



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: May 11, 2011 REPORT NO: 11-072

ATTENTION: Natural Resources and Culture Committee

SUBJECT: Agreement for Services between the City of San Diego and Dr. Carol Williams, San Diego Civic Organist

REFERENCE: Report No. 11-053

REQUESTED ACTION:

1. Authorize the Mayor or his Designee to award and execute, for and on behalf of the City of San Diego (City), an Agreement with Dr. Carol Williams, San Diego Civic Organist, for a term not to exceed ten (10) years, until completion of the Scope of Services or June 30, 2021; whichever is the earliest.
2. Authorize the Chief Financial Officer to expend an amount not to exceed \$286,000 over the ten (10) year term of the Agreement, for the purpose of funding the Agreement with Dr. Carol Williams contingent upon the City Council adoption of the approved Ordinance for the applicable Fiscal Year and the Comptroller certification that the funds necessary for this expenditure are, or will be on deposit in the City Treasury.
3. Authorize the Chief Financial Officer to expend \$28,860 in Fiscal Year 2012 from Transient Occupancy Tax which the Park and Recreation Department will receive for promotional related activity to cover this expense, for the purpose of funding year one (1) of the Agreement, contingent upon the adoption of the Fiscal Year 2012 Appropriation Ordinance and the Comptroller certification that funds necessary for this expenditure are, or will be on deposit in the City Treasury.

STAFF RECOMMENDATION:

Approve the requested actions.

It is the professional judgment of the Park and Recreation Department management team that this contract to provide partial funding of the Civic Organist position is consistent with the goals of the Department, as it assures a beloved civic tradition of free public concerts in Balboa Park.

BACKGROUND:

On April 20, 2011 Report No. 11-053 regarding authorization of an Agreement between the City and Dr. Carol Williams, San Diego Civic Organist, was presented to the Natural Resources and Culture Committee (Committee). The Committee directed Park and Recreation Department (Department) staff to conduct additional research as follows:

- Respond to all requests for information
- Refer the Agreement, with a request for funding, to the Commission for Arts and Culture, Corporate Partnerships and the Spreckels Organ Society
- Request that the Office of the City Attorney review the Agreement that the City has regarding the Spreckels Organ Pavilion to determine the City's funding obligations
- Return to the May 18, 2011 NR&C Committee meeting with all requested information

The Austin Organ and the Spreckels Organ Pavilion, located in Balboa Park were dedicated on New Year's Eve, December 31, 1914, and gifted to the City in a Deed of Gift on January 1, 1915, by philanthropists John D. and Adolph B. Spreckels. The condition placed on their gift to the City was that the concerts should always be free. The Board of Park Commissioners accepted the gifts on behalf of the City. The Deed stated, "To keep, insure and maintain the said organ and building for the free use, benefit and enjoyment of the people." (Attachment 2)

While the Deed of Gift is displayed at the Spreckels Organ Pavilion and in the California Room at the Central Library, the City Clerk was not able to locate a Resolution or Contract regarding the City's acceptance of the Spreckels Organ and the Spreckels Organ Pavilion. The Deed of Gift does not obligate the City to provide any certain number of free concerts.

The Spreckels Company funded the positions of City Organist and Curator until the City of assumed financial responsibility on September 1, 1929. Seven (7) persons have held the

position of San Diego Civic Organist and four (4) persons the position of Spreckels Organ Curator. In 1932, the designation of City Organist was renamed Civic Organist. Organists have included:

- Dr. Humphrey John Stewart 1917 – 1932
- Royal Alton Brown 1932 - 1954
- Charles Rollin Shatto 1954-1957
- Douglas Ian Duncan 1957 -1978
- Jared Jacobsen 1978 – 1984
- Robert Plimpton 1985 – 2000
- Dr. Carol Williams 2001 - Present

Curators have included:

- Roy Tolchard 1915 - 1932
- Edwin A. Spencer 1932 - 1947
- Leonard Dowling 1947 - 1974
- Lyle Blackinton 1974 - Present

The free Organ Concerts, International Summer Organ Festivals and children's concert series bring an estimated 100,000 people to Balboa Park annually, and are steeped in tradition. The custom of beginning each concert with "America, The Beautiful" and ending each with the "Star-Spangled Banner" began with Dr. Humphrey Stewart, the first City Organist on April 16, 1917, the day that America entered World War I. It continues to this day. More recently, the Civic Organist has opened each December Nights celebration with a concert of traditional music and also provides music for the annual tree-lighting ceremony.

As the San Diego Civic Organist, Dr. Williams is responsible for fifty-two (52) or fifty-three (53) Sunday concerts and three (3) civic events each year. She is compensated \$28,860 per fifty-two (52) week year or \$29,415 per fifty-three (53) week year. The concerts are one hour in duration, each Sunday at 2:00 PM. There are approximately thirty (30) hours spent each week on preparation and responsibilities for each concert, including programming the concert; organizing guest artists; rehearsing; setting up the organ for the concert; preparing publicity materials and associated correspondence; and meeting with the public after each concert. The hourly rate for performing these duties equates to approximately \$18.50 per hour based upon a thirty (30) hour week. Dr. Williams also receives diplomats on behalf of the City and meets with supporters from around the globe.

Dr. Williams has provided her services to the City and community without compensation on numerous occasions, notably when tens of thousands of San Diegans gathered at the Organ Pavilion to mourn the events of Sept. 11, 2001, with a program designed to promote healing and civic unity.

The position of Civic Organist could not exist without private funding. This funding is provided by the Spreckels Organ Society (Society) which employs the Civic Organist as its Artistic Director. The Society pays Dr. Williams an annual salary of \$35,798 and provides her health benefits. The Society is a non-profit organization that has partnered with the City for 23 years. In addition to augmenting the compensation of the Civic Organist, the Society has provided tens of thousands of volunteer hours during its existence toward the promotion, programming and preservation of the Spreckels Organ, and raises \$70,000 annually to produce the International Summer Organ Festival through sponsorships, donations and other fund-raising. The Festival provides park visitors free concerts on Monday nights from mid-June to the end of August.

Lyle Blackinton is the Curator for the Spreckels Organ. L. W. Blackinton and Associates, Inc. are responsible for the maintenance, tuning, adjustments and minor repairs by two (2) persons at \$420 per month. Mr. Blackinton also provides stand-by service for the fifty-two (52) or fifty-three (53) Sunday concerts at \$157.50 per week. Total annual cost of the City Purchase Order for Fiscal Year 2011 is \$13,230.

In 2010, he also received \$1,500 or \$150 per additional event for stand-by pay. In 2010 the Society paid Mr. Blackinton \$1,600 for the sixteen (16) Off Campus Integrated Learning Experiences concerts for children and \$1,100 for the eleven (11) Summer Organ Festival Concerts.

The Curator is always present whenever the organ is on stage for rehearsals or performances. He works closely with the Civic Organist, serving as on stage manager and host, provides input regarding the long term care of the organ and ensures that the historical integrity of the Spreckels Organ is maintained. The Curator also serves as console assistant, turning the sheets of music and preventing them from being blown away by the wind at organ concerts.

The Society was founded in 1988 as a non-profit California corporation. The mission of the Society is to preserve, program and promote the Spreckels Organ as a world treasure. The Society has been granted a Special Use Permit by the Department because the City desires to

provide facilities to its citizens, guest, non-commercial local societies, clubs and organizations engaged in civic, social, educational, cultural, recreational or philanthropic work or activities.

As such, the Society has the ability, in the promotion and sponsorship of such activities, to generate revenues from voluntary contributions, special events, membership dues and fund raising projects. In 2010 the proceeds from the sale of Compact Discs (CD) totaled \$677. The Society is also funded by voluntary contributions, individual memberships, foundations, corporations, and government art agencies.

The Society, City's Commission for Arts and Culture (Commission) and City's Corporate Partnership Program were all contacted to discuss the feasibility of funding the San Diego Civic Organist. It was determined in each instance that funding the position was not viable. The Society is currently funding Dr. Williams' position as their Artistic Director and does not have additional resources to also fund the Civic Organist position.

In order for the Commission to consider funding the Civic Organist position, recommendations for Fiscal Year 2012 would have to be reconsidered and a program recommended for funding would have to be defunded. The Commission operates its Allocations Programs with a thoroughly vetted, competitive and public application process which does not guarantee funding on an annual basis. Currently, the Commission is recommending \$16,104 in funding to the Society as part of the Organizational Support Program (OSP) process.

Corporate sponsorship of the Civic Organist and the requisite commercial signage acknowledging sponsorship is not consistent with the Secretary of the Interior requirements for National Historic Landmark Zones.

It was also suggested that perhaps the Balboa Park Conservancy (Conservancy) may be an avenue for funding the Civic Organist. The Conservancy has formulated and approved the necessary corporate documents, their Articles of Incorporation and Organizational By-Laws. These documents will be submitted to receive their 501 (c) 3 status as a non-profit organization. It is anticipated that this process will be finalized by July 1, 2011, the beginning of Fiscal Year 2012. Since the Conservancy does not yet have their non-profit status, fundraising is not possible at this time.

SUMMARY:

It is the professional judgment of the Park and Recreation management team that this contract to provide partial funding of the Civic Organist position is consistent with the goals of the Department, as it assures a beloved civic tradition of free concerts in Balboa Park.

Authorize the Mayor or his Designee to execute an Agreement with Dr. Carol Williams, San Diego Civic Organist, for a term not to exceed ten (10) years, until completion of the Scope of Services or June 30, 2021; whichever is the earliest.

FISCAL CONSIDERATIONS:

Funding in the amount \$286,000 will be available in the Park and Recreation Department Budget for the duration of the Agreement.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Dr. Carol Williams has held the position of San Diego Civic Organist since 2001, when she was selected after an extensive worldwide talent search. Fifty-three candidates from the United States, United Kingdom, South Korea, Canada and Europe expressed interest in the position of the San Diego Civic Organist. The Selection Panel was comprised of the Balboa Park Cultural Arts District Manager and Area Manager, the Founding President and Chair of the Board of the Spreckels Organ Society, President of the Society, Vice-President of the Society, Spreckels Organ Curator, San Diego Civic Organist Emeritus and Society members.

KEY STAKEHOLDERS AND PROJECT IMPACTS:

Visitors to Balboa Park. The 2010 study conducted by the Trust for Public Land determined that Balboa Park was the single greatest tourist attraction in San Diego. Park derived tourist spending totaled \$114.2 million.



Scott Reese, Assistant Director
Park and Recreation Department

- Attachments: 1. Agreement for Services Between the City of San Diego and Dr. Carol Williams, San Diego Civic Organist
2. The Deed of Gift for the Spreckels Organ and Pavilion



THE CITY OF SAN DIEGO
AGREEMENT FOR SERVICES
BETWEEN
THE CITY OF SAN DIEGO
AND

DR. CAROL WILLIAMS, SAN DIEGO CIVIC ORGANIST

ORDINANCE NUMBER: _____

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation [City], and Dr. Carol Williams [Contractor] as the Contractor to provide services to the City as the San Diego Civic Organist.

ARTICLE I

SERVICES

1. **Scope of Services.** The Contractor shall provide Services to the City as set forth in Exhibit A attached and at the direction 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 completion of the Scope of Services or June 30, 2021; whichever is the earliest but not to exceed ten (10) years. The total duration of this contract shall not exceed ten (10) years as approval by the City of San Diego Council by Ordinance _____ pursuant to San Diego City Charter Section 99.

2.2 **Time of Essence.** Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement.

2.3 **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 Contractor. 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 Contractor. Contractor will be entitled to fair and reasonable compensation for all services completed in compliance with this Agreement prior to the notice of termination.

2.4 **City's Right to Terminate for Default.** If the Contractor fails to satisfactorily perform any obligation required by this Agreement, the Contractor's failure constitutes a Default. A Default includes the Contractor's failure to adhere to the Time Schedule. If the Contractor 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 Contractor 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 Contractor for performance of all Services rendered in accordance with the scope of work in Section 1 of this Agreement, including reasonably related expenses for a total not to exceed (\$286,000) TWO HUNDRED EIGHTY SIX THOUSAND DOLLARS over the ten year period approved by the City Council approved Ordinance.

3.2 Additional Services. The City may require that the Contractor perform additional Services beyond those described in the Scope of Services [Additional Services]. Prior to the Contractor's performance of Additional Services, the City and the Contractor must agree in writing upon a fee for the Additional Services, including reasonably related expenses, in accordance with the Compensation and Fee Schedule.

3.3 Manner of Payment. The City shall pay the Contractor in accordance with the Compensation and Fee Schedule (Exhibit B). For the duration of this Agreement, the Contractor shall not be entitled to fees, including fees for expenses, that exceed the amounts specified in the Compensation and Fee Schedule. The Contractor shall submit one invoice per calendar month in a form acceptable to City in accordance with the Compensation and Fee Schedule. The Contractor 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. Invoice shall be mailed to the following address:

Monica Davis, Administrative Aide,
City of San Diego Parks & Recreation
(619)235-5932 Fax (619) 235-1112
mdavis@sandiego.gov

ARTICLE IV
CONTRACTOR'S OBLIGATIONS

4.1 Industry Standards. The Contractor agrees that the Services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent professional organist, 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 Council, Mayor, or other representatives of the City is required, it is understood to be general approval only and does not relieve the Contractor of responsibility for complying with all applicable laws, codes, and good consulting practices.

4.2 Maintenance of Records. The Contractor shall maintain books, records, logs, documents and other evidence sufficient to record all actions taken with respect to the rendering

of the Services for the Project, throughout the performance of the Services and for a period of ten years following completion of the Services for the Project. The Contractor further agrees to allow the City to inspect, copy, and audit such books, records, documents and other evidence at all reasonable times.

4.3 Insurance. The Contractor shall not begin any work under this Services Agreement until it has: (a) obtained, and upon the City's request provided to the City, insurance certificates reflecting evidence of all insurance required in below; however, the City reserves the right to request, and the Contractor shall submit, copies of any policy upon reasonable request by the City; (b) obtained City approval of each insurance company or companies; and (c) confirmed that all policies contain the specific provisions required below. Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Contractor'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. The Contractor shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement.

4.3.1 Types of Insurance. At all times during the term of this Agreement, the Contractor shall maintain insurance coverage as follows:

Commercial General Liability. Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$ 1 million per occurrence and subject to an annual aggregate of \$2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

Commercial Automobile Liability. For all of the Contractor's automobiles including owned, hired and non-owned automobiles, the Contractor shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

Workers' Compensation. For all of the Contractor's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Contractor shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and the Contractor shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

4.3.2 Deductibles. All deductibles on any policy shall be the responsibility of the Contractor and shall be disclosed to the City at the time the evidence of insurance is provided.

4.3.3 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Contract or in the Special General Conditions shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are

authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the City.

The City will accept insurance provided by non-admitted, “surplus lines” carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

4.3.4 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to the City before any work is initiated under this Agreement.

Commercial General Liability Insurance Endorsements

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of Contractor’s insurance and shall not contribute to it.

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that the Contractor’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability and shall provide cross-liability coverage.

Automobile Liability Insurance Endorsements

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of the Consultant.

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that Contractor’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability and shall provide cross-liability coverage.

Worker’s Compensation and Employer’s Liability Insurance Endorsements

WAIVER OF SUBROGATION. The Worker’s Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City and its

respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the City.

4.3.5 Reservation of Rights. The City reserves the right, from time to time, to review the Contractor's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to the City. The City will reimburse the Contractor for the cost of the additional premium for any coverage requested by the City in excess of that required by this Agreement without overhead, profit, or any other markup.

4.3.6 Additional Insurance. The Contractor may obtain additional insurance not required by this Agreement.

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

4.4 Drug-Free Workplace. The Contractor 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 (Exhibit "C").

4.5 ADA Certification. The Contractor hereby certifies that it agrees to comply with the City's Americans With Disabilities Act Compliance/City Contracts requirements set forth in Council Policy 100-04, adopted by San Diego Resolution R-282153 and incorporated into this Agreement by this reference.

4.6 Non-Discrimination Requirements.

4.6.1 Compliance with the City's Equal Opportunity Contracting Program. The Contractor shall comply with the City's Equal Opportunity Contracting Program Contractor Requirements. The Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Contractor shall provide equal opportunity in all employment practices. The Contractor shall ensure that its Sub-consultants comply with the City's Equal Opportunity Contracting Program Contractor Requirements. Nothing in this Section shall be interpreted to hold the Contractor liable for any discriminatory practice of its Sub-consultants. The Contractor's hiring or retaining of any Sub-contractor to perform services is subject to prior written approval by the City. Should the Contractor retain Sub-consultants with the City's written approval, the Contractor shall comply with all Equal Opportunity Contracting (EOC) requirements. For applicable rules and forms see <http://www.sandiego.gov/eoc/index.shtml>.

4.6.2 Non-Discrimination Ordinance. The Contractor 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 Sub-consultants, vendors or suppliers. The Contractor shall provide equal opportunity for Sub-consultants to participate in sub-consulting opportunities. The Contractor understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, and other sanctions. This language shall be in contracts between the Contractor and any Sub-consultants, vendors and suppliers.

4.6.3 Compliance Investigations. Upon the City's request, the Contractor agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all Sub-consultants, vendors, and suppliers that the Contractor 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 Contractor for each subcontract or supply contract. The Contractor 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 Contractor 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 Contractor up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. The Contractor 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 Conflict of Interest. The Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq. and 81000, et. seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at sections 27.3501 to 27.3595.

4.8 Vendor Registration Form. All prospective consultants and sub-consultants, as well as existing consultants and sub-consultants, are required to complete and submit the online Contractor/Vendor Registration form. Registration will be a prerequisite for the following: submission of future contractor agreements or sub-contractor agreements for City projects; acceptance of all future contractor bills and invoices submitted to the City; and award of all future contracts issued by the City. The Contractor can register at <http://www.sandiego.gov/purchasing/vendor/index.shtml>. Contractor/Vendor Registration shall remain valid for two years from the date the registration form is originally submitted, and must be renewed at that time.

4.9 Business Tax Certificate. 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 Contractor to provide a copy of their Business Tax License, or a copy of their application receipt. Failure to provide the required documents with this agreement may result in a Contractor being declared non-responsive and rejected.

4.10 Equal Benefits. Effective January 1, 2011, any contract entered into, awarded, amended, renewed, or extended is subject to the City's Equal Benefits Ordinance (EBO). In accordance with the EBO, the Consultant must certify it will provide and maintain equal benefits as defined in section 22.4302 of the municipal code for the remaining duration of this Agreement. Failure to maintain equal benefits is a material breach of the Agreement. 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.

The Consultant must also give the City access to documents and records sufficient for the City to verify the Consultant is providing equal benefits and otherwise complying with the EBO. The full text of the EBO and the rules implementing the EBO 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.

4.11 Submittals. Failure to provide the required submittals listed below with the agreement shall delay completion of the agreement, and therefore, commencement of scope of work and payments to Consultant.

- Complete Insurance Certificates with all Endorsements per Section 4.3;
- Signed Drug Free Workplace Form per 4.4 (Form attached);
- Online Vendor Registration per 4.8 (Form attached);
- Business Tax License per Section 4.9;
- Taxpayer Identification Number (W-9) as specified in City of San Diego General Provisions, Section C, paragraph 15, if not currently on file. (<http://www.irs.gov/formspubs/lists>);
- Vendor Registration Form (attached);
- Workforce Form (attached);
- Equal Benefits Form www.sandiego.gov/purchasing/.

ARTICLE V

INDEMNIFICATION

5.1 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 Contractor's employees, agents, and officers, arising out of any services performed under this Agreement, the Contractor 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 Contractor'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.

5.2 Insurance. The provisions of this Article are not limited by the requirements of Section 4.3 related to insurance.

5.3 Enforcement Costs. The Contractor agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in this Article.

ARTICLE VI

MISCELLANEOUS

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

6.2 Independent Consultants. The Contractor and any Sub-consultants employed by the Contractor shall be independent consultants and not agents of the City. Any provisions of this Agreement that may appear to give the City any right to direct the Contractor concerning the details of performing the Services, or to exercise any control over such performance, shall mean only that the Contractor shall follow the direction of the City concerning the end results of the performance.

6.3 Jurisdiction and Venue. The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California.

6.4 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.

6.5 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: City of San Diego, Susan Lowery-Mendoza, District Manager, Park & Recreation Department, 2125 Park Blvd, San Diego, CA 92101. Notices for the Contractor shall be addressed to: Dr. Carol Williams, 2820 6th Ave. Apt. 10, San Diego, CA 92103-6313.

6.6 Product Endorsement. The Contractor shall conform to the City's Administration Regulation 95.65 concerning product endorsement which requires that any advertisement referring to the City as a user of a product or service will require the prior written approval of the City Manager.

6.7 Ownership of Documents. The City reserves full rights of ownership of all finished or unfinished documents, data, studies, surveys, reports and other material prepared by Contractor under this Agreement.

6.8 Integration/Amendments. This Agreement represents the entire understanding of the City and the Contractor as to those matters contained herein. No prior oral or written

Dr. Carol Williams, San Diego Civic Organist

understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by both parties.

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

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor or designee, pursuant to Ordinance O-_____ authorizing such execution, and by Dr. Carol Williams.

I HEREBY CERTIFY that I can legally bind Dr. Carol Williams and that I have read all of this Agreement this _____ day of _____, 2011.

DR. CAROL WILLIAMS

BY: _____
CONTRACTOR

DATE: _____

**CITY OF SAN DIEGO
A MUNICIPAL CORPORATION**

BY: _____
Hildred Pepper, Jr. Purchasing Agent

DATE _____

I HEREBY APPROVE the form and legality of the foregoing Agreement this _____ day of _____, 2011.

Jan Goldsmith, City Attorney:

By: _____
Deputy City Attorney

Exhibits to Agreement:

- Exhibit A – Background & Scope of Work
- Exhibit B- Compensation and Fee Schedule
- Exhibit C – Drug Free Workplace Form

EXHIBIT "A"

BACKGROUND AND SCOPE OF SERVICES

Background: The Spreckels Outdoor Pipe Organ is the world's largest outdoor pipe organ, played throughout the year in Balboa Park. In 1915 philanthropists, John D. and Adolph B. Spreckels gifted the Austin Organ and the Spreckels Organ Pavilion to the City of San Diego for the free enjoyment of its citizens. A bronze plaque at the Spreckels Organ Pavilion commemorates the Spreckels' intention. The tablet reads in part, "For the free use, benefit, and enjoyment of the People of San Diego... To them and the people of the world this pavilion and organ are dedicated." The organ has been in continuous service since then and the City of San Diego funded the position of Civic Organist since 1926 to provide free weekly organ concerts, a San Diego tradition, in the Spreckels Organ Pavilion in Balboa Park.

The Spreckels Organ Society works cooperatively with the City to program, preserve and promote this unique instrument. Dr. Williams's full time position as the San Diego Civic Organist and Artistic Director of the SOS is jointly funded by the City and the SOS. The position requires a high level of organ performance, skill, stage presence, organizational and administrative ability, as well as creativity and a strong commitment to community outreach. Her position permits time for additional concertizing, teaching, community involvement, and personal development. She is an Independent Contractor for the City of San Diego and a salaried employee for the SOS, reporting to their Board of Trustees.

As the SOS Artistic Director, Dr. Williams serves as an Ex Officio member of the Board of Trustees. She meets with a variety of committees to guide the SOS to fulfill their Mission to, "Preserve, Program and Promote the Spreckels Organ as a world treasure for all people." She works with the Board to set goals, budget preparation, program development, publicity, promotion and long range planning.

Dr. Carol Williams has held the position of San Diego Civic Organist since 2001, when she was selected after an extensive worldwide talent search. She is the first woman to be appointed Civic Organist in the United States. Fifty-three (53) candidates from the United States, United Kingdom, South Korea, Canada and Europe expressed interest in the position of the San Diego Civic Organist.

The Selection Panel was comprised of the Balboa Park Cultural Arts District Manager and Area Manager, the Founding President and Chair of the Board of the Spreckels Organ Society (SOS), President of the SOS, Vice-President of the SOS, Spreckels Organ Curator, San Diego Civic Organist Emeritus and SOS members.

Dr. Williams studied at London's Royal Academy of Music. She was awarded all of the prizes for organ performance. Afterwards she studied in Paris, France, at Yale University, and New York's Manhattan School of Music where she earned her Doctorate in Music and the Helen

Cohn Award. Dr. Williams has been awarded an Honorary Fellow of the North and Midlands School of Music (Hon. FNMSM) in the United Kingdom.

She has performed all over the world, at Westminster Abbey and St. Paul's Cathedral in London; Notre-Dame Cathedral and St. Sulpice in Paris; St. Patrick's Cathedral and Riverside Church in New York; St. Bartholomew's in Brighton; Holy Trinity Blythburgh; St. Mary's in Great Yarmouth; the Winchfield Festival in Hampshire; in Poland; and at the Peter Eben Festival sponsored by the American Embassy in Prague.

Dr. Williams is instrumental in the planning and administration of the International Summer Organ Festival, thirty (30) weekly educational outreach concerts for children, the Guest of the Month Sunday Concerts and programs for membership events. She has made audio and video recordings for sale by the SOS. One of her Compact Discs, Sundays at 2, played on the historic Spreckels Organ features a playlist that typifies the weekly free concerts. It is a wonderful remembrance for Balboa Park visitors.

Dr. Williams supervises the use of the Organ by all guest or substitute organists. She works closely with the Balboa Park Cultural Arts District Manager and Area Manager as well as the Organ Curator. Dr. Williams has exercised creativity to maximize the Organ's appeal to the diverse residents of San Diego as well as worldwide guests who are drawn to this prominent tourist attraction. As an example, she has hosted Halloween Costume Contests, Dog Parades, the January 1, 2005 Birthday Party for the Spreckels Organ and other musical events with a wide repertoire of instrumentation.

Scope of Services: As an Independent Contractor for the City, Dr. Williams is responsible for one (1) hour Sunday concerts on the Spreckels Organ for each Sunday of the year, whether there be fifty-two (52) or fifty-three (53) Sundays in the year, Contractor is obligated to perform a maximum of three (3) civic events per year gratis such as the Community Christmas Center and Balboa Park December Nights. Scheduled concerts are to be performed on Sundays from 2:00 p.m. – 3:00 p.m. in Balboa Park. She has the right of first refusal for any additional events at the Spreckels Organ Pavilion such as graduations, weddings, memorial services, or convention concerts for an additional fee.

Technical Requirements: Possess a high degree in Organ Performance (doctorate preferred); demonstrate perfect musical pitch; ability to program and perform all music genres; command of the English language to explain the music being presented to the audience; supervise the use of the organ by all guests or substitute organists; have the right of refusal for all additional events which may request the use of the organ for an additional fee; ability to work closely with City staff on all uses of the organ; work with the Organ Curator concerning the organ's maintenance and expansion; exercise creativity in finding ways to maximize the organ's appeal to the diverse residents of San Diego and tourists; have knowledge, skills and abilities to initiate press contacts and submittal of articles to promote the organ; ability to perform an audition concert to be reviewed by a committee comprised of representatives from the City, the Spreckels Organ Society and other prominent community musicians on a Sunday; provide performance history; submit sample programs for six months of purposed Sunday concerts, past concert history reviews and references from major concert artists.

EXHIBIT "B"

COMPENSATION AND FEE

Contractor will receive \$555.00 per Sunday concert, billed monthly. Contractor is obligated to perform a maximum of three (3) civic events per year gratis.

Contractor shall be paid monthly, in arrears, for work performed satisfactorily. Billing shall be in accordance with the current Pricing Agreement, allowing for City approved adjustments if any. Invoices shall be submitted to the Contract Administrator or designee, at the address specified on the Purchase Order(s). One (1) invoice identified as the original invoice and one (1) identified invoice copy shall be submitted by the 7th of the following month work was performed. The invoice shall reference the purchase order number; include a description of the work performed by dates.

Any extra-ordinary work to include the date and description of work performed shall be provided and Contractor must attach written authorization from Contract Administrator approving extra-ordinary work. Failure to do so will result in payment being withheld for such services.

EXHIBIT "C"

CONTRACTOR CERTIFICATION FOR A DRUG-FREE WORKPLACE

PROJECT TITLE: _____

I hereby certify that I am familiar with the requirement of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace as outlined in the request for proposals, and that:

Name under which business is conducted

has in place a drug-free workplace program that complies with said policy. I further certify that each subcontract agreement for this project contains language which indicates the Subcontractors agreement to abide by the provisions of Section 4.9.1 subdivisions A through C of the policy as outlined.

Signed _____

Printed Name _____

Title _____

Date _____

This Deed of Gift, made this First day of January, 1915

WITNESSETH:

In consideration of our appreciation of the good people of San Diego, of our desire to contribute something to their benefit and enjoyment, and of our earnest wish that they may live and prosper in peace and harmony, we, John D. Spreckles and Adolph B. Spreckles, do hereby give and grant, alien and confirm unto Carl I. Ferris, Charles T. Chandler and John F. Forward, Jr., members of and constituting the Board of Park Commissioners of the City of San Diego, State of California, and to their successors in office forever all of our right, title and interest in and to that certain organ, purchased by us from the Austin Organ Company, of Hartford, Connecticut, and to the building wherein it is placed, which we have cause to be constructed, all situated and being in Balboa Park in the said City of San Diego.

TO HAVE AND TO HOLD the same, in trust, nevertheless, for the users and purposes and with the powers hereinafter mentioned, namely:

FIRST: To keep, insure and maintain the said organ and building for the free use, benefit and enjoyment of the people.

SECOND: If by any change to the laws the jurisdiction or control of the said Carl I. Ferris, Charles T. Chandler and John F. Forward, Jr., or successors, as , members of the said Board of Park Commissioners, over said Park shall pass to any other board or body or persons, to execute any instrument and so any act necessary or requisite to transfer said organ and building to said other board or body or persons, in trust, for like uses and purposes and with like powers.

IN WITNESS WHEREOF, we, John D. Spreckles and Adolph B. Spreckles, have hereunto set our hands and seals this the day and year first above written.

Signed Sealed and delivered
In the presence of
Samuel M. Shortridge
Harry L. Titus

John D. Spreckles
Adolph B. Spreckles