THE CITY OF SAN DIEGO

REPORT TO THE CITY COUNCIL

DATE ISSUED: January 19, 2011 REPORT NO: 11-013

ATTENTION: Honorable Todd Gloria, Chair and
Budget And Finance Committee Members

SUBJECT: Lump Sum Agreement for a Marketing Consultant with The Pathfinder Group

REQUESTED ACTIONS:

Authorize Mayor or his designee to execute a consultant agreement with The Pathfinder Group for corporate sponsorship consulting services under the terms and conditions set forth in the consultant agreement and any amendments thereto, on file with the City Clerk as Document No. RR-_____.

Authorize Chief Financial Officer to expend an amount not to exceed $500,000 (includes $300,000 for monthly retainer over 5 years (March 1, 2007 – February 28, 2012), transaction fees on marketing agreements, travel expenses and cost savings transaction fee for the vendor project) for the above consultant agreement and any amendments thereto.

STAFF RECOMMENDATIONS:

1. Approve the Ordinance.

SUMMARY:

Background:

A five year contract with the Pathfinder Group was approved via Mayoral Action in 2007. The last year of the contract is March 1, 2011 to February 28, 2012. Since the expenditure limit is $250,000 for a Mayoral consultant contract and the payment amount will exceed $250,000 over five years, staff requests Council approve this contract for the remaining year. See SDMC 22.3223.

On June 8, 1999, the City Council approved a Strategic Marketing Plan for corporate partnerships with the City of San Diego called the Municipal Marketing Partnership Program (MMPP). On January 18, 2000, the City council approved a Marketing Partnership Policy to

provide guidelines for the Program. A copy of the policy is included in this Report as Attachment A.

The MMPP, now called the Corporate Partnership Program (CPP), develops corporate partnerships to benefit taxpayers and strengthen the General Fund. The CPP's goals are to generate unrestricted revenue and in-kind support for City services through business arrangements with the corporate community. The CPP is widely recognized by other cities, trade publications, and the press as one of the most successful municipal marketing partnership programs in the country.

To date, the CPP has generated $18 million for the City through partnerships with companies and organizations including, but not limited to, The Pepsi Bottling Group, Verizon Wireless, General Motors, Ford Motor Company, McCune Chrysler-Jeep, Sunroad Enterprises, San Diego Metropolitan Credit Union, Cardiac Science, Service Authority for Freeway Emergency, EA Sports, Evolution Film Inc., Barona Band of Mission Indians, Sycuan Band of the Kumeyaay Nation, and Viejas Band of Kumeyaay Indians.

The CCP is staffed with one FTE, the Director of Strategic Partnerships. The success of the CPP is due in part from employing an outside consulting company that specializes in municipal marketing, strategic planning and complex negotiations. The City's consultant, The Pathfinder Group, is providing the CPP with the following consulting services consistent with the Scope of Services as described in the RFP for a Marketing Consultant for the CPP and in Consultant's Proposal in Response thereto:

1. Develops and implements strategies to expand the existing CPP by identifying new business categories and developing long term revenue generating partnerships in light of existing corporate partnership and sponsorship obligations.

2. Develops specific proposals and Request For Sponsorships/Proposals to send to prospective corporate partners.

3. Meets with decision makers from prospective partner companies and holds follow-up meetings for the purpose of developing formal proposals specifically tailored to the City and the corporate partnership.

4. Conducts negotiations with prospects and develops partnership agreements.

5. Assists the Director of Strategic Partnerships in preparing and presenting reports on proposed partnership agreements to City officials, City Council and the media, as requested.

6. Assists the Director of Strategic Partnerships in the management and fulfillment obligations to ensure that existing contractual marketing partnership benefits are met.

7. Develops the content and implements plans for managing and packaging information about the City's CPP to targeted businesses and organizations and for use on the City's website.

8. Creates sales and marketing materials that outlines the CPP, promotes the City as a desirable partner and details certain benefits that are available to partners through the CPP.

In addition to the above, The Pathfinder Group provides the CPP with the following:

1. Collaborates with CPP staff on all issues related to identifying, developing, negotiating, closing and obtaining approval of marketing partnerships within the unique environment of City government.

2. Educates and informs CPP staff about corporate partnerships and trends in municipal marketing in other cities and public sector entities in the U.S.

3. Conducts research on business sectors, corporate sponsorship activity and emerging partnership opportunities for the City.

4. Drafts partnership agreements (consultant is an attorney) and works with the City Attorney and the corporate partner's attorney to finalize partnership agreement.

5. Recommends and drafts changes to operational policies and procedures as needed.

Selection Process:

In 2006, the City issued a Request for Proposal (RFP) for a Marketing Consultant for the CPP. The overall objectives of the RFP were to: 1) assist the CPP generate $1.5 million annually; 2) identify new business categories and develop new long term revenue generating partnerships in light of existing partnership obligations; and 3) assist in the management of fulfillment obligations under existing marketing partnership agreements. A copy of Request for Proposal Number 8430-07-L-RFP is included in this Report as Attachment B.

In response to the RFP, two companies responded which were Active Network and The Pathfinder Group.

As a result of the Technical Evaluation Committee recommendation and the analysis of the pricing proposals, The Pathfinder Group was selected as the company that best met the needs of the City. The Pathfinder Group proposal was superior in that its expertise and history of successfully generating significant revenue for cities throughout the United States far exceeded the experience of the other company. A copy of The Pathfinder Group Proposal response is included in this Report as Attachment C.

Approval Process:

In 2007, CPP followed legal direction from a Deputy City Attorney and processed the contract with The Pathfinder Group through a Mayoral Action because the consultant contract would not exceed $250,000 in any given fiscal year. Since then, the City Attorney's Office has clarified the interpretation of the Municipal Code and directed that any consultant contract that exceeds $250,000 in the aggregate must be approved by City Council.

In addition, because the Marketing Consultant Agreement is structured to allow for Transaction Payments for up to three years after consulting services are complete, the City Attorney recommends approval by ordinance in accordance with City Charter section 99 (requiring contractual obligations exceeding five years to be approved by ordinance by two-thirds' vote).

Revenue and Expenditures:

Per the Marketing Consultant Agreement, the City pays The Pathfinder Group an annual retainer of $60,000 and a 10% transaction fee of the value of each marketing partnership with a corporate partner that is developed and finalized by the Marketing Consultant and approved and executed by the City. All transactions due and payable to the Marketing Consultant on multi-year marketing partnerships shall be limited to three (3) years and exercised if the City realizes the revenue or cost savings.

The City has paid $362,029 to the Marketing Consultant under the terms of the contract. Of that amount, $262,029 is for the retainer and travel expenses and approximately $95,000 is for transaction fees that have been approved by Council in separate actions. (R-303642; R-302258; R-302163; and R-302127) Since March 1, 2007, The Pathfinder Group has successfully negotiated $2,735,000 in partnerships for the City, with the City receiving $1,000,000 in cash and additional in-kind budget reliving resources, including a surf rescue vessel, training videos and vehicles for the San Diego Lifeguards.

The CPP has negotiated $18 million in partnerships from 1999 to the present, and of that amount, The Pathfinder Group has successfully negotiated $13 million in value for the City. On several of the partnerships that were developed primarily by CPP staff, The Pathfinder Group provided strategic advice, negotiation support and research assistance. A copy of the detailed Revenue Summary is included in this Report as Attachment D.

CONCLUSION:

This action extends the current Mayoral contract one more year to February 2012 and provides for continuity with the current consultant. A copy of the original Consultant Agreement between the City of San Diego and The Pathfinder Group, the First Amendment, the Second Amendment and **proposed** Third Amendment are included in this Report as Attachment E. Management plans to issue an RFP in 2011 for a marketing consultant to support the Corporate Partnership Program.

RECOMMENDATIONS N/A

FISCAL CONSIDERATIONS:

A retainer, transaction fees and other approved expenses not to exceed $500,000 will be paid to The Pathfinder Group, the City's marketing consultant, for Year 1 through Year 5 of the Lump Sum Agreement for a Marketing Consultant (Year 5 is March 1, 2011 – February 28, 2012). Because $362,029 has already been paid to Consultant, the actual fiscal impact will only be $60,000 for the final year of the agreement, plus travel expenses. Any additional transaction fees will require City Council approval. Transaction fees only apply when revenue is generated and savings are secured with existing corporate partners. No transaction fees apply until the City realizes the revenue and/or savings.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS: N/A

Mary Lewis

Mary Lewis
Chief Financial Officer

CITY OF SAN DIEGO, CALIFORNIA

COUNCIL POLICY

CURRENT

SUBJECT: MARKETING PARTNERSHIP POLICY
POLICY NO.: 000-40
EFFECTIVE DATE: February 1, 2000

BACKGROUND:

On June 8, 1999 the City Council unanimously approved a strategic marketing plan for corporate partnerships with the City of San Diego called the Municipal Marketing Partnership Program (MMPP.) The MMPP seeks opportunities for the City to generate revenue from partnerships with the corporate community in order to enhance municipal services and facilities in the City. The specific objectives of the MMPP are as follows:

1. To establish and guide relationships with existing and potential business partners who share the City's commitment to provide the highest quality civic environment through the City of San Diego.
2. To generate revenue to fund existing and additional facilities, projects, programs and activities.
3. To minimize the perception that the City has become "corporatized" by limiting the number of corporate partners while maximizing the cumulative revenue from the partners.

In conjunction with City Council's approval of the MMPP, the City Manager has developed the following Marketing Partnership Policy to provide general guidelines for the implementation of the MMPP.

PURPOSE:

To provide guidelines for developing and managing municipal marketing partnerships which ensure that all marketing partnerships support the City of San Diego's goals of service to the community and remain responsive to the public's needs and values. The following guidelines are established to maintain flexibility in developing mutually beneficial relationships with the corporate sector.

DEFINITIONS:

Marketing Partnership:

A mutually beneficial business arrangement between the City and a third person, wherein the third person provides cash and/or in-kind services to the City in return for access to the commercial marketing potential associated with the City. Marketing Partnerships may include sponsorship of one or more of the City's programs, projects, events, facilities or activities.

Request for Sponsorship

An open and competitive process whereby third persons may express their interest in participating in marketing partnership opportunities with the City of San Diego. All Request for Sponsorships (RFS) will include a summary of the partnership opportunity, benefits for participation, and a description of the open and competitive procedure for expressing interest in participating in marketing partnership opportunities.

General Principles

a. The City of San Diego accepts the principle that third persons may become marketing partners with the City in the sponsorship of City-approved programs, projects, events, facilities or activities where such partnerships are mutually beneficial to both parties and in a manner consistent with all applicable policies and ordinances set by the City. Under the conditions of this policy, City staff may solicit such marketing partnerships for the City.

b. At all times, recognition for marketing partners must be evaluated to ensure the City is not faced with undue commercialism and is consistent with the scale of each partner's contribution.

c. Restrictions on Partnerships

In general, the following industries and products are not eligible for marketing partnerships with the City of San Diego.

1. Police-regulated Businesses
2. Companies whose business is substantially derived from the sale or manufacture of tobacco products.
3. Alcoholic beverages when the targeted beneficiaries of the marketing partnership are youth under the legal drinking age.
4. Parties involved in a law suit with the City.
5. Parties involved in any stage of negotiations for a City contract unless contract is directly linked to a marketing partnership opportunity.

The City may elect to enter into marketing partnerships with restricted partners when it is deemed appropriate and tasteful for the project.

d. Exclusions to Marketing Partnership Policy:

1. Gifts or unsolicited donations to a department or the City where no business relationship exists.
2. Marketing partnership proposals forwarded to the City may not be subject to the Marketing Partnership Policy if the proposed sponsorship is determined through a good faith effort to be unique and without interested competitors.

Marketing Partnership Process

The general procedure for developing marketing partnerships will be as follows:

a. Define scope of marketing partnership program or project, including a description of the community need, financial goals and general marketing strategy.

b. Develop a RFS for each partnership opportunity valued at $250,000 or greater and submit to City Council for approval. City-originated marketing partnerships valued below $250,000 may be subject to the RFS process if participation in the partnership opportunity is deemed to be competitive and issuance of an RFS would benefit the City.

c. Advertise RFS and implement an open and competitive bidding process for interested partners.

d. Review and analyze all responsive proposals received through the RFS process and award partnership.

e. Develop a Marketing Partnership Agreement with corporate sponsor which is consistent with all applicable City policies and ordinances, including Equal Employment Opportunity Outreach Program and Drug Free Workplace. Marketing partnerships with individual sponsors and marketing partnerships with an aggregate value to the City below $250,000 may be subject to Marketing Partnership Agreement clauses to the extent legally required.

f. Submit all Marketing Partnership Agreements with an aggregate value of $50,000 or greater to the appropriate Council Committee for review.

g. For the first year of the Marketing Partnership Program, submit all Marketing Partnership Agreements with an aggregate value of $50,000 or greater to City Council for review. Thereafter, Marketing Partnership Agreements will utilize the following review and approval process:

   Submit all Marketing Partnership Agreements with an aggregate value of $250,000 or greater to the City Council for final approval. Marketing Partnership Agreements with an aggregate value to the City below $250,000 are subject to the following levels of review and approval:

   1. Less than $50,000: Department Head or Director approval required.
   2. From $50,000 to $250,000: City Manager approval required.

Marketing Partnership Agreements

All Marketing Partnership Agreements will include contractual language consistent with all applicable City policies and ordinances and good business practices. In general, Marketing Partnership Agreements should include:

a. Contractual Relationship
b. Term
c. Renewal
d. Consideration
   - Marketing Rights Fee
   - Commissions
   - In-kind Goods
   - In-kind Services
e. Description of Programs, Projects and Activities

f. Marketing Rights and Benefits
g. Termination Provisions

Responsibilities

a. All marketing partnership activities will be coordinated by the Development Office, or its successive office, under the Direction of the appropriate Deputy City Manager.

b. The Development Office will be responsible for:

1. implementing the City-wide Municipal Marketing Partnership Program.
2. providing guidance to all City departments regarding the interpretation and application of this policy;
3. providing assistance and advice to departments regarding marketing partnership activities;
4. reviewing and assisting in the development of partnership arrangements as requested;
5. tracking and reporting on a quarterly basis all marketing partnerships developed by City Departments.

HISTORY:

"Marketing Partnership Policy"
Adopted by Resolution R-292719 02/01/2000

CITY OF SAN DIEGO

PURCHASING DIVISION
1200 Third Avenue, Suite 200
San Diego, CA 92101-4195

Proposal No. 8430-07-L-RFP

REQUEST FOR PROPOSAL

Closing Date: October 13, 2006 @ 4:00 p.m.

Subject: Furnish the City of San Diego with **Marketing Consultant for Corporate Partnership Program**, as may be required for a period of one (1) year from date of award, with options to renew for four (4) additional one (1) year periods, in accordance with the attached specifications.

Company _____

Federal Tax I.D. No. _____

Street Address _____

City_____

State _____Zip Code _____

Tel. No._____ Fax No. _____

E-Mail _____

Name _____
[PRINT OR TYPE]

Signature* _____

Title _____

Date _____

Authorized Signature*: *The signer declares under penalty of perjury that she/he is authorized to sign this document and bind the company or organization to the terms of this agreement.

ONLY PROPOSALS WITH AN ORIGINAL SIGNATURE WILL BE ACCEPTED.

This cover page must be completed and submitted as part of your bid.

If your firm is not located in California, are you authorized to collect California sales tax? ☐ YES ☐ NO

If YES, under what Permit #_____

Cash discount terms _____% _____days.
[Terms of less than 20 days will be considered as Net 30 for bid evaluation purposes.]

FOR FURTHER INFORMATION CONCERNING THIS PROPOSAL, PLEASE CONTACT:

LISA HOFFMANN/bl9, Procurement Specialist

Phone: (619) 236-6096 Facsimile: (619) 533-3229

E-mail: LHoffmann@sandiego.gov

TABLE OF CONTENTS

I. Background, Scope of Work, and Objective 4

A. Background 4
B. Scope of Work 4
C. Objective 5
D. Terms and Definitions 5

II. RFP Process 6

A. Procurement Specialist – Issuing Office 6
B. Questions 6
C. Submission of Proposals 6
D. Closing Date 7
E. Late Submissions 7
F. Economy of Preparation 7
G. Two (2) Volume Proposals 7
H. Submittals Required Upon Provisional Award 9
I. Evaluation Committees 9
J. Acceptability of Proposals 10
K. Technical Evaluation 10
L. Price Evaluation 10
M. Oral Presentation and Interview of the Marketing 11
N. Negotiation 11
O. City's Unilateral Right 12
P. Evidence of Responsibility 12
Q. Basis of Award 12
R. Incurred Expenses 12

III. Specific Provisions 13

A. Roles of The City of San Diego Purchasing Agent 13
B. Insurance Requirements 13
C. General Provisions 14
D. Independent Contractor 14
E. Subcontracting 15
F. Employment of City Staff 15
G. Delays and Extensions of Time 15
H. Suspension of Work 15
I. Quality Assurance Meetings 15
J. Inspection, Acceptance, and Payment 16
K. Post Award Kick-off Meeting 16
L. Confidential Information 16
M. Business Tax License 16

IV. Specifications 17

TABLE OF CONTENTS *(Cont.)*

A. Introduction....17
B. Core Requirements....17
C. Strategic Plan....18
D. Cooperative Work Environment....18
E. Ongoing Coordination/status Meetings....18
F. Knowledge and Understanding of Municipal Marketing....18
G. Demonstrated Experience....18
H. References....19
I. Experience and Qualifications – Key Personnel....19

V. Pricing Submittal....21

A. Price Proposal Pages - Instructions....21
B. Renewal Option(s)....21

VI. Forms....24

Proposers References....24
Proposers Statement of Financial Responsibilities....26
Proposers Statement of Subcontractors....27
Certification Survey....28

I. BACKGROUND, SCOPE OF WORK, AND OBJECTIVE

A. BACKGROUND

In June 1999, the Mayor and City Council adopted a Strategic Marketing Plan that established the Corporate Partnership Program (CPP) as a framework to develop resources for the City through partnerships with the corporate community. In March 2000, the Mayor and City Council adopted a Marketing Partnership Policy (Council Policy 000-40) to provide guidelines for developing and managing municipal marketing partnerships which ensure that all marketing partnerships support the City of San Diego's goals of service to the community and remain responsive to the public's needs and values.

The CPP is a fully-functioning program that has been approved and supported by the Mayor and City Council. The CPP has an annual revenue goal of $1.5 million and has received extensive media coverage for its success in developing innovative partnerships that have helped fund general City services and new programs. The CPP has been recognized as one of the most successful and comprehensive municipal marketing partnership programs in the country. In addition to developing corporate partnerships, the CPP is responsible for managing and administering partnership agreements, managing fund-raising events and coordinating, supporting and serving as a resource to all City departments, programs and projects engaged in corporate partnership or other fund-raising activities.

This Request for Proposal (RFP) is being issued in order to re-solicit competition for Marketing Consultant for Corporate Partnership Program. The current contract is expiring.

B. SCOPE OF WORK

The City of San Diego is seeking the services of a qualified Proposer, Marketing Consultant to assist the City's Development Director in meeting the annual revenue goal of $1.5 million. The scope of work includes:

- Proposer shall identify new business categories and develop new long term revenue generating partnerships in light of existing corporate partnership obligations.

- Proposer shall assist in the management of fulfillment obligations under existing marketing partnership agreements.

- Proposer shall manage information about existing marketing partnerships and the CPP on the City's web site and through other medium.

C. OBJECTIVE

The objective of this RFP is to make an award to a single Proposer, Marketing Consultant qualified in municipal marketing partnerships programs, to the City that delivers best overall value to the City meeting the specifications and requirements of this RFP.

D. TERMS AND DEFINITIONS

The following specific terms and definitions are used herein:

1. Must or shall: Used throughout this RFP to indicate mandatory requirements.

2. BAFO: Best and Final Offer

3. Contract Administrator: Successful Proposer's point of contact for implementation of project specified per this RFP. Contact information for Contract Administrator will be provided after award of contract.

II. RFP PROCESS

A. PROCUREMENT SPECIALIST – ISSUING OFFICE

Proposers who have received this RFP from a source other than the Procurement Specialist listed on the cover page should immediately contact the Procurement Specialist and provide their contact information (name, mailing address, telephone number, and fax number) via e-mail in order that addenda to the RFP, or other communications, can be sent to them. Proposers who fail to notify the Procurement Specialist with this information assume complete responsibility in the event that they do not receive communications prior to the closing date.

B. QUESTIONS

Proposers are responsible for reading carefully and understanding fully the terms and conditions of this RFP. All contact between Proposers and the City will be formally made at scheduled meetings or in writing through the Procurement Specialist. Requests for clarification or additional information must be made in writing to the Procurement Specialist and received at the Purchasing Division Office listed on the cover page no later than end of business day September 25, 2006. Such requests should contain the following: "QUESTIONS: 8430-07-L-RFP". Other than information received at the pre-proposal conference, only written communications relative to the procurement shall be considered. It is preferable that questions are submitted attached as a MS Word document via electronic mail. It is incumbent upon Proposers to verify City receipt of their questions.

Other than at the pre-proposal conference, all questions will be answered in writing. Both questions and answers will be distributed via an addendum, without identification of the inquirer(s), to all Proposers who are on record with the Procurement Specialist as having received this RFP. No oral communications can be relied upon for this Proposal.

To the extent that a question causes a change to any part of this RFP, an addendum shall be issued addressing such change.

C. SUBMISSION OF PROPOSALS

Proposals shall be:

1. Submitted in the format set forth herein,

2. Made in the official name of the firm or individual under which Contractor's business is conducted (including the official business address),

3. Cover page of this RFP with an original signature by a person duly authorized to commit successful Proposer to the contract,

4. Submitted in envelopes clearly marked with the assigned RFP number and closing date/time referenced on the outside of the envelope (lower left corner),

5. Separated into Technical and Price Proposal Volumes, and

6. Addressed to the Procurement Specialist identified on the cover page of this RFP.

Proposers must submit one (1) original and four (4) copies of the Technical Volume, and one (1) original and two (2) copies of the Price Proposal Volume. One (1) original and two (2) copies of the Cover page shall be included with the Price Proposal Volume. Commingling of technical and price information or failure to submit the two (2) volumes bound, separate and sealed may cause the proposal to be rejected as non-responsive and not acceptable. The volumes, which contain original documents, should be clearly identified as the ORIGINAL Technical and the ORIGINAL Price Proposal Volume. Faxed Proposals will not be accepted.

D. CLOSING DATE

Proposals must arrive at the location, date, and time identified on the cover page of this RFP in the format set forth herein. There will be no public opening of the Proposals. The names of Proposers will not be released until announcement of award.

E. LATE SUBMISSIONS

Proposers mailing Proposals should allow sufficient mail delivery time to insure timely receipt by the issuing office. Any Proposal, modifications to Proposals, request for withdrawal of Proposals, or Best and Final Offers (BAFO) arriving after the closing date and time will be considered late and will only be accepted in accordance with the applicable City of San Diego's General Provisions for Proposals. Delivery of the Proposal to the specified location by the prescribed time and date is the sole responsibility of Proposers. A record of late submission, request for withdrawal, modification of a Proposal, or BAFO shall be made in the appropriate procurement file.

F. ECONOMY OF PREPARATION

Proposers shall prepare each Proposal simply and economically, providing a straightforward, concise description of Proposers' offer and capabilities to satisfy the requirements of this RFP. Emphasis should be on completeness and clarity of content.

G. TWO (2) VOLUME PROPOSALS

The selection procedure for this procurement requires an independent evaluation of the Technical and Price Proposals. This separation allows for evaluation of Technical Proposals on their technical merit only. Consequently, Proposers shall submit their Proposal in two (2) separately bound and sealed volumes as specified below.

1. Volume I – Technical Proposal

   The information specified herein must be addressed in the technical Proposal.

   a. Executive/Management Summary

      The Executive/Management Summary shall contain a brief narrative or synopsis summary of how the Proposal meets the needs of the City, incorporating Proposers' understanding of the background, scope of work, and objective as specified in Section I of the RFP.

   b. Section IV, Specifications

      Proposers must expressly indicate that the Proposal satisfies and is fully capable of providing each point of the RFP. Proposers shall provide responses to each paragraph in the same order as the RFP citing the heading and then their response. Simple "Yes", "No", or "Comply" responses to stated Specifications are insufficient. Rather, the Proposers must describe in detail how the proposed products and/or services meet or exceed the requirements of this RFP and Proposers shall state their understanding and compliance. Additionally, Proposers must explain any exception or deviation from the requirements in accordance with the applicable General Provisions for Proposals. Proposers should also include any other information they feel may be beneficial to the City.

      Proposers are urged to read the Contract Documents very carefully and to submit their questions, in writing, by the due date for questions. Misinterpretation of the Contract Documents by the Proposer shall not relieve the Proposer of responsibility to perform the contract.

      Failure to provide the required responses and/or submittals with the Proposal may be cause for the Proposal to be rejected as non-responsive and unacceptable.

   c. Additional Submittals/Forms

      (1) Proposer's References (use form on page 24).

      (2) Proposer's Statement of Subcontractors (use form on page 27).

2. Volume II – Price Proposal

   This volume consists of and must contain the following items. Proposers shall not include any technical information or Specific Provisions and Specifications in the Price Proposal Volume.

a. Completion and Signing of the RFP Cover Page

Proposers must complete and sign the RFP cover page acknowledging any addenda. Signing of the RFP documents shall be by an individual or individuals authorized to execute legal documents on behalf of the party(ies) represented. Failure to submit this signed document will result in rejection of the Proposal.

b. Price Proposal Pages

Proposers shall submit pricing Proposals on the City's Price Proposal pages, unless otherwise stated in this RFP.

c. Additional Submittals/Forms

(1) Proposer's Statement of Financial Responsibility as specified in Section II, paragraph L (use form on page 26).

(2) Certification Survey, (use form on page 28).

H. SUBMITTALS REQUIRED UPON PROVISIONAL AWARD

1. Insurance requirements as specified in Section III, paragraph B.

2. Taxpayer Identification number (W-9) as specified in General Provisions dated January 18, 2005.

3. Business Tax License as specified in Section III, paragraph M, if not currently on file.

Failure to provide the required submittals upon provisional award, within the time period specified, may be cause for the provisional award to be voided and the Proposal to be rejected as non-responsive.

I. EVALUATION COMMITTEES

The Purchasing Agent shall establish separate technical and price evaluation committees to review and rate Proposals. The price evaluation committee may be composed of the Procurement Specialist and any other individuals appointed by the Purchasing Agent. The technical evaluation committee shall be composed of other individuals appointed by the Purchasing Agent.

J. ACCEPTABILITY OF PROPOSALS

The Procurement Specialist shall determine which Proposers have met the requirements of the RFP. Failure to comply with any mandatory requirement will disqualify a Proposal. The Procurement Specialist shall have the sole authority to determine whether any deviation from the requirements of this RFP is substantial in nature. The Procurement Specialist may waive or permit to be cured minor irregularities or minor informalities in Proposals that are immaterial or inconsequential in nature, whenever it is determined to be in the City's best interest.

The City may accept other than the lowest priced offer. The Procurement Specialist may conduct discussions with Proposers in any manner deemed necessary to best serve the interests of the City. The Procurement Specialist may limit the competitive range to firms highly rated technically and whose prices are considered to be reasonable by the City for purposes of efficiency. The Procurement Specialist may reject in whole or in part any and all Proposals if such is in the City's interest.

K. TECHNICAL EVALUATION

The Technical Evaluation Committee (TEC) shall conduct its evaluation of the technical merit of the Proposals in accordance with this solicitation. The Proposer must satisfy and explicitly respond to all requirements of this RFP, including a detailed explanation of how each item listed in this RFP is to be met. The last phase of this technical evaluation will be the ranking by the TEC of each qualified Proposal on technical merit.

The criteria that will be used by the TEC for the technical evaluation of Proposals for this procurement are listed below in decreasing order of importance.

1. Experience, Qualifications, and Rapport – Key Personnel;

2. Past performance as indicated by references; and

3. Executive/Management Summary and Specifications;

The TEC may request additional technical assistance from any source. References shall be used during the evaluation process.

L. PRICE EVALUATION

The separate Price Proposal Volume will be distributed to the Price Evaluation Committee. This information will then be used to establish a ranking.

Proposers are required to submit, with their price Proposal, a statement of financial responsibility as specified in the Forms Section. This document will be used in determining the Proposers' financial responsibility.

Additionally, the City reserves the right to require, during Proposal evaluation, that Proposers provide a copy of their most current Annual Report or audited Statement of Financial Condition to include a Balance Sheet, Income Statement, and Cash Flow Statement or other acceptable financial information. These documents may be relied on to further determine Proposers' financial responsibility.

M. ORAL PRESENTATION AND INTERVIEW OF THE MARKETING CONSULTANT

Proposers may be required to make individual oral presentations to the City Evaluation Committee, or its designated representatives, in order to clarify their Proposals. Additionally, the Proposer's Project Lead/Lead Consultant may be required to be interviewed by the City's Evaluation Committee, or its designated representatives. The primary purpose of the interview of the Project Lead/Lead Consultant is to determine if the City is able to establish rapport and a productive professional working relationship with this individual. If the City determines that such oral presentation and interview of the Project Lead/Lead Consultant is needed, the Issuing Office will schedule a time and place. Proposers are required to make the oral presentation and interview of the Project Lead/Lead Consultant within fourteen (14) calendar days after request by the City. Proposers and or Project Lead/Lead Consultant should be prepared to discuss and substantiate any of the areas of the Proposal submitted, as well as its qualifications to furnish the specified products and services. Notwithstanding the possibility of a request for an oral presentation and interview of the Project Lead/Lead Consultant, Proposers shall not rely on the possibility of such a request and shall submit a complete and comprehensive written response to this solicitation. Any costs incurred for the oral presentation and interview of the Project Lead/Lead Consultant are the responsibility of the Proposer.

N. NEGOTIATION

The City has the right to accept the Proposal, which serves the best interest of the City, as submitted, without discussion or negotiation. Proposers should, therefore, not rely on having a chance to discuss, negotiate, and adjust their Proposals.

Proposers who submit Proposals initially judged by the Procurement Specialist to be reasonably susceptible of being selected for award may be asked to discuss their Proposals with the City to facilitate arrival at a contract most advantageous to the City. If the Procurement Specialist determines that discussion is in the best interest of the City, the Procurement Specialist will advise Proposers in the competitive range to submit a Best and Final Offer (BAFO) for consideration after discussions are held.

However, discussions may not be conducted if the Procurement Specialist determines either that discussions are not in the best interests of the City or that discussions need not be conducted: (a) with respect to prices that are fixed by law or regulation, although consideration shall be given to competitive terms and conditions; (b) because the time of delivery or performance does not permit discussions; or (c) because it can be demonstrated clearly from the existence of adequate competition or accurate prior price experience with the particular item that acceptance of an initial offer without negotiation would result in a fair and reasonable price.

O. CITY'S UNILATERAL RIGHT

The City reserves the unilateral right to cancel this RFP, in whole or in part, or reject all Proposals submitted in response to this RFP when such action is determined to be fiscally advantageous to the City or otherwise in the best interest of the City; the unilateral right to award a contract in whole or in part; to award a contract to one or more Proposers; to waive or permit cure of minor irregularities; and to conduct discussions with Proposers in any manner necessary to serve the best interest of the City.

P. EVIDENCE OF RESPONSIBILITY

Prior to the award of a contract pursuant to this RFP, the Procurement Specialist may require Proposer to submit such additional information bearing upon Proposer's ability to perform the contract as the Procurement Specialist deems appropriate. The Procurement Specialist may also consider any information otherwise available, but not limited to price, technical, and qualifications relative to ability, capacity, integrity, ethics, performance record, and experience of the Proposer.

Q. BASIS OF AWARD

The Procurement Specialist will recommend contract award to the responsible Proposer, whose Proposal is determined to provide overall best value to the City, considering the evaluation factors in this RFP, including price.

Technical ranking of Proposals will be combined with the corresponding price ranking to determine a final ranking for each Proposal. Technical merit will have greater weight than price. However, the more closely Proposals are ranked technically, the more important price will become.

R. INCURRED EXPENSES

The City will not be responsible for any expenses incurred by Proposers in preparing and submitting a Proposal or best and final offer or in making an oral presentation or demonstration.

III. SPECIFIC PROVISIONS

A. ROLES OF THE CITY OF SAN DIEGO PURCHASING AGENT, PROCUREMENT SPECIALIST, AND CONTRACT ADMINISTRATOR

The Procurement Specialist is the City of San Diego's authorized representative for all pre-contract matters related to this contract. Throughout the duration of the contract, the Purchasing Agent shall be the only individual with authority to modify any provisions of this contract including, without limitation, the statement of work, pricing, or any other sections in accordance with the applicable General Provisions for Proposals. The City's Contract Administrator or designee shall be the principal interface on behalf of the City for post-award technical matters, and shall have the authority to explain and provide further details regarding the City's expectations concerning the work to be performed hereunder and/or the items to be provided herein. The Contract Administrator or designee shall have no authority to modify any provisions of this contract.

B. INSURANCE REQUIREMENTS

All required insurance shall be submitted to Purchasing within ten (10) days of provisional award. Failure to provide the insurance certificates within the time frame specified by the City shall be cause for the Proposal to be rejected as non-responsive and not acceptable. The Proposer shall maintain insurance in full force and effect during the entire period of performance under contract. Failure to do so shall be cause for termination of the contract.

All policies must have a thirty (30) day non-cancellation clause giving the City thirty (30) days prior written notice in the event a policy is canceled. At the end of each contract year, the City reserves the right to review insurance requirements and to require more or less coverage depending upon assessment of the risk, the Proposer's past experience, and the availability and affordability of increased liability insurance coverage.

Insurance coverage must be from insurers licensed in the State of California, rated at least "A-, VI" or better by the current A.M. Best Key Rating Guide and approved by the City. Non-admitted surplus lines insurers may be accepted provided they appear on the current California List of Eligible Surplus Lines Insurers (LESLI list) and otherwise meet City requirements.

The following coverage shall be required:

1. Commercial General Liability with coverage for bodily injury, including death, and property damage with limits of at least one million dollars ($1,000,000.) per occurrence and one million dollars ($1,000,000.) aggregate. Coverage shall be written on an occurrence form which shall be endorsed to provide that it is primary and non-contributory to any insurance carried by the City. In addition, the City, its elected officials, officers, employees, agents and representatives shall be named as additional insureds pursuant to a separate endorsement, CG2010 (11/85) or equivalent.

2. Worker's Compensation insurance in an amount to satisfy statutory requirements for all employees subject to the California Labor Code provisions; in addition, Employer's Liability coverage with limits of at least one million dollars ($1,000,000.) per employee shall be provided. The policy shall be endorsed to include a waiver of subrogation in favor of the City.

Any deductibles or self-insured retentions are the sole responsibility of the Proposer and any deductibles or self-insured retentions in excess of ten thousand dollars ($10,000.) shall be disclosed to and acceptable to the City.

C. GENERAL PROVISIONS

Except as otherwise specified herein, the City of San Diego General Provisions for Proposals, dated January 18, 2005, (on file in the Office of the Purchasing Agent) are incorporated as part of this Proposal and any resulting contract by reference. The General Provisions are available online at www.sandiego.gov/purchasing or via request from the Purchasing Division by calling (619) 236-6000.

By signing and/or authorizing the Proposal submittal, the Proposer acknowledges that they have read and understood the meaning, intent, and requirements of said General Provisions; and acknowledge said General Provisions are included as a part of this Proposal.

D. INDEPENDENT CONTRACTOR

It is understood and agreed that the Proposer is an independent Contractor of the City and not an employee. The City shall not withhold income taxes, social security, or any other sums from the payments made to the successful Proposer. If the successful Proposer employs additional persons in the performance of this contract, those persons shall in no way be considered employees of the City, but rather they shall be employees or Subcontractors of the successful Proposer, and the successful Proposer bears full responsibility for compensating those persons.

Joint venture proposals, consortium of subject area experts are acceptable; however the legal name must be disclosed along with the current address and contact information.

E. SUBCONTRACTING

The successful Proposer shall not subcontract all or any part of the work to be performed pursuant to this request for proposal without the prior written approval of the Contract Administrator.

F. EMPLOYMENT OF CITY STAFF

Proposer shall not employ an individual who, within twelve (12) months immediately preceding such employment did, in the individual's capacity as a City officer or employee, participate in, negotiate with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the Proposer.

G. DELAYS AND EXTENSIONS OF TIME

1. The successful Proposer agrees to perform the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances, from any cause whatsoever, during the progress of any portion of the work specified in this contract.

2. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the successful Proposer, including but not restricted to, acts of God, acts of the public enemy, acts of the City in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the City, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of Subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the successful Proposer or the Subcontractors or suppliers.

H. SUSPENSION OF WORK

The Contract Administrator unilaterally may order the successful Proposer in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he or she may determine to be appropriate for the convenience of the City.

I. QUALITY ASSURANCE MEETINGS

Proposer may be required to schedule at least one (1) meeting with the Contract Administrator to discuss Proposer's performance. This meeting, should it be required, shall be scheduled at the Contract Administrator's request anytime during the term of the Contract. At this meeting the Contract Administrator will provide Proposer with feedback and will note any deficiencies in contract performance and provide Proposer with an opportunity to address and correct these areas. Additional quality assurance meetings may be required, depending upon Proposer's performance.

J. INSPECTION, ACCEPTANCE, AND PAYMENT

The City's Contract Administrator(s) or designee(s) shall inspect the work to determine if the specifications have been provided in accordance with the Contract. The City reserves the right to determine acceptability. The City shall tie payment of invoices to the deliverables and will authorize payment after the City's acceptance.

K. POST AWARD KICK-OFF MEETING

Proposer receiving award under this solicitation may be required to attend a post award contract kick-off meeting to be scheduled by the Procurement Specialist. The Procurement Specialist will communicate the date, time, location, and agenda for this meeting to the Proposer.

L. CONFIDENTIAL INFORMATION

Any information submitted with a Proposal is a public record subject to disclosure unless a specific exemption applies. If a Proposer submits information clearly marked confidential or proprietary, it will be protected and treated with confidentiality to the extent permitted by law. However, it will be the Proposer's obligation and expense to defend any legal challenges seeking to obtain said information.

M. BUSINESS TAX LICENSE

Any company doing business with the City of San Diego is required to comply with Section 31.0301 of the San Diego Municipal Code regarding Business Tax. For more information please visit the City of San Diego website at www.sandiego.gov/treasurer/ or call (619) 615-1500.

The City requires that each vendor to provide a copy of their Business Tax License, or a copy of their application receipt. Failure to provide the required documents within ten (10) business days of the City's request may result in a Bid being declared non-responsive and rejected.

IV. SPECIFICATIONS

A. INTRODUCTION

The City of San Diego's CPP was the first effort by any city in the United States to establish a comprehensive initiative to generate revenue and resources through partnerships with the corporate community. Since its beginning in June, 1999, this nationally recognized program has generated over $9,000,000 in revenue and enhancements for the City. In addition, existing partnerships with multi-year terms will generate several million dollars for the City over the next two to six years. The CPP's current marketing partners are the Pepsi Bottling Group, Verizon Wireless, McCune Chrysler-Jeep (expiring 12/7/07), Sunroad Enterprises and Cardiac Science.

Information regarding the Corporate Partnership Program can be found on the City of San Diego's website at http://www.sandiego.gov/corporatepartnership/. The Corporate Partnership Program website includes an overview of the Program, information about existing partners and the City Council Policy 000-40 on Marketing Partnerships. The link to City Council Policy 000-40 is found at the bottom of the "What is a Marketing Partnership?" page.

B. CORE REQUIREMENTS

1. Proposer shall develop and implement a strategy to expand the existing CPP by identifying new business categories and developing new long term revenue generating partnerships in light of existing corporate partnership and sponsorship obligations.

2. Proposer shall develop specific proposals and Requests for Sponsorship to send to prospective corporate partners.

3. Proposer shall coordinate and meet with decision-makers at prospective partner companies and hold any necessary follow-up meetings for the purpose of developing formal proposals specifically tailored to the City and the corporate partnership.

4. Proposer shall conduct negotiations with prospects and develop partnership agreements. The City makes the final determination as to the acceptance of any proposal, and has the right to reject any potential business partner or proposed marketing initiative.

5. Proposer shall attend and assist the Development Director in presenting and preparing reports on the proposed partnership agreement(s) to City officials, City Council and the media, as requested.

6. Proposer shall assist in the management of fulfillment obligations to ensure that existing contractual marketing partnership benefits are met.

7. Proposer shall develop the content and implement a plan for managing and packaging information about the City's CPP to targeted businesses and organizations and for use on the City's web site.

8. Proposer shall create sales and marketing materials that outlines the CPP, promotes the City as a desirable partner and details certain benefits that are available to partners through the CPP.

C. STRATEGIC PLAN

Proposer shall provide a brief narrative that describes proposed methods and an overall strategic plan to accomplish the Core Requirements in Section IV, Paragraph A.

D. COOPERATIVE WORK ENVIRONMENT

The Proposer shall work closely with the City's Development Director and other City staff; daily contact is typical. The Development Director is part of the Department of Finance, Office of the Mayor. The Proposer is required to foster a cooperative and responsive work environment with the Development Director, and any other City staff.

E. ONGOING COORDINATION/STATUS MEETINGS

While much of the work will be conducted with the City via telephone and e-mail, the Development Director reserves the right to schedule one-on-one meetings, on City property, as required, with the Project Lead/Lead Consultant, at no additional cost to the City.

F. KNOWLEDGE AND UNDERSTANDING OF MUNICIPAL MARKETING PARTNERSHIP PROGRAMS

Proposer shall provide a narrative summary of their knowledge and understanding of municipal marketing partnership programs, particularly the City's program relative to its complexity; scope and size explaining what challenges may be faced, and proposed solutions in order to achieve a successful Corporate Partnership Program.

G. DEMONSTRATED EXPERIENCE

Proposer shall provide a brief narrative demonstrating their experience in the below areas. Demonstrated experience in these areas, as well as complexity of work and work comparable in scope and size to that of the City (complexity of work and work comparable in scope and size with municipalities is preferred) will be an important consideration in the evaluation for award. References shall be provided, as per Section IV, Paragraph H below, to validate this experience.

1. Proposer shall detail their experience working with agencies (municipalities is preferred) and the public sector;

2. Proposer shall provide examples of their experience in putting together corporate partnerships (municipal corporate partnerships are preferred);

3. Proposer shall provide examples of their experience in obtaining corporate partners for various properties including facilities and events;

4. Proposer shall provide examples of their experience in generating revenue and fundraising initiatives in addition to corporate partnerships; and

5. Proposer shall provide examples of how they effectively managed existing marketing partnerships and potential future partnerships in light of organizational changes and issues (e.g. layoffs, etc.) that may adversely affect an organization's (prefer municipality's) image as a corporate partner/sponsor.

H. REFERENCES

Proposers are required to provide a minimum of three (3) references to demonstrate successful performance for work of similar size and scope as specified during the past five (5) years. Reference form (see page 24) shall be completed in full. Proposers must also demonstrate that they are properly equipped to perform the work

This will enable the City to judge the Proposer's reliability, performance, and other information.

I. EXPERIENCE AND QUALIFICATIONS – KEY PERSONNEL

To enable the City to evaluate the responsibility, experience, skill, qualifications, and business standing of the Project Lead/Lead Consultant and key personnel, the following information must be included with the technical proposal. It will be an important consideration for the Project Lead/Lead Consultant and/or key personnel to have been directly involved in the Proposer's response as per Section IV, Paragraph G, "Demonstrated Experience".

1. Proposer shall provide a company/corporate organizational chart and staffing profile including sub-contractors, if applicable.

2. Proposer shall provide resumes of key personnel, experience dealing with government agencies and years of tenure for key personnel who will be assigned and dedicated to the City's account.

3. Project team personnel shall be assigned and dedicated to the City's account and shall not be substituted or replaced during the term of the contract without the written acceptance of the City.

4. Proposer shall provide the names and contact information including e-mail addresses of the key personnel, including Project Lead/Lead Consultant and other key staff assigned and dedicated to the City's account.

5. Proposer shall provide a Project Lead/Lead Consultant who has a minimum of five (5) years prior experience in accounts of similar type, size, and scope.

6. Proposer shall clearly define what responsibilities the assigned Project Lead/Lead Consultant, project team member(s) and key personnel will be charged with relative to this project.

7. The dedicated Project Lead/Lead Consultant shall be accessible, at the minimum, by e-mail and local telephone numbers with an area code of 619, 858 or 760 or a toll free number, Monday through Friday between the hours of 9:00 a.m. and 6:00 p.m., Pacific Time excluding Federal holidays.

V. PRICING SUBMITTAL

A. PRICE PROPOSAL PAGES - INSTRUCTIONS

Proposers shall submit their proposal for pricing on City's Price Proposal pages. Using the City's Price Proposal pages will help ensure consistency in the price evaluation. The Price Proposal pages are to be completed in full and shall be incorporated herein. Only the City's Price Proposal pages will be accepted. Any deviations from the Price Proposal pages may be considered non-responsive and unacceptable. All prices stated on the Price Proposal pages shall be fixed price and include the complete service and/or material, and be inclusive of any and all related charges (including travel expenses). No other charges will be considered.

Worksheets may be used to provide additional information, however evaluation will be based on information entered on the City's Price Proposal pages.

Price evaluation will be based on "Monthly Retainer for Ongoing Services" and a "Transaction Fee Percentage", firm pricing for one (1) year.

The "Monthly Retainer" is a fixed monthly fee to perform on-going services as specified in Section IV, Paragraph B.

The "Transaction Fee" is a percentage of the "total value of each marketing partnership" that is originated, developed and finalized by the Proposer and approved and executed by the City. All transaction fees due and payable to the Proposer on multi-year marketing partnerships shall be limited to three (3) years.

The phrase "total value of each marketing partnership" shall consist of a combination of cash and value in-kind goods or services, but only to the extent that in-kind goods or services are identified as a line item in the City's budget or the decision to purchase the in-kind goods and services has been approved by the City.

Blanks on the price proposal pages will be interpreted as zero (0) and no price will be allowed.

B. RENEWAL OPTION(S)

The City reserves the option to renew the contract for four (4) additional one (1) year periods under the terms and conditions herein stated beginning on the anniversary of the commencement of service. The renewal is contingent on a mutual agreement between the City and the Contractor with such agreement to be confirmed within sixty (60) days prior to the expiration of the contract period. Either the City or the Contractor may decline to confirm the renewal of the contract for any reason whatsoever, which shall render the renewal option null and void.

The City's initial letter offering the contractor an opportunity to renew the contract does not constitute an award of the option period. Any option acceptance must be confirmed by the City, in writing, before it becomes valid.

The City will not grant an option, if the contractor requests an increase which exceeds the average percentage variant for the previous twelve (12) months in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the San Diego area as published by the Bureau of Labor Statistics, or 5.0%, whichever is less. If a price increase is requested, the Contractor must provide detailed supporting documentation to justify the requested increase. The requested increase will be evaluated by the City, and the City reserves the right to accept or reject such request.

This section will not be considered in the evaluation for award.

The City may desire to extend a contract on a month-to-month basis upon expiration of the current contract period under the terms and conditions of the current contract unless modified in writing. The renewal is contingent on a mutual agreement between the City and the Contractor with such agreement to be confirmed in writing prior to the expiration of the contract period.

VI. PRICING PAGE

SCHEDULE A – PRICING

YEAR 1 MONTHLY RETAINER FOR ONGOING SERVICES	YEAR 1 EXTENSION (MONTHLY RETAINER X 12 MOS)
$_____/MO	$_____/YR

TRANSACTION FEE PERCENTAGE
_____ %

VII. FORMS

PROPOSER'S REFERENCES

The Proposer is required to provide a minimum of three (3) references as specified in Section IV, Paragraph H. This will enable the City of San Diego to judge the responsibility, experience, skill, and business standing of the Proposer.

REFERENCES

Name of Organization or

Municipality/State: _____ **Contact Name:** _____

Address: _____ **Phone Number:** _____

_____ **Fax Number:** _____

Dollar Value of Contract: $_____ **Contract Dates:** _____

Description of Corporate Partnership, Sponsorship, etc. generated by Proposer (Additionally, if pertaining to a municipality, provide no. of municipal employees, no. of retirees, and population of municipality):

_____

_____

_____

_____

Name of Organization or

Municipality/State: _____ **Contact Name:** _____

Address: _____ **Phone Number:** _____

_____ **Fax Number:** _____

Dollar Value of Contract: $_____ **Contract Dates:** _____

Description of Corporate Partnership, Sponsorship, etc. generated by Proposer (Additionally, if pertaining to a municipality, provide no. of municipal employees, no. of retirees, and population of municipality):

_____

_____

_____

_____

PROPOSER'S REFERENCES *(Cont.)*

Name of Organization or

Municipality/State: _____ **Contact Name:** _____

Address: _____ **Phone Number:** _____

_____ **Fax Number:** _____

Dollar Value of Contract: $_____ **Contract Dates:** _____

Description of Corporate Partnership, Sponsorship, etc. generated by Proposer (Additionally, if pertaining to a municipality, provide no. of municipal employees, no. of retirees, and population of municipality):

_____

_____

_____

_____

PROPOSER'S STATEMENT OF FINANCIAL RESPONSIBILITY

The Proposer is required to furnish below a statement of financial responsibility, except when the bidder has previously completed contracts with the City of San Diego covering work of similar scope.

I, _____, certify that my company, _____, has sufficient operating capital and/or financial reserves to properly fund the services identified in these contract specifications for a minimum of two (2) full months. I agree that upon notification of provisional award, I will promptly provide a copy of my company's most recent balance sheet, or other necessary financial statements, as supporting documentation for this statement, if requested. I understand that this balance sheet, as well as any other required financial records, will remain confidential information to the extent allowed under the California Public Records Act.

I certify under penalty of perjury under the laws of the State of California that the information contained in this statement is true and correct.

Dated: _____ Signature: _____

PROPOSER'S STATEMENT OF SUBCONTRACTORS

The Proposer is **required** to state below all subcontractors to be used in the performance of the proposed contract, and what portion of work will be assigned to each Subcontractor. Failure to provide details of Subcontractors may be grounds for rejection of bid. NOTE: Add additional pages if necessary.

Company Name: _____ **Contact Name:** _____

Address: _____ **Phone Number:** _____

_____ **Fax Number:** _____

Dollar amount of sub-contract: $_____ **Contract Dates:** _____

Contractor's License #: _____

Requirements of contract: _____

What portion of work will be assigned to this subcontractor: _____

Company Name: _____ **Contact Name:** _____

Address: _____ **Phone Number:** _____

_____ **Fax Number:** _____

Dollar amount of sub-contract: $_____ **Contract Dates:** _____

Contractor's License #: _____

Requirements of contract: _____

What portion of work will be assigned to this subcontractor: _____

Company Name: _____ **Contact Name:** _____

Address: _____ **Phone Number:** _____

_____ **Fax Number:** _____

Dollar amount of sub-contract: $_____ **Contract Dates:** _____

Contractor's License #: _____

Requirements of contract: _____

What portion of work will be assigned to this subcontractor: _____

Certification Survey

For Small, Ethnically and Culturally Diverse,

Woman, Disadvantaged, Disabled Veteran, Or Other Businesses

All Contractors are required to complete this form and return it with their bid package.

Company Name: _____

Mailing Address: _____

_____

Telephone No.: (_____) _____

E-Mail Address: _____

1. Contractor's company is currently certified as small, ethnically and culturally diverse, woman, disadvantaged, disabled veteran, or other business? □ Yes □ No

   Certification Number/Agency: _____

2. Contractor's company has applied for certification? □ Yes □ No

   If yes, which agency? _____

3. Contractor's company is an independently owned business? □ Yes □ No
4. Contractor's company is 51% or more owned by a socially, economically, disadvantaged individual*? □ Yes □ No
5. SIC Code: _____
6. Number of Employees: _____
7. Annual Gross Receipts (three year average): _____
8. This is not an application for certification. If you would like to receive an application for certification, please check box: □

I certify that this information is correct: _____ _____

Authorized Signature Date

* Black Americans, Native Americans, Hispanic Americans, Asian-Pacific Americans, Subcontinent Asian Americans, Women, any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA) at such time as the SBA designation becomes effective.

RFP No. 8430-07-L

THE PATHFINDER GROUP

Proposal for Marketing Consultant for Corporate Partnership Program City of San Diego

VOLUME I
TECHNICAL PROPOSAL

RFP No. 8430-07-L

THE PATHFINDER GROUP

Proposal for Marketing Consultant for Corporate Partnership Program City of San Diego

VOLUME I
TECHNICAL PROPOSAL

TABLE OF CONTENTS

Executive/ Management Summary	1	
Section IV, Specifications	3	Core Requirements
	7	Strategic Plan
	8	Knowledge and Understanding of Municipal Marketing Partnership Programs
	10	Demonstrated Experience
	13	References
	13	Experience and Qualifications - Key Personnel
Additional Submittals/Forms	17	Proposer's References Form
	19	Proposer's Statement of Subcontractors Form
	20	Resume of Ed Augustine

The Pathfinder Group (Pathfinder) is pleased to submit this Proposal in response to the City of San Diego's (City) Request For Proposal (RFP) for a Marketing Consultant for the Corporate Partnership Program (CPP). The following information is presented in accordance with the format and proposal content outlined in Section II, paragraph G of the RFP.

Executive/ Management Summary

This Proposal will demonstrate that Pathfinder has a thorough understanding of the background of the CPP, the scope of work contained in the RFP and the objective of the RFP as specified in Section I, paragraphs A - C of the RFP.

In 1999, Pathfinder developed the Strategic Marketing Plan that led to the creation of the CPP and to the position of Development Director. This was the first Strategic Marketing Plan to be created for any City in the U.S.

In 1999, Pathfinder negotiated the first revenue generating partnership for the City, with the Pepsi Bottling Group. This partnership provided the initial funding for the CPP to become a comprehensive program.

In 2000, the City Council adopted a Corporate Partnership Policy (Policy), written by Pathfinder, that provided guidelines for the CPP's future development.

Since the beginning of the CPP, Pathfinder has been involved in developing and negotiating every major marketing partnership with the City including partnerships with the Pepsi Bottling Group, Verizon Wireless, General Motors, McCune Chrysler-Jeep, Evolution Film & Tape and the San Diego Metropolitan Credit Union. Pathfinder has also provided ongoing advice and consulting for every other partnership that the CPP has completed. These, and other partnerships have generated approximately $10 million for the City.

Since the beginning of the CPP, Pathfinder has been involved in every key strategic decision and task including preparing the Strategic Marketing Plan and Marketing Partnership Policy; identifying, researching, developing, negotiating and closing Marketing Partnerships; writing drafts of RFP's, Marketing Partnership Agreements, briefing documents, position papers and program overviews.

Since the beginning of the CPP in 1999, Pathfinder has consulted with the City during the terms of three Mayors, numerous City Council members, two City Managers, two forms of government and three Development Directors.

"In 1999, San Diego became one of the first cities in the country to hire a consulting firm – Atlanta-based The Pathfinder Group – to develop a strategic marketing plan and identify new ways to generate revenue from marketing partnerships."

American City & County Magazine
September 2006

The last few years have comprised one of the most challenging, unsettled and difficult periods in City government. In spite of massive change and uncertainty, Pathfinder was able to play a key role in helping the CPP not only to maintain its high level of success, but also to develop new and innovative partnerships and additional revenue for the City.

As a result of its continued success and innovation, the CPP was profiled in the September 2006 issue of *American City and County Magazine* as the one of the premier corporate partnership programs in the country.

Pathfinder is confident that its municipal marketing consulting expertise and specific experience working with the CPP from the beginning, combined with the strong and energetic leadership of current Development Director, Jenny Wolff, will continue to result in the CPP meeting and exceeding its revenue goals, accelerating its successful growth and securing its position as one of the premier corporate partnership programs in the country.

"Since those early days when the city did its first partnership and we put our policies in place, almost every partnership has been approved unanimously because those policies are there."

Jenny Wolff, Director of San Diego's Corporate Partnership Program
American City & County Magazine
September 2006

SECTION IV, SPECIFICATIONS

B. Core Requirements

1. Proposer shall develop and implement a strategy to expand the existing CPP by identifying new business categories and developing long term revenue generating partnerships in light of existing corporate partnership and sponsorship obligations.

Pathfinder is currently working with the CPP to develop partnerships in two new business categories, Electronics and Apparel. In addition, Pathfinder is confident that two additional categories, Banking and Supermarkets can emerge as successful Community Partnerships that will generate revenue to support the needs of specific City facilities, programs and projects. Pathfinder estimates that the Electronics and Apparel partnerships can be completed in FY '07 and the Banking and Supermarket partnerships can be completed in FY '08.

Pathfinder will also work with the Development Director to identify other partnership opportunities and develop strategies to implement them, such as in the cable/satellite telecommunications area. As additional partnerships are completed, a realistic assessment of personnel and resources will have to be made to insure that both current and future corporate partnership and sponsorship contractual obligations are met.

2. Proposer shall develop specific proposals and Requests for Sponsorship to send to prospective corporate partners.

A key step in the partnership development process is to communicate the opportunity to prospective corporate partners. The communication needs to clearly articulate the opportunity and establish a process for the company to express their interest that will both increase the chances for a successful partnership and comply with the City's purchasing and procurement process.

On January 18, 2000, the San Diego City Council approved a Marketing Partnership Policy to provide guidelines to the CPP. The Policy creates and authorizes the use of a Request For Sponsorship (RFS) to communicate new marketing partnership opportunities to prospective corporate partners as well as the process to be followed in developing those partnerships.

Pathfinder developed both the Policy and the RFS in collaboration with former Development Director Mary Braunwarth. The RFS by itself, or in combination with an RFP, has been successfully utilized by the CPP, working with Pathfinder, to develop partnerships for the City with the Pepsi Bottling Group, Verizon Wireless, General Motors, McCune Chrysler-Jeep and Cardiac Science. These partnerships have generated approximately $8 million in revenue to the City.

3. Proposer shall coordinate and meet with decision-makers at prospective partner companies and hold any necessary follow-up meetings for the purpose of developing formal proposals specifically tailored to the City and the corporate partnership.

Pathfinder will continue to work with the Development Director to coordinate and meet with decision makers from prospective partner companies at various stages in the partnership development process. The goal of the first meeting is for the City to brief the prospective partner on the benefits of being associated with the CPP and to learn about the prospective partner's marketing goals and objectives.

After the first meeting, Pathfinder and the Development Director will develop a strategy for the next steps in the partnership development process. These steps may include providing or requesting additional information, conducting company or industry research, scheduling future meetings, preparing a proposal and/or other steps that will lead to a partnership that is specifically tailored to the goals and objectives of both the City and the prospective partner.

4. Proposer shall conduct negotiations with prospects and develop partnership agreements. The City makes the final determination as to the acceptance of any proposal, and has the right to reject any potential business partner or proposed marketing initiative.

Ed Augustine, Pathfinder's Managing Partner has been the lead negotiator for all of the major partnerships that have been completed by the CPP. In addition to his municipal marketing expertise, Mr. Augustine has been an attorney for 34 years and has negotiated numerous complex business transactions. His continuing education includes courses in negotiation, mediation, mergers and acquisitions, marketing, and other types of business transactions.

He served as Special Assistant to the Mayor of Atlanta (1980 - 1982) and, in addition to San Diego, has been a municipal marketing consultant to Salt Lake City, Portland (OR), Austin and Dallas (TX) and Atlanta (GA). He has worked with numerous purchasing and procurement officers and City Attorneys.

Mr. Augustine was the City's lead negotiator for partnerships with the Pepsi Bottling Group, two partnerships with Verizon Wireless, General Motors (GM), McCune Chrysler-Plymouth, Evolution Film & Tape and the San Diego Metropolitan Credit Union. Mr. Augustine was also the lead representative for the City in successful negotiations with GM for the Lifeguard Division to purchase vehicles that were part of the marketing partnership with GM. Pathfinder is currently the lead representative for the City in negotiations with GM to settle a damage claim regarding additional vehicles that were part of the marketing partnership with GM.

Pathfinder has also actively participated in developing partnership agreements for each of the above partnerships, often writing the first draft of the marketing partnership section of the agreement.

Mr. Augustine's role as the lead negotiator in numerous transactions, his background as an attorney, his experience working with six different city governments and his specific expertise in business, municipal law and marketing greatly enhance his ability to develop partnership agreements and to work collaboratively with City's attorneys and other city personnel to finalize these agreements.

5. Proposer shall attend and assist the Development Director in presenting and preparing reports on the proposed partnership agreement(s) to City officials, City Council and the media, as requested.

Pathfinder will continue to support and assist the Development Director, at her request, in briefing the Mayor, City Council and other City Officials during the development phase of the partnership, prior to consideration by the City Council and in formal presentations to the City Council.

For each partnership Pathfinder has already negotiated for the City, Pathfinder has participated in the preparation of the Report to the City Council, the Executive Summary Sheet and briefing documents to individual City Council members and their staffs.

In addition, Pathfinder has attended and participated in briefing sessions with City officials and City Council members and has made formal presentations at City Council meetings. Pathfinder has also been available, at the Development Director's request, to brief members of the media about various partnerships with the City.

6. Proposer shall assist in the management and fulfillment obligations to ensure that existing contractual marketing partnership benefits are met.

Developing and negotiating a partnership, finalizing the partnership agreement and gaining approval by City Council are important and necessary tasks. However, fulfillment of the marketing partnership benefits that the City has contracted to deliver is a critical component of a successful and sustainable corporate partnership program.

Although the number, size and quality of the partnerships it completes are good measures of the CPP's progress, its true long term success is measured by the partnerships that are renewed after the initial term of the partnership has expired. Other measures of the CPP's success are a company choosing to extend the partnership and other companies being interested in being a partner in the same business category. The key to renewals and building long-term business relationships is in the quality of the fulfillment.

The CPP has had two Development Directors, Mary Braunwarth and Jenny Wolff who have significantly contributed to the success of the CPP, in part, because both of them have excelled at fulfillment. There have been three partnerships that were completed during the time that Ms. Braunwarth was Development Director that have come up for renewal at the end of the term of the partnership agreement (Verizon Wireless, GM, Cardiac Science).

In each of these categories, multiple companies were interested in becoming a marketing partner, a second partnership has been completed or is in the process of being completed. Although Ms. Braunwarth and Ms, Wolff have taken the lead with fulfillment, Pathfinder has worked closely with both of them in developing and implementing various strategies that have contributed to their success.

7. Proposer shall develop the content and implement a plan for managing and packaging information about the City's CPP to targeted businesses and organizations and for use on the City's web site.

One of Pathfinder's roles as a consultant to the CPP has been to work with the Development Director to develop effective communications strategies with potential partners, current partners, City management and staff, elected officials, the public and the media.

With potential partners, Pathfinder has worked with the Development Director to develop communication tools and methods that will be responded to and will lead to the desired result. CPP-designed Requests For Proposals have become more streamlined to expedite transactions and screen prospective partners. Requests For Sponsorships are prepared for specific business categories and clearly explain the marketing partnership opportunities and the process for becoming involved. Both are producing results for the CPP.

Pathfinder, in conjunction with the Development Director, has worked with City management and staff to educate them about how the CPP benefits the City and their departments, to encourage their suggestions about potential partnerships and to gather information from them about specific partnership opportunities.

Pathfinder recently developed a survey form to gather information about purchases of electronic equipment by various City departments. Pathfinder, the Development Director and the Purchasing Division will analyze the information as part of the process of developing a partnership in the Electronics category. The result will be a more simplified purchasing process and cost savings to the City.

With elected officials, Pathfinder has worked with the Development Director to prepare Reports and Executive Summary Sheets for the City Council summarizing completed partnerships. Pathfinder has also participated in preparing briefing summaries and "leave-behinds" for meetings with Council members and/or their staffs.

With the public, Pathfinder has worked with the Development Director to respond to other cities, companies and others who have inquired about various aspects of the CPP.

With the media, Pathfinder worked with the Development Director to assist the writer in preparing the article that appeared in the September 2006 issue of *America City and County Magazine* showcasing the CPP. During its tenure as a consultant to the CPP, Pathfinder has worked with various staff in the City Manager and Mayor's office to develop press releases and to publicize the CPP's successes.

8. Proposer shall create sales and marketing materials that outlines the CPP, promotes the City as a desirable partner and details certain benefits that are available to partners through the CPP.

In general, sales and marketing materials should be created for specific partnership development initiatives and not be generic. The content, graphics, use of color, type of paper and other characteristics of the materials should be custom designed for a specific business category in a collaborative process that includes the Development Director and the Pathfinder team which includes an in-house graphic designer.

C. Strategic Plan

Proposer shall provide a brief narrative that describes proposed methods and an overall strategic plan to accomplish the Core Requirements in Section IV, Paragraph B.

Pathfinder recommends the following as the primary components of a Strategic Plan for the CPP for FY'07 and FY '08:

- Get final Council approval of partnerships with Verizon Wireless, San Diego Metropolitan Credit Union and Evolution Film & Tape and begin to activate the marketing rights and benefits received by each of these partners
- Finalize the RFP in the Automatic External Defibrillator (AED) category, negotiate, close and get Council approval for the partnership and activate the marketing rights and benefits
- Continue to develop partnerships in the Electronics and Apparel categories
- Evaluate partnership opportunities with the U.S. Open
- Begin work on developing a new partnership with McCune Chrysler-Jeep or another company in the vehicle category
- Begin work on developing Community Partnerships with various companies to support Parks, Recreation and Library programs, projects and facilities
- Assess additional full-time staffing needs
- Develop internships with MBA program in business, marketing and/or public administration with local university
- Develop partnership with web design and management firm

F. Knowledge and Understanding of Municipal Marketing Partnership Programs

Proposer shall provide a narrative summary of their knowledge and understanding of municipal marketing partnership programs, particularly the City's program relative to its complexity; scope and size explaining what challenges may be faced, and proposed solutions in order to achieve a successful Corporate Partnership Program.

Prior to 1999, several cities entered into one-time marketing partnership agreements with cities, mostly in the Non-Alcoholic Beverage category (soft drinks, bottled water, juice). For example, the City of Atlanta entered into a partnership with Visa to be designated as the Official Credit card of Atlanta prior to and during the 1996 Summer Olympics in Atlanta. None of these cities stepped beyond those initial partnerships to develop a comprehensive corporate program like San Diego did in 1999. In 2003, New York City began a program and is the only City, other than San Diego, to have a staffed and fully funded program that continues to generate revenue from marketing partnerships.

In 1999, San Diego's City Manager decided to evaluate all of the potential opportunities to generate revenue for the City from marketing partnerships. Pathfinder was retained to identify the City's opportunities and to recommend strategies to maximize the potential to generate revenue from these opportunities.

Approved by City Council on June 8, 1999, the Strategic Marketing Plan prepared by The Pathfinder Group launched the City's Corporate Partnership Program. The first Director of the CPP, Mary Braunwarth, was hired in the fall of 1999. On January 18, 2000. The City Council approved a Corporate Partnership Policy, drafted by Pathfinder, to provide operational guidelines for the Program.

To date, the Program has received over $10 million in revenue from marketing partnerships with the Pepsi Bottling Group, Verizon Wireless, General Motors, Cardiac Science, McCune Chrysler-Jeep, Sunroad Community Foundation and Evolution Film & Tape.

A second partnership agreement with Verizon Wireless and new partnership agreements with the San Diego Metropolitan Credit Union and Evolution Film & Tape are awaiting Council approval. Two new partnerships, in the Electronics and Apparel categories, are in various stages of development. Other partnerships are in the early stages of discussion. Additional Community Partnerships have been identified and will be developed over the next few years.

The CPP is beginning its third phase of development. The first phase included preparation of the Strategic Marketing Plan (1999) and the Marketing Partnership Policy (2000), the hiring of the first Director of the Program (1999) and the first partnerships that were developed with the Pepsi Bottling Group (1999), Verizon Wireless (2000), Cardiac Science (2001), General Motors (2002), Sunroad Enterprises (2004) and McCune-Chrysler (2004). During this phase the CPP established itself as a fully functional and viable program that was capable of generating the revenue to fund current operations and future growth.

The second phase began in December 2004 when Mary Braunwarth left the program to work with the Scripps Health System and this phase has continued through the second quarter of 2006. After Ms. Braunwarth's departure, Jenny Wolff was appointed Interim Director of the CPP.

F. (continued)

A new Development Director was hired in August 2005 and left the City in October 2005. In June 2006, Jenny Wolff was appointed permanent Director.

During the second phase of the CPP, San Diego city government experienced one of the most tumultuous times in its history including grand jury investigations of the City's pension funds, indictments and trials of two City Council members, the early resignation of Mayor Murphy, the resignation of City Manager Michael Uberaga, speculation that the City was bankrupt, the election of Mayor Sanders, new City Council members, a change from a City Manager form of government to a strong Mayor form of government, a significant turnover of management and staff and the implementation of new city-wide policies and procedures that have significantly altered the way the City does business.

In spite of this extreme atmosphere of change, under the leadership of Jenny Wolff and with the experienced and steady counsel of Pathfinder, the CPP has not only survived, but expanded. New partnerships valued at over $2 million were completed including a second partnership with Verizon, a partnership with the San Diego Metropolitan Credit Union and a unique partnership with Evolution Film & Tape. Ms. Wolff set a new record for fundraising for the Fire-Rescue helicopter from an annual golf tournament she organizes with the Sunroad Community Foundation.

An RFP for a second partnership in the AED category will be issued this Fall and is expected to be completed by the end of FY' 07. RFP's for new partnerships in Electronics and Apparel will also be issued by the end of FY'07. In addition, the CPP was featured in the September 2006 issue of *American City and County Magazine* as the model of success for a municipal marketing partnership program. At an high-level management meeting on September 28, 2006, Ms. Wolff was singled out by Mayor Sanders for her outstanding leadership and for the success of the CPP.

During this second stage of development, the CPP has shown that it is built on a solid foundation, that it is strong and resilient and that, not only can it sustain itself during times of extreme change within city government, it can grow and prosper.

The CPP is now ready to enter into its third phase of development. Once again, the CPP has a strong and effective director, the City is settling into a period of calm, the CPP has proven that it is on solid footing and its national reputation is increasing. In the next three years of this phase, it will likely double in the number of partnerships and the amount of revenue it will generate. This phase will require some changes in the way the CPP has been doing business and may require additional resources to manage existing partnerships and support efforts to develop new partnerships.

Pathfinder is proud to have played a major role in the birth, startup and the first and second phases of the development of the CPP and to have worked with all three of it's Development Directors. Pathfinder looks forward to continuing to play a major role in the CPP's and the City's future successes.

G. Demonstrated Experience

1. Proposer shall detail their experience working with agencies (municipalities is preferred) and the public sector.

In addition to its municipal marketing consulting work with the City of San Diego, Pathfinder has a broad range of consulting experience with other cities and agencies generating revenue from corporate partnerships. These cities and agencies include Salt Lake City (UT), Portland (OR), Austin (TX), Dallas (TX), Atlanta (GA) and Hartsfield-Jackson Atlanta international Airport. Please see the next section for more detail about Pathfinder's experience working with these cities and agencies.

2. Proposer shall provide examples of their experience in putting together corporate partnerships (municipal corporate partnerships are preferred).

a. On behalf of the cities of San Diego and Atlanta, Pathfinder developed a Strategic Marketing Plan that identified, evaluated, valued and prioritized the City's revenue generating potential from corporate partnerships. Both plans included strategies to implement the recommendations provided by Pathfinder. Pathfinder is currently preparing a Strategic Marketing Plan for Hartsfield-Jackson Atlanta International Airport. This airport is the busiest in the world with 85 million passengers traveling through the airport annually. These projects were completed in 1999, 2005 and 2006.

b. On behalf of the cities of San Diego, Portland, Dallas and Atlanta, Pathfinder developed marketing partnership program policies and guidelines to assist elected officials, management and staff in the development of their corporate partnership programs. These projects were completed in 2000, 2003, 2004 and 2005.

c. On behalf of the cities of San Diego and Dallas, Pathfinder developed, negotiated and closed partnerships in the non - alcoholic beverage category. The San Diego beverage partnership with the Pepsi Bottling Group has the largest guaranteed revenue ($4.25 million) to any city in the U.S., outside of the New York market. The Dallas beverage partnership with Dr. Pepper has the largest guaranteed first year payment ($3.5 million) to any city in the U.S., outside of the New York market. These projects were completed in 1999 and 2004.

d. On behalf of the City of San Diego, Pathfinder developed, negotiated and closed two corporate partnerships with Verizon Wireless. The value of the combined partnerships is $2.25 million. These projects were completed in 2000 and 2006.

2. (continued)

e. On behalf of the City of San Diego, Pathfinder developed, negotiated and closed corporate partnerships in the vehicle category with General Motors and McCune Chrysler-Jeep. The value of the combined partnerships is $1.8 million. These projects were completed in 2002 and 2004.

f. On behalf of the City of San Diego, Pathfinder developed negotiated and closed corporate partnerships with Evolution Film & Tape, Inc. and the San Diego Metropolitan Credit Union. The combined value of these partnerships is nearly $1 million. These projects were completed in 2006.

3. Proposer shall provide examples of their experience in obtaining corporate partners for various properties including facilities and events.

a. On behalf of the National Football League, Pathfinder developed, negotiated and closed corporate partnerships with International Paper, Waste Management and other corporations in support of the NFL's Environmental Program at ten Super Bowls (1994 - 2003). The combined value of these partnerships is $200,000.

b. Pathfinder is currently consulting with the Atlanta Jazz Festival to develop a sponsorship program. In its 30th year, the event is held over Memorial Day weekend and is attended by approximately 200,000 people per year. The potential value of these partnerships is $500,000 – $1 million per year.

c. Pathfinder is working with the City of Atlanta on selling the naming rights to Chastain Park Amphitheater, a concert venue owned and managed by the Department of Parks, Recreation and Cultural Affairs. The potential value of these partnerships is $8 - 10 million over a 10-year term.

4. Proposer shall provide examples of their experience in generating revenue and fundraising initiatives in addition to corporate partnerships.

Pathfinder's primary business is generating revenue for cities by developing marketing partnerships with corporations in win-win business arrangements. Pathfinder is not in the business of raising money from grants, foundations, wealthy individuals or other philanthropic sources.

However, the ownership, management and staff of Pathfinder strongly believe in contributing as much as it can to our community by providing financial and in-kind resources to various organizations and events. Some of the fundraising initiatives that Pathfinder ownership, management and/or staff have participated in include:

4. (continued)

- Working with the Mayor and Fire Chief of the City of Atlanta to establish a foundation for the Fire Department that will be a vehicle for fundraising
- Serving on the Board of Directors and raising money for Park Pride, a non-profit organization dedicated to supporting Atlanta's parks and green space
- Serving on the Board of Directors and raising money for Trees Atlanta, a non-profit organization dedicated to expanding green space in Atlanta
- Serving on the Board of Directors and raising money for the Georgia Conservancy, a non-profit organization dedicated to preserving and enhancing the environment
- Serving on the Board of Directors and raising money for the Judith Alexander Foundation, a non-profit organization dedicated to supporting artists
- Coaching and raising money for the Atlanta Youth Soccer and the Stone Mountain Youth Soccer Associations
- Raising money for the financial aid program and athletic programs and events at the Paideia School in Atlanta

5. Proposer shall provide examples of how they effectively managed existing partnerships and potential future partnerships in light of organizational changes and issues (e.g. layoffs, etc.) that may adversely affect an organization's (prefer municipality's) image as a corporate partner/sponsor.

Please see response to Section IV, paragraph F beginning on page 8 of this Proposal.

H. References

Please see Proposer's References form on page 20 in the Additional Submittals/Forms section of this Proposal.

I. Experience and Qualifications - Key Personnel

Proposer shall provide a company/corporate organizational chart and staffing profile including sub-contractors, if applicable.

Pathfinder's core staff consists of Ed Augustine, Managing Partner, Von Diaz, Research Coordinator and an administrative staff. Senior Consultants are added to projects as independent contractors when their additional expertise is needed. All Senior Consultants must be seasoned professionals with background and experience in business, marketing, the public sector and/or law. This staffing structure insures Pathfinder will minimize its overhead cost and only work with Consultants whose experience will add specific value to each project. This approach results in the client always receiving the highest value at the lowest cost.

Pathfinder's Senior Consultant's have included:

- John Bennett, former Vice President of Marketing for Visa and Mayor of Chatham, New Jersey (lead municipal marketing consultant to Salt Lake City with Ed Augustine and worked on Strategic Marketing Plan for City of San Diego)
- Carol Asher, former Marketing Director for New Orleans Sports Foundation (worked on Strategic Marketing Plan for City of San Diego)
- Rich Levine, former Director of Marketing for 1994 World Cup Soccer (worked on Strategic Marketing Plan for City of San Diego and, with Ed Augustine, negotiated beverage partnership with Pepsi Bottling Group)
- Bruce Todd, former Mayor of Austin, Texas (worked on beverage partnerships for City of Austin and Dallas)
- David Kubes, former senior executive with major advertising firms in Chicago and Dallas (worked on several marketing partnerships for the City of Dallas)
- Erica Lee, MBA in Public Administration (worked on Strategic Marketing Plan for City of Atlanta)
- Kathy Oropallo, PH.D. in education and currently education consultant to the NFL (worked on communications strategies and marketing materials for various projects)

Pathfinder does not plan to add any sub-contractors at this time.

2. Proposer shall provide resumes of key personnel, experience dealing with government agencies and years of tenure for key personnel who will be assigned and dedicated to the City's account.	Ed Augustine will be assigned and dedicated to the City's account. His resume is included in the Additional Submittals/Forms section of this Proposal on page 20.
4. Proposer shall provide the names and contact information including e-mail addresses of the key personnel, including Project Lead/Lead Consultant and other key staff assigned and dedicated to the City's account.	Ed Augustine's contact information is in his resume which is included in the Additional Submittals/Forms section of this Proposal on Page 20.
5. Proposer shall provide a Project Lead/Lead Consultant who has a minimum of five (5) years prior experience in accounts of similar type, size, and scope.	Ed Augustine shall be the Project Lead/Lead Consultant. He has ten (10) years of experience in accounts of similar type, size and scope. He has thirty-four (34) years as a professional in business, law, marketing and municipal government.
6. Proposer shall clearly define what responsibilities the assigned Project Lead/Lead Consultant, project team member(s) and key personnel will be charged with relative to this project.	The responsibilities that the assigned Project Lead/Lead Consultant, project team member(s) and key personnel will be charged with, relative to this project, will include working with the Development Director to: ▪ Support her efforts to lead and manage the CPP by being accessible to her via personal meetings, telephone conferences and e-mail ▪ Set goals for the program, do strategic planning and prioritize tasks

6. (continued)

- Collaborate with her on key administrative, strategic, tactical, legal and marketing issues
- Develop and complete partnerships by:
    - Identifying and researching new partnership opportunities
    - Meeting with prospective partners
    - Writing and issuing RFP/RFS'
    - Negotiating and closing partnerships
    - Developing partnership agreements
    - Briefing management, staff and City Council members
    - Presenting partnership agreements to the City Council for approval
    - Briefing the media and the public about partnerships
- Assist her in the fulfillment of marketing rights and benefits and other contractual obligations
- Educate her on new developments in the municipal marketing area
- Provide her with professional training and executive coaching
- Continually strive to enhance the success of the CPP and her professional and personal success

7. The dedicated Project Lead/Lead Consultant shall be accessible, at the minimum, by e-mail and local telephone numbers with an area code of 619, 858 or 760 or a toll free number, Monday through Friday between the hours of 9:00 a.m. and 6:00 pm, Pacific Time excluding Federal holidays.

Ed Augustine's e-mail address and toll free telephone number are in his Resume, which is included in the Additional Submittals/Forms section of this Proposal on Page 20. He will be accessible between the hours required as well as after normal business hours and on weekends.

END OF VOLUME I, TECHNICAL PROPOSAL

RFP No. 8430-07-L

THE PATHFINDER GROUP

Proposal For Marketing Consultant
For Corporate Partnership Program
City of San Diego

ADDITIONAL SUBMITTALS/FORMS

TABLE OF CONTENTS

Additional Submittals/Forms

17 Proposer's References Form

19 Proposer's Statement of Subcontractors Form

20 Resume of Ed Augustine

VII. FORMS

PROPOSER'S REFERENCES

The Proposer is required to provide a minimum of three (3) references as specified in Section IV, Paragraph H. This will enable the City of San Diego to judge the responsibility, experience, skill, and business standing of the Proposer.

REFERENCES

Name of Organization or Municipality/State: City of San Diego **Contact Name:** Mary Braunwarth, Former Director of CPP

Address: 203 West F Street, San Diego, CA 92101 **Phone Number:** (619) 278-3388 **Fax Number:** (619) 293-0095

Dollar Value of Contract: $ 500,000 **Contract Dates:** 1999 - Current

Description of Corporate Partnership, Sponsorship, etc. generated by Proposer (Additionally, if pertaining to a municipality, provide no. of municipal employees, no. of retirees, and population of municipality):

Developed partnerships for City of San Diego with Pepsi Bottling Group, Verizon Wireless, General Motors, McCune Chrysler Plymouth, Evolution Film & Tape, San Diego Metropolitan Credit Union. City has 11,000 employees, 5,000 retirees and total population of 1.2 million.

Name of Organization or Municipality/State: City of Dallas **Contact Name:** Mark Duebner, Director of Purchasing

Address: 1500 Marilla, Dept. 3FS, Dallas, TX 75211 **Phone Number:** (214) 670-3325 **Fax Number:** (214) 670-4793

Dollar Value of Contract: $ 400,000 **Contract Dates:** 2004 - 2005

Description of Corporate Partnership, Sponsorship, etc. generated by Proposer (Additionally, if pertaining to a municipality, provide no. of municipal employees, no. of retirees, and population of municipality):

Developed partnership in beverage category with Dr. Pepper.

City has 12,500 employees, 7,000 retirees and total population of 1.2 million.

PROPOSER'S REFERENCES *(Cont.)*

Name of Organization or Municipality/State: City of Atlanta

Contact Name: David Edwards
Senior Advisor to the Mayor

Address: 55 Trinity Ave. - Suite 2400
Atlanta, GA 30303

Phone Number: (404) 330-6129

Fax Number: (404) 658-7361

Dollar Value of Contract: $100,000

Contract Dates: 2005 - Current

Description of Corporate Partnership, Sponsorship, etc. generated by Proposer (Additionally, if pertaining to a municipality, provide no. of municipal employees, no. of retirees, and population of municipality):

Developed strategic marketing plan, identified and valued revenue generating opportunities including marketing partnerships, event sponsorships, amphitheater naming rights and outdoor advertising. City is in process of implementing recommendations. City has 8,500 employees, 8,000 retirees and total population of 470,000.

PROPOSER'S STATEMENT OF SUBCONTRACTORS

The Proposer is **required** to state below all subcontractors to be used in the performance of the proposed contract, and what portion of work will be assigned to each Subcontractor. Failure to provide details of Subcontractors may be grounds for rejection of bid. NOTE: Add additional pages if necessary.

PROPOSER DOES NOT PLAN TO USE ANY SUBCONTRACTORS AT THIS TIME

Company Name: _____ **Contact Name:** _____

Address: _____ **Phone Number:** _____

_____ **Fax Number:** _____

Dollar amount of sub-contract: $_____ **Contract Dates:** _____

Contractor's License #: _____

Requirements of contract: _____

What portion of work will be assigned to this subcontractor: _____

_____

Company Name: _____ **Contact Name:** _____

Address: _____ **Phone Number:** _____

_____ **Fax Number:** _____

Dollar amount of sub-contract: $_____ **Contract Dates:** _____

Contractor's License #: _____

Requirements of contract: _____

What portion of work will be assigned to this subcontractor: _____

_____

Company Name: _____ **Contact Name:** _____

Address: _____ **Phone Number:** _____

_____ **Fax Number:** _____

Dollar amount of sub-contract: $_____ **Contract Dates:** _____

Contractor's License #: _____

Requirements of contract: _____

What portion of work will be assigned to this subcontractor: _____

Edward E. Augustine
1641 S. Ponce de Leon Avenue / Atlanta, GA 30307
tel 800.477.2559 / fax 404.378.2603
e-mail ea@pathgrp.com

RESUME

Professional Experience

1997 - Present
The Pathfinder Group
Founder/Managing Partner

- Responsible for all strategic, business, financial, legal and personnel matters for the firm; in addition, he is responsible for coordinating all projects with cities and is actively involved in the development, negotiation and completion of marketing partnerships
- Lead Pathfinder partner to work with the City of San Diego to develop the first and most successful Corporate Partnership Program for any city in the U.S.
- Developed the first Strategic Marketing Plan for any city in the U.S., the first Corporate Partnership Policy and the first marketing partnership in conjunction with a city procurement process -- all completed on behalf of the City of San Diego
- Has consulted with Salt Lake City, San Diego, Portland, Austin, Dallas and Atlanta on various aspects of developing corporate partnership programs, including preparing Strategic Marketing Plans and Corporate Partnership Policies, negotiating partnerships and drafting partnerships agreements and activating and fulfilling marketing rights and benefits
- Developed marketing partnerships valued at over $30 million with major corporations in multiple business sectors

1992 - 2003
Augustine Environmental, Inc.
Founder/Managing Partner

- Served on team of international environmental lawyers, scientists and management consultants to develop environmental planning initiatives for the 1992 Winter Olympics in Lillehammer, Norway
- Coordinated environmental planning initiatives for the 1996 Summer Olympics in Atlanta; managed a 22 member advisory group of business, public officials, academic, scientific and community leaders to develop recommendations
- Conceived, developed, planned, implemented and obtained sponsors for environmental programs for the National Football League for ten (10) Super Bowls (1994 - 2003); responsible for professional planning and implementation staff and over 100 volunteers

1980 - 1982
City of Atlanta

- As Special Assistant to the Mayor, served as political/legal advisor to Atlanta Mayor Andrew Young; coordinated appointments to all city boards, commissions and judgeships; Mayor's representative on city pension boards; evaluated quality of management and services provided by major operational departments of Atlanta city government including the departments of Administrative Services, Planning, Community Development and Law and made recommendations for improvement

- As Director of Labor Relations, responsible for handling labor/management issues impacting 10,000 city employees and negotiating labor contracts with unions

- Coordinated a 13 member task force of attorneys, city officials, aviation consultants and others to evaluate the financial and operational impact of Eastern Airlines' bankruptcy on Hartsfield Atlanta International Airport, the world's busiest airport at that time

1972 - 1996
Augustine & Associates, Inc.
Founder/Managing Partner

- Provided legal representation to individuals and companies in complex litigations regarding constitutional, environmental, business, financial and other issues

- Provided legal and management consulting services to business entities regarding general business, marketing and funding issues. Involved in business transactions valued at more than $100 million.

- Provided legal representation to civil rights workers throughout South in 1970's. Clients included individuals and organizations such as Southern Christian Leadership Conference founded by Martin Luther King, Jr.

Education

1969 University of Georgia, Bachelor of Arts in Communication
1972 University of Miami Law School, Juris Doctor
1994 Advanced studies at Harvard Law School

Professional/ Community Activities

1972 – Present, Member, Georgia Bar; admitted to practice before U.S. Supreme Court
1972 - Present, Served on boards and support various organizations, active in environmental, youth sports, arts and cultural issues
1982, Received award for Law and Justice from organization founded by Martin Luther King, Jr.
1992 – Present, Certified Mediator, American Arbitration Association
1994 – 2000, Soccer coach for Atlanta and Stone Mountain Youth Soccer Associations

San Diego Corporate Partnership Program
Marketing Partnership Summary
December 23, 2010

All Partnerships Negotiated By Corporate Partnership Program 1999 - Present

Partnership	Value
Pepsi Bottling Group (Beverage)	$6.6 million
Service Authority For Freeway Emergencies (Helicopter)	3.1 million
Verizon Wireless (Wireless)	2.25 million
Cardiac Science (AED)	1.67 million
Barona, Sycuan,Viejas (Helicopter)	1.3 million
General Motors (Lifeguard Vehicles)	900,000
Sunroad Community Foundation (Helicopter)	600,000
San Diego Metropolitan Credit Union (Credit Union)	550,000
Evolution Productions (Lifeguard Equipment)	544,500
McCune Chrysler-Jeep (Lifeguard Vehicles)	418,787
EA Sports (Torrey Pines Golf Course)	60,000
Total	**$17,993,287**

Partnerships Negotiated By Pathfinder 1999 – Present

Partnership	Value
Pepsi Bottling Group	$6.6 million
Verizon Wireless	2.25 million
Cardiac Science	1.67 million
General Motors	925,000
San Diego Metropolitan Credit Union	550,000
Evolution Productions	544,500
McCune Chrysler-Jeep	418,787
EA Sports	60,000
Total	$13,018,287

Partnerships Negotiated By Pathfinder from 2007 – Present

Partnership	Value
Verizon Wireless	$1,250,000
Cardiac Science	925,000
San Diego Metropolitan Credit Union	500,000
EA Sports	60,000
Total	$2,735,000

Revenue Received 2007 – Present from Partnership Negotiated By Pathfinder Prior to 2007

Partnership	Value
Pepsi Bottling Group	$1.0 million

Partnerships Negotiated By Pathfinder in 2010 But Not Presented to City Council

Partnership	Value
Grainger (MRO RFP)	$1.0 million
WAXIE (MRO RFP)	490,000
Total	**$1,490,000**

Copy

AGREEMENT FOR CONSULTING SERVICES

FOR

THE CITY OF SAN DIEGO

CORPORATE PARTNERSHIP PROGRAM/DEPARTMENT OF FINANCE

LUMP SUM AGREEMENT

FOR

MARKETING CONSULTANT SERVICES

THE CITY OF SAN DIEGO

AND

The Pathfinder Group

LUMP SUM AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND THE PATHFINDER GROUP FOR CONSULTANT SERVICES

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation [City], and The Pathfinder Group [Consultant] for the Consultant to provide Services to the City for Marketing for the Corporate Partnership Program.

RECITALS

The City wants to retain the services of a Consultant to assist the Corporate Partnership Program in securing municipal marketing partnerships to benefit the City [the Services].

The Consultant has the expertise, experience and personnel necessary to provide the Services. The City and the Consultant [Parties] want to enter into an Agreement whereby the City will retain the Consultant to provide, and the Consultant shall provide, the Services .

In consideration of the above recitals and the mutual covenants and conditions set forth, herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby set forth their mutual covenants and understandings as follows:

ARTICLE I

CONSULTANT SERVICES

The above-listed recitals are true and correct and are hereby incorporated by reference.

1.1 Scope of Services. The Consultant shall perform the Services as set forth in the written Scope of Services, as described in RFP No. 8430-07-L-RFP and Consultant's Proposal in Response thereto [collectively, Exhibit A], at the direction of the City.

1.1.1 Definitions. As used in this Agreement and the Exhibits hereto, the following terms shall have the following meanings:

Marketing Partnership means a mutually beneficial business arrangement between the City and a third person wherein the third person provides cash and/or in-kind goods or services to the City in return for access to the commercial marketing potential associated with the City. Marketing Partnerships may include sponsorship of one or more City programs, projects, events, facilities and activities.

Partner means a participant in a Marketing Partnership who enters into a Marketing Partnership Agreement with the City.

Marketing Partnership Agreement means a written Agreement between the City and a Partner which defines the contractual relationship between the

parties and identifies the specific components of the marketing partnership.

Monthly Retainer means a fixed monthly fee to perform on-going services as specified in the Scope of Services.

Transaction Fee means a percentage of the "total value of each marketing partnership" that is originated, developed and finalized by the Marketing Consultant and approved and executed by the City. All transaction fees due and payable to the Marketing Consultant on multi-year marketing partnerships shall be limited to three (3) years.

Total value of each marketing partnership means a combination of cash and value of in-kind goods and service, but only to the extent that in-kind goods or service are identified as a line item in the City's budget or the decision to purchase the in-kind goods and service has been approved by the City.

1.2 Contract Administrator. The Corporate Partnership Program is the contract administrator for this Agreement. The Consultant shall provide the Services under the direction of a designated representative of the Corporate Partnership Program. The City's designated representative will communicate with the Consultant on all matters related to the administration of this Agreement and the Consultant's performance of the Services rendered hereunder. When this Agreement refers to communications to or with the City, those communications will be with the designated representative, unless the designated representative or the Agreement specifies otherwise. However, when this Agreement refers to an act or approval to be performed by City, that act or approval shall be performed by the Mayor or his designee, unless the Agreement specifies otherwise.

1.3 City Modification of Scope of Services. The City may, without invalidating this Agreement, order changes in the Scope of Services by altering, adding to or deducting from the Professional Services to be performed. All such changes shall be in writing and shall be performed in accordance with the provisions of this Agreement. If any such changes cause an increase or decrease in the Consultant's cost of, or the time required for, the performance of any of the Professional Services, the Consultant shall immediately notify the City. If the City deems it appropriate, an equitable adjustment to the Consultant's compensation or time for performance may be made, provided that any adjustment must be approved by both Parties in writing in accordance with Section 9.1 of this Agreement.

1.4 Written Authorization. Prior to performing any Services, the Consultant shall obtain from the City a written authorization to proceed. Further, throughout the term of this Agreement, the Consultant shall immediately advise the City in writing of any anticipated change in the Scope of Services [Exhibit A], Compensation and Fee Schedule [Exhibit B], or Time Schedule [Exhibit C], and shall obtain the City's written consent to the change prior to making any changes. In no event shall the City's consent be construed to relieve the Consultant from its duty to render all Services in accordance with applicable laws and accepted industry standards.

1.5 Confidentiality of Services. All Services performed by the Consultant, including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by the Consultant, pursuant to this Agreement, are for the sole use of the City, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the City. This provision does not apply to information that (a) was publicly known, or otherwise known to the Consultant, at the time that it was disclosed to the Consultant by the City, (b) subsequently becomes publicly known through no act or omission of the Consultant, or (c) otherwise becomes known to the Consultant other than through disclosure by the City. Except for Subcontractors covered by Section 4.4, neither the documents nor their contents shall be released to any third party without the prior written consent of the City.

ARTICLE II

DURATION OF AGREEMENT

2.1 Term of Agreement. This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40. Unless otherwise terminated, it shall be effective until one year from the effective date or, if extended per paragraph V(B) of the RFP, until the expiration of any renewal period, whichever is the earliest. The total term of this Agreement shall not to exceed five years unless approved by City ordinance.

2.2 Time of Essence. Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement. The time for performance of the Scope of Services [Exhibit A] is set forth in the Time Schedule [Exhibit C].

2.3 Notification of Delay. The Consultant shall immediately notify the City in writing if the Consultant experiences or anticipates experiencing a delay in performing the Services within the time frames set forth in the Time Schedule [Exhibit C]. The written notice shall include an explanation of the cause for, and a reasonable estimate of the length of the delay. If in the opinion of the City, the delay affects a material part of the City's requirements for the Services, the City may exercise its rights under Sections 2.5-2.7 of this Agreement.

2.4 Delay. If delays in the performance of the Services are caused by unforeseen events beyond the control of the Parties, such delay may entitle the Consultant to a reasonable extension of time, but such delay shall not entitle the Consultant to damages or additional compensation. Any such extension of time must be approved in writing by the City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the Consultant's work; inability to obtain materials, equipment, or labor; required additional Services; or other specific reasons agreed to between the City and the Consultant; provided, however, that: (a) this provision shall not apply to, and the Consultant shall not be entitled to an extension of time for, a delay caused by the acts or omissions of the Consultant; and (b) a delay caused by the inability to obtain materials, equipment, or labor shall not entitle the Consultant to an extension of time unless the Consultant furnishes the City, in a timely manner, documentary proof satisfactory to City of the Consultant's inability to obtain materials, equipment, or labor.

2.5 **City's Right to Suspend for Convenience.** The City may, at its sole option and for its convenience, suspend all or any portion of the Consultant's performance of the Services, for a reasonable period of time not to exceed six months. In accordance with the provisions of this Agreement, the City will give written notice to the Consultant of such suspension. In the event of such a suspension, in accordance with the provisions of Article III of this Agreement, the City shall pay to the Consultant a sum equivalent to the reasonable value of the Services the Consultant has satisfactorily performed up to the date of suspension. Thereafter, the City may rescind such suspension by giving written notice of rescission to the Consultant. The City may then require the Consultant to resume performance of the Services in compliance with the terms and conditions of this Agreement; provided, however, that the Consultant shall be entitled to an extension of time equal to the length of the suspension, unless otherwise agreed to in writing by the Parties.

2.6 **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 written notice of such termination to the Consultant. 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 receipt of the notice by the Consultant. After termination of this Agreement, the Consultant shall complete any and all additional work necessary for the orderly filing of documents and closing of the Consultant's Services under this Agreement. For services satisfactorily rendered in completing the work, the Consultant shall be entitled to fair and reasonable compensation for the Services performed by the Consultant before the effective date of termination. After filing of documents and completion of performance, the Consultant shall deliver to the City all documents or records related to the Consultant's Services . By accepting payment for completion, filing and delivering documents as called for in this paragraph, the Consultant discharges the City of all of the City's payment obligations and liabilities under this Agreement.

2.7 **City's Right to Terminate for Default.** If the Consultant fails to satisfactorily perform any obligation required by this Agreement, the Consultant's failure constitutes a Default. A Default includes the Consultant's failure to adhere to the Time Schedule. If the Consultant fails to satisfactorily cure a Default within ten calendar days of receiving written notice from the City specifying the nature of the Default, the City may immediately cancel and/or terminate this Agreement, and terminate each and every right of the Consultant, and any person claiming any rights by or through the Consultant under this Agreement. The rights and remedies of the City enumerated in this Section are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against the Consultant.

ARTICLE III

COMPENSATION

3.1 **Amount of Compensation.** The City shall pay the Consultant for performance of all Services rendered in accordance with this Agreement.

3.2 **Additional Services.** The City may require that the Consultant perform additional Services beyond those described in the Scope of Services [Additional Services]. Prior

to the Consultant's performance of Additional Services, the City and the Consultant must agree in writing upon a fee for the Additional Services, including reasonably related expenses, in accordance with the Compensation and Fee Schedule [Exhibit B]. The City will pay the Consultant for the performance of Additional Services in accordance with Section 3.3.

3.3 **Manner of Payment.** The City shall pay the Consultant in accordance with the Compensation and Fee Schedule [Exhibit B]. For the duration of this Agreement, the Consultant shall not be entitled to fees, including fees for expenses, that exceed the amounts specified in the Compensation and Fee Schedule. The Consultant shall submit one invoice per calendar month in a form acceptable to City in accordance with the Compensation and Fee Schedule. The Consultant shall include with each invoice a description of completed Services, reasonably related expenses, if any, and all other information, including but not limited to: the progress percentage of the Scope of Services and/or deliverables completed prior to the invoice date, as required by the City. The City will pay undisputed portions of invoices within thirty calendar days of receipt.

3.4 **Additional Costs.** Additional Costs are those costs that can be reasonably determined to be related to the Consultant's errors or omissions, and may include Consultant, City, or Subcontractor overhead, construction, materials, demolition, and related costs. The Consultant shall not be paid for the Services required due to the Consultant's errors or omissions, and the Consultant shall be responsible for any Additional Costs associated with such errors or omissions. These Additional Costs may be deducted from monies due, or that become due, the Consultant. Whether or not there are any monies due, or becoming due, the Consultant shall reimburse the City for Additional Costs due to the Consultant's errors or omissions.

ARTICLE IV

CONSULTANT'S OBLIGATIONS

4.1 **Industry Standards.** The Consultant agrees that the Services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent marketing firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by the City, the Mayor or his designee, or other representatives of the City is required, it is understood to be general approval only and does not relieve the Consultant of responsibility for complying with all applicable laws, codes, and good consulting practices.

4.2 **Right to Audit.**

4.2.1 **Access.** The City retains the right to review and audit, and the reasonable right of access to Consultant's and any Subcontractor's premises to review and audit the Consultant's or Subcontractor's compliance with the provisions of this Agreement [City's Right]. The City's Right includes the right to inspect and photocopy same, and to retain copies, outside of the Consultant's premises, of any and all records related to the Services provided hereunder with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. This information shall be kept by the City in the strictest confidence allowed by law.

4.2.2 **Audit.** The City's Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the City determines are necessary to discover and verify that the Consultant or Subcontractor is in compliance with all requirements under this Agreement.

4.2.2.1 **Cost Audit.** If there is a claim for additional compensation or for Additional Services, the City's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the City determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

4.2.2.1.1 **Accounting Records.** The Consultant and all Subcontractors shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. The Consultant and Subcontractors shall make available to the City for review and audit, all Service related accounting records and documents, and any other financial data. Upon the City's request, the Consultant and Subcontractors shall submit exact duplicates of originals of all requested records to the City.

4.2.3 **City's Right Binding on Subcontractors.** The Consultant shall include the City's Right as described in Section 4.2, in any and all of their subcontracts, and shall ensure that these sections are binding upon all Subcontractors.

4.2.4 **Compliance Required before Mediation or Litigation.** A condition precedent to proceeding with mandatory mediation and further litigation provided for in Article VII is the Consultant's and Subcontractors full compliance with the provisions of this Section 4.2 within sixty days of the date on which the City mailed a written request to review and audit compliance.

4.3 **Insurance.** The Consultant shall not begin the Services under this Agreement until it has: (a) obtained, and provided to the City, insurance certificates reflecting evidence of all insurance as set forth in Exhibit D; however, the City reserves the right to request, and the Consultant shall submit, copies of any policy upon reasonable request by the City; (b) obtained City approval of each company or companies as described in Exhibit D; and (c) confirmed that all policies contain the specific provisions required in Exhibit D. Consultant's liabilities, including but not limited to Consultant's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement and Consultant's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by the City.

Further, the Consultant shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement.

4.4 **Subcontractors.** The Consultant's hiring or retaining of any third parties [Subcontractors] to perform Services [Subcontractor Services] is subject to prior approval by the City. The Consultant shall list on the Subcontractor List [Exhibit E Attachment BB] all Subcontractors known to the Consultant at the time this Agreement is entered. If at any time after

this Agreement is entered into the Consultant identifies a need for additional Subcontractor Services, the Consultant shall give written notice to the City of the need, at least forty-five days before entering into a contract for such Subcontractor Services. The Consultant's notice shall include a justification, a description of the scope of work, and an estimate of all costs for the Subcontractor Services. The Consultant may request that the City reduce the forty-five day notice period. The City agrees to consider such requests in good faith.

4.4.1 Subcontractor Contract. All contracts entered into between the Consultant and any Subcontractor shall contain the information as described in Sections 4.6, 4.7, 4.10.2, and 4.18, and shall also provide as follows:

4.4.1.1 Each Subcontractor shall obtain insurance policies which shall be kept in full force and effect during any and all work on this Agreement. Each Subcontractor shall obtain, and the Consultant shall require the Subcontractor to obtain, all policies described in Exhibit D in the amounts required by the City, which shall not be greater than the amounts required of the Consultant.

4.4.1.2 The Consultant is obligated to pay the Subcontractor, for Consultant and City-approved invoice amounts, out of amounts paid by the City to the Consultant, not later than fourteen working days from the Consultant's receipt of payment from the City. Nothing in this paragraph shall be construed to impair the right of the Consultant and any Subcontractor to negotiate fair and reasonable pricing and payment provisions among themselves.

4.4.1.3 In the case of a deficiency in the performance of Subcontractor Services, the Consultant shall notify the City in writing of any withholding of payment to the Subcontractor, specifying: (a) the amount withheld; (b) the specific cause under the terms of the subcontract for withholding payment; (c) the connection between the cause for withholding payment and the amount withheld; and (d) the remedial action the Subcontractor must take in order to receive the amount withheld. Once the Subcontractor corrects the deficiency, the Consultant shall pay the Subcontractor the amount withheld within fourteen working days of the Consultant's receipt of the City's next payment.

4.4.1.4 In any dispute between the Consultant and Subcontractor, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The Consultant agrees to defend and indemnify the City as described in Article VI of this Agreement in any dispute between the Consultant and Subcontractor should the City be made a party to any judicial or administrative proceeding to resolve the dispute in violation of this position.

4.4.1.5 The Subcontractor is bound to the City's Equal Opportunity Contracting Program covenants set forth in Article IV, Section 4.6 and Exhibit E of this Agreement.

4.4.1.6 The City is an intended beneficiary of any work performed by the Subcontractor for purposes of establishing a duty of care between the Subcontractor and the City.

4.5 Contract Activity Report. The Consultant shall submit statistical information to the City as requested in the City's Contract Activity Report [Exhibit E Attachment CC]. The statistical information shall include the amount of subcontracting provided by firms during the period covered by the Contract Activity Report. With the Contract Activity Report, the Consultant shall provide an invoice from each Subcontractor listed in the report. The Consultant

agrees to issue payment to each firm listed in the Report within fourteen working days of receiving payment from the City for Subcontractor Services as described in Section 4.4.1.

4.6 Non-Discrimination Requirements.

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

4.6.2 Non-Discrimination Ordinance. The Consultant 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. The Consultant shall provide equal opportunity for Subcontractors to participate in subcontracting opportunities. The Consultant 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 the Consultant and any Subcontractors, vendors and suppliers.

4.6.3 Compliance Investigations. Upon the City's request, the Consultant agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all Subcontractors, vendors, and suppliers that the Consultant 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 the Consultant for each subcontract or supply contract. The Consultant 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.] The Consultant 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 Consultant up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. The Consultant further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

4.7 Drug-Free Workplace. The Consultant agrees to 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. The Consultant shall certify to the City that it will provide a drug-free workplace by submitting a Consultant Certification for a Drug-Free Workplace form [Exhibit F].

4.7.1 Consultant's Notice to Employees. The Consultant shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition.

4.7.2 Drug-Free Awareness Program. The Consultant shall establish a drug-free awareness program to inform employees about all of the following:

4.7.2.1 The dangers of drug abuse in the work place.

4.7.2.2 The policy of maintaining a drug-free work place.

4.7.2.3 Available drug counseling, rehabilitation, and employee assistance programs.

4.7.2.4 The penalties that may be imposed upon employees for drug abuse violations.

4.7.3 Posting the Statement. In addition to Section 4.7.1 above, the Consultant shall post the drug-free policy in a prominent place.

4.7.4 Subcontractor's Agreements. The Consultant further certifies that each contract for Subcontractor Services for this Agreement shall contain language that binds the Subcontractor to comply with the provisions of Article IV, Section 4.7 of this Agreement, as required by Sections 2.A.(1) through (3) of Council Policy 100-17. Consultants and Subcontractors shall be individually responsible for their own drug-free work place program.

4.8 Product Endorsement. The Consultant acknowledges and agrees to comply with the provisions of City of San Diego Administrative Regulation 95.65, concerning product endorsement. Any advertisement identifying or referring to the City as the user of a product or service requires the prior written approval of the City.

4.9 Conflict of Interest. The Consultant is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq. and 81000, et. seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at sections 27.3501 to 27.3595.

4.9.1 If, in performing the Services set forth in this Agreement, the Consultant makes, or participates in, a "governmental decision" as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the department's conflict of interest code, the Consultant shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the Consultant's relevant financial interests.

4.9.1.1 Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. The Consultant shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that the Consultant is subject to a conflict of interest code. The Consultant shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the Consultant was subject to a conflict of interest code.

4.9.1.2 If the City requires the Consultant to file a statement of economic interests as a result of the Services performed, the Consultant shall be considered a "City Official" subject to the provisions of the City of San Diego Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Agreement.

4.9.2 The Consultant shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships.

4.9.3 The Consultant's personnel employed for the Services shall not accept gratuities or any other favors from any Subcontractors or potential Subcontractors. The Consultant shall not recommend or specify any product, supplier, or contractor with whom the Consultant has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

4.9.4 If the Consultant violates any conflict of interest law or any of the provisions in this Section 4.10, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects the Consultant to liability to the City for attorneys fees and all damages sustained as a result of the violation.

4.10 **Mandatory Assistance.** If a third party dispute or litigation, or both, arises out of, or relates in any way to the Services provided under this Agreement, upon the City's request, the Consultant, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The Consultant's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

4.11 **Compensation for Mandatory Assistance.** The City will compensate the Consultant for fees incurred for providing Mandatory Assistance as Additional Services under Section 3.3. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of the Consultant, its agents, officers, and employees, the Consultant shall reimburse the City. The City is then entitled to reimbursement of all fees paid to the Consultant, its agents, officers, and employees for Mandatory Assistance.

4.12 **Attorney Fees related to Mandatory Assistance.** In providing the City with dispute or litigation assistance, the Consultant or its agents, officers, and employees may incur expenses and/or costs. The Consultant agrees that any attorney fees it may incur as a result of assistance provided under Section 4.11 are not reimbursable. The Parties agree this provision does not in any way affect their rights to seek attorney fees under Article VIII, Section 8.8 of this Agreement.

ARTICLE V

RESERVED

ARTICLE VI

INDEMNIFICATION

6.1 **Indemnification and Hold Harmless Agreement.** With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the Consultant, or Consultant's employees, agents, and officers, arising out of any services

performed under this Agreement, the Consultant agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers, and employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents or officers, or any third party. The Consultant's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its agents, officers or employees.

ARTICLE VII

MEDIATION

7.1 **Mandatory Non-binding Mediation.** With the exception of Sections 2.5-2.8 of this Agreement, if a dispute arises out of, or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, prior to the initiation of any litigation, the Parties agree to attempt to settle the dispute in an amicable manner, using mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association [AAA] or any other neutral organization agreed upon before having recourse in a court of law.

7.2 **Mandatory Mediation Costs.** The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator [Mediator], and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the Parties, unless they agree otherwise.

7.3 **Selection of Mediator.** A single Mediator that is acceptable to both Parties shall be used to mediate the dispute. The Mediator will be knowledgeable in construction aspects and may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party. If the Mediator is selected from a list provided by AAA, the initiating Party shall concurrently file with AAA a "Request for Mediation" along with the appropriate fees, a list of three requested Mediators marked in preference order, and a preference for available dates.

7.3.1 If AAA is selected to coordinate the mediation [Administrator], within ten working days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order after striking any Mediators to which they have any factual objection, and a preference for available dates. If the opposing Party strikes all of initiating Party's preferred Mediators, opposing Party shall submit a list of three preferred Mediators listed in preference order to initiating Party and Administrator. Initiating Party shall file a list of preferred Mediators listed in preference order, after striking any Mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a Mediator.

7.3.2 The Administrator will appoint or the Parties shall agree upon the highest, mutually preferred Mediator from the individual Parties' lists who is available to serve within the designated time frame.

7.3.3 If the Parties agree not to use AAA, then a Mediator, date and place for the mediation shall be mutually agreed upon.

7.4 **Conduct of Mediation Sessions.** Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

7.4.1 Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

7.4.2 Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

ARTICLE VIII

INTELLECTUAL PROPERTY RIGHTS

8.1 **Work For Hire.** 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 (Deliverable Materials) is "work for hire" under the United States Copyright law and shall become the sole property of the City. The Contractor, including its employees, and independent Subcontractor(s), shall not assert any common law or statutory patent, copyright, trademark, or any other intellectual proprietary right to the City to the deliverable Materials.

8.2. **Rights in Data.** All rights (including, but not limited to publication(s), registration of copyright(s), and trademark(s)) in the Deliverable Materials, developed by the Contractor, including its employees, agents, talent and independent Subcontractors pursuant to this Agreement are the sole property of the City. The Consultant, including its employees, agents, talent, and independent Subcontractor(s), may not use any such Product mentioned in this article for purposes unrelated to Consultant's work on behalf of the City without prior written consent of the City.

8.3 **Intellectual Property Rights Assignment** Consultant, its employees, agents, talent, and independent Subcontractor(s) 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 Deliverable Materials; and

cooperate and assist in the prosecution of any action or opposition proceeding involving said rights and any adjudication of the same.

8.4 Moral Rights Consultant, its employees, agents, talent, and independent Subcontractor(s) hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Deliverable Materials which Consultant, its employees, agents, talent, and independent Subcontractor(s), may now have or which may accrue to Consultant, its employees, agents, talent, and independent Subcontractor(s)' benefit under U.S. or foreign copyright laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the and the right to object to any modification, translation or use of said content, and any similar rights existing under judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

8.5 Subcontracting In the event that Consultant utilizes a Subcontractor(s) for any portion of the Work that is in whole or in part of the specified Deliverable(s) to the City, the agreement between Consultant and the Subcontractor [Subcontractor Agreement] shall include a statement that identifies that the Deliverable/Work product as a "work-for hire" as defined in the Act and that all intellectual property rights in the Deliverable/Work product, whether arising in copyright, trademark, service mark or other belongs to and shall vest solely with the City. Further, the Subcontractor Agreement shall require that the Subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to the City, all titles, rights and interests in and to said Work/Deliverable, including all copyrights and other intellectual property rights. City shall have the right to review any Subcontractor agreement for compliance with this provision.

8.6 Publication. Consultant may not publish or reproduce any Deliverable Materials, for purposes unrelated to Consultant's work on behalf of the City without prior written consent of the City.

8.7 Intellectual Property Warranty and Indemnification. Consultant represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this contract are either original, not encumbered and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become 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 Consultant to produce, at Consultant's own expense, new non-infringing materials, deliverables or Works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Consultant 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 materials, deliverables, supplies, equipment, services or Works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claims of Infringement). If a Third Party Claim of Infringement is threatened or made before Consultant receives payment under this contract, City shall be entitled, upon written notice to Consultant, to withhold some or all of such payment.

8.8 Enforcement Costs. The Consultant agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in Article 8, including but not limited to, attorney's fees.

ARTICLE IX

MISCELLANEOUS

9.1 Notices. In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. For the purpose of this Agreement, unless otherwise agreed in writing, notice to the City shall be addressed to: Jennifer Wolff, Manager, City of San Diego Corporate Partnership Program, 1200 Third Ave., Suite 1700, San Diego, CA 91201, and notice to the Consultant shall be addressed to: The Pathfinder Group, 1641 S. Ponce de Leon Ave., Atlanta, GA 30307.

9.2 Headings. All article headings are for convenience only and shall not affect the interpretation of this Agreement.

9.3 Non-Assignment. The Consultant shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without the City's prior written approval. Any assignment in violation of this paragraph shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of the City. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee.

9.4 Independent Contractors. The Consultant and any Subcontractors employed by the Consultant shall be independent contractors and not agents of the City. Any provisions of this Agreement that may appear to give the City any right to direct the Consultant concerning the details of performing the Services, or to exercise any control over such performance, shall mean only that the Consultant shall follow the direction of the City concerning the end results of the performance.

9.5 Consultant and Subcontractor Principals for Consultant Services. It is understood that this Agreement is for unique Professional Services. Retention of the Consultant's Professional Services is based on the particular professional expertise of Ed Augustine. Accordingly, performance of Professional Services on the Project may not be delegated to other members of the Consultant's organization or to Subcontractors without the prior written consent of the City. It is mutually agreed that the members of the Project Team are the principal persons responsible for delivery of all Professional Services and may not be removed from the Project without the City's prior written approval. Removal of any member of the Project Team with out notice and approval by the City vide may be considered a default of the terms and conditions of this Agreement by the Consultant. In the event any member of the Project Team becomes unavailable for any reason, the City must be consulted as to any replacement. If the City does not approve of a proposed replacement, the City may terminate this Agreement pursuant to section 2.6 of this Agreement. Further, the City reserves the right, after consultation with the Consultant, to require any of the Consultant's employees or agents to be removed from the Project.

9.6 Covenants and Conditions. All provisions of this Agreement expressed as either covenants or conditions on the part of the City or the Consultant, shall be deemed to be both covenants and conditions.

9.7 Compliance with Controlling Law. The Consultant shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement. In addition, the Consultant shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

9.8 Jurisdiction and Attorney Fees. The jurisdiction and applicable laws for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in accordance with the laws of the State of California. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney fees in addition to any other award made in such suit or proceeding.

9.9 Successors in Interest. This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.

9.10 Integration. This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, amendment, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties . All prior negotiations and agreements are merged into this Agreement.

9.11 Counterparts. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

9.12 No Waiver. No failure of either the City or the Consultant to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

9.13 Severability. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

9.14 Additional Consultants or Contractors. The City reserves the right to employ, at its own expense, such additional Consultants or contractors as the City deems necessary to perform work or to provide the Services.

9.15 Employment of City Staff. This Agreement may be unilaterally and immediately terminated by the City, at its sole discretion, if the Consultant employs an individual who, within the last twelve months immediately preceding such employment did, in the individual's capacity as an officer or employee of the City, participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council or Mayor in connection with the selection of the Consultant.

9.16 Municipal Powers. Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.

9.17 Drafting Ambiguities. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

9.18 Signing Authority. The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

9.19 Conflicts Between Terms. If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

9.20 Reserved.

9.21 Exhibits Incorporated. All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

9.22 Survival of Obligations. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with this Agreement, as well as all continuing obligations indicated in this Agreement, shall survive, completion and acceptance of the Professional Services and termination or completion of the Agreement.

The remainder of this page has intentionally been left blank.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor or an authorized designee thereof, pursuant to San Diego Municipal Code section 22.3223, authorizing such execution, and by the Consultant.

THE CITY OF SAN DIEGO

Dated: 9/7/07

By: _____

I HEREBY CERTIFY that I can legally bind The Pathfinder Group and that I have read all of this Agreement this 30th day of August, 2007.

By: Edward E. Augustine
Authorized Representative
Managing Partner

I HEREBY APPROVE the form and legality of the foregoing Agreement this 4th day of October, 2007.

MICHAEL J. AGUIRRE, City Attorney

By: _____
Michael P. Calabrese
Chief Deputy City Attorney

EXHIBITS

NON-DESIGN PROFESSIONAL CONSULTANT LUMP SUM AGREEMENT

Exhibit A - Scope of Services

Exhibit B - Compensation and Fee Schedule

Exhibit C - Time Schedule

Exhibit D - Insurance

Exhibit E - City's Equal Opportunity Contracting Program Consultant Requirements
(AA) Work Force Report
(BB) Subcontractors List
(CC) Contract Activity Report

Exhibit F - Consultant Certification for a Drug-Free Workplace

Exhibit G - Consultant Evaluation Form

EXHIBIT A

SCOPE OF SERVICES

See Attached RFP and responsive proposal.

FIRST AMENDMENT TO THE CONSULTANT AGREEMENT BETWEENTHE CITY OF SAN DIEGO AND THE PATHFINDER GROUP

RECITALS

WHEREAS, The City of San Diego ("City") and The Pathfinder Group ("Consultant"), collectively referred to as "the Parties," entered into a Lump Sum Agreement For Marketing Consultant Services" ("Consultant Agreement"); and

WHEREAS, the Scope of Services for said Consultant Agreement includes certain consulting services to be provided by Consultant as specified in Section 1.1 of the Agreement; and

WHEREAS, Consultant's compensation for providing the Scope of Services is described in Section 3.1 of the Agreement; and

WHEREAS, the Parties have agreed to modify Consultant's Scope of Services and compensation; and

WHEREAS, the process for modifying Consultant's Scope of Services and compensation is described in Sections 1.3 and 3.2 of the Consultant Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree in this First Amendment to the Consultant Agreement ("First Amendment") as follows:

Section 1. Definitions (amends Section 1.1.1 of the Consultant Agreement)

1.1. The definition for "Partner" shall be replaced with the following definition: Partner means a participant in a Marketing Partnership who enters into a Marketing Partnership Agreement with the City (corporate Partner). Partner also means a vendor, identified in the Vendor Partnership Initiative and approved by the City, who agrees to reduce prices and/or engage in business practices that result in cost savings for the City (vendor Partner).

1.2 The definition for "Transaction Fee" shall be replaced with the following definition: Transaction Fee means a percentage of the total value of each marketing partnership with a corporate Partner or a business arrangement with a vendor Partner that is developed and finalized by the Marketing Consultant and approved and executed by the City. All transactions due and payable to the Marketing Consultant on multi-year marketing partnerships or business arrangements with Partners shall be limited to three (3) years.

1.3 Vendor Partnership Initiative means the actions by the City to work collaboratively with its vendors to find mutually agreeable ways for vendors to reduce prices and/or engage in business practices that result in cost saving for the City.

Section 2. Scope of Services (amends Section 1.3 of the Consultant Agreement)

The Scope of Services shall be expanded to include the performance of tasks that will generate revenue for the City from the reduction of prices and/or other cost saving initiatives with City vendors identified in the Vendor Partnership Initiative and approved by the City. The additional tasks include:

1. Recommend relevant information regarding procurement contracts to be included in a data base that will serve as a central information source for evaluating opportunities for this initiative and developing strategies to pursue these opportunities
2. Develop criteria to identify target vendors to begin discussions regarding cost saving opportunities
3. Based on the criteria, develop relevant information requests for data base manager, Purchasing and Contracting (P & C) staff and other sources that will result in gathering information to determine target list of vendors with whom to initiate discussions regarding cost saving opportunities
4. Meet with department heads, contract managers, procurement specialists and/or P & C staff that are involved in vendor contracts on target list, educate them about the initiative, get their ideas, suggestions and cooperation and develop strategy to meet with vendors
5. Design contract amendment template with City Attorney and P & C that will streamline the contract amendment process
6. Recommend negotiation team members and strategies; prepare and train negotiating team for first meeting with vendors
7. Meet with vendor and lead negotiations
8. Follow-up with vendors after first meeting
9. Prepare and train negotiating team for additional meetings with vendors
10. Follow-up with vendors after additional meetings
11. Close transactions
12. Work with contract manager, P & C and City Attorney to prepare and finalize contract amendment
13. Assist in supporting fulfillment of all rights and other business benefits negotiated in amended vendor contract
14. Assist in monitoring compliance with amended vendor contract

Section 3. Compensation and Travel Expenses (amends Section 1.1 and 3.2 of the Consultant Agreement)

In consideration of the Additional Services to be performed by Consultant, Consultant's compensation shall be modified as follows:

1. City shall pay Consultant a Retainer Fee of Seven Thousand Five Hundred Dollars ($7,500) per month. Said Retainer Fee shall be paid to Consultant for no more than three (3) months from the effective date of this First Amendment. Consultant's retainer fees shall not exceed Sixty Thousand ($60,000) in any calendar year.

2. City shall reimburse Consultant for reasonable travel and other business expenses. In order to receive reimbursement, said expenses shall be pre-approved by Project Manager, Jenny Wolff, Director of Strategic Partnerships. Said expenses shall be reimbursed to Consultant for expenses incurred for no more than three (3) months from the effective date of this First Amendment and not exceed Two Thousand Five Hundred Dollars ($2,500) per month or a total of Seven Thousand Five Hundred Dollars ($7,500). Travel and other business expenses shall be incurred and reimbursed in accordance with all City policies, regulations, guidelines and procedures related to travel.

3. Consultant shall receive a Transaction Fee for its participation in developing and closing all Marketing Partnerships and transactions with corporate Partners consistent with the Consultant Agreement and this First Amendment.

   Consultant shall also receive a Transaction Fee for its participation in transactions related to vendor Partners as defined in this First Amendment who, through Consultant's participation, agree to reduce prices and/or engage in business practices that result in cost savings for the City. Consultant's participation shall include, but not be limited to, negotiating and/or restructuring current and future contract and/or business terms with city vendors identified in the Vendor Partnership Initiative and approved by the City.

   The Transaction Fee for the types of transactions described in this paragraph shall remain at Ten Percent (10%) as specified in the Consultant Agreement.

All other provisions and terms of the parties Lump Sum Agreement for Marketing Consulting Services entered into on October 4, 2007 shall remain in full force and effect.

IN WITNESS WHEREOF, this First Amendment to the Consultant Agreement between the City of San Diego and The Pathfinder Group is executed by authorized representatives of the Parties.

THE CITY OF SAN DIEGO

Dated: 2/5/2010

By: Hildred Pepper Jr.
Hildred Pepper, Director
Purchasing & Contracts Department

FOR THE PATHFINDER GROUP

Dated: February 4, 2010

By: Ed Augustine
Ed Augustine, Managing Partner

I HEREBY APPROVE the form and legality of the foregoing First Amendment to the Consultant Agreement between the City of San Diego and The Pathfinder Group.

this 9 day of February, 2010.

JAN GOLDSMITH, City Attorney

By: William Gersten
William Gersten, Deputy City Attorney

SECOND AMENDMENT TO THE CONSULTANT AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND THE PATHFINDER GROUP

RECITALS

WHEREAS, The City of San Diego ("City") and The Pathfinder Group ("Consultant"), collectively referred to as "the Parties," entered into a Lump Sum Agreement For Marketing Consultant Services" ("Consultant Agreement"); and

WHEREAS, the Parties modified the Scope of Services and compensation of said Consultant Agreement by entering into a First Amendment to the Consultant Agreement ("First Amendment"); and

WHEREAS, the Parties desire to continue the Scope of Services, compensation and other provisions of said First Amendment effective at the expiration of the First Amendment; and

WHEREAS, the process for modifying Consultant's Scope of Services and compensation is described in Sections 1.3 and 3.2 of the Consultant Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree in this Second Amendment to the Consultant Agreement ("Second Amendment") as follows:

Section 1. Definitions (amends Section 1.1.1 of the Consultant Agreement)

1.1. The definition for "Partner" shall be replaced with the following definition: Partner means a participant in a Marketing Partnership who enters into a Marketing Partnership Agreement with the City (corporate Partner). Partner also means a vendor, identified in the Vendor Partnership Initiative and approved by the City, who agrees to reduce prices and/or engage in business practices that result in cost savings for the City (vendor Partner).

1.2 The definition for "Transaction Fee" shall be replaced with the following definition: Transaction Fee means a percentage of the total value of each marketing partnership with a corporate Partner or a business arrangement with a vendor Partner that is developed and finalized by the Marketing Consultant and approved and executed by the City. All transactions due and payable to the Marketing Consultant on multi-year marketing partnerships or business arrangements with Partners shall be limited to three (3) years.

1.3 Vendor Partnership Initiative means the actions by the City to work collaboratively with its vendors to find mutually agreeable ways for vendors to reduce prices and/or engage in business practices that result in cost saving for the City.

Section 2. Scope of Services (amends Section 1.3 of the Consultant Agreement)

The Scope of Services shall be expanded to include the performance of tasks that will generate revenue for the City from the reduction of prices and/or other cost saving initiatives with City vendors identified in the Vendor Partnership Initiative and approved by the City. The additional tasks include:

1. Recommend relevant information regarding procurement contracts to be included in a data base that will serve as a central information source for evaluating opportunities for this initiative and developing strategies to pursue these opportunities
2. Develop criteria to identify target vendors to begin discussions regarding cost saving opportunities
3. Based on the criteria, develop relevant information requests for data base manager, Purchasing and Contracting (P & C) staff and other sources that will result in gathering information to determine target list of vendors with whom to initiate discussions regarding cost saving opportunities
4. Meet with department heads, contract managers, procurement specialists and/or P & C staff that are involved in vendor contracts on target list, educate them about the initiative, get their ideas, suggestions and cooperation and develop strategy to meet with vendors
5. Design contract amendment template with City Attorney and P & C that will streamline the contract amendment process
6. Recommend negotiation team members and strategies; prepare and train negotiating team for first meeting with vendors
7. Meet with vendor and lead negotiations
8. Follow-up with vendors after first meeting
9. Prepare and train negotiating team for additional meetings with vendors
10. Follow-up with vendors after additional meetings
11. Close transactions
12. Work with contract manager, P & C and City Attorney to prepare and finalize contract amendment
13. Assist in supporting fulfillment of all rights and other business benefits negotiated in amended vendor contract
14. Assist in monitoring compliance with amended vendor contract

Section 3. <u>Compensation and Travel Expenses</u> (amends Section 1.1 and 3.2 of the Consultant Agreement)

In consideration of the Additional Services to be performed by Consultant, Consultant's compensation shall be modified as follows:

1. City shall pay Consultant a Retainer Fee of Seven Thousand Five Hundred Dollars ($7,500) per month. Said Retainer Fee shall be paid to Consultant for no more than three (3) months from the effective date of this Second Amendment. Consultant's retainer fees shall not exceed Sixty Thousand ($60,000) in any calendar year.

2. City shall reimburse Consultant for reasonable travel and other business expenses. In order to receive reimbursement, said expenses shall be pre-approved by Project Manager, Jenny Wolff, Director of Strategic Partnerships. Said expenses shall be

reimbursed to Consultant for expenses incurred for no more than three (3) months from the effective date of this Second Amendment and not exceed Two Thousand Five Hundred Dollars ($2,500) per month or a total of Seven Thousand Five Hundred Dollars ($7,500). Travel and other business expenses shall be incurred and reimbursed in accordance with all City policies, regulations, guidelines and procedures related to travel.

3. Consultant shall receive a Transaction Fee for its participation in developing and closing all Marketing Partnerships and transactions with corporate Partners consistent with the Consultant Agreement and this Second Amendment.

   Consultant shall also receive a Transaction Fee for its participation in transactions related to vendor Partners as defined in this Second Amendment who, through Consultant's participation, agree to reduce prices and/or engage in business practices that result in cost savings for the City. Consultant's participation shall include, but not be limited to, negotiating and/or restructuring current and future contract and/or business terms with city vendors identified in the Vendor Partnership Initiative and approved by the City.

   The Transaction Fee for the types of transactions described in this paragraph shall remain at Ten Percent (10%) as specified in the Consultant Agreement.

All other provisions and terms of the parties Lump Sum Agreement for Marketing Consulting Services entered into on March 1, 2007 shall remain in full force and effect.

IN WITNESS WHEREOF, this Second Amendment to the Consultant Agreement between the City of San Diego and The Pathfinder Group is executed by authorized representatives of the Parties.

THE CITY OF SAN DIEGO

Dated: 4/23/10

By: Hildred Pepper Jr
Hildred Pepper, Director
Purchasing & Contracts Department

FOR THE PATHFINDER GROUP

Dated: 4/26/10

By: Ed Augustine
Ed Augustine, Managing Partner

I HEREBY APPROVE the form and legality of the foregoing Second Amendment to the Consultant Agreement between the City of San Diego and The Pathfinder Group.

this 26TH day of APRIL, 2010.

JAN GOLDSMITH, City Attorney

By: William Gersten
William Gersten, Deputy City Attorney

reimbursed to Consultant for expenses incurred for no more than three (3) months from the effective date of this Second Amendment and not exceed Two Thousand Five Hundred Dollars ($2,500) per month or a total of Seven Thousand Five Hundred Dollars ($7,500). Travel and other business expenses shall be incurred and reimbursed in accordance with all City policies, regulations, guidelines and procedures related to travel.

3. Consultant shall receive a Transaction Fee for its participation in developing and closing all Marketing Partnerships and transactions with corporate Partners consistent with the Consultant Agreement and this Second Amendment.

   Consultant shall also receive a Transaction Fee for its participation in transactions related to vendor Partners as defined in this Second Amendment who, through Consultant's participation, agree to reduce prices and/or engage in business practices that result in cost savings for the City. Consultant's participation shall include, but not be limited to, negotiating and/or restructuring current and future contract and/or business terms with city vendors identified in the Vendor Partnership Initiative and approved by the City.

   The Transaction Fee for the types of transactions described in this paragraph shall remain at Ten Percent (10%) as specified in the Consultant Agreement.

All other provisions and terms of the parties Lump Sum Agreement for Marketing Consulting Services entered into on March 1, 2007 shall remain in full force and effect.

IN WITNESS WHEREOF, this Second Amendment to the Consultant Agreement between the City of San Diego and The Pathfinder Group is executed by authorized representatives of the Parties.

THE CITY OF SAN DIEGO

Dated: 4/23/10

By: Hildred Pepper Jr
Hildred Pepper, Director
Purchasing & Contracts Department

FOR THE PATHFINDER GROUP

Dated: _____

By: _____
Ed Augustine, Managing Partner

I HEREBY APPROVE the form and legality of the foregoing Second Amendment to the Consultant Agreement between the City of San Diego and The Pathfinder Group.

this _____ day of _____, 2010.

JAN GOLDSMITH, City Attorney

By: _____
William Gersten, Deputy City Attorney

[PROPOSED] THIRD AMENDMENT TO THE CONSULTANT AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND PATHFINDER GROUP

RECITALS:

WHEREAS, The City of San Diego ("City") and The Pathfinder Group ("Consultant"), collectively referred to as "the Parties," entered into an Agreement for Marketing Consulting Services ("Consultant Agreement") on or about October 4, 2007; and

WHEREAS, the Parties have previously amended the scope and certain payment terms of the Consultant Agreement in the First Amendment, fully executed on February 9, 2010, and again in the Second Amendment, fully executed on April 26, 2010; and

WHEREAS, the Parties wish to amend the Consultant Agreement a third time, to extend the term through February 28, 2012 and to add provisions required by the Equal Benefits Ordinance, enacted by Ordinance No. O-2011-17 Rev. (codified at San Diego Municipal Code sections 22.4301 *et seq.*), which became effective on January 1, 2011.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree in this Third Amendment to the Consultant Agreement ("Third Amendment") as follows:

1. Section 2.1 (Term of the Agreement) is <u>amended</u> to read as follows:

   > This Agreement shall be effective on the date it is executed by the last party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40. Unless otherwise terminated, it shall be effective until February 28, 2012, except that Consultant will continue to be entitled to Transaction Fees (as defined in Section 1.1 of the Agreement and Consultant's Price Proposal) for multi-year marketing partnerships entered into on or before February, 28, 2012. In no event will Consultant be entitled to Transaction Fees after February 28, 2015.

2. Section 9.23 (Equal Benefits Ordinance) is <u>added</u> to read as follows:

   > This Agreement is subject to the City of San Diego's Equal Benefits Ordinance [EBO], Chapter 2, Article 2, Division 43 of the SDMC. In accordance with the EBO, the Consultant shall certify that it will provide and maintain equal benefits as defined in SDMC §22.4302 for the Term of this Agreement. [SDMC §22.4304(f)]. Failure to maintain equal benefits is a material breach of this Agreement [SDMC §22.4304(e)]. Consultant must notify employees of their equal benefits policy at the time of hire and during open enrollment periods and must post a copy of the following statement in an area frequented by employees:

"During the performance of a contract with the City of San Diego, this employer will provide equal benefits to its employees with spouses and its employees with domestic partners."

Consultant also must give the City access to documents and records sufficient for the City to verify the Consultant is providing equal benefits and otherwise complying with EBO requirements. The full text of the EBO and the Rules Implementing the Equal Benefits Ordinance are posted on the City's website at www.sandiego.gov/purchasing/ or can be requested from the Equal Benefits Program at (619) 533-3948.

3. All other provisions and terms of the Consultant Agreement, First Amendment, and Second Amendment shall remain in full force and effect.

In Witness Whereof, this Third Amendment between the City and Consultant is executed by authorized representatives of the Parties.

THE CITY OF SAN DIEGO

Date _____ By _____

Hildred Pepper Jr., Director P&C

PATHFINDER GROUP, INC.

Date _____ By _____

I hereby approve the form and legality of the foregoing Third Amendment to the Consultant Agreement between the City and Pathfinder Group, this ___day of _____, 2011.

JAN I. GOLDSMITH, City Attorney

By _____

Sanna R. Singer, Deputy City Attorney