed subject to the limitations contained in this Article VI, Section 5. Except as otherwise directed by the Member or the Member's Designee, Directors shall be appointed by the Mayor or the Mayor's designee and confirmed by the City Council, acting in its capacity as the Member.

Section 6. Vacancies. A Director may be removed with or without cause by the Member acting by and through the City Council or by the Mayor or the Mayor's designee who shall be treated as the Member's Designee. To clarify, the Member intends that both the City Council and the Mayor or the Mayor's designee shall have the right to remove Directors. The successor of a Director so removed shall be appointed as described in this Article VI of the Bylaws as soon as practical following such removal, subject to confirmation by the Member acting by and through the City Council. Vacancies caused by death or resignation shall be filled by the appointment process for Directors described in this Article VI. Directors appointed to fill a vacancy shall serve a partial term and be eligible for appointment to a full term as described in Article VI, Section 5 of the Bylaws.

Section 7. Officers of the Board.

(a) Board Officers. Officers of the Board ("Board Officers") shall consist of a Chair and as many Vice Chairs as the Board may from time to time appoint.

(b) Election and Term Limits. Each Board Officer shall be chosen annually by the Board shall take office on January 1, and shall hold office until the end of his or her term or until his or her resignation or until removed by the Board or otherwise disqualified to serve or until his or her successor is elected and qualified. Board Officers may serve no more than three successive one year terms in the same office. However, if a Board Officer position is vacant for any reason, the Board shall, at its next regular meeting, hold an election to fill the position and the elected Board Officer shall serve a partial term that will expire on March 1. Board Officers elected to such a partial term may then be elected to up to three successive one year terms in the same office.

(c) Removal and Resignation. Any Board Officer may be removed, either with or without cause, by a two-thirds majority of the Directors then in office, at any regular meeting of the Board (“Regular Meeting”) or special meeting of the Board (“Special Meeting”). Any Board Officer may resign at any time by giving written notice to the Board, to the Chair, or to the Secretary of the Corporation. Any such resignation shall take effect as of the date such notice is received or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation by the Board, the Chair, or the Secretary shall not be necessary to make it effective.

(d) Vacancies. A vacancy created by the death, resignation, removal, or disqualification of a Board Officer, or for any other cause, shall be filled in the manner prescribed in these Bylaws for regular appointments to such office, provided that such vacancies shall be filled as they occur and not on an annual basis.

(e) Eligibility. Only Directors are eligible to serve as Board Officers.

(f) Chair. The Chair shall, when present, preside at all meetings of the Board. The Chair is authorized to execute in the name of the corporation all contracts and other documents as specifically authorized by the Board, except when by law the signature of the Executive Director is required, or the Board otherwise delegates to the Executive Director authority to execute contracts or other documents.

(g) Vice Chair. If the Chair is unable to act, the Vice Chairs, in order of their rank as fixed by the Board, or if not ranked, the Vice Chair designated by the Board, shall perform all of the duties of the Chair, and when so acting shall have all of the powers of, and be subject to, all of the restrictions upon the Chair. The Vice Chairs shall have such other powers and perform such other duties as may from time to time be prescribed for them by the Board and in these Bylaws.

Section 8. Place of Meeting. Regular Meetings and Special Meetings shall be held at any place within the City of San Diego which has been designated from time to time by resolution of the Board or by written consent of all Members of the Board. In the absence of such designation, Regular Meetings shall be held at the principal office of the Corporation.

Section 9. Annual Board Meeting. During the month of December of each year, the Board shall hold a Regular Meeting for the purpose of organization, election of officers and the transaction of other business (“Annual Board Meeting”). The terms of officers elected at the Annual Board Meeting shall commence on the first day of the following January.

Section 10. Other Regular Meetings. Other Regular Meetings shall be held on such day in each month, or on such day in such months, as the Board shall from time to time fix and determine by resolution; provided, however, that should the date of a Regular Meeting fall on a legal holiday, such Regular Meeting shall be held at the same time on the next business day which is not a legal holiday or on such other day designated by the Board. The notice of a Regular Meeting and the agenda for such meeting shall be posted and made available to the public at least seventy-two (72) hours before the date of the meeting and the meeting shall otherwise comply with the Brown

Act. Additionally, the Board shall provide notice to the Member or the Member's Designee, the members of the City Council and the Mayor or the Mayor's designee, of the date, time and location of any Regular Meeting. Except as otherwise described in this Article VI, Section 10, notice of all Regular Meetings shall follow the same procedures as provided for in Article VI, Section 11 with respect to Special Meetings.

Section 11. Special Meeting. Special Meetings, for any purpose or purposes, may be called at any time by the Chair or by a majority of the Directors. At least twenty-four (24) hours' notice of such meeting shall be given to each Director, either personally, by mail, facsimile, or by means of electronic mail message. Such notice shall contain the date, time and place of the meeting and a specific description of the business to be transacted. Such notice shall also be given to the Member. No business shall be transacted at any Special Meeting except business that is specifically described in the notice of such Special Meeting. The requirement of written notice shall be waived as to any Director who, at or prior to the time of the Special Meeting files with the Secretary a written waiver of notice. The waiver may be given by facsimile or by means of electronic mail message. The requirement of written notice shall also be waived as to any Director who is actually present at the Special Meeting at the time it convenes. Notice shall also be posted at least 24 hours prior to the Special Meeting in a location that is freely accessible to Members of the public.

Section 12. Proper Business of Special Meeting. No business, other than the business the general nature of which was set forth in the notice of the meeting, may be transacted at a Special Meeting.

Section 13. Entry of Notice. Whenever any Director has been absent from any Special Meeting, an entry in the minutes to the effect that notice has been duly given shall be conclusive and incontrovertible evidence that due notice of such Special Meeting was given to such Director, as required by law and these Bylaws.

Section 14. Quorum. Action at a Meeting. The presence of a majority of the Directors then in office, at a meeting of the Board, constitutes a quorum for the transaction of business, except as otherwise required by the Brown Act or provided in these Bylaws, and provided that a quorum shall not exist if less than two Directors are present at a meeting of the Board. Every act done or decision made by a majority of the Directors present at a meeting duly held and noticed and in compliance with the Brown Act at which a quorum is present shall be regarded as the act of the Board, unless a greater number, or the same number after disqualifying one or more Directors from voting, is required by the Articles of Incorporation, these Bylaws, or the Law. Directors may not vote by proxy. A meeting at which a quorum is initially present, including an adjourned meeting, may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is later approved by at least a majority of the required quorum for that meeting, or by a greater number if required by the Articles of Incorporation, these Bylaws or the Law, subject to compliance with the Brown Act.

Section 15. Adjournment. A quorum of the Directors may adjourn any Regular Meeting or Special Meeting to meet again at a stated day and hour; provided, however, that in the absence of

a quorum, a majority of the Directors present at any Regular Meeting or Special Meeting may adjourn from time to time until the time fixed for the next Regular Meeting.

Section 16. Compensation. Directors shall not receive any compensation for their services.

Section 17. Standard of Care.

(a) Prudent Person Rule. A Director shall perform the duties of a Director, including duties as a member of any committee of the Board on which the Director may serve, in good faith, in a manner such Director believes to be in the best interests of the Corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like situation would use under similar circumstances.

(b) Reliance on Others. In performing the duties of a Director, a Director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

(i) One or more officers or employees of the Corporation whom the Director believes to be reliable and competent in the matters presented;

(ii) Legal counsel, independent accountants or other persons as to matters which the Director believes to be within such person's professional or expert competence; or

(iii) A committee of the Board upon which the Director does not serve, as to matters within its designated authority, which committee the Director believes to merit confidence, so long as, in any such case, the Director acts in good faith, after reasonable inquiry when the need therefore is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

(c) Avoidance of Speculation. Except with respect to assets which are directly related to the Corporation's charitable programs, when investing, reinvesting, purchasing, acquiring, exchanging, selling or managing the Corporation's investments, the Board shall avoid speculation, looking instead to the permanent disposition of the funds, considering the probable income, as well as the probable safety of the Corporation's capital, and comply with the express terms of an instrument or agreement pursuant to which the assets were contributed to the Corporation.

Section 18. Self-Dealing Transactions. The Board shall not approve or permit the Corporation to engage in self-dealing transaction. A self-dealing transaction is a transaction to which the Corporation is a party and in which one or more of its Directors has a material financial interest, unless the transaction is described in Section 5233(b) of the Law.

Section 19. Loans. Excepted as permitted by Section 5236 of the Law, the Corporation shall not make any loan of money or property to, or guarantee the obligation of, any Director or Officer; provided, however, that this Corporation may advance money to a Director or Officer of this

Corporation or any subsidiary for expenses reasonably anticipated to be incurred in performance of the duties of such Director or Officer so long as such individual would be entitled to be reimbursed for such expense absent that advance.

Section 20. Participation of City Officials. The members of the City Council or their duly authorized representatives and the Mayor shall be entitled to attend any meetings of the Board or any committee thereof (as allowed by law) and shall receive notice of such meetings in accordance with these Bylaws, with the right of presentation and debate as to any matters presented therein. However, neither the members of the City Council nor the Mayor shall be entitled to vote on any matter considered by the Board or any committee thereof at any meeting thereof. In furtherance of this Article VI, Section 20, both the members of the City Council and the Mayor shall be entitled to make presentations to the Board and include recommendations for consideration by the Board and any committees thereof on matters related to the business or operations of the Corporation.

ARTICLE VII: OFFICERS, CHIEF FINANCIAL OFFICER, AND CORPORATE COUNSEL

Section 1. Officers. The officers of this Corporation (other than Board Officers) shall consist of a President (who, as described in Section 4 of this Article VII, may be referred to as the Executive Director), a Vice President, a Secretary, and a Treasurer; provided, however, that neither the Secretary nor the Treasurer may serve concurrently as the President. The Corporation may also have, at the discretion of the Board, one or more additional Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers, an Executive Secretary, and such other officers as the Board may from time to time appoint (collectively, the President, Vice President, Secretary and Treasurer, are referred to herein as the “Officers”).

Section 2. Appointment of Corporate Officers. The President, Treasurer, and Secretary shall be appointed directly by the Board and shall serve at the pleasure of the Board, subject to the rights, if any, of an Officer under any contract of employment, and, for the President, subject to the Executive Director Selection, Compensation, Performance and Separation Policy described in Article VIII of these Bylaws. All other Officers, as defined in Article VII, herein, and with the exception of the President, Treasurer, and Secretary, shall be appointed by the President, with the advice and consent of the Board, and such Officers shall serve at the pleasure of the Board, subject to the rights, if any, of an Officer under any contract of employment.

Section 3. Removal and Resignation. The Officers may be removed by the Board at any time, consistent with the approved Board policies. Any Officer may resign at any time by giving written notice to the Board, the chairperson of the Board, the President, or the Secretary of the Corporation, without prejudice to the rights, if any, of the Corporation under any contract to which such Officer is a party. Any resignation shall take effect on the date of the receipt of such notice or at any later time specified in the resignation; and, unless otherwise specified in the resignation, the acceptance of the resignation shall not be necessary to make it effective.

A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to that

office. The compensation, if any, of the Officers, shall be fixed or determined by resolution of the Board, except that the compensation for the President shall be determined as set forth in Article VIII, Section 1(a) of these Bylaws.

Section 4. President. The President shall be the Chief Executive Officer of the Corporation and may, except as otherwise required by law and at the discretion of the Board, be referred to in Corporate documents as the “Executive Director.” The President/Executive Director shall, subject to the discretion and control of the Board, and except as otherwise described in these Bylaws, have general supervision, direction and control of the business and Officers of the Corporation. The President may also act as an Assistant Secretary and as an Assistant Treasurer of the Corporation at the discretion of the Board.

Section 5. Vice Presidents. Each of the Vice Presidents appointed by the President shall be full-time employees of the Corporation, shall act as directors of specified corporate departments and shall report directly to the President. Any Vice President may also act as an Assistant Secretary and as an Assistant Treasurer of the Corporation at the sole discretion of the Board.

Section 6. Secretary. The Corporation’s Corporate Counsel shall, unless the Board determines otherwise, serve as the Secretary for the Corporation.

(a) Minutes. The Secretary shall keep, or cause to be kept, a book of minutes at the principal office, or such other place as the Board may specify, of all Regular Meetings and Special Meetings and of all annual and special meetings of the Member, with the time and place of such meeting, the manner in which the meeting was authorized if not a Regular Meeting or a regular meeting of the Member, the names of those present at such meetings and the form of notice given thereof. All meetings, whether regular or Special and both closed session and open session, shall be electronically recorded and retained for a period of at least five years.

(b) Notice. The Secretary shall give, or cause to be given, in accordance with the provisions of these Bylaws, notice of all annual and special meetings of the Member and notice of all Regular Meetings and Special Meetings required by these Bylaws, or otherwise required by law to be given, and he or she shall have such other powers and perform such other duties as may be prescribed by the Board, these Bylaws, or the President.

Section 7. Treasurer. The Treasurer shall be the Chief Financial Officer of the Corporation and shall, subject to the direction and control of the Board, have general supervision, direction and control of the Corporation’s financial matters.

(a) Books of Account. The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts and disbursements. The books of account shall at all times be available for inspection by any Director, by any Member of the City Council, the Mayor or his designee, and the Director of Information technology or his designee.

(b) Deposits. The Treasurer shall deposit or cause to be deposited all monies and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board. He or she shall disburse the funds of the Corporation as may be ordered by the Board, shall render to the Chair, the President and Directors, whenever they request it, an account of all transactions as Treasurer and the financial condition of the Corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board, these Bylaws, or the President.

Section 8. Chief Financial Officer. The Chief Financial Officer of the Corporation (“CFO”) shall be appointed by the Board and shall serve at the pleasure of the Board.

Section 9. Corporate Counsel. The in-house counsel for the Corporation (“Corporate Counsel”) shall be appointed by the Board and shall serve at the pleasure of the Board.

ARTICLE VIII: CORPORATE GOVERNANCE

Section 1. Adoption of Corporate Polices Subject to Member Approval. The Board shall, as further described in this Article VIII, Section 1, adopt and maintain comprehensive written policies in the areas of: (a) Executive Director selection, compensation, performance and separation, (b) Fiscal Year Budget, and (c) Training related to Board governance, to provide guidelines and ensure proper governance consistent with Board powers and authority as set forth in these Bylaws (“Member Approved Policies”). The Member Approved Policies are attached hereto as Exhibits as described below in this Article VIII, Section 1, shall be deemed approved by the Member upon the Member’s approval of these Bylaws, and are hereby incorporated herein by reference. Such Member Approved Policies shall be updated from time to time, as determined by the Board and Member or Member’s designee or the Mayor or his designee, to ensure compliance with current best practices, provided, however, that any change to such Member Approved Policies shall not be effective until approved, in writing, by the Member or the Member’s designee. The Member Approved Policies attached hereto as Exhibits are as follows:

(a) Executive Director Selection, Compensation, Performance and Separation Policy. The Board shall adopt and maintain a written policy regarding Executive Director selection, compensation, performance and separation (“Executive Director Selection, Compensation, Performance and Separation Policy”). The Executive Director Selection, Compensation, Performance and Separation Policy is attached hereto as Exhibit A.

(b) Budget & Fiscal Policy and Submission of Budget to Member for Review. Corporation shall, on an annual basis, prepare and submit a draft budget to the SDDPC ad hoc Budget Committee for review and input. The budget preparation shall follow the process and shall include the information described on the attached Exhibit B (“Budget and Fiscal Policy”). After the ad hoc Budget Committee’s review, the SDDPC CFO shall, at such a time and as directed by the City CFO, send the SDDPC proposed budget to the City CFO for review and comment. The SDDPC ad hoc Budget Committee will consider the City CFO’s comments, direct changes to be made, if any,

and submit the budget to the Board for review and approval.

Following approval by the Board, the Corporation shall, each Fiscal Year, submit its budget to the City CFO, or designee, as part of the Mayor's budget process, for information only, as part of the overall City Budget.

SDDPC shall present the Board-approved budget to the City Council, as an information only item, in accordance with the approved City budget policy, in a format as directed by the City CFO, or designee. Such presentation will include budget information for Corporation business with both City and non-City customers. If requested by the City CFO, or designee, or any member of the City Council, the budget will also be presented to the City Council Budget and Finance Committee as an information item only, prior to presenting it to the full City Council. City Council shall have the opportunity to recommend changes to the budget. If any such recommendation is made, the City's Director of Information Technology, in his or her capacity as a member of the Board, shall present the recommendation for a vote at the next regularly scheduled or special meeting of the Board.

(c) Board Governance Program and Training Policy The Board shall adhere to a training and governance program as described in the policy attached hereto as Exhibit C ("Board Governance Program and Training Policy"). The Board Governance Program and Training Policy will emphasize ethics, fiduciary duties and corporate governance in accordance with current best practices in the industry. Certificates of compliance shall be submitted to the Mayor or Mayor's designee every year demonstrating compliance with the training requirements.

Section 2. Adoption of Corporate Policies Not Subject to Member Approval. The Board shall, as further described in this Article VIII, Section 2, approve and maintain comprehensive written policies in the areas of: (a) finance and accounting, (b) human resources, and (c) procurement, to provide guidelines and ensure proper governance consistent with Board powers and authority as set forth in these Bylaws ("Board Policies"). The Board may, at its option, consult with the City CFO for review of Board Policies related to budget, finance, and procurement. Such Board Policies shall be updated from time to time, as determined by the Board, to ensure alignment with current best practices. The Board, in its discretion, may also adopt policies in other areas relevant to the business and affairs of the Corporation. The Board Policies shall include the following:

(a) Finance and Accounting Policies. The Board shall adopt and maintain written finance and accounting policies ("Finance and Accounting Policies"). The Finance and Accounting Policies shall establish the approval levels for the different types of business transactions within the Corporation; define and set guidelines as to what expenditures are considered appropriate, reasonable and reimbursable; ensure that the Corporation's expenses are cost effective and appropriate in the conduct of the Corporation's business; establish guidelines for the timeliness of reporting, processing, and reimbursement of appropriate business expenses; and ensure that the Corporation's business activities are appropriately documented, reviewed and approved.

(b) Human Resource Policies. The Board shall adopt and maintain written policies regarding human resource issues (“Human Resource Policies”) which will address human resource issues other than those contained in the separate Executive Director Selection, Compensation, Performance and Separation Policy. The Human Resource Policies shall guide and direct the Corporation’s management and personnel and include, without limitation, such areas as EEOC, Termination, Discipline and Rules of Conduct, Time Reporting, Compensation and Benefits, Vacation, Holidays, Leaves of Absence and Employee Conduct, along with other areas consistent with local, State and Federal law.

(c) Procurement Policies. The Board shall adopt and maintain written procurement policies (“Procurement Policies”) which detail the various procurement activities of the Corporation and the requirements for competition and best practices consistent with industry standards.

(d) Conflict of Interest Policy. All Directors, Officers and employees of the Corporation shall comply with all applicable federal, State, and local conflicts of interest laws, regulations and policies. The Board shall adopt and maintain a written policy regarding conflicts of interest (“Conflict of Interest Policy”).

Section 3. Performance Audits. Corporation shall allow a performance audit of the Corporation to be undertaken by the City Auditor or a third party consultant at any time and for any reason in the discretion of the Member or the Member’s Designee. City shall pay, in full, all costs and expenses associated with any performance audit requested by the Member or the Member’s Designee.

Section 4. Public Disclosure. Corporation shall, within forty-five (45) days of approval or completion as described in this Article VIII, Section 2(e), post on its web-site copies of: i) the agendas and all approved minutes of the proceedings of the Board and any committees thereof (excluding ad hoc committees), ii) any reports requested by the City to be posted, iii) the approved Budget for the current Fiscal Year, iv) the audited financial statements of the Corporation for each Fiscal Year, v) policies of the Corporation set forth in Section 1 of this Article VIII, and vi) the Bylaws and all amendments thereto.

Section 5. Strategic Plan. Corporation shall develop with the Board on an annual basis a written strategic plan containing its business plan for the next Fiscal Year in form and content acceptable to the Member (“Strategic Plan”). The Strategic Plan shall be in alignment with the City’s strategic plan and shall include appropriate performance goals and related metrics and meet the goals and objectives of the City as communicated to the Corporation from time to time. The Strategic Plan along with the actual performance results of the Corporation for the prior Fiscal Year shall be reported to and approved by the Member annually at a time determined by the Member. In connection with the Strategic Plan, Corporation will provide to the Member advice and recommendations that are designed to serve the City’s future information technology needs. Corporation further agrees that in preparing its Strategic Plan it will consult regularly with appropriate City staff and take such other actions as are reasonably requested by the Member.

ARTICLE IX: COMMITTEES

Section 1. Committees. The Board, or the Chair subject to the limitations imposed by the Board, may create committees to serve the Board which do not have the powers of the Board. Committees shall be either standing or ad hoc. Standing committees either shall have a continuing subject matter jurisdiction or a meeting schedule fixed by formal action of the Board. Meetings of standing committees must be noticed and conducted in the same manner as meetings of the Board. All other committees are ad hoc committees with a discrete function and limited duration.

Section 2. Creation and Combination of Committees. Apart from the Audit Committee, as described in Article IX, Section 9 herein, the creation of committees shall be discretionary with the Board. If the Board determines that any committee should not exist, it shall assign the functions of such committee to a new or existing committee or to the Board acting as a committee of the whole.

Section 3. Appointment and Tenure. The Chair, with the approval of the Board, shall appoint Board members to serve on committees. One of the Board members appointed shall be designated chair of such committee. Each member of a committee shall continue as such until the end of his or her term, if serving as an Officer or Director of the Corporation and until his or her successor is appointed, unless the member shall sooner resign or be removed from the committee.

Section 4. Meetings and Notice. Meetings of a committee may be called by the Chair, the chair of the committee or a majority of the committee's voting Members. Each committee shall meet as often as is necessary to perform its duties. Notice of a meeting of a committee may be given at any time and in any manner reasonably designed to inform the committee Members of the time and place of the meeting.

Section 5. Quorum. A majority of the voting members of a committee shall constitute a quorum for the transaction of business at any meeting of the committee. Each committee may keep minutes of its proceedings and shall report periodically to the Board.

Section 6. Manner of Acting. A committee may take action by a majority vote of the members present at a meeting at which a quorum is present. Such action shall neither bind nor direct the Corporation unless and until it has been approved by the full Board at a properly noticed Regular Meeting or Special Meeting.

Section 7. Resignation and Removal. Any member of a committee may resign at any time by giving written notice to the chair of the committee or to the Board. Such resignation, which may or may not be made contingent upon formal acceptance, shall take effect upon the date of receipt or at any later time specified in the notice. The Chair may, with the advice and consent of the Board, remove any member of a committee.

Section 8. Vacancies. A vacancy in any committee or any increase in the membership thereof shall be filled for the unexpired portion of the term by the Chair with approval of the Board.

Section 9. Audit Committee. The Board shall appoint an Audit Committee. Notwithstanding Article IX, Section 3, which shall otherwise govern the committee's operations, the committee may be comprised of one or more persons and may not include persons other than directors of the Corporation.

The Membership of the Audit Committee shall not include the following persons:

- (a) The Executive Director or the chairperson of the Board;
- (b) The Chief Financial Officer or the treasurer of the Corporation;
- (c) Any employee of the Corporation; or
- (d) Any person with a material financial interest in any entity doing business with the Corporation.

In the event that the Board appoints a Finance Committee, Members of the Finance Committee must constitute less than one-half of the Membership of the Audit Committee and the Chair of the Finance Committee shall not serve on the Audit Committee.

The Corporation shall use an audit firm that the Member selects. The Audit Committee may be authorized by the Board to negotiate the cost for the audit firm's services. The Audit Committee shall confer with the audit firm to satisfy its members that the Corporation's financial affairs are in order, and shall review and determine whether to accept the audit.

In the event that the audit firm provides non-audit services to the Corporation, the Audit Committee shall ensure that the audit firm adheres to the standards for auditor independence set forth in the latest revision of the Government Auditing Standards published by the Comptroller General of the United States, or any standards promulgated by the Attorney General of California.

ARTICLE X: RECORDS AND REPORTS

Section 1. Maintenance and Inspection of Articles and Bylaws. The Corporation shall keep at its principal office the original or a copy of its Articles of Incorporation and Bylaws as amended to date, which shall be open to inspection by the Member and the Board at all reasonable times during office hours.

Section 2. Maintenance and Inspection of Federal Tax Exemption Application and Annual Information Returns. The Corporation shall keep at its principal office a copy of its federal tax exemption application and its annual information returns for three years from their date of filing, which shall be open to public inspection and copying to the extent required by law.

Section 3. Maintenance and Inspection of Other Corporate Records. The Corporation shall keep adequate and correct books and records of accounts; written minutes of the proceedings of its Member, Board, and committees of the Board; and a record of each Member's name and address.

All such records shall be kept at such place or places designated by the Board, or, in the absence of such designation, at the principal office of the Corporation. The minutes shall be kept in written or typed form, and other books and records shall be kept either in written or typed form or in any other form capable of being converted into written, typed, or printed form. Upon leaving office, each officer, employee, or agent of the Corporation shall turn over to his or her successor or the chairperson or Executive Director, in good order, such corporate monies, books, records, minutes, lists, documents, contracts or other property of the Corporation as have been in the custody of such officer, employee, or agent during his or her term of office.

Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of every kind and the physical properties of the Corporation. The inspection may be made in person or by an agent or attorney, and shall include the right to copy and make extracts of documents.

On written demand, the Member (including any member of the City Council or its Designee, or the Mayor or his designee) may inspect, copy, and make extracts of the: i) accounting and financial books and records, ii) the minutes of proceedings of the Corporation, the Board, and the minutes, if any, of any committees of the Board, iii) the personnel records (subject to appropriate confidentiality protections) and any and all documents, records and reports relating to the business and operations of the Corporation, at any reasonable time for a purpose reasonably related to the Member's interest as a Member, including any reason directly or indirectly related to the business or operations of the Corporation.

Any inspection and copying under this Section may be made in person or by the Member's agent or attorney. The right of inspection includes the right to copy and make extracts. Any right of inspection extends to the records of any subsidiary of the Corporation.

Section 4. Preparation of Annual Audited Financial Statements. The Corporation shall prepare annual audited financial statements which shall be audited by an independent certified public accountant, in conformity with generally accepted accounting principles and under supervision of the Audit Committee established by these Bylaws. The Corporation shall make these financial statements available to the California Attorney General and members of the public for inspection no later than nine (9) months after the close of the Fiscal Year to which the statements relate. The Corporation shall also furnish the Member with a copy of any report filed by the Corporation with the California Attorney General. Corporation shall, within one hundred thirty five (135) days after the close of each Fiscal Year of Corporation, submit to the Member the audited financial statements of Corporation for the prior Fiscal Year, including an unqualified opinion of the independent auditor that is prepared by an independent certified public accountant, covering the business and operations of Corporation for such Fiscal Year. The CFO and the Executive Director of the Corporation shall review the audited financial statements upon presentation to the Board (or the Audit Committee). The CFO, President and such other Officers of the Corporation as the Board designates, shall provide certifications to the Member in connection with such audited financial statements in the form required by the Member.

Section 5. Monthly Financial Reports. On or before the fourth Friday of each month or, if that day is a holiday, the next business day, Corporation shall prepare and file with the Member the

unaudited monthly financial statements of the Corporation prepared in accordance with generally accepted accounting principles in the form and content requested by the Member which reflect the business and results of operations for the preceding month. The Board (or the Audit Committee) shall review and approve such monthly financial statements which shall be presented for approval to the Board by the CFO of the Corporation. The presentation to the Board of the monthly financial statements shall include a comparison of the actual results of operations to the estimates provided in the Budget, and the CFO shall explain and disclose to the Board any material variations between actual results and the Budget.

ARTICLE XI: INDEMNIFICATION AND INSURANCE

Section 1. Indemnification. Except to the extent prohibited by the applicable law, this Corporation shall have, and hereby agrees to exercise, the power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding by reason of the fact that such person is or was a Director, Officer, employee or other agent of the Corporation to the full extent allowed under the provisions of Section 7237 of the California Nonprofit Corporation Law relating to the power of a Corporation to indemnify corporate "agents". The amount of such indemnity shall be so much as the Board determines and finds to be reasonable, or, if required by Section 7237, the amount of such indemnity shall be so much as the court determines and finds to be reasonable.

Section 2. Purchase of Liability Insurance. Upon approval of the Board, this Corporation may purchase and maintain insurance on behalf of any agent of the Corporation against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such whether or not this Corporation would have the power to indemnify the agent against such liability under the provisions of this Article.

Section 3. Inapplicability to Fiduciaries of Employee Benefit Plan. This Article does not apply to any proceeding against any trustee, investment manager or other fiduciary of an employee benefit plan in such person's capacity as such, notwithstanding the fact that such person may also be an agent of the Corporation as defined in these Bylaws. The Corporation shall have the power to indemnify such trustee, investment manager or other fiduciary to the extent permitted by subdivision (f) of Section 5140 of the California Nonprofit Corporation Law.

ARTICLE XII: MISCELLANEOUS

Section 1. Checks and Other Forms of Payment. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of, or payable to, the Corporation shall be signed or endorsed by such person or persons and in such manner as, from time to time shall be determined by resolution of the Board. All checks drawn on the Corporation's funds shall be signed in the name of the Corporation by two signatories of the Corporation from time to time designated and determined.

Section 2. Contracts for the Corporation to Provide Services to Third Parties. With the exception of agreements between the Corporation and the San Diego Geographic Information Source (SanGIS), the County of San Diego, the Automated Regional Justice Information System

(ARJIS), San Diego Association of Governments (SANDAG) or the San Diego City Employees' Retirement System (SDCERS) that are already in force at the time these Bylaws go into effect, the Corporation shall not enter into any agreement for the provision of services to third parties other than the City where it would receive payment, on an annual basis, equal to or greater than Five Hundred Thousand Dollars (\$500,000) without the prior approval of the Mayor or his designee. The Mayor or his designee will approve or deny such a request within twenty (20) business days of the receipt of the request, in writing, or the proposed agreement will be deemed approved. A written request shall be deemed received by the Mayor on the date when the Corporation has provided the Mayor with sufficient information (i.e., scope of work, contract documents, etc.) to allow proper City review. The Corporation may appeal denial by the Mayor or his designee to the City Council. Any City Council action regarding such an appeal shall be binding on the Corporation.

Section 3. Sale, Lease, Conveyance, Exchange or Transfer of All or Substantially all of the Corporation's Assets. The Corporation may sell, lease, convey, exchange, transfer or otherwise dispose of all or substantially all of its assets when the terms are: (a) Approved by the Member; and (2) Approved by the Board.

Section 4. Fiscal Year. The fiscal year of this Corporation shall commence on July 1 of each year and end on June 30 of the following year ("Fiscal Year").

Section 5. Strong Mayor Provisions. If the Strong Mayor provisions contained in Article XV of the San Diego City Charter either expire by their own terms or are earlier repealed, then references in these Bylaws to the Mayor shall be deemed modified to refer to the City Manager or such other individual tasked with the responsibilities by the City Charter.

ARTICLE XIII: AMENDMENTS AND REVISIONS

Only the Member may adopt, amend, or repeal Bylaws by an affirmative vote of a majority of the Members of the City Council. Proposed amendments to these Bylaws must be in writing and sent to the Members of the City Council at least seven (7) days in advance of the Member meeting at which they will be considered for adoption. The Board may not extend the term of a director beyond that for which the Member confirmed the Director.

The Board may not, without the approval of the Member, adopt, amend, or repeal a Bylaw provision that specifies or changes a fixed number of Directors or the minimum or maximum number of Directors.

If any provision of these Bylaws requires the vote of a larger proportion of the Board than is otherwise required by law, that provision may not be altered, amended, or repealed except by that greater vote.

ARTICLE XIV: CORPORATE SEAL

The Board may adopt, use, and alter a corporate seal. The seal shall be kept at the principal office of the Corporation. Failure to affix the seal to any corporate instrument, however, shall not affect the validity of that instrument.

ARTICLE XV: CONSTRUCTION AND DEFINITIONS

Unless the context otherwise requires, the general provisions, rules of construction, and definitions contained in the Law as amended from time to time shall govern the construction of these Bylaws. Without limiting the generality of the foregoing, the masculine gender includes the feminine and neuter, the singular number includes the plural and the plural number includes the singular, and the term "person" includes a Corporation as well as a natural person. If any competent court of law shall deem any portion of these Bylaws invalid or inoperative, then so far as is reasonable and possible the remainder of these Bylaws shall be considered valid and operative, and effect shall be given to the intent manifested by the portion deemed invalid or inoperative.