



AGENDA

Consolidated Regular Meeting

City Council Chamber - 1243 National City
Boulevard, National City, CA

Alejandra Sotelo-Solis, Mayor
Marcus Bush, Vice-Mayor
Jose Rodriguez, Councilmember
Ron Morrison, Councilmember
Mona Rios, Councilmember

Brad Raulston, City Manager
Barry J. Schultz, Interim City Attorney
Luz Molina, City Clerk
Mitchell Beauchamp, City Treasurer

The City Council also sits as the City of National City Community Development Commission, Housing Authority, Joint Powers Financing Authority, and Successor Agency to the Community Development Commission as the National City Redevelopment Agency

Thank you for participating in local government and the City of National City Council Meetings.

Meetings: Regular City Council Meetings are held on the first and third Tuesday of the month at 6:00 p.m. Special Closed Session Meeting and Workshops may be same day, the start time is based on needs. Check Special Agendas for times.

Location: Regular City Council Meetings are held in the Council Chamber located at City Hall, 1243 National City Boulevard, National City, CA 91950, the meetings are open to the public.

Agendas and Material: [Agendas and Agenda Packet](#) for items listed are available on the City website, and distributed to the City Council no less than 72 hours prior to the City Council Meeting. Sign up for [E-Notifications](#) to receive alerts when items are posted.

Public Participation: Encouraged in a number of ways as described below. Members of the public may attend the City Council Meeting in person, watch the City Council Meeting via [live](#) web stream, or participate remotely via Zoom. [Recording of Meetings](#) are archived and available for viewing on the City's website.

Public Comment: Persons wishing to address the City Council on matters not on the agenda may do so under Public Comments. Those wishing to speak on items on the agenda may do so when the item is being considered. Please submit a Speaker's Slip to the City Clerk prior to the meeting or immediately following the announcement of the item. All comments will be limited up to three (3) minutes. The Presiding Officer shall have the authority to reduce the time allotted to accommodate for a large number of speakers. (*City Council Policy 104*)

If you wish to submit written comment [email](#) to the City Clerk's Office at least 2 hours prior to the City Council Meeting to allow time for distribution to the City Council.

Spanish Interpretation Services: Spanish Interpretation Services are available, please contact the City Clerk prior to the start of the meeting for assistance.

American Disabilities Act Title II: In compliance with the American Disabilities Act of 1990, persons with a disability may request an agenda in appropriate alternative formats as required by Title II. Any person with a disability who requires a medication or accommodation in order to participate in a meeting should direct such request to the City Clerk's Office (619) 336-4228 at least 24 hours in advance of the meeting.



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Gracias por participar en las reuniones del gobierno local y del Consejo de la Ciudad de National City.

Reuniones: Las reuniones regulares del Consejo Municipal se llevan a cabo el primer y tercer martes del mes a las 6:00 p.m. La reunión especial de sesión privada y los talleres pueden ser el mismo día, la hora de inicio se basa en las necesidades. Consulte las agendas especiales para conocer los horarios.

Ubicación: Las reuniones regulares del Concejo Municipal se llevan a cabo en la Cámara del Consejo ubicada en el Ayuntamiento, 1243 National City Boulevard, National City, CA 91950, las reuniones están abiertas al público.

Agendas y Material: Las Agendas y el Paquete de Agenda para los temas enumerados están disponibles en el sitio web de la Ciudad y se distribuyen al Concejo Municipal no menos de 72 horas antes de la Reunión del Concejo Municipal. Regístrese para recibir notificaciones electrónicas cuando se publiquen artículos.

Participación pública: Se fomenta de varias maneras como se describe a continuación. Los miembros del público pueden asistir a la Reunión del Concejo Municipal en persona, ver la Reunión del Concejo Municipal a través de la transmisión web en vivo o participar de forma remota a través de Zoom. Las grabaciones de las reuniones están archivadas y disponibles para su visualización en el sitio web de la Ciudad.

Comentario Público: Las personas que deseen dirigirse al Concejo Municipal sobre asuntos que no están en la agenda pueden hacerlo bajo Comentarios públicos. Quienes deseen hacer uso de la palabra sobre los temas del programa podrán hacerlo cuando se esté examinando el tema. Por favor, envíe una solicitud del orador al Secretario de la Ciudad antes de la reunión o inmediatamente después del anuncio del artículo. Todos los comentarios estarán limitados a tres (3) minutos. El Presidente tendrá la autoridad para reducir el tiempo asignado para dar cabida a un gran número de oradores. (Política del Concejo Municipal 104)

Si desea enviar comentarios por escrito, envíe un correo electrónico a la Oficina del Secretario de la Ciudad al menos 2 horas antes de la Reunión del Concejo Municipal para dar tiempo a la distribución al Consejo Municipal.

Servicios de interpretación en español: Los servicios de interpretación en español están disponibles, comuníquese con el Secretario de la Ciudad antes del inicio de la reunión para obtener ayuda.

Título II de la Ley de Discapacidades Americanas: En cumplimiento con la Ley de Discapacidades Americanas de 1990, las personas con discapacidad pueden solicitar una agenda en formatos alternativos apropiados según lo requerido por el Título II. Cualquier persona con una discapacidad que requiera un medicamento o adaptación para participar en una reunión debe dirigir dicha solicitud a la Oficina del Secretario de la Ciudad (619) 336-4228 al menos 24 horas antes de la reunión.



AGENDA

Consolidated Regular Meeting

Tuesday, November 1, 2022, 6:00 p.m.
City Council Chamber - 1243 National City Boulevard
National City, CA

Pages

1. CALL TO ORDER

2. ROLL CALL

3. PLEDGE OF ALLEGIANCE TO THE FLAG

4. PUBLIC COMMENT

In accordance with State law, an item not scheduled on the agenda may be brought forward by the general public for comment; however, the City Council will not be able to discuss or take action on any issue not included on the agenda. Speakers will have up to three (3) minutes.

5. PROCLAMATIONS AND RECOGNITION

5.1. National City Recognizes Iglesia Ni Cristo in honor of Filipino American History Month.

6. PRESENTATION (Limited to Five (5) Minutes each)

6.1. Presentation - A Reason to Survive (ARTS)

5

Recommendation:

Staff recommends that City Council receive and file presentation.

7. INTERVIEWS AND APPOINTMENTS

Mayoral and City Council appointments to City Boards/Commission/Committees

7.1. Appointments: City Boards, Commissions and Committees – Mayoral Appointments for Board of Library Trustees; and provide direction regarding Public Art Committee., 2022-110

24

Recommendation:

Mayoral Appointment with City Councilmembers confirmation, and provide staff direction regarding recruitment for the Public Art Committee Vacancy.

8. REGIONAL BOARDS AND COMMITTEE REPORTS (Limited to Five (5) Minutes each)

9. CONSENT CALENDAR

The Consent Calendar may be enacted in one motion by the City Council with a Roll Call Vote without discussion unless a Councilmember, a member of the Public, or the City Manager request an item be removed for discussion. Items removed from the Consent Calendar will be considered immediately following the adoption of the Calendar.

9.1. Approval of Reading by Title Only and Waiver of Reading in Full of Ordinance on this Agenda

Motion of the City Council of the City of National City, California, approving the waiving of the reading of the text of the Ordinances or Resolutions that are having a Public Hearing considered at this meeting and providing that such Ordinances or Resolutions shall be introduced and/or adopted after a reading of the title only.

9.2. Declaring Findings to Continue to Teleconference Meetings From November 14, 2022 to December 13, 2022, as Required by AB 361. 38

Recommendation:

Adopt a Resolution Entitled, "Resolution of the City Council of the City of National City, California, Making the Findings Required by AB 361 to Continue Teleconference Meetings of the City Council and the City Boards, Commissions, and Committees to December 13, 2022."

9.3. Approval of City Council Meeting Minutes 41

Recommendation:

Approve and file.

9.4. Approval of Agreement with A Reason to Survive (ARTS) for Basketball Court Mural Project 52

Recommendation:

Adopt a resolution entitled "Resolution of the City Council of the City of National City, California, authorizing the City Manager to enter into an Agreement between the City of National City and ARTS for the design, creation and installation of a Basketball Court Mural at Kimball Park."

9.5. Approval of Agreement with A Reason to Survive (ARTS) for Public Art Projects 88

Recommendation:

Adopt the Resolution Entitled, "Resolution of the City Council of the City of National City, California, to approve the agreement with A Reason to Survive (ARTS) for the Design, Creation and Installation of Public Artwork in Conjunction with City Projects."

- 9.6. Approval of Amendment to the Agreement between City of National City and A Reason to Survive (ARTS) 128

Recommendation:

Adopt a Resolution entitled "Resolution of the City Council of the City of National City, California, authorizing the Mayor to enter into the First Amendment to the Agreement between the City of National City ("City") and A Reason to Survive ("ARTS") for the maintenance and operation of the ARTS Center located at 200 East 12th Street in National City."

- 9.7. Amendments to On-Call Consultant Agreements for City's Capital Improvement Program (CIP) increasing the not-to-exceed dollar amounts and extending each agreement by one year as allowed by original agreement 156

Recommendation:

Adopt a Resolution Entitled, "Resolution of the City Council of the City of National City, California, authorizing the Mayor to increase On-Call Consultant Agreements by a not-to-exceed amount of \$1,000,000, including hourly rate updates, extend by one year, and execute 1) First Amendments to the following On-Call Consultants: a) Anser Advisory; b) HDR Engineering, Inc.; c) Innovative Construction Consulting Services, Inc.; d) Kimley-Horn and Associates, Inc.; e) KTU&A; f) NV5, Inc.; g) STC Traffic, Inc.; and, h) WSP USA Inc.; and 2) Second Amendments to the following On-Call Consultants: a) Chen Ryan Associates, Inc.; and, b) Project Professionals Corporation."

- 9.8. FY21 UASI Amendment adding \$40,000 toward training for the Police Department. 190

Recommendation:

Adopt a Resolution entitled, "Resolution of the City Council of the City of National City, California Authorizing the Mayor to Execute the City of San Diego Office of Homeland Security Grant Subaward Amendment for an Additional Appropriation of \$40,000 for a New Total of \$56,800 to the Reimbursable Grant Citywide Account for the Fy21 Urban Area Security Initiative (UASI) Grant for the Reimbursable Grant Purchase of Training for the Police Department"

- 9.9. Warrant Register #11 for the period of 9/9/22 through 9/15/22 in the amount of \$959,384.91. 194

Recommendation:

Ratify Warrants Totaling \$959,384.91

- 9.10. Warrant Register #12 for the period of 9/16/22 through 9/22/22 in the amount of \$1,346,098.20. 197

Recommendation:
Ratify Warrants Totaling \$1,346,098.20

- 9.11. Warrant Register #13 for the period of 9/23/22 through 9/29/22 in the amount of \$1,170,264.82 200

Recommendation:
Ratify Warrants Totaling \$1,170,264.82

10. PUBLIC HEARING

The following item(s) have been advertised as public hearing(s) as required by law.

- 10.1. Public Hearing and Introduction of an Ordinance Amending Section 18.30.310 (Tattoo Parlors and Body-Piercing Establishments) of Title 18 (Zoning) of the National City Municipal Code related to the location of tattoo and body-piercing establishments. 203

Recommendation:
Introduce the Ordinance

- 10.2. Public hearing and introduction of an Ordinance of the City Council of the City of National City, California, amending Title 9 of the National City Municipal Code by adding Chapter 9.64 pertaining to Mobilehome Park Rent Stabilization 208

Recommendation:
Introduce the Ordinance and conduct the Public Hearing.

11. STAFF REPORTS

12. CITY MANAGER'S REPORT

13. ELECTED OFFICIALS REPORT

14. CITY ATTORNEY REPORT

15. ADJOURNMENT

Regular Meeting of the City Council of the City of National City - Tuesday, November 15, 2022 - 6:00 p.m. - Council Chambers - National City, California.



AGENDA REPORT

Department: City Clerk's Office
Prepared by: Joyce Ryan, Library & Comm Svcs Dir.
Meeting Date: Tuesday, November 1, 2022
Approved by: Brad Raulston, City Manager

SUBJECT:

Presentation - A Reason to Survive (ARTS)

RECOMMENDATION:

Staff recommends that City Council receive and file presentation.

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

Since 2012, A Reason to Survive (ARTS) has had a home in National City in the old Library building at 200 East 12th Street. Since then, ARTS has worked to positively impact the lives of our young community residents and bring their creativity and imagination to the surface through free programs at the Arts Center. The staff at ARTS have been instrumental in the installation of art projects throughout the City, including the "A" Avenue Art Wall. ARTS staff have also participated in programs and events, including the Dia de los Muertos event and Community Services Day.

As part of the agreement between ARTS and the City of National City, ARTS presents an overview of its projects and programs every year.

FINANCIAL STATEMENT:

Not applicable.

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Parks, Recreation and Library

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review.CCR15378; PRC 21065.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

Not Applicable

EXHIBIT:

1. ARTS Presentation – City of National City – November 1, 2022

PRESENTATION FOR CITY OF NATIONAL CITY

NOVEMBER 1, 2022

ARTS



ARTS lifts young people in the South County region of San Diego to become confident, compassionate, and courageous community builders through the transformative power of creativity.

www.areasontosurvive.org

OUR MISSION

Projects & Events

TOTAL PROJECTS

28

NATIONAL CITY PARTICIPANTS

635

Annual Amount Due to City

\$125,000

FINANCIAL IMPACT

\$166,124

FINANCIAL IMPACT REPORT, 2021-2022

COMMUNITY PROJECTS

TOTAL PROJECTS

6

NATIONAL CITY PARTICIPANTS

54

FINANCIAL IMPACT

\$50,902





City Hall Mural, Photo Exhibition

Little Libraries for NCPL

SUHI Alumni c/o 2022 Mural



COMMUNITY PROJECTS

EVENTS & EXHIBITIONS

TOTAL PROJECTS

22

NATIONAL CITY PARTICIPANTS

581

FINANCIAL IMPACT

\$115,222



¡VIVA LA VIDA, VIVA LA MUERTE!



NATIONAL CITY'S DÍA DE LOS MUERTOS FESTIVAL (FALL 2021)

STEAM DAY @ ARTS

**COLLABORATION
WITH NATIONAL
CITY'S 16 WEEKS
OF STEAM
(SPRING 2022)**





13

YOUTH AND
COMMUNITY
EXHIBITIONS

OVER

1000

VISITORS

219

YOUNG
ARTISTS
EXHIBITED

ARTS GALLERY



PROGRAMS

TOTAL PROGRAMS

34

NATIONAL CITY YOUTH PARTICIPANTS

154

FINANCIAL IMPACT

~\$500,000

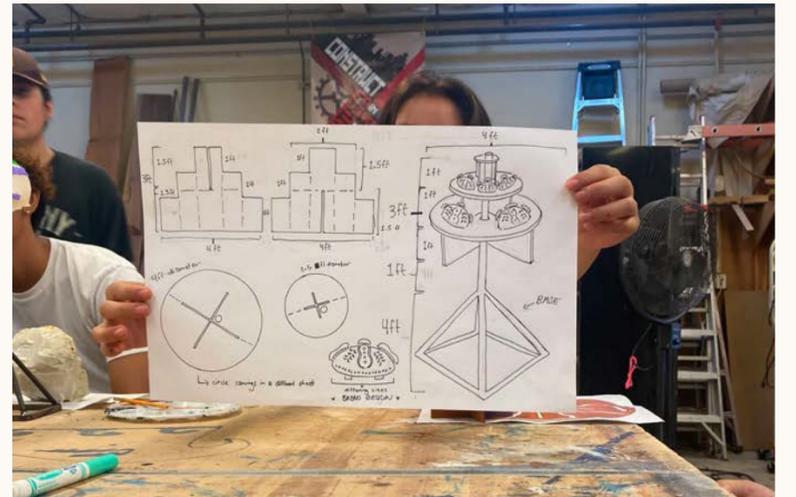
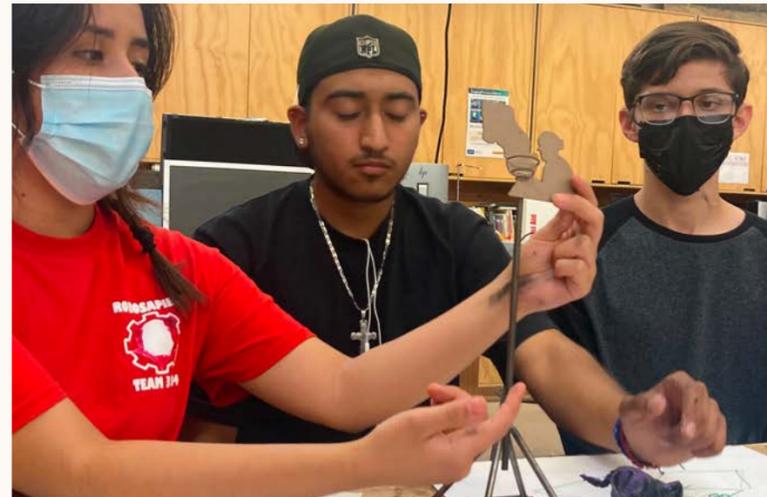




20 SWEETWATER HS STUDENTS IN SPRING 2022 AND FALL 2022 SEMESTERS

- 8 weeks, 40+ hours of hands-on learning in Maker Workshop
- Project team for Dia de los Muertos festival & CIP projects (City of NC)





ARTS @ WORK SPRING 2022 & FALL 2022 COHORTS

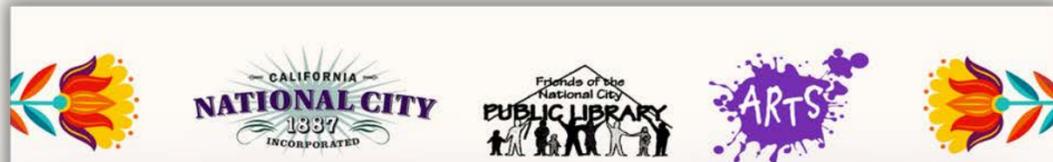


TEENS



DIA DE LOS MUERTOS COMMUNITY WORKSHOPS





NATIONAL CITY'S



DÍA DE LOS MUERTOS FESTIVAL

JOIN US FOR FAMILY FRIENDLY ACTIVITIES LIKE:

- Community Altar
- Ofrendas
- Performances
- Calaveras
- Book Giveaway
- Crafts



Kimball Bowl

148 E. 12th St,
National City, CA 91950



Friday, November 4, 2022
5:00 PM - 8:30 PM

NATIONAL CITY'S DÍA DE LOS MUERTOS FESTIVAL

KIMBALL BOWL

FRIDAY, NOVEMBER 4, 2022 5:00PM - 8:30 PM

Sister Cities Gateway (Kimball Park)

Camacho Gym Mural (Las Palmas Park)

Farmstand/Greenhouse (El Toyon Park)

W. 19th St. Greenway

Eastside I-805 Community Greenbelt

Kimball Court Mural (Kimball Park)



KIMBALL COURT MURAL - 2023

UPCOMING PROJECTS - 2023

We look forward to contributing to creative elements / public art as part of capital Improvement projects, beautifying local parks, and through art consultancy to advance the emerging public art program for the City of National City. Together, we are building a regional model for collaboration between local government and a community—based organization focused on creative youth development and arts & culture.

Thank
you!

James Halliday

ARTS Executive Director

jhalliday@areasontosurvive.org



AGENDA REPORT

Department: City Clerk's Office
Prepared by: Shelley Chapel, MMC, Deputy City Clerk
Meeting Date: Tuesday, November 1, 2022
Approved by: Brad Raulston, City Manager

SUBJECT:

Appointments: City Boards, Commissions and Committees – Mayoral Appointments for Board of Library Trustees; and provide direction regarding Public Art Committee.

RECOMMENDATION:

Mayoral Appointment with City Councilmembers confirmation, and provide staff direction regarding recruitment for the Public Art Committee Vacancy.

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

Vacancies on multiple Boards/Commissions/Committees (BCCs) were noticed in the Star News, posted on the City Hall Bulletin Boards, City Website, and City Social Media sites to advertise openings and the application acceptance period.

The most recent Vacancy Notices were posted on Monday, September 26, 2022, and all applications were due to the City Clerk's Office by the deadline of Monday, October 17, 2022, at 5:00 p.m.

The following BCCs currently have vacancies caused by end of term and/or resignations:

Board of Library Trustees

Two vacancies due to resignations; one position is an alternate position. One application has been received.

Public Art Committee

One alternate position due to resignation. No applications have been received.

FINANCIAL STATEMENT:

This report does not reflect financial changes to the budget at this time.

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Communication and Outreach

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review.CCR15378; PRC 21065.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

Not Applicable

EXHIBITS:

Attachment A – Explanation

Attachment B – Application (redacted)

Attachment C – City Council Policy #107

Attachment D – Boards/Commission/Committees Reference Chart

The City Clerk’s Office began advertising and accepting applications for vacancies on the following Boards, Committees, and Commissions: Board of Library Trustees; and Public Art Committee on September 26, 2022 with a deadline of October 17, 2022.

One application was received for the Board of Library Trustees Vacancies; no applications were received for the Public Art Committee Vacancy.

Background

In order to obtain qualified candidates, a Notice of Vacancies was advertised on the following: The City website, posted on the City Hall Bulletin Boards, the Star News and City Social Media sites to advertise openings and the application acceptance period.

Vacancies are listed below:

BCC	Number of Open Seats and Term expiration for that seat	Appointing Member(s)	Residency Requirement	Applications Received
Board of Library Trustees	(1) One Seat – Sept. 30, 2023 (This is an Alternate Seat) (1) One Seat – Sept. 30, 2025	Mayoral	Yes	Cassi Raya
Public Art Committee	(1) One Seat – Sept. 30, 2024 (This is an Alternate Seat)	Mayoral	No	None.

Residency requirements are listed if required in the chart above. If filling a resident requirement, applicant must reside within the City of National City at the time the application is submitted to be considered for the resident position.

Appointment:

Per City Council Policy #107 (D)(7):

The Mayor will make the motion to appoint (naming the appointee) and Councilmembers may second the motion. The City Clerk will then take a roll call vote of the City Council. A majority vote of the City Council will be required for the appointment. If, the majority of the City Council choose to deny the proposed appointment, at which point the Mayor would propose an alternative candidate from the current application pool, or could choose to reopen the application period and return to City Councils with a different applicant for consideration.

If Mayor Appointment is not approved by the majority of the City Council by confirmation, that applicant is removed from the pool for that seat. The Mayor will return to a future meeting with a substitute Mayoral appointment.

Per City Council Policy #107 (D)(14)(3): Attendance

A Commissioner or Member of a Board, Committee, or Commission must be present at least one hour, or 50% of the entire meeting, whichever is less, to be counted as present for purposes of attendance.

Per City Council Policy #107 (D)(14)(3): Mandatory Training and Filing Requirements:

Commissioners and Members of Board, Committee, or Commission, as appointed by the legislative body, are entrusted with certain responsibilities and concomitant training and reporting. The following are requirements of Commissioners and Members of Boards, Commissions, and Committees.

This training is required to be completed within 30 days of appointment or notification.

1. Oath of Office (Article XX of the California Constitution, and California Government Code Section 36507)
2. Fair Political Practices Commission (FPPC) Statement of Economic Interest Form 700 Filing (California Government Code Section 87100 et seq)
3. AB1234 Ethics Training (California Government Code Section 53235.1(b))
4. Anti-Sexual Harassment Training
5. Brown Act Training
6. Social Media Training
7. Any training required by State Law, Federal Law, or City Policies.

All training is offered in a variety of formats including in person, via Zoom, and training website/software, and pre-recorded video. Currently, these are all requirements of the Mayor and City Council, and City staff.

There were no applications received for the Public Art Committee. Please provide direction to staff.

CITY OF NATIONAL CITY
APPLICATION FOR APPOINTMENT
TO CITY BOARDS, COMMISSIONS, AND COMMITTEES

- | | |
|---|--|
| <input type="checkbox"/> Community & Police Relations Commission* (CPRC) | <input type="checkbox"/> Civil Service Committee |
| <input checked="" type="checkbox"/> Library Board of Trustees | <input type="checkbox"/> Planning Commission |
| <input type="checkbox"/> Parks, Recreation & Senior Citizens Advisory Board | <input type="checkbox"/> Public Art Committee* |
| <input type="checkbox"/> Veterans & Military Families Advisory Committee* | <input type="checkbox"/> Traffic Safety Committee |
| <input type="checkbox"/> Port Commission | <input type="checkbox"/> Advisory Housing Committee* |

- Applicants must be residents of the City of National City except for those marked by an asterisk (*). All applicants must be U.S. Citizens.
- Applicants for the Community and Police Relations Commission must pass a criminal background check prior to appointment.
- Applicants for the Advisory Housing Committee must have subject matter expertise in housing-related issues.

Name: Cassi Raya E-Mail: [REDACTED]

Home Address: [REDACTED] Tel No: [REDACTED]
(Include City/Zip)

Business Affiliation: _____ Title: _____

Business Address: _____ Tel. No.: _____

Length of Residence in National City: 8 years San Diego County: 8 years California: 19 years

Educational Background: Current student as SWC for nursing

Occupational Experience: Have worked in customer service and dental/health care

Professional or Technical Organization Memberships: _____

Civic or Community Experience, Membership, or Previous Public Service Appointments:
PTA Executive Board for 3 years

Experience or Special Knowledge Pertaining to Area of Interest: _____

I love to read- that's my only experience with a library

Have you ever been convicted of a felony crime? No: Yes: misdemeanor crime? No: Yes:
If any convictions were expunged disclosure is not required. Convictions are not necessarily disqualifying. Please feel free to provide an explanation or information if "Yes" was marked for the above two questions.

RECEIVED

Date: 9/26/22

Signature: [REDACTED]

SEP 27 2022
Office of the City Clerk
City of National City

Please feel free to provide additional information or letters of endorsement.

Return completed form to: Office of the City Clerk, 1243 National City Blvd., National City, CA 91950

Thank you for your interest in serving the City of National City.

CITY COUNCIL POLICY CITY OF NATIONAL CITY

TITLE: Appointments to Boards, Commission and Committees	POLICY # 107
ADOPTED: June 17, 1986	AMENDED: November 16, 2021

PURPOSE

To establish a procedure to serve as a guide in making appointments to various City Boards, Commissions, and Committees. The City currently has the following Boards, Commissions, and Committees to which this Policy applies:

Mayor's Appointments:

1. Board of Library Trustees
2. Community and Police Relations Commission
3. Park, Recreation, and Senior Citizens Advisory Committee
4. Public Art Committee
5. Sweetwater Authority
6. Traffic Safety Committee
7. Veterans and Military Families Advisory Committee

City Council Appointments:

1. Civil Service Commission
2. Planning Commission
3. Housing Advisory Committee including Ex-Officio Members
4. Port Commission

POLICY

Appointment Process

- A. Opportunity to apply. All interested individuals shall be given an opportunity to submit applications for vacancies on City Boards, Commissions, and Committees. Incumbent Appointees are not automatically re-appointed but are required to fill out an abbreviated application provided by the City Clerk, indicating their interest in continuing to serve.
- B. Unexpired terms. If an incumbent Appointee was appointed to fill an unexpired term and the Appointee serves for less than one year in that position, the Council may re-appoint the incumbent without considering other applicants.
- C. Vacancies. When vacancies occur, the following procedure shall be followed:
 1. Schedule vacancy. When a term is expiring or expires, public notice of the vacancy shall be made, inviting interested individuals to submit applications for the vacancy on a form provided by the City Clerk on the City website.

Unscheduled vacancy. An unscheduled vacancy shall be filled according to

CITY COUNCIL POLICY CITY OF NATIONAL CITY

TITLE: Appointments to Boards, Commission and Committees	POLICY # 107
ADOPTED: June 17, 1986	AMENDED: November 16, 2021

Government Code Section 54974, which generally provides as follows: Whenever an unscheduled vacancy occurs, whether due to resignation, death, termination, or other causes, a special vacancy notice shall be posted in the Office of the City Clerk, the City website, outside City Hall on the Bulletin Board, and on City social media platforms not earlier than twenty (20) days before or not later than twenty (20) days after the vacancy occurs. The City Council shall not make a final appointment for at least ten (10) working days after posting the notice in designated locations. The notice's posting and application period shall be thirty (30) calendar days. However, if it finds that an emergency exists, the City Council may, fill the unscheduled vacancy immediately. According to this section, a person appointed to fill the vacancy shall serve only on an interim basis until the final appointment.

The end of term for the members of Boards, Commissions, and Committees generally occurs in an annual rotation during the months of March and September. Appointments will be considered at those times unless a vacancy resulting from a resignation results in the lack of a Quorum on the Board, Commission, or Committee, in which case the appointment could occur at the time of the unscheduled vacancy in accordance with the procedure set out above.

3. Government Code Section 40605, and National City Municipal Code Title 16, grants the Mayor, with the City Council's approvals, the authority to make all appointments unless otherwise explicitly provided by statute. The exceptions are:
 1. Civil Service Commission
 2. Planning Commission
 3. Housing Advisory Committee including Ex-Officio Members
 4. Planning Commission

The City Council fills vacancies on these bodies.

- D. Implementation. Implementation of Council policy for appointment to Boards, Commissions, and Committees requires the following:
 1. Per Government Code Section 54972, on or before December 31 of each year, the City Council shall prepare a list of appointments of all regular and ongoing Boards, Commissions, and Committees appointed by the City Council. The City Clerk will prepare the list of all regular and ongoing Boards, Commissions, and Committees appointed by the Mayor or the City Council. The list shall contain a list of all terms that will expire during the next calendar year, the incumbent appointee's name, the appointment date, the term's expiration date, and the position's necessary qualifications. It shall also include a list of all

CITY COUNCIL POLICY CITY OF NATIONAL CITY

TITLE: Appointments to Boards, Commission and Committees	POLICY # 107
ADOPTED: June 17, 1986	AMENDED: November 16, 2021

Boards, Commissions, and Committees whose members serve at the City Council's pleasure and the qualifications required for each position. This Local Appointments List shall be made available to the public on the City website.

2. Notice. A public notice for vacancies must be placed in the newspaper of general circulation within the City, on the City's website, City Hall Bulletin Boards, and City social media platforms.
3. Expiration of term. All appointees will receive a letter as their terms expire asking if they would like to re-apply for the position.
4. Applications. Applications shall be available on the City website and in the City Clerk's Office. Submissions must be received before the advertised deadline for consideration for the appointment. All applications will be retained in the City Clerk's Office for one year from the date the application was submitted. During the one-year retention period of the application, an applicant shall be considered for other vacancies on Boards, Commissions, and Committees. The City Clerk's Office will notify the applicant being considered for an appointment to confirm that they are still interested in volunteering.
5. A member may only serve on one (1) Board, Commission, or Committee at a time. If an applicant applies for another position on a different Board, Commission, or Committee, that applicant will forfeit the prior seat and a vacancy will occur per policy.
6. Interviews:
 - a. Mayor Appointments: Interviews for Mayoral appointments will be conducted by the Mayor outside of the public meeting and scheduled by the Mayor's Office.
 - b. City Council Appointments: Interviews for the four (4) Civil Service Commission, Planning Commission, Housing Advisory Committee, and Port Commission who serve at the City Council's pleasure and are appointed by the City Council as a body will be interviewed in the public forum at a City Council Meeting as described below.
7. Mayoral Appointments:

The Mayor will make the motion to appoint (naming the appointee) and Councilmembers may second the motion. The City Clerk will then take a roll call

CITY COUNCIL POLICY CITY OF NATIONAL CITY

TITLE: Appointments to Boards, Commission and Committees	POLICY # 107
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vote of the City Council. A majority vote of the City Council will be required for the appointment. If the majority of the City Council choose to deny the proposed appointment, the Mayor shall either propose an alternative candidate from the current application pool or choose to reopen the application period and return to the City Council at a future City Council Meeting with a different applicant for consideration. If a Mayoral Appointment is not approved by the majority of the City Council by confirmation, that applicant is removed from the pool for that seat. The Mayor will return to a future meeting with a substitute Mayoral appointment.

8. For City Council Appointments, the Interview Process is as follows:
 - a. The City Clerk will provide an overview of the Board, Commission, or Committee(s) with current vacancy (ies). The Mayor will introduce the applicant and two (2) questions will be asked of each applicant on behalf of the City Council.
 - b. Each applicant is given two (2) minutes to make a brief introduction of themselves and their qualifications to the City Council.
 - c. Mayor and City Councilmembers will ask questions of each applicant. All applicants must be asked the same questions.
 - d. Total time per applicant is five (5) timed minutes with time allowed for clarification at the discretion of the City Council, not to exceed ten (10) minutes total per applicant.
 - e. All appointments and interviews before the City Council will be scheduled as needed to fill unexpected vacancies, with every effort to be made before an individual's term expires. Interviews may take place at one meeting, with appointments made at a subsequent meeting.
9. Vacancies for City Council Appointed Positions. If the vacancy is for a City Council appointed position, and there is more than one (1) applicant for a given position, the voting process will proceed as follows: Once the interviews are complete, each Councilmember votes for their choice via a written ballot provided by the City Clerk. Each Councilmember shall print and sign their name on the ballot. All ballots shall be considered a public record and be open to inspection by the public. The ballots are passed to the City Clerk who announces the number of votes for each candidate.

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If the appointment process is conducted via a virtual meeting the process is the same except the ballot/vote process. The City Clerk's Office will provide a Vote Sheet (a piece of paper electronically) with the name of each applicant to be considered. The Mayor will count to three (3) and the Council will hold their vote sheet up in front of their face to make sure it is captured on the camera during the live virtual meeting. The City Clerk will tally the votes and will then confirm the votes with a verbal roll call. The applicant with the most votes is appointed.

In the event of a tie, each Councilmember votes again until one (1) candidate has the majority vote and is declared to be the newly-appointed member of the Board, Commission, or Committee.

10. Re-appointment beyond two terms. Anyone wishing to be re-appointed to any Board, Commission, or Committee and has served two or more full terms already must be approved by a four-fifths vote of the City Council. If all five members of the City Council are not present, or if one member abstains or recuses their vote, the four-fifths requirement shall be changed to require only a simple majority.

11. Report to Council:

All applications received for vacancies, whether Mayoral Appointment or City Council Appointment, will be attached to the staff report to Council. All applications will have private personal information redacted (name, street numbers and name of street address, and phone number). This redacted information is in alignment with Government Code Section 6255(a) because the public interest served by not disclosing the applicant's personal, private information and protection of the applicant's right to privacy outweighs the public interest served by disclosing that information.

12. An automatic vacancy upon becoming a Non-Resident. An unscheduled vacancy automatically occurs when a resident holding an appointment position on a City Board, Committee, or Commission becomes a non-resident by moving out of National City limits. When an unscheduled vacancy occurs due to a resident becoming a non-resident, the unscheduled vacancy may be filled as follows:

- a. A special vacancy notice shall be posted in the Office of the City Clerk, and in other places as directed by the City Council, not earlier than 20 days before or not later than 20 days after the vacancy occurs. Final Appointment at a City Council Meeting shall not be made by the Appointing Authority for at least 10 working days after the posting of the notice in the City Clerk's Office.

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- b. The Appointing Authority may appoint the former resident to a Non-Residential position if a Non-Residential position is vacant.

However, the Appointing Authority may, if it finds that an emergency exists, fill the unscheduled vacancy immediately. A person appointed to fill the vacancy shall serve only on an acting basis until the final appointment is made pursuant to this section.

- 13. Only City Residents may be elected to Chair and Vice-Chair positions. To be eligible to be elected as the Chairperson of a City Board, Committee, or Commission, the member must be a resident of the City.
- 14. Resignations, Attendance, Training, and Removals

Resignation:

If a Commissioner or Member of a Board, Committee, or Commission is unable to continue serving because of health, business requirements, or personal reasons, a letter of resignation shall be submitted to the City Clerk, who will present to the City Council.

Attendance:

Regular attendance at meetings is critical to be effective operation of City Boards, Commissions, and Committees. The City Council relies on the advice of the City's Boards, Commissions, and Committees, which is the result of discussions among appointed members. The City Council anticipates that members of Boards, Committees, and Commissions shall make every reasonable effort to attend all regular and special meetings of their respective Boards, Commissions, and Committees, and to be prepared to discuss matters on their respective agendas.

A Commissioner or Member of a Board, Committee, or Commission shall be considered removed from any advisory board under the following conditions:

- 1. A Commissioner or Member of a Board, Committee, or Commission with unexcused absences from three consecutive regularly scheduled meetings.
- 2. A Commissioner or Member of a Board, Committee, or Commission misses more than 25% of the advisory body's meetings in a calendar year.

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3. A Commissioner or Member of a Board, Committee, or Commission must be present at least one hour, or 50% of the entire meeting, whichever is less, to be counted as present for purposes of attendance.

Excused Absences:

An “excused absence” is only granted when absolutely necessary and pre-approved if at all possible. The City Council encourages Boards, Commissions, and Committees to refrain from scheduling meetings on cultural and religious holidays in order to encourage full participation by all Commissioners, Board Members, and the public. The pre-approval of excused absences will be by the body as a whole and documented in the meeting minutes.

Excused absences are listed as follows:

1. Illness of the Commissioner or Member of the Board, Committee, or Commission, their family member, or their personal friend;
2. Business commitment of the Commissioner or Member of the Board, Committee, or Commission that interferes with the attendance at a meeting;
3. Attendance of the Commissioner or Member of the Board, Committee, or Commission at a funeral, religious service or ceremony, wedding, or other similarly-significant event; or
4. Other reason for which the Commissioner or Member of the Board, Committee, or Commission has given notice to the Chairperson or Secretary of their unavailability fifteen (15) days in advance, as long as the unavailability is not expected to last longer than 30 days.

Removal:

The Secretary or Lead of each Board, Commission, or Committee will report the attendance to the Office of the City Clerk on a monthly basis. If the attendance or absences fall within these guidelines, the Office of the City Clerk will prepare a report to City Council for review and possible removal of the Commissioner, Member, or Alternate sitting on the Board, Committee, or Commission. Any Commissioner, Member, or Alternate sitting on a Board, Committee, or Commission may be removed from office at any time by a simple majority vote of the City Council at a regularly scheduled Council meeting with or without cause.

Mandatory Training and Filing Requirements:

Commissioners and Members of Board, Committee, or Commission, as appointed by the legislative body, are entrusted with certain responsibilities and

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concomitant training and reporting. The following are requirements of Commissioners and Members of Boards, Commissions, and Committees. This training is required to be completed within 30 days of appointment or notification.

1. Oath of Office (Article XX of the California Constitution, and California Government Code Section 36507)
2. Fair Political Practices Commission (FPPC) Statement of Economic Interest Form 700 Filing (California Government Code Section 87100 et seq)
3. AB1234 Ethics Training (California Government Code Section 53235.1(b))
4. Sexual Harassment Training
5. Brown Act Training
6. Social Media Training
7. Any training required by State Law, Federal Law, or City Policies.

All training is offered in a variety of formats including in person, via Zoom, training website/software, and pre-recorded video. Currently, these are all requirements of the Mayor and City Council, and City staff.

Removal:

Failure to complete any of these requirements within 30 days of the appointment date or date of notification is cause for automatic removal.

Related Policy References

Government Code Section 40605

Government Code Section 54970, et seq.

Article XX of the California Constitution, and California Government Code Section 36507

California Government Code Section 53235(b)

California Government Code Section 87100 et seq

National City Municipal Code Title 16 (pending)

Prior Policy Amendments:

February 2, 2021 (Resolution No. 2021-08)

May 19, 2020 (Resolution No. 2020-95)

November 9, 1993 (Resolution No. 93-173)

June 11, 2013 (Revised – No Resolution – Refer to Meeting Minutes)

October 8, 2013 (Resolution No. 2013-147)

May 19, 2020 (Resolution No. 2020-20)

BOARDS/COMMISSION/COMMITTEES

BOARDS, COMMISSION AND COMMITTEES (11)	BOARD OF LIBRARY TRUSTEE	CIVIL SERVICE COMMISSION	COMMUNITY AND POLICE RELATIONS COMMISSION	PARK, RECREATION AND SENIOR CITIZENS' ADVISORY COMMITTEE (7 Members)	PLANNING COMMISSION and HOUSING ADVISORY COMMITTEE (7 Members) 2 Ex Officio	PORT COMMISSION	PUBLIC ART COMMITTEE	SWEETWATER AUTHORITY	TRAFFIC SAFETY COMMITTEE
TOTAL MEMBERS (51+)	(5 Members)	(5 Members)	(8 Members)	(7 Members)	(7 Members)	(1 Member)	(5 Members)	(1 Member)	(5 Members)
TERM	3 Years	5 Years	3 Years	3 Years	4 Years	4 Years	3 Years	4 Years	3 Years
RESIDENCY REQUIREMENT	Yes	Yes	5 Resident up to 2 Non-Resident (1) Non-Voting Member	Yes	Yes	Yes	No	n/a	Yes
VOTER REQUIREMENT	No	No	No	No	No	No	No	No	No
MAYORAL APPOINTMENT SUBJECT TO CONFIRMATION BY THE CITY COUNCIL	X		X	X			X	X	X
CITY COUNCIL AS A BODY APPOINTMENT		X			X	X			
COMPENSATION	No	No	No	No	Compensation set by Council Resolution	No	No	No	No
FORM 700 FILING REQUIREMENT	Yes	Yes	Yes	No	Yes	n/a	No	n/a	No
MEETINGS	1 X per month	1X every other month	1X every 3 months	1X every 2 months	2X per month	n/a	1X per quarter	n/a	1X per month
REQUIRED TO REPORT TO COUNCIL ANNUALLY	Yes, on or before August 31st and to the State Librarian	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
OTHER		Can not be salaried employee or holds office of the City							

CITY COUNCIL POLICY #107 and NCMC TITLE 16

**Effective February 2, 2020 all Chair and Vice-Chairs are required to be NC Residents



AGENDA REPORT

Department: City Clerk's Office
Prepared by: Shelley Chapel, Deputy City Clerk
Meeting Date: November 1, 2022
Approved by: Brad Raulston, City Manager

SUBJECT:

Declaring Findings to Continue to Teleconference Meetings From November 14, 2022 to December 13, 2022, as Required by AB 361.

RECOMMENDATION:

Adopt a Resolution Entitled, "Resolution of the City Council of the City of National City, California, Making the Findings Required by AB 361 to Continue Teleconference Meetings of the City Council and the City Boards, Commissions, and Committees to December 13, 2022."

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

Adoption of the resolution would allow the City Council and the City Boards, Commissions, and Committees to continue teleconference meetings via Zoom past the December 13, 2022, expiration date of the Governors Executive Order N-08-21. The State of Emergency continues as the COVID-19 Delta Variant has emerged causing a spike in cases throughout the world. The City complies with the County of San Diego County Health Department and Cal OSHA requirements to ensure the health and safety of its staff and the public.

Adopting this resolution would allow the City Council to reevaluate this declaration of findings every thirty (30) days for ongoing continuation or further action.

FINANCIAL STATEMENT:

Not Applicable

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Communication and Outreach

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review.CCR15378; PRC 21065.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

Not Applicable

EXHIBITS:

Exhibit A - Resolution

RESOLUTION NO. 2022-

**RESOLUTION OF CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA,
MAKING THE FINDINGS REQUIRED BY AB 361 TO CONTINUE TELECONFERENCE
MEETINGS OF THE CITY COUNCIL AND THE CITY BOARDS, COMMISSIONS, AND
COMMITTEES TO DECEMBER 13, 2022**

WHEREAS, the World Health Organization has declared the COVID-19 outbreak a global pandemic and local and state emergencies have been declared providing reprieve from certain public meeting laws such as the Brown Act; and

WHEREAS, beginning March 2020, California Governor Newsom executed Executive Order N-29-20 including additional updates as the pandemic progressed and extending into 2021. The most recent Executive Order N-08-21, issued June 11, 2021 waived all physical presence requirements under the Ralph M. Brown Act as a means of limiting the spread of COVID-19; and

WHEREAS, Executive Order N-08-21 expired on September 30, 2021. The date was predicted as a time when hopes were that agencies could begin to transition back to public meetings held in full compliance with the Ralph M. Brown Act; and

WHEREAS, on September 16, 2021, California Governor Newsom signed into law Assembly Bill (AB) 361, which extends the authority of public agencies to conduct meetings by teleconference, including video conference, while the state of emergency resulting from the COVID-19 pandemic and accompanying recommendations for social distancing remain in place; and

WHEREAS, on October 5, 2021, City Council adopted Resolution No. 2021-147 declaring findings to continue to teleconference for an additional 30 days; and

WHEREAS, on November 2, 2021, City Council adopted Resolution No. 2021-164 declaring findings to continue to teleconference for an additional 30 days; and

WHEREAS, on December 7, 2021, City Council adopted Resolution No. 2021-183 declaring findings to continue to teleconference for an additional 30 days; and

WHEREAS, on January 4, 2022, City Council adopted Resolution No. 2022-01 declaring findings to continue to teleconference for an additional 30 days; and

WHEREAS, on February 1, 2022, City Council adopted Resolution No. 2022-11 declaring findings to continue to teleconference for an additional 30 days; and

WHEREAS, on March 1, 2022, City Council adopted Resolution No. 2022-31 declaring findings to continue to teleconference for an additional 30 days; and

WHEREAS, on April 5, 2022, City Council adopted Resolution No. 2022-47 declaring findings to continue to teleconference for an additional 30 days; and

WHEREAS, on May 17, 2022, City Council adopted Resolution No. 2022-74 declaring findings to continue to teleconference for an additional 30 days; and

WHEREAS, on June 7, 2022, City Council adopted Resolution No. 2022-85 declaring findings to continue to teleconference for an additional 30 days; and

WHEREAS, on June 21, 2022, City Council adopted Resolution No. 2022-100 declaring findings to continue to teleconference for an additional 30 days; and

WHEREAS, on July 19, 2022, City Council adopted Resolution No. 2022-119 declaring findings to continue to teleconference for an additional 30 days.

WHEREAS, on August 16, 2022, City Council adopted Resolution No. 2022-130 declaring findings to continue to teleconference for an additional 30 days.

WHEREAS, on September 15, 2022, City Council adopted Resolution No. 2022-136 declaring findings to continue to teleconference for an additional 30 days.

WHEREAS, on October 4, 2022, City Council adopted Resolution No. 2022-158 declaring findings to continue to teleconference for an additional 30 days.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1: Makes the findings required by AB 361 to continue teleconference meetings of the Legislative Body and its appointed Boards, Commissions, and Committees:

Section 2. Makes the findings that the City of National City meets the requirements to continue holding meetings remotely in order to ensure the health and safety of its staff and the public:

Section 3. That the City Clerk shall certify the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED and ADOPTED this 1st day of November 2022.

Alejandra Sotelo-Solis, Mayor

ATTEST:

Luz Molina, City Clerk

APPROVED AS TO FORM:

Barry J. Schultz, Interim City Attorney



AGENDA REPORT

Department: City Clerk's Office
Prepared by: Shelley Chapel, Deputy City Clerk
Meeting Date: Tuesday, November 1, 2022
Approved by: Brad Raulston, City Manager

SUBJECT:

Approval of City Council Meeting Minutes.

RECOMMENDATION:

Approve and file.

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

Meeting Minutes:

September 20, 2022 City Council Special Meeting – Closed Session
October 4, 2022 City Council Regular Meeting

FINANCIAL STATEMENT:

None.

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Not Applicable

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review.CCR15378;
PRC 21065.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

Not Applicable

EXHIBITS:

Exhibit A – Meeting Minutes



REGULAR MEETING MINUTES OF THE CITY COUNCIL

**September 20, 2022, 5:00 p.m.
City Council Chamber - 1243 National City Boulevard
National City, CA**

Present: Mayor Sotelo-Solis
Vice-Mayor Bush
Councilmember Rodriguez
Councilmember Morrison
Councilmember Rios

Others Present: Barry J. Schultz, Interim City Attorney
Shelley Chapel, Deputy City Clerk

1. CALL TO ORDER

The meeting was called to order at 5:00 p.m. by Mayor Sotelo-Solis.

2. ROLL CALL

3. PLEDGE OF ALLEGIANCE TO THE FLAG

Mayor Sotelo-Solis led the Pledge of Allegiance.

4. PUBLIC COMMENT

No Public Comment was received.

5. CLOSED SESSION

Members retired into Closed Session at 5:04 p.m. and returned at 5:52 p.m. with all members present in attendance: Bush, Morrison, Rios, Rodriguez, Sotelo-Solis, and Schultz.

5.1 PUBLIC EMPLOYMENT

Title: City Attorney

Government Code Sections 54957(b)(1), 54954.5

Announcement of actions taken in Closed Session shall be made at the Regular City Council Meeting following this meeting at 6:00 p.m.

6. ADJOURNMENT

Mayor Sotelo-Solis adjourned to the Regular Meeting of the City Council of the City of National City, Tuesday, September 20, 2022, 6:00 in the Council Chamber, located in City Hall, 1243 National City Boulevard, National City, California.

The meeting adjourned at 5:53 p.m.

Shelley Chapel, MMC, Deputy City Clerk

The foregoing minutes were approved at the Regular Meeting of November 1, 2022.

Alejandra Sotelo-Solis, Mayor



REGULAR MEETING MINUTES OF THE CITY COUNCIL

**October 4, 2022, 6:00 p.m.
City Council Chamber - 1243 National City Boulevard
National City, CA**

Present: Mayor Sotelo-Solis
Vice-Mayor Bush
Councilmember Rodriguez
Councilmember Morrison
Councilmember Rios

Others Present: Luz Molina, City Clerk
Shelley Chapel, Deputy City Clerk
Brad Raulston, City Manager
Frank Para, Assistant City Manager
Phil Davis, Director of Finance
Joyce Ryan, Library & Community Services Director
Carlos Aguirre, Director of Housing
Roberto Yano, Director of Public Works and City
Engineering
Jose Tellez, Chief of Police
Alejandro Hernandez, Police Captain
Tonya Hussain, Executive Secretary

1. **CALL TO ORDER**

A Regular Meeting of the City Council of the City of National City was called to order at 6:00 p.m. via teleconference and in the Council Chamber, located in City Hall, 1243 National City Boulevard, National City, California.

2. **ROLL CALL**

Councilmembers present: Sotelo-Solis, Bush (6:10 p.m. arrival), Morrison, Rios, Rodriguez

Other Elected Officials absent: Beauchamp

Administrative Officials present: Raulston, Parra, Schultz, Chapel (*via Zoom*), Yano, Aguirre, Ryan, Davis, Tellez, Juarez, and Hussain

Interpretation in Spanish provided by Carlos Diaz and Luisa Diaz de Leon.

3. **PLEDGE OF ALLEGIANCE TO THE FLAG**

Councilmember Morrison led the Pledge of Allegiance.

4. **PUBLIC COMMENT**

Mayor Sotelo-Solis summarized the process for acceptance of live public comment allowing two (2) minutes per comment and introduced City Clerk Molina.

Fifteen (15) spoken comments were received:

Two (2) written comments were received and published on the City website.

In-person comment received from:

Laura Zarate

Patrick DeMarco

Eddie Perez

Janice Luna Reynoso

Paul Wapnowski

Anthony Avalos

Edward Nieto

Randy Valderrama

Bill Nosal

Jacqueline Reynoso

Laura Wilkinson Sinton

Gloria Jean Nieto

John Borja

Comment via Zoom received from:

Judith Strang

Becky Rapp

Councilmember Morrison left the dais at 6:34 p.m. and returned at 6:35 p.m.

5. PROCLAMATIONS AND RECOGNITION

5.1 National City celebrates Latino Heritage Month recognizing the Valderrama, Baca and Nieto families.

Mayor Sotelo-Solis introduced the Valderrama, Baca, and Nieto families and presented the proclamation.

In-person comment received from:

Mari Pilli Becerra

Pattie Harris

Anthony Avalos

Jacqueline Reynoso

6. PRESENTATION (Limited to Five (5) Minutes each)

6.1 Introduction of New City Employees

City Manager Brad Raulston announced the names of the new City employees.

7. INTERVIEWS AND APPOINTMENTS

7.1 Appointments: City Boards, Commissions and Committees – City Council Appointment for Civil Service Commission

Civil Service Commission incumbent Javier Alvarado addressed the Council.

City Council to Conduct Interviews and Appointment.

ACTION: Motion by Councilmember Morrison, seconded by Councilmember Rodriguez to reappoint Javier Alvarado to the Civil Service Commission for a term ending September 30, 2027.

Ayes: Bush, Morrison, Rios, Rodriguez

Nays: Sotelo-Solis

Motion passed by 4-1 vote.

8. REGIONAL BOARDS AND COMMITTEE REPORTS (Limited to Five (5) Minutes each)

Councilmember Morrison announced that the upcoming Regional Solid Waste Association meeting would include discussion of the EDCO contract.

Councilmember Rios provided an update on the San Diego County Water Authority and announced the new Board members.

Unified Port of San Diego Commissioner Sandy Naranjo provided an update regarding the Capital Improvement Program and announced an upcoming meeting to discuss the National City Balanced Plan and Projects Environmental Impact Report.

9. CONSENT CALENDAR

ACTION: Motion by Councilmember Rios, seconded by Councilmember Morrison to approve the Consent Calendar Items 9.1 through 9.10.

Moved by Rios

Seconded by Morrison

Motion carried by unanimous vote

9.1 Approval of Reading by Title Only and Waiver of Reading in Full of Ordinance on this Agenda

9.2 Declaring Findings to Continue to Teleconference Meetings to November 14, 2022, as Required by AB 361.

Approved Resolution No. 2022-158.

Adopt a Resolution Entitled, "Resolution of the City Council of the City of National City, California, Making the Findings Required by AB 361 to Continue Teleconference Meetings of the City Council and the City Boards, Commissions, and Committees to November 14, 2022."

Motion carried by unanimous vote

9.3 Request to designate the Fire Chief, Chief of Police, and Management Analyst III (Fire) as authorized agents to continue the cost recovery process for all open and future disasters up to three (3) years following the date of approval.

Approved Resolution No. 2022-159.

Adopt the Resolution entitled, “Resolution of the City Council of the City of National City, California, Designation of Applicant’s Agent Resolution for Non-State Agencies”

Motion carried by unanimous vote

- 9.4 Resolution of the City Council of the City of National City authorizing the Mayor to execute a Mills Act Historic Preservation Contract for 520 ‘F’ Avenue. (Applicants: Christine & Liam Dunfey, Joe Dzida) (Case File 2022-27 M)

Approved Resolution No. 2022-160.

Staff recommends adoption of a resolution authorizing the Mayor to execute a Mills Act Historic Preservation Contract for 520 ‘F’ Avenue.

Motion carried by unanimous vote

- 9.5 Project close-out and notice of completion for five construction projects.

Approved Resolution No. 2022-161.

Adopt a Resolution Entitled, "Resolution of the City Council of the City of National City, California, 1) accepting the work performed by the general contractors on the following five projects identified below: a) Camacho Recreation Center HVAC Replacement project CIP No. 20-07; b) Euclid Bike and Pedestrian Enhancements project CIP No. 18-10; c) Paradise Creek Park Expansion project CIP No. 18-16; d) Sweetwater Road Safety Enhancements project CIP No. 19-12; and e) Sweetwater River Bikeway Connections/ 30th Street Bicycle Facility Improvements project – CIP 18-14; 2) approving the final contract amounts; 3) ratifying the release of retentions; and 4) authorizing the Mayor to sign the Notice of Completion for the projects”.

Motion carried by unanimous vote

- 9.6 Temporary Use Permit – Circo Hermanos Caballero Blue Unit sponsored by Circo Hermanos Caballero from October 6, 2022 to October 17, 2022 at the Westfield Plaza Bonita Mall with no waiver of fees, 2022-95.

Approve the application for a Temporary Use Permit subject to compliance with all conditions of approval with no waiver of fees.

Motion carried by unanimous vote

- 9.7 Temporary Use Permit – Care for Humanity hosted by Church of Christ on October 23, 2022, from 12 p.m. to 4 p.m. at 3201 Kimball Park with no waiver of fees, 2022-85.

Approve the Application for a Temporary Use Permit subject to compliance with all conditions of approval with no waiver of fees or in accordance to City Council Policy 802.

Motion carried by unanimous vote

- 9.8 Temporary Use Permit – Hope Fest hosted by Heart Revolution Church at 1920 Sweetwater Road on October 31, 2022, from 6 p.m. to 9 p.m. with no waiver of fees.

Approve the Application for a Temporary Use Permit subject to compliance with all conditions of approval with no waiver of fees or in accordance to City Council Policy 802.

Motion carried by unanimous vote

- 9.9 Warrant Register #7 for the period of 8/12/22 through 8/18/22 in the amount of \$686,957.09.

Ratify Warrants Totaling \$686,957.09

Motion carried by unanimous vote

- 9.10 Warrant Register #8 for the period of 8/19/22 through 8/25/22 in the amount of \$2,168,757.25.

Ratify Warrants Totaling \$2,168,757.25

Motion carried by unanimous vote

10. **STAFF REPORTS**

City Clerk Molina read the title of the item into the record.

- 10.1 Update on the disposition of City-owned real property located at 921 & 929 National City Boulevard, National City.

Housing Director Carlos Aguirre introduced the item. PowerPoint presentation was given by Kosmont Senior Vice President Wil Sohlt Kimley-Horn Analyst Precious Nicanor was present.

Tower 999, LLC Managing Partner Cyrus Rapinan addressed the City Council.

Councilmember Rodriguez left the dais at 7:19 p.m. and returned at 7:20 p.m.

ACTION: Motion by Vice Mayor Bush, seconded by Councilmember Rodriguez to approve the staff recommendation with the amendment that staff explore commercial tenants, homeownership opportunities, local hire and public benefits, neighborhood prioritization, and a Regional Housing Needs Assessment Plan analysis.

Recess taken at 8:00 p.m. Meeting reconvened at 8:08 p.m.

Councilmember Rodriguez returned to the dais at 8:09 p.m.

Moved by Bush

Seconded by Rodriguez

Motion carried by unanimous vote

- 10.2 Letter to Governor Gavin Newsom requesting the amendment of Senate Bill 357.

City Manager Brad Raulston introduced Chief of Police Jose Tellez who presented the item.

Moved by Morrison

Seconded by Rios

Motion carried by unanimous vote

11. CITY MANAGER’S REPORT

City Manager Brad Raulston presented a PowerPoint Presentation and addressed the relocation of Granger Music Hall to El Toyon Park. He announced that National City was awarded the Outstanding Chapter Project of the Year by the American Public Works Association for the Roosevelt Avenue Corridor Smart Growth Revitalization Project.

Vice Mayor Bush left the dais at 8:25 p.m. and returned at 8:28 p.m.

12. ELECTED OFFICIALS REPORT

Closing remarks were provided by members of the City Council.

13. CITY ATTORNEY REPORT

Mayor Sotelo-Solis introduced Interim City Attorney Schulz who had nothing to report.

14. ADJOURNMENT

Mayor Sotelo-Solis adjourned to the Regular Meeting of the City Council of the City of National City, Tuesday, October 18, 2022, 6:00 in the Council Chamber, located in City Hall, 1243 National City Boulevard, National City, California.

The meeting adjourned at 8:39 p.m.

Luz Molina, City Clerk

The foregoing minutes were approved at the Regular Meeting of November 1, 2022.

Alejandra Sotelo-Solis, Mayor



AGENDA REPORT

Department: Library and Community Services
Prepared by: Joyce Ryan, Library & Community Services Director
Meeting Date: Tuesday, November 1, 2022
Approved by: Brad Raulston, City Manager

SUBJECT:

Approval of Agreement with A Reason to Survive (ARTS) for Basketball Court Mural Project

RECOMMENDATION:

Adopt a resolution entitled "Resolution of the City Council of the City of National City, California, authorizing the City Manager to enter into an Agreement between the City of National City and ARTS for the design, creation and installation of a Basketball Court Mural at Kimball Park."

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Kimball Park Basketball Mural Design approved by Public Art Committee at regular meeting on July 26, 2022.

EXPLANATION:

Colorful basketball court murals have been created in cities across the country. By working with students at Sweetwater High School to develop the art designs, ARTS has developed a concept for a basketball court mural for Kimball Park. The overall project involves the repair, resurfacing and painted design work for the basketball court mural.

ARTS has received approval of the design from the Public Art Committee at the regular July meeting. The mural design is attached to the agreement (Exhibit "B") and is entitled "Convergence." This rendering captures the proposed overall design, as well as color palette. The animating concept of the design is the convergence of parkland and the bay beyond, with the creek in the middle. This also captures the specific geography around the basketball court.

As part of the project, ARTS will be working with a subcontractor to repair and resurface the court, according to City specifications. ARTS will also maintain the basketball court design for five years.

FINANCIAL STATEMENT:

There is no fiscal impact to the General Fund. All costs for this project are funded through ARTS and will be part of the \$125,000 lease obligation.

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Parks, Recreation and Library

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review.CCR15378; PRC 21065.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

Not Applicable

EXHIBITS:

1. Agreement Between the City of National City and ARTS for Basketball Court Mural Project – November 1, 2022
2. Agreement Between the City of National City and ARTS – December 7, 2021
3. Resolution

**SHORT FORM SERVICES AGREEMENT
BY AND BETWEEN
THE CITY OF NATIONAL CITY
AND A REASON TO SURVIVE (ARTS)**

THIS AGREEMENT is entered into this 1st day of November, 2022, by and between the CITY OF NATIONAL CITY, a municipal corporation (the "CITY"), and A REASON TO SURVIVE, a non-profit organization (the "CONTRACTOR").

NOW, THEREFORE, CITY agrees to engage CONTRACTOR to perform the services set forth herein in accordance with the following terms and conditions:

1. **Description of Services.** CONTRACTOR shall provide the following services: provide artwork design for one (1) Basketball Court mural for approval to Public Art Committee (re-work design as needed) and City Council; repair and resurface Kimball Park basketball court and install artwork on Kimball Park basketball court according to Exhibit "A" Scope of Services, including all supplies, equipment, transportation, and labor needed for same, and utilizing design shown in "Exhibit B."

2. **Length of Agreement.** The schedule is set forth below:
Work to be started within 10 working days of notice to proceed and will be completed within 120 working days of start date.

3. **Compensation.** The total compensation to CONTRACTOR for providing the services set forth herein shall not exceed a one-time cost of \$20,000 and shall be included in ARTS' \$125,000 lease obligation to the City as stated in the Agreement between the City and Contractor dated December 7, 2021.

4. **Payment Schedule.** Based on the information set forth in #3 Compensation, there will be a credit towards the lease obligation and there will be no payment made for the satisfactorily completed services of CONTRACTOR.

5. **Termination.** CITY may terminate this Agreement at any time by providing one (1) day's written notice to CONTRACTOR.

6. **Independent Contractor.** It is agreed that CONTRACTOR is an independent Contractor, and all persons working for or under the direction of CONTRACTOR are CONTRACTOR'S agents, servants and employees, and said persons shall not be deemed agents, servants, or employees of CITY.

7. **Insurance.** CONTRACTOR shall obtain:
A. If checked, Professional Liability Insurance (errors and omissions) with minimum limits of \$1,000,000 per occurrence.

B. Automobile insurance covering all bodily injury and property damage incurred during the performance of this Agreement, with a minimum coverage of \$1,000,000 combined single limit per accident. Such automobile insurance shall include owned, non-owned, and hired vehicles. The policy shall name the CITY and its officers, agents, employees, and volunteers as additional insureds, and a separate additional insured endorsement shall be provided.

C. Commercial General Liability Insurance, with minimum limits of either \$2,000,000 per occurrence and \$4,000,000 aggregate, or \$1,000,000 per occurrence and \$2,000,000 aggregate with a \$2,000,000 umbrella policy, covering all bodily injury and property damage arising out of its operations, work, or performance under this Agreement. The policy shall name the CITY and its officers, agents, employees, and volunteers as additional insureds, and a separate additional insured endorsement shall be provided. The general aggregate limit must apply solely to this “project” or “location”. The “project” or “location” should be noted with specificity on an endorsement that shall be incorporated into the policy.

D. Workers’ compensation insurance in an amount sufficient to meet statutory requirements covering all of CONTRACTOR’S employees and employers’ liability insurance with limits of at least \$1,000,000 per accident. In addition, the policy shall be endorsed with a waiver of subrogation in favor of the CITY. Said endorsement shall be provided prior to commencement of work under this Agreement.

If CONSULTANT has no employees subject to the California Workers’ Compensation and Labor laws, CONSULTANT shall execute a Declaration to that effect. Said Declaration shall be provided to CONSULTANT by CITY.

E. The aforesaid policies shall constitute primary insurance as to the CITY, its officers, employees, and volunteers, so that any other policies held by the CITY shall not contribute to any loss under said insurance. Said policies shall provide for thirty (30) days prior written notice to the CITY’s Risk Manager, at the address listed in subsection G below, of cancellation or material change.

F. Said policies, except for the professional liability and workers’ compensation policies, shall name the CITY and its officers, agents, employees, and volunteers as additional insureds, and separate additional insured endorsements shall be provided.

G. The Certificate Holder for all policies of insurance required by this Section shall be:

City of National City
c/o Risk Manager
1243 National City Boulevard
National City, CA 91950-4397

H. If required insurance coverage is provided on a “claims made” rather than “occurrence” form, the CONTRACTOR shall maintain such insurance coverage for three years after expiration of the term (and any extensions) of this Agreement. In addition, the “retro” date must be on or before the date of this Agreement.

I. Insurance shall be written with only insurers authorized to conduct business in California which hold a current policy holder’s alphabetic and financial size category rating of not less than A:VII according to the current Best’s Key Rating Guide, or a company of equal financial stability that is approved by the City’s Risk Manager. In the event coverage is provided by non-admitted “surplus lines” carriers, they must be included on the most recent List of Approved Surplus Line Insurers (“LASLI”) and otherwise meet rating requirements.

J. This Agreement shall not take effect until certificate(s) or other sufficient proof that these insurance provisions have been complied with, are filed with, and approved by the CITY’s Risk Manager. If the CONTRACTOR does not keep all insurance policies required by this Section 7 in full force and effect at all times during the term of this Agreement, the CITY may

treat the failure to maintain the requisite insurance as a breach of this Agreement and terminate the Agreement as provided herein.

K. All deductibles and self-insured retentions in excess of \$10,000 must be disclosed to and approved by the CITY. CITY reserves the right to modify the insurance requirements of this Section 7, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

L. If the CONTRACTOR maintains broader coverage or higher limits (or both) than the minimum limits shown above, the CITY shall be entitled to the broader coverage or higher limits (or both) maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY.

8. **Indemnification and Hold Harmless.** To the maximum extent provided by law, the CONTRACTOR agrees to defend, indemnify and hold harmless the City of National City, its officers, officials, agents, employees, and volunteers against and from any and all liability, loss, damages to property, injuries to, or death of any person or persons, and all claims, demands, suits, actions, proceedings, reasonable attorneys' fees, and defense costs, of any kind or nature, including workers' compensation claims, of or by anyone whomsoever, resulting from or arising out of the CONTRACTOR'S performance or other obligations under this Agreement; provided, however, that this indemnification and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the CITY, its agents, officers employees, or volunteers. CITY will cooperate reasonably in the defense of any action, and CONTRACTOR shall employ competent counsel, reasonably acceptable to the City Attorney.

The indemnity, defense, and hold harmless obligations contained herein shall survive the termination of this Agreement for any alleged or actual omission, act, or negligence under this Agreement that occurred during the term of this Agreement.

8. **EMPLOYEE PAYMENTS AND INDEMNIFICATION.**

9.1 **PERS Eligibility Indemnification.** If CONTRACTOR's employee(s) providing services under this Agreement claims, or is determined by a court of competent jurisdiction or the California Public Employees Retirement System ("PERS") to be eligible for enrollment in PERS of the CITY, CONTRACTOR shall indemnify, defend, and hold harmless CITY for the payment of any employer and employee contributions for PERS benefits on behalf of the employee as well as for payment of any penalties and interest on such contributions which would otherwise be the responsibility of the CITY.

CONTRACTOR'S employees providing service under this Agreement shall not: (1) qualify for any compensation and benefit under PERS; (2) be entitled to any benefits under PERS; (3) enroll in PERS as an employee of CITY; (4) receive any employer contributions paid by CITY for PERS benefits; or (5) be entitled to any other PERS-related benefit that would accrue to a CITY employee. CONTRACTOR's employees hereby waive any claims to benefits or compensation described in this Section 9. This Section 9 applies to CONTRACTOR notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary.

9.2 **Limitation of CITY Liability.** The payment made to CONTRACTOR under this Agreement shall be the full and complete compensation to which CONTRACTOR and CONTRACTOR's officers, employees, agents, and subcontractors are entitled for performance of any work under this Agreement. Neither CONTRACTOR nor CONTRACTOR's officers,

employees, agents, and subcontractors are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to CITY employees. The CITY will not make any federal or state tax withholdings on behalf of CONTRACTOR. The CITY shall not be required to pay any workers' compensation insurance on behalf of CONTRACTOR.

9.3 Indemnification for Employee Payments. CONTRACTOR agrees to defend and indemnify the CITY for any obligation, claim, suit, or demand for tax, retirement contribution including any contribution to PERS, social security, salary or wages, overtime payment, or workers' compensation payment which the CITY may be required to make on behalf of (1) CONTRACTOR, (2) any employee of CONTRACTOR, or (3) any employee of CONTRACTOR construed to be an employee of the CITY, for work performed under this Agreement. This is a continuing obligation that survives the termination of this Agreement.

9. Acceptability of Work. The CITY shall, with reasonable diligence, determine the quality or acceptability of the work, the manner of performance, and/or the compensation payable to the CONTRACTOR.

10. Business License. CONTRACTOR must possess or shall obtain business license from National City Finance Department before beginning work.

11. Prevailing Wages. State prevailing wage rates may apply to work performed under this Agreement. State prevailing wages rates apply to all public works contracts as set forth in California Labor Code, including but not limited to, Sections 1720, 1720.2, 1720.3, 1720.4, and 1771. CONTRACTOR is solely responsible to determine if State prevailing wage rates apply and, if applicable, pay such rates in accordance with all laws, ordinances, rules, and regulations.

12. Administrative Provisions.

A. *Computation of Time Periods.* If any date or time period provided for in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, then such date shall automatically be extended until 5:00 p.m. Pacific Time of the next day which is not a Saturday, Sunday or federal, state, or legal holiday.

B. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.

C. *Captions.* Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

D. *No Obligations to Third Parties.* Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, or obligate any of the parties hereto, to any person or entity other than the parties hereto.

E. *Exhibits and Schedules.* The Exhibits and Schedules attached hereto are hereby incorporated herein by this reference for all purposes. To the extent any exhibits, schedules, or provisions thereof conflict or are inconsistent with the terms and conditions contained in this Agreement, the terms and conditions of this Agreement will control.

F. *Amendment to this Agreement.* The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

G. *Assignment & Assumption of Rights.* CONTRACTOR shall not assign this Agreement, in whole or in part, to any other party without first obtaining the written consent of CITY.

H. *Waiver.* The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

I. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California. The venue for any legal action arising under this Agreement shall be in either state or federal court in the County of San Diego, State of California. The CONTRACTOR shall comply with all laws, including federal, state, and local laws, whether now in force or subsequently enacted.

J. *Audit.* If this Agreement exceeds ten-thousand dollars (\$10,000), the parties shall be subject to the examination and audit of the State Auditor for a period of three (3) years after final payment under the Agreement, per Government Code Section 8546.7.

K. *Entire Agreement.* This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between the parties as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent, or representative of any party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.

L. *Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

M. *Subcontractors or Subconsultants.* The CITY is engaging the services of the CONTRACTOR identified in this Agreement. The CONTRACTOR shall not subcontract any portion of the work, unless such subcontracting was part of the original proposal or is allowed by the CITY. In the event any portion of the work under this Agreement is subcontracted, the subcontractor(s) shall be required to comply with and agree to, for the benefit of and in favor of the CITY, both the insurance provisions in Section 7 and the indemnification and hold harmless provision of Section 8 of this Agreement.

N. *Construction.* The parties acknowledge and agree that (i) each party is of equal bargaining strength, (ii) each party has actively participated in the drafting, preparation and negotiation of this Agreement, (iii) each such party has consulted with or has had the opportunity to consult with its own, independent counsel and such other professional advisors as such party has deemed appropriate, relative to any and all matters contemplated under this Agreement, (iv) any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

IN WITNESS WHEREOF, this Agreement is executed by CITY and by CONTRACTOR on the date and year first above written.

CITY OF NATIONAL CITY

By: _____
Brad Raulston, City Manager

APPROVED AS TO FORM:

By: _____
Barry J. Schultz
Interim City Attorney

-- OR --

By: _____
Jennifer K. Gilman
Deputy City Attorney

A REASON TO SURVIVE (ARTS)
(Corporation – signatures of two corporate officers required)
(Partnership or Sole proprietorship – one signature)

By: _____
(Name)

JAMES HALLIDAY

(Print)

EXECUTIVE DIRECTOR

(Title)

By: _____
(Name)

Lauren Lockhart

(Print)

Board Chair

(Title)

CONTACT INFORMATION

CITY OF NATIONAL CITY
1243 National City Boulevard
National City, CA 91950-4397

Phone: (619) 470-5882
Contact: Joyce Ryan
Title: Library & Community Services
Director
Dep.: Library & Community Services
Email: jrryan@nationalcityca.gov

A REASON TO SURVIVE (ARTS)
200 East 12th Street
National City, CA 91950

Phone:
Fax:
Contact:
Title:
Email:
Taxpayer I.D. No.:

Exhibit "A"

SCOPE OF SERVICES

This is an exhibit attached to, and made part of, the AGREEMENT entered into this 1st day of November, 2022 by and between the CITY OF NATIONAL CITY, a municipal corporation (the "CITY"), and A REASON TO SURVIVE, a non-profit organization (the "CONTRACTOR").

CONTRACTOR shall perform services as detailed in the following sections

SECTION 1. GENERAL

- A. General Description:** CONTRACTOR shall artwork design for one (1) Basketball Court mural for approval to Public Art Committee (re-work design as needed) and City Council; repair and resurface Kimball Park basketball court; install artwork on Kimball Park basketball court; and maintain art on the basketball court by touching up paint, at minimum, twice per term. (Hereafter referred to as "Project")
- B. General Performance Requirement:**
 - a. The performance of all services by CONTRACTOR shall be in the satisfaction of the CITY, in accordance with the express terms hereof, including but not limited to the terms set out in detail in this scope of services and the standard care provisions obtained in this AGREEMENT.
 - b. CONTRACTOR shall coordinate this scope of services with the CITY as well as with other CITY contractors, as needed or directed by the CITY.
 - c. CONTRACTOR's services shall be performed as expeditiously as is consistent with professional skill and care in the orderly process of the work. The schedule for the PROJECT may be adjusted by mutual agreement.

SECTION 2. TASKS

- A.** CONTRACTOR will market to local students the opportunity to collaborate with the artist to participate in the design of and application of a painted mural on the Kimball Park Basketball Court.
 - i. Participating students will be between the ages of 13 to 18 and attend Sweetwater High School, National Middle School, Granger Jr. High, and other schools in the Sweetwater Union High School District; additionally, students from Integrity Charter School.
 - ii. Students will meet weekly to draft designs to present to the National City Public Arts Committee for recommendation and approval.
- B.** CONTRACTOR shall be responsible for pulling all CITY permits associated with PROJECT.
- C.** CONTRACTOR will work with Ferandell Tennis Court Inc. (SUBCONTRACTOR) for the repair and resurfacing of the basketball court, creating a clean canvas for CONTRACTOR to incorporate design.

- D.** SUBCONTRACTOR shall furnish the following submitted specifications and costs, all material, labor, equipment, transpiration, and perform all work necessary for the following at Kimball Park, E 15th St/National City CA 91950.
- i.** SUBCONTRACTOR to waterblast, using a 2500 to 5000 PSI hydroblast, or diamond grind existing surface. This will expose all surface spall and pop-outs, clean out existing cracks, and remove any bubbling or peeling of the existing surface.
 - ii.** SUBCONTRACTOR to break out lifting/heaving areas, patch with *RapidSet CementAll*, and grind flush with slab.
 - iii.** SUBCONTRACTOR to remove 60' of existing caulking, clean joints, and re-caulk with elastomeric caulking material. *Acrylic color/paint may crack as it does not flex at the same rate as caulking material*
 - iv.** SUBCONTRACTOR to patch all cracks, visible pop-outs, and spalls, using court patch binder and grind or sand flush with slab. *Cracks will re-appear due to contraction, expansion, and other existing conditions.*
 - v.** SUBCONTRACTOR to clean and prepare the existing surface, then apply acrylic concrete primer to all exposed concrete.
 - vi.** SUBCONTRACTOR to apply two (2) coats of sand-filled acrylic resurfacer, giving a smooth, even, uniform finish.
 - vii.** To apply sand-filled acrylic color. SUBCONTRACTOR recommends two (2) coats.
- E.** CONTRACTOR will apply court design, approved by the Public Art Committee. Please see Exhibit "B" for the approved design.
- i.** After CONTRACTOR applies court color, SUBCONTRACTOR to stripe court, utilizing line primer for sharper edges, as per current game specifications, in the color white
- F.** CONTRACTOR will take responsibility for all costs associated with the project. Costs include, but not limited to, sub-contractor fees, labor fees, materials, student resources, marketing, and potential CITY Requirements.
- G.** CONTRACTOR will maintain art on the basketball court by touching up paint, at minimum twice per term.
- i.** Term will be equivalent to five (5) years following the notice to proceed.

The provisions set forth upon this exhibit and any other attached exhibits hereto are hereby incorporated in and made a part of this AGREEMENT.

Exhibit B

**Kimball Park Basketball Court Mural Design
"Convergence"**



**AGREEMENT
BY AND BETWEEN
THE CITY OF NATIONAL CITY
AND
A REASON TO SURVIVE**

THIS AGREEMENT is entered into on this 7 day of December, 2021, by and between the CITY OF NATIONAL CITY, a municipal corporation (the "CITY"), and A REASON TO SURVIVE (the "ARTS").

RECITALS

WHEREAS, the CITY owns the improved real property located at 200 East 12th Street, National City, California. This real property is commonly known as the Arts Center Building (the "ARTS CENTER"). A description of the ARTS CENTER is attached hereto as Exhibit "A" and Exhibit "B", incorporated herein by reference;

WHEREAS, one of the goals of the CITY's General Plan is to develop a cultural arts program that encourages and facilitates the development of art in public spaces and promotes greater awareness of architectural, urban design, and the cultural heritage of the CITY;

WHEREAS, ARTS is a California non-profit corporation skilled in creating public art, including capital arts projects;

WHEREAS, the CITY desires to employ ARTS to maintain the ARTS CENTER for the benefit of the community and ARTS is willing and able to maintain the ARTS CENTER for such purpose;

WHEREAS, in exchange for maintaining the ARTS CENTER for the benefit of residents and visitors, the CITY desires to grant ARTS a revocable license to enter and operate the ARTS CENTER located at 200 East 12th Street, National City, California;

WHEREAS, the CITY previously entered into a similar arts maintenance agreement with ARTS which commenced on January 1, 2018 and expires on December 31, 2021;

WHEREAS, the CITY wishes to enter into this new agreement for continued arts maintenance with ARTS.

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

1. **ENGAGEMENT OF CONSULTANT.** The CITY agrees to engage ARTS to maintain and operate the real property located at 200 East 12th Street, National City, California and known as the ARTS CENTER, in accordance with all the terms and

conditions contained herein. ARTS represents that all services shall be performed directly by ARTS or under direct supervision of ARTS.

1.1 **LICENSE FOR USE OF PROPERTY.** The CITY grants ARTS a revocable license to enter and operate the ARTS CENTER, subject to the covenants and conditions hereinafter set forth, as of the Effective Date of this agreement.

1.1.1 Parking. CITY will maintain control of the public parking lot adjacent to the Arts Center. ARTS shall neither have reserved parking nor exclusive on-site parking spaces.

1.2 **OWNERSHIP OF PERSONAL PROPERTY AND IMPROVEMENTS.** The rights and obligations of CITY and ARTS regarding the ownership of personal property and improvements on the property known as the ARTS CENTER shall be as follows:

1.2.1 Ownership of Personal Property. All improvements existing on the property known as the ARTS CENTER, together with all fixtures permanently attached to the property as of the effective date of this agreement shall remain the property of the CITY during the Term. ARTS shall not remove any improvements or fixtures from the property and shall not waste, destroy, or modify any improvements or fixtures, except as permitted by this agreement.

1.2.2 Ownership of Improvements and Equipment. All improvements made to the ARTS CENTER by ARTS shall become property of the CITY.

2. **TERM.** This agreement will become effective on January 1, 2022. The duration of this agreement is for the period of January 1, 2022 through December 31, 2022. This agreement may be extended by mutual agreement upon the same terms and conditions for an additional two (2) year term. CITY and ARTS may exercise up to three two-year extensions. Any extension of this agreement must be approved by resolution of the City Council.

3. **SCOPE OF SERVICES.** It is the intenton of this agreement that the operation of the Arts Center by ARTS will encourage and foster arts education programming, creative youth development, project based learning, and support services for the students and families at the ARTS CENTER, as well as the creation of public art projects in the community.

In exchange for its use of the ARTS CENTER, ARTS shall provide capital projects and programming services (the "Projects and Programs") within National City's jurisdictional boundaries during the Term. Such Projects shall serve as consideration for the use of the property and shall include: a) capital improvements to the ARTS CENTER; b) the performance of works of authorship as described in California Civil Code 980-989 and United States Code Title 17, Article 106(A) and Section 113(d) (hereafter "Public Art"), throughout the community utilizing various media; c) community event banners; d)

public gateway improvements, that may include aspects of Public Art;e) landscape, streetscape, and park improvements; and f) art consultancy, art installation and art maintenance of ARTS-installed temporary art pieces done on behalf of and for the benefit of the City of National City or National City programs such as, but not exclusively limited to, the annual Dia de los Muertos and Community Services Day programs and events. ARTS is not obligated to maintain permanent public art or public art pieces unless the parties agree. The scope of services described in this Article 3 are in addition to all other property maintenance obligations more specifically described herein.

3.1 **VALUE OF PROJECTS AND PROGRAMS.** The annual value of the Projects and Programs shall total at least one hundred and twenty-five thousand dollars (\$125,000.00). Of this \$125,000, ARTS must obtain at least \$25,000 for the Projects and Programs through fundraising.

3.2 **METHOD OF DETERMINING VALUE OF PROJECTS AND PROGRAMS.** The value of all Projects and Programs shall be determined according to a) the dollar value of each Project and Program, as represented by a separate written agreement approved by the City Manager or designee, or b) copies of invoices, receipts, or bills demonstrating the dollar value of materials purchased for a Project and Program. ARTS must promptly make all invoices, receipts, or bills demonstrating the dollar value of materials purchased for a Project or Program available to the City Manager or designee within 3 days of a written request.

3.3 **WAIVER OF ARTISTIC RIGHTS.** ARTS expressly waives and disclaims any residual rights in the Projects and Programs granted to ARTS by state or federal law, including the California Civil Code, Articles 980-989, relating to intellectual property and artistic works and Title 17 United States Code Section 106A and Section 113(d) relating to artistic rights.

3.4 **HOURS OF OPERATION.** ARTS will open the property known as the ARTS CENTER to the public Monday through Friday from 10:00 a.m. to 5:00 p.m.

3.5 **SERVICE FEES.** ARTS shall not provide any programs and services for profit. However, ARTS may charge user fees for classes and programs offered to school groups and the community to offset costs incurred by ARTS in its maintenance and operation of the ARTS CENTER. Any fees charged this Article 3.5 must be approved by the City Manager or designee. There will no fee for the public to gain access to the ARTS CENTER during the hours of operation listed in Article 3.4.

3.6 **REPORTING BY ARTS.** ARTS shall provide quarterly reports to the City Manager, or designee, that provide Statistical Information (defined below) for the immediately preceding quarter. Each quarterly report shall contain, at a minimum, the total number of a) National City residents who participated in ARTS' Projects or Programs; b) participants and volunteers who participated in ARTS' Projects or Programs; c) all events and programs coordinated; d) the capital projects completed. The quarterly reports shall also include reports on ARTS' operating and maintenance

plans, long-term and short-term goals, and any other pertinent statistics. The information required to appear in the quarterly reports by this Article 3.6 will be referred to as "Statistical Information." Each quarterly report will include all previous quarters' Statistical Information", if any. ARTS will deliver the quarterly report to the City Manager or designee within 30 days of the end of each quarter.

3.7 **ANNUAL BUDGET.** ARTS shall provide the City Manager, or designee, with a courtesy copy of the proposed budget for ARTS' estimated maintenance and operating expenses for the ARTS CENTER by July 1 of each year during the Term. ARTS shall provide to the City Manager or designee, an audited financial report and tax return, ninety (90) days following June 30 of each year during the Term.

3.8 **VOLUNTEER MANAGEMENT.** ARTS may utilize volunteers to operate the ARTS CENTER, and in providing the Projects and Programs required by this agreement. ARTS is responsible for recruiting, training, and managing all volunteers on the property. Volunteers are considered the responsibility of ARTS for the purpose of workers compensation or general liability.

3.9 **ALCOHOL USE.** ARTS or third parties with permission from ARTS, may, hold events at the ARTS CENTER where alcoholic beverages are served. Alcoholic beverages shall be served subject to the following requirements.

- (a) Alcohol will not be served during youth programming under any circumstance.
- (b) Alcohol will be served in limited areas of the ARTS CENTER designated by ARTS in advance of any event and approved by the City Manager or designee.
- (c) Alcoholic beverages must be served by a licensed bartender,. The bartender must have a copy of their bartender's license located at the property.
- (d) The event host must obtain approval from the California Department of Alcoholic Beverage Control to serve alcohol.
- (e) The event host is responsible for all guests' behavior during and following the service of alcohol.
- (f) "Last call" for service of alcohol shall be at least thirty (30) minutes prior to the scheduled end of the event.
- (g) When third parties (with permission from ARTS) serve alcoholic beverages, the following additional requirements shall apply:
 - 1. The third party shall provide the CITY proof of liability insurance acceptable to the City's Risk Manager;
 - 2. The third party shall provide two licensed security guards for every 100 guests registered to attend the event;
 - 3. ARTS shall reserve the authority to immediately terminate an event if ARTS determines, in its sole discretion, the

third party has not complied with any requirements of this Article 3.9.

4. ARTS shall provide the CITY a copy of their third party rental agreement template for approval.

4. **CONSIDERATION.** ARTS' payment of \$1.00 to the CITY, in addition to ARTS' provision of Projects and Programs under Article 3 of this agreement and the mutual benefit to be derived from ARTS' performance under the remainder of this agreement, shall serve as the sole consideration due the CITY for ARTS license to use and operate the ARTS CENTER.

5. **OWNERSHIP RIGHTS AND LICENSES TO ARTWORK: WAIVER.** Through its provision of Projects and Programs to the CITY, ARTS makes an unconditional donation, in perpetuity, of all Public Art created to the CITY. ARTS acknowledges that the CITY is authorized to accept donations of Public Art pursuant to Sections 37354 and 37355 of the Government Code. Before beginning each Project or Program that contains Public Art, ARTS and all individuals participating in the Project or Program must sign a CITY-approved waiver that expressly waives and disclaims any and all rights they each may have under the California Art Preservation Act, as set forth in Civil Code Section 980-989, and any rights under the Visual Artists Rights Act, as set forth at 17 U.S.C. Section 106A and Section 113(d) to any Public Art created pursuant to this agreement. ARTS, and all participants who create Public Art, shall not attempt to defeat Sections 3.2.3 and 9.2 by cooperating with any organization which seeks to bring an action under Civil Code Article 989 or any other applicable provision of law.

5.1 **OWNERSHIP OF MATERIALS.** Ownership of all materials and concepts produced for the CITY under this agreement, including but not limited to completed Projects, and all rights to licensing and reproductions of Public Art, shall pass to and become the property of the CITY once the CITY accepts the completed Project. The CITY, at its option, will store all drawings and materials that may assist with future repairs.

5.2 **ASSIGNMENT.** ARTS hereby assigns to the CITY all rights to produce, give, sell, and distribute still or motion images and models or other likeness of any kind of Public Art but shall exercise no rights thereto inconsistent with any provision of this Article 5.0. Any Memoranda, Reports, Maps, Drawings, Renderings, Photos, Plans, Specifications, and other documents prepared by ARTS for any Project or Program, whether paper or electronic, shall become the property of the CITY for use with respect to the specific Project or Program provided to the CITY, and shall be turned over to the CITY upon completion of the Project or Program, or any phase thereof, as contemplated by this Agreement.

5.3 **SURVIVAL.** The provisions of Article 5.0 to 5.2 shall survive the termination of this agreement.

6. **COMPLIANCE WITH LAWS.** ARTS, at its sole discretion, shall procure, maintain, and hold available for the CITY's inspection any governmental license or permit required for the proper and lawful conduct of ARTS' operation of the ARTS CENTER. ARTS shall not use the ARTS CENTER for any use or purpose in violation of the laws of the United States of America, or the laws, ordinances, regulations, orders, or requirements of the State of California, the County of San Diego, the CITY, or of other lawful authorities. ARTS shall, at its sole expense, comply with all applicable statutes, laws, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the Term regulating the use by ARTS of the ARTS CENTER.

7. **UTILITY SERVICES.** The CITY shall be responsible for maintaining reasonable utility services to the ARTS CENTER. The CITY shall pay for Twenty Thousand dollars (\$20,000) worth of electricity and reasonable water usage at the property known as the ARTS CENTER. ARTS shall pay for all costs of electricity that exceeds the sum listed in this Article 7. If the CITY determines, in its sole discretion, that ARTS is negligent in its use of the utilities, including water usage, the CITY may hold a good faith meet and confer meeting with ARTS to discuss its utilities usage.

8. **ARTS REPAIRS AND MAINTENANCE OBLIGATIONS.** ARTS acknowledges that it has made a thorough inspection of the ARTS CENTER and that it accepts the property "as-is" as of the Effective Date of this agreement. At ARTS' own cost and expense, ARTS shall repair, replace, and maintain the ARTS CENTER in good, tenable condition as necessary. ARTS shall not be obligated to repair or replace damage to the Property caused by ordinary wear and tear. ARTS shall maintain the property in an accessible manner for use by individuals with disabilities and comply with federal and state law regarding accessibility, including but not limited to the Americans with Disabilities Act and the California's Disabled Persons Act. Other than repair work in emergency situations, not exceeding Three Thousand Dollars (\$3,000), ARTS shall not perform any repair work without the CITY's prior written consent. As used in this Article 8, "emergency" means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. All emergency repairs performed by the CITY on the property known as the ARTS CENTER are governed by Public Contract Code Section 22050. ARTS' obligations under this Article shall apply regardless of whether the repairs, restorations, and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or noncapital, the fault or not the fault of ARTS, its agents, employees, volunteers, invitees, visitors, or contractors. All replacements made by the ARTS shall be of like size, kind, and quality to the items replaced.

8.1 **CITY REPAIR AND MAINTENANCE OBLIGATIONS.** For any repair and maintenance work exceeding Three Thousand Dollars (\$3,000), the CITY will consider the nature and priority of the work and available funding to determine if and when such repairs will be completed.

8.2 **CITY RIGHT TO INSPECT.** ARTS shall permit the CITY to enter

the ARTS CENTER at all times during usual hours of operation to inspect the property. Any entry pursuant to this Article 8.2 shall not unreasonably interfere with with ARTS operation of the ARTS CENTER. However, nothing contained in this Article 8.2 shall create any duty on the part of the CITY to do any work which, under any provision of this agreement ARTS may be required to do.

9. **ALTERATIONS**. ARTS may alter, replace, add to, change, or construct additional improvements to the ARTS CENTER, as ARTS may find necessary or convenient for its operation of the property. Any alteration performed by ARTS under this Article 9 shall be performed: a) ARTS' sole cost and expense; b) with the CITY's prior written consent; and c) in accordance with construction plans submitted to and approved by the CITY.

9.1 **CONSTRUCTION PERMITS AND LICENSES**. At all times during the Term, ARTS shall procure, at its sole cost and expense, all permits and licenses that are necessary or required from any local governmental agency for the proposed construction of any alterations. The CITY may, in its sole discretion, waive CITY permitting fees where applicable.

9.2 **PROPOSED PLANS**. In its sole discretion, the CITY may require ARTS to do any of the following: a) submit a complete set of proposed plans of any alterations to the CITY; b) apply for and receive a permit from the Building Department to complete any alterations; c) within sixty (60) days of a written request, furnish CITY with a complete set of "as-built" plans for any CITY-approved alterations.

9.3. **PREVAILING WAGES**. ARTS shall comply with prevailing wage statutes for any work not performed by volunteers. State prevailing wage rates may apply to work performed under this agreement. State prevailing wages rates apply to all public works contracts as set forth in California Labor Code, including but not limited to, Sections 1720, 1720.2, 1720.3, 1720.4, and 1771. Consultant is solely responsible to determine if State prevailing wage rates apply and, if applicable, pay such rates in accordance with all laws, ordinances, rules, and regulations.

10. **MECHANICS' LIENS: STOP NOTICES**. ARTS shall pay, or cause to be paid, the total cost and expense of all works of improvement, as that phrase is defined in the Mechanics Lien Law in effect at time and place of construction, done by it, or caused to be done by it, on the property known as the ARTS CENTER, and for all materials furnished for, or in connection with any such work. If any lien or stop notice is filed against the property known as the ARTS CENTER, ARTS shall cause the lien or stop notice to be discharged of record within one hundred eighty (180) days after it is filed. ARTS shall indemnify, defend, and hold the CITY harmless from any and all liability, loss, damage, costs, attorneys' fees, and all other expenses on account of claims of lien of laborers, materialmen, or others for work performed, or materials or supplies furnished for ARTS or persons claiming under ARTS.

10.1 **NOTICE OF LIEN OR STOP NOTICE**. Should any claim of lien or stop notice related to ARTS' work of improvement of the property be filed against the property, or any action be filed against the property, or any action affecting the title to the property be commenced, the party receiving notice of such lien or stop notice or action shall immediately give the other party written notice thereof.

10.2 **NOTICE OF NON-RESPONSIBILITY**. The CITY or its representatives shall have the right to post and keep posted on the property notices on non-responsibility or such other notices which the CITY may deem to be proper for the protections of the CITY's interest in the property. ARTS shall, before the commencement of any work which might result in any such lien or stop notice, give to the CITY written notice of its intention to do so with sufficient time to enable posting of such notices.

11. **DEFINITION OF TAXES**. "Taxes" shall mean all taxes, governmental bonds, special assessments, charges, or transfer taxes, license and transaction fees, including, but not limited to: (a) any state, local, federal income tax, or any real or personal property tax; (b) increases in taxes attributable to ARTS' operation of the property, or; (c) any taxes which are essentially payments to a governmental agency, other than the CITY, for the right to make improvements to the property.

11.1 **POSSESSORY INTEREST**. Notwithstanding Articles 1 to 1.2, ARTS acknowledges that this agreement may create a possessory interest subject to property taxation and that ARTS may be subject to the payment of taxes levied on such interest. ARTS shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon the property.

11.2 **RESPONSIBILITY FOR PAYMENT OF TAXES**. The CITY shall not be obligated to pay any Taxes accruing against any interest in ARTS' use of the property at any time before or during the Term. ARTS shall pay any Taxes that accrue against any interest in ARTS' use of the property. Additionally, ARTS shall pay any Taxes levied upon any improvements, fixtures, or personal property located on the property to the extent such Taxes result from ARTS operation or other activities held upon, or in connection with, the property.

12. **PROJECT COORDINATION AND SUPERVISION**. The Library & Community Services Director hereby is designated as the Project Coordinator for the CITY and will monitor the progress and execution of this agreement. ARTS shall assign a single Project Director to provide supervision and have overall responsibility for the progress and execution of this agreement for the ARTS. The ARTS Executive Director thereby is designated as the Project Director for the ARTS.

13. **INDEMNIFICATION AND HOLD HARMLESS.** To the maximum extent provided by law, ARTS agrees to defend, indemnify and hold harmless the City of National City, its officers, officials, agents, employees, and volunteers against and from any and all liability, loss, damages to property, injuries to, or death of any person or persons, and all claims, demands, suits, actions, proceedings, reasonable attorneys' fees, and defense costs, of any kind or nature, including workers' compensation claims, of or by anyone whomsoever, resulting from or arising out of ARTS' performance or other obligations under this Agreement, or arising either directly or indirectly from, any act, error, omission, or negligence of ARTS or its contractors, licensees, invitees, members, agents, servants or employees; provided, however, that this indemnification and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of CITY, its agents, officers, employees or volunteers. CITY will cooperate reasonably in the defense of any action, and ARTS shall employ competent counsel, reasonably acceptable to the City Attorney.

The indemnity, defense, and hold harmless obligations contained herein shall survive the termination of this Agreement for any alleged or actual omission, act, or negligence under this agreement that occurred during the term of this agreement.

13.1 **THIRD PARTY INDEMNITY.** ARTS shall not invite third party organizations onto the property known as the ARTS CENTER until said third party organization furnishes CITY a written agreement in which it indemnifies and holds CITY harmless, upon terms satisfactory to CITY.

13.2 **WAIVERS FROM THIRD PARTIES.** ARTS agrees to obtain from all guests, invitees, or third party organizations whose participants visit the property, a waiver of liability and hold harmless agreement upon terms satisfactory to the CITY.

14. **INSURANCE.** ARTS, at its sole cost and expense, shall purchase and maintain, and shall require its subcontractors, and third party organizations ARTS invites onto the property to purchase and maintain, throughout the term of this agreement, the following insurance policies:

- (a) If checked, **Professional Liability Insurance** (errors and omissions) with minimum limits of \$1,000,000 per occurrence.
- (b) **Automobile Insurance** covering all bodily injury and property damage incurred during the performance of this agreement, with a minimum coverage of \$1,000,000 combined single limit per accident. Such automobile insurance shall include owned, non-owned, and hired vehicles. The policy shall name the CITY and its officers, agents, employees, and volunteers as additional insureds, and a separate additional insured endorsement shall be provided.
- (c) **Commercial General Liability Insurance**, with minimum limits of either \$2,000,000 per occurrence and \$4,000,000 aggregate, or \$1,000,000 per occurrence and \$2,000,000 aggregate with a \$2,000,000 umbrella policy, covering all bodily injury and property damage arising out of its operations, work, or performance under this agreement. The policy shall name the CITY and its officers, agents, employees, and volunteers as additional insureds, and a separate additional insured endorsement

shall be provided. The general aggregate limit must apply solely to this "project" or "location". The "project" or "location" should be noted with specificity on an endorsement that shall be incorporated into the policy. The Commercial General Liability required by this Section must include Sexual Misconduct Liability coverage.

- (d) **Workers' Compensation Insurance** in an amount sufficient to meet statutory requirements covering all of ARTS employees and employers' liability insurance with limits of at least \$1,000,000 per accident. In addition, the policy shall be endorsed with a waiver of subrogation in favor of the CITY. Said endorsement shall be provided prior to commencement of work under this Agreement.
- (e) If CONSULTANT has no employees subject to the California Workers' Compensation and Labor laws, ARTS shall execute a Declaration to that effect. Said Declaration shall be provided to ARTS by CITY.
- (f) The aforesaid policies shall constitute primary insurance as to the CITY, its officers, officials, employees, and volunteers, so that any other policies held by the CITY shall not contribute to any loss under said insurance. Said policies shall provide for thirty (30) days prior written notice to the CITY's Risk Manager, at the address listed in subsection (h) below, of cancellation or material change.
- (g) If required insurance coverage is provided on a "claims made" rather than "occurrence" form, the CITY shall maintain such insurance coverage for three years after expiration of the term (and any extensions) of this agreement. In addition, the "retro" date must be on or before the date of this agreement.
- (h) The Certificate Holder for all policies of insurance required by this Section shall be:

City of National City
c/o Risk Manager
1243 National City Boulevard
National City, CA 91950-4397

- (i) Insurance shall be written with only insurers authorized to conduct business in California that hold a current policy holder's alphabetic and financial size category rating of not less than A:VII according to the current Best's Key Rating Guide, or a company of equal financial stability that is approved by the CITY'S Risk Manager. In the event coverage is provided by non-admitted "surplus lines" carriers, they must be included on the most recent List of Approved Surplus Line Insurers ("LASLI") and otherwise meet rating requirements.
- (j) This agreement shall not take effect until certificate(s) or other sufficient proof that these insurance provisions have been complied with, are filed with and approved by the CITY'S Risk Manager. If ARTS does not keep all insurance policies required by this Article 14 in full force and effect at all times during the term of this agreement, the CITY may treat the

failure to maintain the requisite insurance as a breach of this agreement and terminate the agreement as provided herein.

- (k) All deductibles and self-insured retentions in excess of \$10,000 must be disclosed to and approved by the CITY. CITY reserves the right to modify the insurance requirements of this Article 14, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- (l) If ARTS maintains broader coverage or higher limits (or both) than the minimum limits shown above, the CITY shall be entitled to the broader coverage or higher limits (or both) maintained by ARTS. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY.

15. **LEGAL FEES.** If any CITY or ARTS brings a suit or action against the other arising from any breach of any of the covenants or agreements or any inaccuracies in any of the representations and warranties on the part of the other party arising out of this agreement, then in that event, the prevailing party in such action or dispute, whether by final judgment or out-of-court settlement, shall be entitled to have and recover of and from the other party all costs and expenses of suit, including attorneys' fees.

For purposes of determining who is to be considered the prevailing party, it is stipulated that attorney's fees incurred in the prosecution or defense of the action or suit shall not be considered in determining the amount of the judgment or award. Attorney's fees to the prevailing party if other than the CITY shall, in addition, be limited to the amount of attorney's fees incurred by the CITY in its prosecution or defense of the action, irrespective of the actual amount of attorney's fees incurred by the prevailing party.

16. **TERMINATION.**

- (a) This agreement may be terminated with or without cause by the CITY. Termination without cause shall be effective only upon 60-day's written notice to ARTS. During said 60-day period ARTS shall perform all services in accordance with this agreement.
- (b) This agreement may also be terminated immediately by the CITY for cause in the event of a material breach of this agreement, misrepresentation by the ARTS in connection with the formation of this agreement or the performance of services, or the failure to perform services as directed by the CITY.
- (c) Termination with or without cause shall be effected by delivery of written Notice of Termination to ARTS as provided for herein.
- (d) CITY further reserves the right to immediately terminate this agreement upon: (1) the filing of a petition in bankruptcy affecting ARTS; (2) a reorganization of ARTS for the benefit of creditors; or (3) a business reorganization, change in business name or change in business status of the ARTS.

17. **HAZARDOUS MATERIALS LAWS.** As used in this Article 17, the term "Hazardous Materials' Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law") relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under, or about the Property, soil and ground water conditions, or other similar substances or conditions. ~~The following legal authority is a non-exhaustive list of the legal authority that applies~~ to the definition of the term "Hazardous Materials Laws": the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C., Section 9601 et seq.); the Hazardous Materials Transportation Act, as amended (49 U.S.C., Section 1801 et seq.); and the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C., Section 6901 et seq.).

17.2 **HAZARDOUS MATERIALS DEFINITION.** As used in this Article the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that:

- (a) is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials;
- (b) is controlled, referred to, designated in or governed by any Hazardous Materials Laws;
- (c) gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws, or;
- (d) is any other material or substance giving rise to any liability, responsibility or duty upon the CITY or the ARTS with respect to any third person under any Hazardous Materials Law.

17.3 **ARTS REPRESENTATIONS AND WARRANTIES.** ARTS represents and warrants that, during the Term or any extension thereof, ARTS shall comply with the following provisions of this Article unless otherwise specifically approved in writing by the CITY, subject to the terms and conditions of the ARTS' maintenance obligations provided elsewhere in this Agreement:

- (a) ARTS shall not cause or permit any Hazardous Materials to be brought, kept or used in or about the property by ARTS, its agents, employees, assigns, contractors or invitees, except as required by ARTS' permitted use of the property in the normal course of operations;
- (b) Any handling, transportation, storage, treatment, or usage by ARTS of Hazardous Materials that is to occur on the property following the Effective Date shall be in compliance with all applicable Hazardous Materials Laws;
- (c) Any leaks, spills, release, discharge, emission or disposal of Hazardous Materials which may occur on the Property following the Effective Date shall be promptly and thoroughly cleaned and removed

- from the Property by ARTS at its sole expense, and any such discharge shall be promptly reported in writing to the CITY, and to any other appropriate governmental regulatory authorities;
- (d) No friable asbestos shall be constructed, placed on, deposited, stored, disposed of, or located by ARTS on the property;
 - (e) No underground improvements, including but not limited to treatment or storage tanks, or water, gas or oil wells shall be located by ARTS on the property without the CITY's prior written consent.
 - (f) ARTS shall promptly supply the CITY with copies of all notices, reports, correspondence, and submissions made by ARTS to the United States Environmental Protection Agency, the United Occupational Safety and Health Administration, and any other local, state or federal authority which requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to applicable Hazardous Materials' Laws; and

17.4 ARTS shall promptly notify the CITY of any liens threatened or attached against the Property pursuant to any Hazardous Materials' Law. If such a lien is filed against the Property, then, within the earlier of (i) twenty (20) days following such filing, or (ii) before any governmental authority commences proceedings to sell the Property pursuant to the lien, ARTS shall either:

- (a) pay the claim and remove the lien from the Property, or
- (b) furnish either: (1) a bond or cash deposit reasonably satisfactory to the CITY in an amount not less than the claim from which the lien arises, or; (2) other security satisfactory to the CITY in an amount not less than that which is sufficient to discharge the claim from which the lien arises.

17.5. At the end of this agreement, ARTS shall surrender the property to the CITY free of any and all Hazardous Materials and in compliance with all Hazardous Materials' Laws affecting the Property.

18. ARTS shall not voluntarily or involuntarily assign or otherwise transfer all or any portion of its rights and duties under this agreement without the CITY's prior written consent. Any attempted assignment or transfer without the CITY's prior written consent shall be void.

18.1 ARTS may engage third party organizations to provide special services or programming at the Property if: a) CITY consents, in writing, to the third party organizations' proposed use of the Property and; b) the third party organization obtains policies of insurance acceptable to the City's Risk Manager and Article 14 of this agreement.

19. **EVENTS OF DEFAULT; REMEDIES.** The following sub-articles shall apply if either ARTS or the CITY neglects, fails to perform, or fails to observe any of their respective obligations under the terms, covenants, or conditions contained in this agreement ("Default"):

19.1 **THIRTY-DAY CORRECTION OF DEFAULT.** If either ARTS or the CITY determines that the other party is in default, then the non-defaulting party must provide the defaulting party written notice of the Default and thirty (30) days to correct the default.

19.2 **EXTENDED CORRECTION OF DEFAULT.** If the defaulting party determines that more than thirty (30) days is required to correct the Default, the defaulting party must provide the other party written notice of the reasons why additional time is required to correct such Default. The defaulting party must use diligent efforts to correct a Default under this Article 13.1.2 and, in any case, must correct such Default within ninety (90) days from the date of the written notice of default.

19.3 **REMEDIES FOR FAILURE TO CORRECT DEFAULT.** If the defaulting party fails to comply with Article 19.1. or 19.2, then the non-defaulting party may immediately terminate this agreement. The defaulting party shall be liable to the non-defaulting party for any and all damages sustained by the non-defaulting party as a result of the defaulting parties' breach.

20. **ABANDONMENT.** ARTS shall not vacate or abandon the property at any time during the Term nor permit the property to remain unoccupied for a period of longer than five (5) consecutive days during the term of this agreement. These provisions shall not apply if the property is closed and operation is temporarily discontinued therein on account of strikes, lockouts, acts of nature, or similar causes beyond the reasonable control of ARTS. Any exceptions must be submitted in writing to the City Manager or designee for approval.

21. **ARTS' DUTY TO REPAIR CASUALTY.** ARTS shall, as expeditiously as reasonably possible, repair any damages to the property caused by fire, earthquake, or any other identifiable event of a sudden, unexpected, or unusual nature ("Casualty"), and repair, restore, and replace any such damaged or destroyed Fixtures, Improvements or Personal Property ("Casualty Repairs"). Any Casualty Repairs made are: (a) to be performed at ARTS' sole cost and expense; (b) subject to all other terms and conditions of this agreement.

21.1 **CONSTRUCTION PROVISIONS.** In the event of any reconstruction of the property, fixtures or improvements required of ARTS pursuant to this Article, ARTS shall repair the property, and repair or rebuild such fixtures and improvements, to substantially the same condition they were in immediately preceding such casualty.

21.2 **NO ABATEMENT.** In the event of reconstruction, replacement, or repair by ARTS pursuant to this Article, ARTS shall continue its operations on the property during any such period to the extent reasonably practicable from the standpoint of prudent business management, and in continuing compliance with applicable laws and regulations. ARTS shall not be entitled to any compensation or damages from CITY for: (a) loss of use of the whole or any part of the property; (b) ARTS' Personal Property; or

(c) any inconvenience or annoyance occasioned by such damage, reconstruction, or replacement.

21.3 **MAJOR DESTRUCTION**. Notwithstanding any of the foregoing provisions of this Article to the contrary, if, at any time after the Effective Date, (a) the improvements are damaged or destroyed to the extent of more than twenty-five percent (25%) of their replacement cost, or (b) the damage is such that the improvements cannot be repaired and restored within one hundred and eighty (180) days after the casualty, then ARTS shall have the right to terminate this agreement upon thirty (30) days' prior written notice to the CITY.

22. **CONDEMNATION**. ARTS may terminate this agreement within twenty (20) days after the date that a condemning authority (by a party other than the CITY) takes possession of the property by delivery of written notice of such condemnation if: (a) all of the property is taken under eminent domain proceedings; or (b) less than all of the property is taken under such eminent domain proceeding and the part taken substantially impairs the ability of ARTS to use the remainder of the property for the purposes permitted by this agreement.

22.1 In the absence of such written notice from a condemning authority, ARTS may terminate this agreement within twenty (20) days after the condemning authority shall have taken possession.

22.2 **CONTINUATION OF OPERATING AGREEMENT AFTER CONDEMNATION**. If this agreement is not terminated by ARTS, it shall remain in full force and effect as to any portion of the property remaining, and this agreement will end as of the date possession of the part taken by the public entity as to the part of the property that is taken.

22.3 **AWARD**. All monies awarded in any condemnation shall belong to the CITY. The CITY shall have no liability to ARTS for any award not provided by the condemning authority.

23. **SALE OR MORTGAGE**. The CITY may, pursuant to existing and subsequently enacted CITY ordinances and State laws, at any time, and without the consent of ARTS, vacate, sell, purchase, exchange, transfer, assign, lease, encumber or convey the CITY's interest in whole or in part, in the property (collectively referred to in this Article as a "Sale"). The CITY shall provide to ARTS written notice of the CITY's intent to a Sale or discontinuance pursuant to this Article at least ninety (90) days prior to said proposed transfer.

23.1 **RELEASE ON SALE**. From and after a Sale or discontinuance of the CITY's entire interest in the Property, the CITY shall be released from all liability to ARTS and ARTS successors and assigns arising from this Agreement because of any act, occurrence, or omission of the CITY occurring after such Sale.

24. **RIGHT OF ENTRY**. CITY, its agents, employees, and contractors may enter the Property at any time with or without notice to ARTS to: (a) respond to

health and safety concerns; (b) inspect the property and improvements; (c) determine whether ARTS is complying with its obligations in this Agreement (including its obligations with respect to compliance with Hazardous Materials Laws); (d) post notices of non-responsibility or similar notices; (e) inspect the progress of construction of any improvement; or (f) make repairs that this agreement requires or allows CITY to make, or make repairs to any adjoining space or utility services, or make repairs, alterations, or improvements to any other portion of the Property

24.1 All work enumerated in this Article 24 must be done as promptly as reasonably possible and so as to cause as little interference to ARTS as reasonably possible.

25. **NOTICES.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered; or sent by overnight mail (Federal Express or the like); or sent by registered or certified mail, postage prepaid, return receipt requested; or sent by ordinary mail, postage prepaid; or telegraphed or cabled; or delivered or sent by telex, telecopy, facsimile or fax; and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if sent by overnight mail, the business day following its deposit in such overnight mail facility, (iii) if mailed by registered, certified or ordinary mail, five (5) days (ten (10) days if the address is outside the State of California) after the date of deposit in a post office, mailbox, mail chute, or other like facility regularly maintained by the United States Postal Service, (iv) if given by telegraph or cable, when delivered to the telegraph company with charges prepaid, or (v) if given by telex, telecopy, facsimile or fax, when sent. Any notice, request, demand, direction or other communication delivered or sent as specified above shall be directed to the following persons:

CITY: City Manager
City of National City
1243 National City Boulevard
National City, CA 91950-4397

With a copy to:

Library & Community Services Director
City of National City
1401 National City Boulevard
National City, CA 91950

ARTS:A Reason to Survive, Inc.
Executive Director
200 East 12th Street
National City, CA 91950

25.1 Notice of change of address shall be given by written notice in the manner specified in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent. Any notice, request, demand, direction or other communication sent by cable, telex, telecopy, facsimile or fax must be confirmed within forty-eight (48) hours by letter mailed or delivered as specified in this Article.

26. **ARTS' DUTY TO KEEP RECORDS.** ARTS shall, at all times during the term, and for a period of five (5) years following expiration or earlier termination of this agreement, keep or cause to be kept, true and complete books, records and accounts of all: (a) construction undertaken pursuant to the rights conferred on ARTS under this agreement, and (b) financial transactions in the operation of all business activities, of whatever nature, conducted pursuant to the rights granted by this agreement. Such records shall also include the source and disposition of all trash and other waste collected and disposed of by ARTS in the operation of its business. Said records must be supported by source documents such as receipts, invoices, sales slips, cash register tapes, purchase invoices or other pertinent documents.

26.1 **CITY'S RIGHT TO AUDIT.** All ARTS books, accounts, and records shall be kept and made available at one location within the limits of the County of San Diego. The CITY shall have the right at any reasonable time to examine and perform audits of ARTS' records pertaining to (a) construction undertaken pursuant to the rights conferred on ARTS under this Agreement, and (b) its operations on the Property, including , without limitation , any records pertaining to ARTS' use of utilities on the Property. The cost of said audits shall be borne by the CITY, except that ARTS shall provide to the CITY, at ARTS' expense, necessary data to enable the CITY to fully comply with each and every requirement of the State of California or by the United States of America for information or reports relating to this Agreement and to ARTS' use of the Property.

27. **ADMINISTRATIVE PROVISIONS.**

- A. **Amendment to this Agreement.** The terms of this agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.
- B. **Applicable Law.** This agreement shall be governed by and construed in accordance with the laws of the State of California. The venue for any legal action arising under this agreement shall be in either state or federal court in the County of San Diego, State of California.
- C. **Assignment & Assumption of Rights.** ARTS shall not assign this agreement, in whole or in part, to any other party without first obtaining the written consent of CITY.
- D. **Audit.** If this agreement exceeds ten-thousand dollars (\$10,000), the parties shall be subject to the examination and audit of the State Auditor for a period of three (3) years after final payment under the agreement, per Government Code Section 8546.7.

- E. **Authority.** ARTS represents and warrants that it has full power and authority to execute and fully perform its obligations under this agreement pursuant to its governing instruments, without the need for any further action, and that the person executing this agreement on behalf of ARTS is the duly designated agent of ARTS and is authorized to do so.
- F. **Captions.** Any captions to, or headings of, the sections or subsections of this agreement are solely for the convenience of the parties hereto, are not a part of this agreement, and shall not be used for the interpretation or determination of the validity of this agreement or any provision hereof.
- G. **Computation of Time Periods.** If any date or time period provided for in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, then such date shall automatically be extended until 5:00 p.m. Pacific Time of the next day which is not a Saturday, Sunday or federal, state, or legal holiday.
- H. **Conflict of Interest and Political Reform Act Obligations.** During the term of this agreement, ARTS shall not perform services of any kind for any person or entity whose interests conflict in any way with those of the City of National City. ARTS shall at all times comply with the terms of the Political Reform Act and the National City Conflict of Interest Code. ARTS shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the CITY in which ARTS has a financial interest as defined in Government Code Section 87103. ARTS represents that it has no knowledge of any financial interests that would require it to disqualify itself from any matter on which it might perform services for the CITY.
- I. **Construction.** The parties acknowledge and agree that (i) each party is of equal bargaining strength, (ii) each party has actively participated in the drafting, preparation and negotiation of this agreement, (iii) each such party has consulted with or has had the opportunity to consult with its own, independent counsel and such other professional advisors as such party has deemed appropriate, relative to any and all matters contemplated under this agreement, (iv) each party and such party's counsel and advisors have reviewed this agreement, (v) each party has agreed to enter into this agreement following such review and the rendering of such advice, and (vi) any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this agreement, or any portions hereof, or any amendments hereto.
- J. **Counterparts.** This agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.
- K. **Entire Agreement.** This agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between the parties as to the subject matter hereof.

No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of any party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby

- L. **Exhibits and Schedules.** The Exhibits and Schedules attached hereto are hereby incorporated herein by this reference for all purposes. To the extent any exhibits, schedules, or provisions thereof conflict or are inconsistent with the terms and conditions contained in this agreement, the terms and conditions of this agreement shall control.
- M. **Force Majeure.** If either party is prevented or delayed from performing any act or discharging any obligation hereunder, because of any and all causes beyond either party' s reasonable control, including unusual delays in deliveries, abnormally adverse weather conditions, unavoidable casualties, strikes, labor disputes, inability to obtain labor, materials or equipment, acts of God, governmental restrictions, regulations or controls, any hostile government actions, acts of terrorism, civil commotion and fire or other casualty, legal actions attacking the validity of this agreement or the CITY or ARTS' operations of the property, or any other casualties beyond the reasonable control of either party ("Force Majeure"), performance of such act shall be excused for the period of such delay, and the period for performance of such act shall be extended for a period equivalent to the period of such delay. Force Majeure shall not include any bankruptcy, insolvency , or other financial inability on the part of either party hereto.
- N. **Independent Contractor.** ARTS acknowledges that it is an independent contractor; that it alone retains control of the manner of conducting its activities in furtherance of this agreement; and that it, as well as any persons, contractors or agents it may employ, are not employees of CITY for any purpose.
- O. **No Obligations to Third Parties.** Except as otherwise expressly provided herein, the execution and delivery of this agreement shall not be deemed to confer any rights upon, or obligate any of the parties hereto, to any person or entity other than the parties hereto.
- P. **Partial Invalidity.** If any provision of this agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this agreement shall not be affected thereby. Each provision shall be valid and enforceable to the fullest extent permitted by law.
- Q. **Subcontractors or Subconsultants.** The CITY is engaging the services of the ARTS identified in this agreement. ARTS shall not subcontract any portion of the work, unless such subcontracting was part of the original proposal or is allowed by the CITY in writing, or within the terms of this agreement. In the event any portion of the work under this agreement is subcontracted, the subconsultant(s) shall be required to comply with and agree to, for the benefit of and in favor of the CITY,

provision shall be valid and enforceable to the fullest extent permitted by law.

- Q. **Subcontractors or Subconsultants.** The CITY is engaging the services of the ARTS identified in this agreement. ARTS shall not subcontract any portion of the work, unless such subcontracting was part of the original proposal or is allowed by the CITY in writing, or within the terms of this agreement. In the event any portion of the work under this agreement is subcontracted, the subconsultant(s) shall be required to comply with and agree to, for the benefit of and in favor of the CITY, both the insurance provisions and the indemnification and hold harmless provisions of this Agreement.
- R. **Successors and Assigns.** This agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.
- S. **Waiver.** The waiver or failure to enforce any provision of this agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date and year first above written.

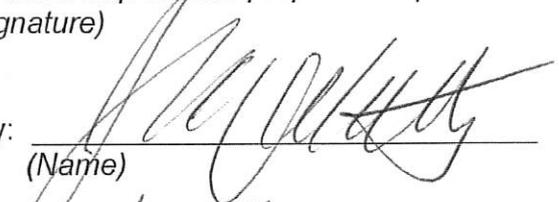
CITY OF NATIONAL CITY

By: 
Alejandra Sotelo Solis, Mayor

A REASON TO SURVIVE (ARTS)

(Corporation – signatures of two corporate officers required)

(Partnership or Sole proprietorship – one signature)

By: 
(Name)

JAMES HALLIDAY
(Print)

EXECUTIVE DIRECTOR
(Title)

APPROVED AS TO FORM:

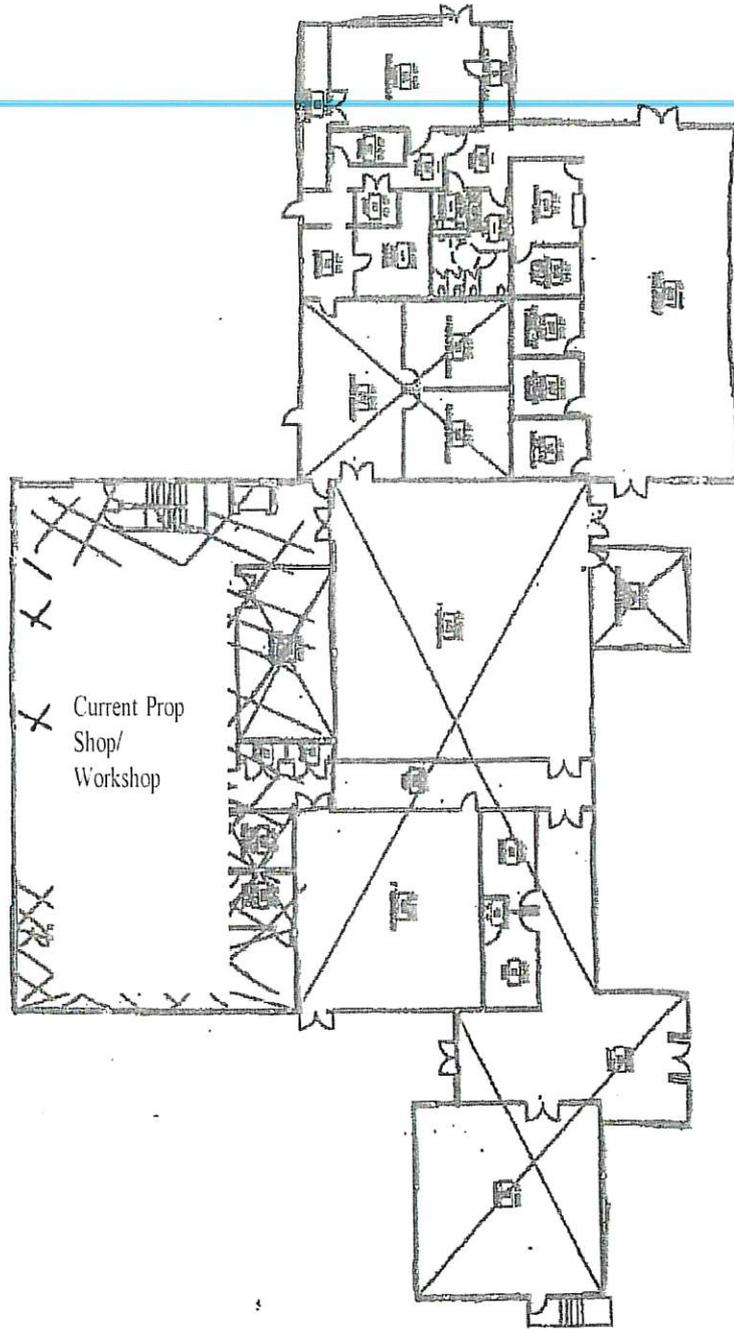
By: 
Gabriela Torres
Deputy City Attorney

By: 
(Name)

Jacqueline Reynoso
(Print)

Board Chair woman
(Title)

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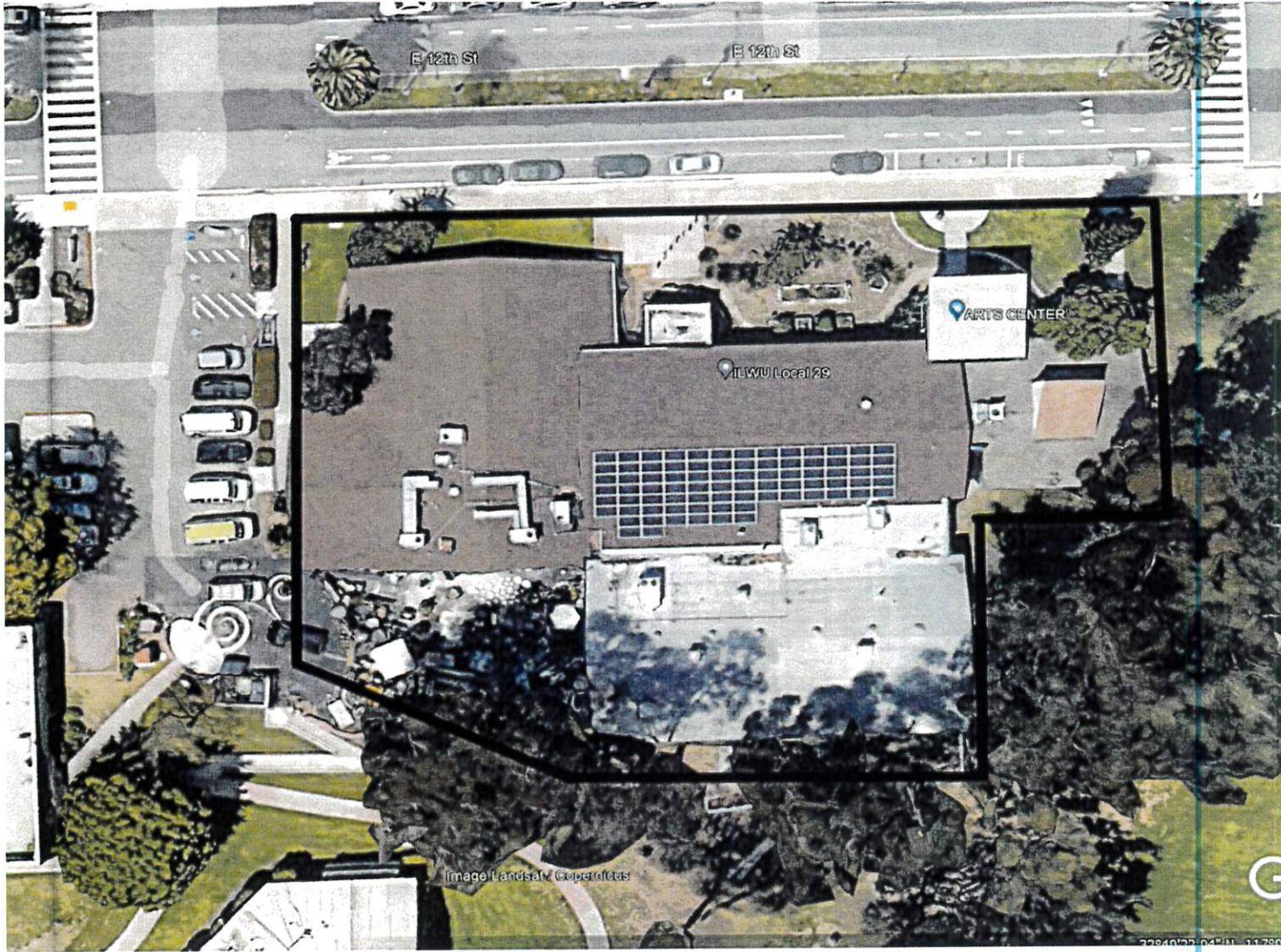


EXHIBIT B - ARTS CENTER, 200 East 12th Street, National City CA

RESOLUTION NO. 2022 -

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT BETWEEN THE CITY OF NATIONAL CITY (“CITY”) AND A REASON TO SURVIVE (“ARTS”) FOR THE CREATION AND INSTALLATION OF A BASKETBALL COURT MURAL AT KIMBALL PARK.

WHEREAS, one of the goals of the CITY’s General Plan is to develop a cultural arts program that encourages and facilitates the development of art in public spaces and promotes greater awareness of architectural, urban design, and the cultural heritage of the CITY;

WHEREAS, ARTS is a California non-profit corporation skilled in creating public art, including capital arts projects;

WHEREAS, the CITY desires to have ARTS design, create and install a Basketball Court Mural at Kimball Park;

WHEREAS, ARTS has worked with local students at Sweetwater High School to create a Basketball Court Mural design and has received approval from the Public Art Committee for the design;

WHEREAS, the CITY previously entered into a maintenance agreement with ARTS which commenced on January 1, 2022 and expires on December 31, 2022.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1: Authorizes the City Manager to enter into an Agreement between the City of National City and ARTS for the design, creation and installation of a Basketball Court Mural at Kimball Park, attached to the Agenda Report as Exhibit 1.

Section 2: The City Clerk shall certify the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED and ADOPTED this 1st day of November, 2022.

Alejandra Sotelo-Solis, Mayor

ATTEST:

Luz Molina, City Clerk

APPROVED AS TO FORM:

Barry J. Schultz, City Attorney



AGENDA REPORT

Department: City Clerk's Office
Prepared by: Joyce Ryan, Library & Comm Svcs Director
Meeting Date: Tuesday, November 1, 2022
Approved by: Brad Raulston, City Manager

SUBJECT:

Approval of Agreement with A Reason to Survive (ARTS) for Public Art Projects

RECOMMENDATION:

Adopt the Resolution Entitled, "Resolution of the City Council of the City of National City, California, to approve the agreement with A Reason to Survive (ARTS) for the Design, Creation and Installation of Public Artwork in Conjunction with City Projects."

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

The City of National City has received funding for a number of Capital Improvement Projects to be completed within the next two to three years. All projects include funding for a public art component. Staff have been working with A Reason to Survive (ARTS) in order to incorporate public art into these currently identified projects, which are listed below and also detailed in Exhibit A of the Agreement, Scope of Services:

CIP Project No.	Project Name
	Kimball Park – Gateway Arch
22-20	Las Palmas Park – Proposed Mural
21-25	W. 19th Street Greenway
22-09	Eastside I805 Community Greenbelt
22-26	El Toyon Park – Farmstand

The funding sources for these projects are grants that have already been awarded to the City and include a public art component in the scope. These sources include Prop. 68, Clean California, TransNet-Prop A, and ARPA.

As part of the agreement, ARTS will design, create and install the public art pieces to the satisfaction of the City's Public Works Department and will provide project management for each scope item. As part of the artistic process, ARTS will collaborate with other City departments and the Public Art Committee, where applicable, to jointly determine the artistic design.

FINANCIAL STATEMENT:

The total amount of funding for all scope items is not to exceed \$205,000. The CITY may allocate project costs towards ARTS' \$125,000 lease obligation to the City in lieu of providing direct compensation for work performed under this Agreement. Any additional funding needs will

be met by ARTS and will be considered part of their \$125,000 annual lease obligation to the City.

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Parks, Recreation and Library

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review.CCR15378; PRC 21065.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

Not Applicable

EXHIBITS:

1. Agreement with A Reason to Survive (ARTS) for Public Art Projects
2. Agreement Between the City of National City and ARTS - December 7, 2021
3. Resolution

RESOLUTION NO. 2022 -

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT BETWEEN THE CITY OF NATIONAL CITY (“CITY”) AND A REASON TO SURVIVE (“ARTS”) FOR THE DESIGN, CREATION AND INSTALLATION OF PUBLIC ART PROJECTS IN NATIONAL CITY.

WHEREAS, one of the goals of the CITY’s General Plan is to develop a cultural arts program that encourages and facilitates the development of art in public spaces and promotes greater awareness of architectural, urban design, and the cultural heritage of the CITY;

WHEREAS, ARTS is a California non-profit corporation skilled in creating public art, including capital arts projects;

WHEREAS, the CITY desires to have ARTS design, create and install a number of public art projects in conjunction with larger capital improvement projects in National City;

WHEREAS, the CITY has received funding for public art projects to be installed as part of local capital improvement projects;

WHEREAS, the CITY previously entered into a maintenance agreement with ARTS which commenced on January 1, 2022 and expires on December 31, 2022.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1: Authorizes the City Manager to enter into an Agreement between the City of National City and ARTS for the design, creation and installation of funded public art projects as part of local capital improvement projects, attached to the Agenda Report as Exhibit 1.

Resolution No. 2022 –
Page Two

Section 2: The City Clerk shall certify the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED and ADOPTED this 1st day of November, 2022.

Alejandra Sotelo-Solis, Mayor

ATTEST:

Luz Molina, City Clerk

APPROVED AS TO FORM:

Barry J. Schultz, City Attorney

**AGREEMENT
BY AND BETWEEN
THE CITY OF NATIONAL CITY
AND
A REASON TO SURVIVE**

THIS AGREEMENT is entered into on this 7 day of December, 2021, by and between the CITY OF NATIONAL CITY, a municipal corporation (the "CITY"), and A REASON TO SURVIVE (the "ARTS").

RECITALS

WHEREAS, the CITY owns the improved real property located at 200 East 12th Street, National City, California. This real property is commonly known as the Arts Center Building (the "ARTS CENTER"). A description of the ARTS CENTER is attached hereto as Exhibit "A" and Exhibit "B", incorporated herein by reference;

WHEREAS, one of the goals of the CITY's General Plan is to develop a cultural arts program that encourages and facilitates the development of art in public spaces and promotes greater awareness of architectural, urban design, and the cultural heritage of the CITY;

WHEREAS, ARTS is a California non-profit corporation skilled in creating public art, including capital arts projects;

WHEREAS, the CITY desires to employ ARTS to maintain the ARTS CENTER for the benefit of the community and ARTS is willing and able to maintain the ARTS CENTER for such purpose;

WHEREAS, in exchange for maintaining the ARTS CENTER for the benefit of residents and visitors, the CITY desires to grant ARTS a revocable license to enter and operate the ARTS CENTER located at 200 East 12th Street, National City, California;

WHEREAS, the CITY previously entered into a similar arts maintenance agreement with ARTS which commenced on January 1, 2018 and expires on December 31, 2021;

WHEREAS, the CITY wishes to enter into this new agreement for continued arts maintenance with ARTS.

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

1. **ENGAGEMENT OF CONSULTANT.** The CITY agrees to engage ARTS to maintain and operate the real property located at 200 East 12th Street, National City, California and known as the ARTS CENTER, in accordance with all the terms and

conditions contained herein. ARTS represents that all services shall be performed directly by ARTS or under direct supervision of ARTS.

1.1 **LICENSE FOR USE OF PROPERTY.** The CITY grants ARTS a revocable license to enter and operate the ARTS CENTER, subject to the covenants and conditions hereinafter set forth, as of the Effective Date of this agreement.

1.1.1 Parking. CITY will maintain control of the public parking lot adjacent to the Arts Center. ARTS shall neither have reserved parking nor exclusive on-site parking spaces.

1.2 **OWNERSHIP OF PERSONAL PROPERTY AND IMPROVEMENTS.** The rights and obligations of CITY and ARTS regarding the ownership of personal property and improvements on the property known as the ARTS CENTER shall be as follows:

1.2.1 Ownership of Personal Property. All improvements existing on the property known as the ARTS CENTER, together with all fixtures permanently attached to the property as of the effective date of this agreement shall remain the property of the CITY during the Term. ARTS shall not remove any improvements or fixtures from the property and shall not waste, destroy, or modify any improvements or fixtures, except as permitted by this agreement.

1.2.2 Ownership of Improvements and Equipment. All improvements made to the ARTS CENTER by ARTS shall become property of the CITY.

2. **TERM.** This agreement will become effective on January 1, 2022. The duration of this agreement is for the period of January 1, 2022 through December 31, 2022. This agreement may be extended by mutual agreement upon the same terms and conditions for an additional two (2) year term. CITY and ARTS may exercise up to three two-year extensions. Any extension of this agreement must be approved by resolution of the City Council.

3. **SCOPE OF SERVICES.** It is the intenton of this agreement that the operation of the Arts Center by ARTS will encourage and foster arts education programming, creative youth development, project based learning, and support services for the students and families at the ARTS CENTER, as well as the creation of public art projects in the community.

In exchange for its use of the ARTS CENTER, ARTS shall provide capital projects and programming services (the "Projects and Programs") within National City's jurisdictional boundaries during the Term. Such Projects shall serve as consideration for the use of the property and shall include: a) capital improvements to the ARTS CENTER; b) the performance of works of authorship as described in California Civil Code 980-989 and United States Code Title 17, Article 106(A) and Section 113(d) (hereafter "Public Art"), throughout the community utilizing various media; c) community event banners; d)

public gateway improvements, that may include aspects of Public Art;e) landscape, streetscape, and park improvements; and f) art consultancy, art installation and art maintenance of ARTS-installed temporary art pieces done on behalf of and for the benefit of the City of National City or National City programs such as, but not exclusively limited to, the annual Dia de los Muertos and Community Services Day programs and events. ARTS is not obligated to maintain permanent public art or public art pieces unless the parties agree. The scope of services described in this Article 3 are in addition to all other property maintenance obligations more specifically described herein.

3.1 **VALUE OF PROJECTS AND PROGRAMS.** The annual value of the Projects and Programs shall total at least one hundred and twenty-five thousand dollars (\$125,000.00). Of this \$125,000, ARTS must obtain at least \$25,000 for the Projects and Programs through fundraising.

3.2 **METHOD OF DETERMINING VALUE OF PROJECTS AND PROGRAMS.** The value of all Projects and Programs shall be determined according to a) the dollar value of each Project and Program, as represented by a separate written agreement approved by the City Manager or designee, or b) copies of invoices, receipts, or bills demonstrating the dollar value of materials purchased for a Project and Program. ARTS must promptly make all invoices, receipts, or bills demonstrating the dollar value of materials purchased for a Project or Program available to the City Manager or designee within 3 days of a written request.

3.3 **WAIVER OF ARTISTIC RIGHTS.** ARTS expressly waives and disclaims any residual rights in the Projects and Programs granted to ARTS by state or federal law, including the California Civil Code, Articles 980-989, relating to intellectual property and artistic works and Title 17 United States Code Section 106A and Section 113(d) relating to artistic rights.

3.4 **HOURS OF OPERATION.** ARTS will open the property known as the ARTS CENTER to the public Monday through Friday from 10:00 a.m. to 5:00 p.m.

3.5 **SERVICE FEES.** ARTS shall not provide any programs and services for profit. However, ARTS may charge user fees for classes and programs offered to school groups and the community to offset costs incurred by ARTS in its maintenance and operation of the ARTS CENTER. Any fees charged this Article 3.5 must be approved by the City Manager or designee. There will no fee for the public to gain access to the ARTS CENTER during the hours of operation listed in Article 3.4.

3.6 **REPORTING BY ARTS.** ARTS shall provide quarterly reports to the City Manager, or designee, that provide Statistical Information (defined below) for the immediately preceding quarter. Each quarterly report shall contain, at a minimum, the total number of a) National City residents who participated in ARTS' Projects or Programs; b) participants and volunteers who participated in ARTS' Projects or Programs; c) all events and programs coordinated; d) the capital projects completed. The quarterly reports shall also include reports on ARTS' operating and maintenance

plans, long-term and short-term goals, and any other pertinent statistics. The information required to appear in the quarterly reports by this Article 3.6 will be referred to as "Statistical Information." Each quarterly report will include all previous quarters' Statistical Information", if any. ARTS will deliver the quarterly report to the City Manager or designee within 30 days of the end of each quarter.

3.7 **ANNUAL BUDGET.** ARTS shall provide the City Manager, or designee, with a courtesy copy of the proposed budget for ARTS' estimated maintenance and operating expenses for the ARTS CENTER by July 1 of each year during the Term. ARTS shall provide to the City Manager or designee, an audited financial report and tax return, ninety (90) days following June 30 of each year during the Term.

3.8 **VOLUNTEER MANAGEMENT.** ARTS may utilize volunteers to operate the ARTS CENTER, and in providing the Projects and Programs required by this agreement. ARTS is responsible for recruiting, training, and managing all volunteers on the property. Volunteers are considered the responsibility of ARTS for the purpose of workers compensation or general liability.

3.9 **ALCOHOL USE.** ARTS or third parties with permission from ARTS, may, hold events at the ARTS CENTER where alcoholic beverages are served. Alcoholic beverages shall be served subject to the following requirements.

- (a) Alcohol will not be served during youth programming under any circumstance.
- (b) Alcohol will be served in limited areas of the ARTS CENTER designated by ARTS in advance of any event and approved by the City Manager or designee.
- (c) Alcoholic beverages must be served by a licensed bartender,. The bartender must have a copy of their bartender's license located at the property.
- (d) The event host must obtain approval from the California Department of Alcoholic Beverage Control to serve alcohol.
- (e) The event host is responsible for all guests' behavior during and following the service of alcohol.
- (f) "Last call" for service of alcohol shall be at least thirty (30) minutes prior to the scheduled end of the event.
- (g) When third parties (with permission from ARTS) serve alcoholic beverages, the following additional requirements shall apply:
 - 1. The third party shall provide the CITY proof of liability insurance acceptable to the City's Risk Manager;
 - 2. The third party shall provide two licensed security guards for every 100 guests registered to attend the event;
 - 3. ARTS shall reserve the authority to immediately terminate an event if ARTS determines, in its sole discretion, the

third party has not complied with any requirements of this Article 3.9.

4. ARTS shall provide the CITY a copy of their third party rental agreement template for approval.

4. **CONSIDERATION.** ARTS' payment of \$1.00 to the CITY, in addition to ARTS' provision of Projects and Programs under Article 3 of this agreement and the mutual benefit to be derived from ARTS' performance under the remainder of this agreement, shall serve as the sole consideration due the CITY for ARTS license to use and operate the ARTS CENTER.

5. **OWNERSHIP RIGHTS AND LICENSES TO ARTWORK: WAIVER.** Through its provision of Projects and Programs to the CITY, ARTS makes an unconditional donation, in perpetuity, of all Public Art created to the CITY. ARTS acknowledges that the CITY is authorized to accept donations of Public Art pursuant to Sections 37354 and 37355 of the Government Code. Before beginning each Project or Program that contains Public Art, ARTS and all individuals participating in the Project or Program must sign a CITY-approved waiver that expressly waives and disclaims any and all rights they each may have under the California Art Preservation Act, as set forth in Civil Code Section 980-989, and any rights under the Visual Artists Rights Act, as set forth at 17 U.S.C. Section 106A and Section 113(d) to any Public Art created pursuant to this agreement. ARTS, and all participants who create Public Art, shall not attempt to defeat Sections 3.2.3 and 9.2 by cooperating with any organization which seeks to bring an action under Civil Code Article 989 or any other applicable provision of law.

5.1 **OWNERSHIP OF MATERIALS.** Ownership of all materials and concepts produced for the CITY under this agreement, including but not limited to completed Projects, and all rights to licensing and reproductions of Public Art, shall pass to and become the property of the CITY once the CITY accepts the completed Project. The CITY, at its option, will store all drawings and materials that may assist with future repairs.

5.2 **ASSIGNMENT.** ARTS hereby assigns to the CITY all rights to produce, give, sell, and distribute still or motion images and models or other likeness of any kind of Public Art but shall exercise no rights thereto inconsistent with any provision of this Article 5.0. Any Memoranda, Reports, Maps, Drawings, Renderings, Photos, Plans, Specifications, and other documents prepared by ARTS for any Project or Program, whether paper or electronic, shall become the property of the CITY for use with respect to the specific Project or Program provided to the CITY, and shall be turned over to the CITY upon completion of the Project or Program, or any phase thereof, as contemplated by this Agreement.

5.3 **SURVIVAL.** The provisions of Article 5.0 to 5.2 shall survive the termination of this agreement.

6. **COMPLIANCE WITH LAWS.** ARTS, at its sole discretion, shall procure, maintain, and hold available for the CITY's inspection any governmental license or permit required for the proper and lawful conduct of ARTS' operation of the ARTS CENTER. ARTS shall not use the ARTS CENTER for any use or purpose in violation of the laws of the United States of America, or the laws, ordinances, regulations, orders, or requirements of the State of California, the County of San Diego, the CITY, or of other lawful authorities. ARTS shall, at its sole expense, comply with all applicable statutes, laws, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the Term regulating the use by ARTS of the ARTS CENTER.

7. **UTILITY SERVICES.** The CITY shall be responsible for maintaining reasonable utility services to the ARTS CENTER. The CITY shall pay for Twenty Thousand dollars (\$20,000) worth of electricity and reasonable water usage at the property known as the ARTS CENTER. ARTS shall pay for all costs of electricity that exceeds the sum listed in this Article 7. If the CITY determines, in its sole discretion, that ARTS is negligent in its use of the utilities, including water usage, the CITY may hold a good faith meet and confer meeting with ARTS to discuss its utilities usage.

8. **ARTS REPAIRS AND MAINTENANCE OBLIGATIONS.** ARTS acknowledges that it has made a thorough inspection of the ARTS CENTER and that it accepts the property "as-is" as of the Effective Date of this agreement. At ARTS' own cost and expense, ARTS shall repair, replace, and maintain the ARTS CENTER in good, tenable condition as necessary. ARTS shall not be obligated to repair or replace damage to the Property caused by ordinary wear and tear. ARTS shall maintain the property in an accessible manner for use by individuals with disabilities and comply with federal and state law regarding accessibility, including but not limited to the Americans with Disabilities Act and the California's Disabled Persons Act. Other than repair work in emergency situations, not exceeding Three Thousand Dollars (\$3,000), ARTS shall not perform any repair work without the CITY's prior written consent. As used in this Article 8, "emergency" means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. All emergency repairs performed by the CITY on the property known as the ARTS CENTER are governed by Public Contract Code Section 22050. ARTS' obligations under this Article shall apply regardless of whether the repairs, restorations, and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or noncapital, the fault or not the fault of ARTS, its agents, employees, volunteers, invitees, visitors, or contractors. All replacements made by the ARTS shall be of like size, kind, and quality to the items replaced.

8.1 **CITY REPAIR AND MAINTENANCE OBLIGATIONS.** For any repair and maintenance work exceeding Three Thousand Dollars (\$3,000), the CITY will consider the nature and priority of the work and available funding to determine if and when such repairs will be completed.

8.2 **CITY RIGHT TO INSPECT.** ARTS shall permit the CITY to enter

the ARTS CENTER at all times during usual hours of operation to inspect the property. Any entry pursuant to this Article 8.2 shall not unreasonably interfere with with ARTS operation of the ARTS CENTER. However, nothing contained in this Article 8.2 shall create any duty on the part of the CITY to do any work which, under any provision of this agreement ARTS may be required to do.

9. **ALTERATIONS**. ARTS may alter, replace, add to, change, or construct additional improvements to the ARTS CENTER, as ARTS may find necessary or convenient for its operation of the property. Any alteration performed by ARTS under this Article 9 shall be performed: a) ARTS' sole cost and expense; b) with the CITY's prior written consent; and c) in accordance with construction plans submitted to and approved by the CITY.

9.1 **CONSTRUCTION PERMITS AND LICENSES**. At all times during the Term, ARTS shall procure, at its sole cost and expense, all permits and licenses that are necessary or required from any local governmental agency for the proposed construction of any alterations. The CITY may, in its sole discretion, waive CITY permitting fees where applicable.

9.2 **PROPOSED PLANS**. In its sole discretion, the CITY may require ARTS to do any of the following: a) submit a complete set of proposed plans of any alterations to the CITY; b) apply for and receive a permit from the Building Department to complete any alterations; c) within sixty (60) days of a written request, furnish CITY with a complete set of "as-built" plans for any CITY-approved alterations.

9.3. **PREVAILING WAGES**. ARTS shall comply with prevailing wage statutes for any work not performed by volunteers. State prevailing wage rates may apply to work performed under this agreement. State prevailing wages rates apply to all public works contracts as set forth in California Labor Code, including but not limited to, Sections 1720, 1720.2, 1720.3, 1720.4, and 1771. Consultant is solely responsible to determine if State prevailing wage rates apply and, if applicable, pay such rates in accordance with all laws, ordinances, rules, and regulations.

10. **MECHANICS' LIENS: STOP NOTICES**. ARTS shall pay, or cause to be paid, the total cost and expense of all works of improvement, as that phrase is defined in the Mechanics Lien Law in effect at time and place of construction, done by it, or caused to be done by it, on the property known as the ARTS CENTER, and for all materials furnished for, or in connection with any such work. If any lien or stop notice is filed against the property known as the ARTS CENTER, ARTS shall cause the lien or stop notice to be discharged of record within one hundred eighty (180) days after it is filed. ARTS shall indemnify, defend, and hold the CITY harmless from any and all liability, loss, damage, costs, attorneys' fees, and all other expenses on account of claims of lien of laborers, materialmen, or others for work performed, or materials or supplies furnished for ARTS or persons claiming under ARTS.

10.1 **NOTICE OF LIEN OR STOP NOTICE**. Should any claim of lien or stop notice related to ARTS' work of improvement of the property be filed against the property, or any action be filed against the property, or any action affecting the title to the property be commenced, the party receiving notice of such lien or stop notice or action shall immediately give the other party written notice thereof.

10.2 **NOTICE OF NON-RESPONSIBILITY**. The CITY or its representatives shall have the right to post and keep posted on the property notices on non-responsibility or such other notices which the CITY may deem to be proper for the protections of the CITY's interest in the property. ARTS shall, before the commencement of any work which might result in any such lien or stop notice, give to the CITY written notice of its intention to do so with sufficient time to enable posting of such notices.

11. **DEFINITION OF TAXES**. "Taxes" shall mean all taxes, governmental bonds, special assessments, charges, or transfer taxes, license and transaction fees, including, but not limited to: (a) any state, local, federal income tax, or any real or personal property tax; (b) increases in taxes attributable to ARTS' operation of the property, or; (c) any taxes which are essentially payments to a governmental agency, other than the CITY, for the right to make improvements to the property.

11.1 **POSSESSORY INTEREST**. Notwithstanding Articles 1 to 1.2, ARTS acknowledges that this agreement may create a possessory interest subject to property taxation and that ARTS may be subject to the payment of taxes levied on such interest. ARTS shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon the property.

11.2 **RESPONSIBILITY FOR PAYMENT OF TAXES**. The CITY shall not be obligated to pay any Taxes accruing against any interest in ARTS' use of the property at any time before or during the Term. ARTS shall pay any Taxes that accrue against any interest in ARTS' use of the property. Additionally, ARTS shall pay any Taxes levied upon any improvements, fixtures, or personal property located on the property to the extent such Taxes result from ARTS operation or other activities held upon, or in connection with, the property.

12. **PROJECT COORDINATION AND SUPERVISION**. The Library & Community Services Director hereby is designated as the Project Coordinator for the CITY and will monitor the progress and execution of this agreement. ARTS shall assign a single Project Director to provide supervision and have overall responsibility for the progress and execution of this agreement for the ARTS. The ARTS Executive Director thereby is designated as the Project Director for the ARTS.

13. **INDEMNIFICATION AND HOLD HARMLESS.** To the maximum extent provided by law, ARTS agrees to defend, indemnify and hold harmless the City of National City, its officers, officials, agents, employees, and volunteers against and from any and all liability, loss, damages to property, injuries to, or death of any person or persons, and all claims, demands, suits, actions, proceedings, reasonable attorneys' fees, and defense costs, of any kind or nature, including workers' compensation claims, of or by anyone whomsoever, resulting from or arising out of ARTS' performance or other obligations under this Agreement, or arising either directly or indirectly from, any act, error, omission, or negligence of ARTS or its contractors, licensees, invitees, members, agents, servants or employees; provided, however, that this indemnification and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of CITY, its agents, officers, employees or volunteers. CITY will cooperate reasonably in the defense of any action, and ARTS shall employ competent counsel, reasonably acceptable to the City Attorney.

The indemnity, defense, and hold harmless obligations contained herein shall survive the termination of this Agreement for any alleged or actual omission, act, or negligence under this agreement that occurred during the term of this agreement.

13.1 **THIRD PARTY INDEMNITY.** ARTS shall not invite third party organizations onto the property known as the ARTS CENTER until said third party organization furnishes CITY a written agreement in which it indemnifies and holds CITY harmless, upon terms satisfactory to CITY.

13.2 **WAIVERS FROM THIRD PARTIES.** ARTS agrees to obtain from all guests, invitees, or third party organizations whose participants visit the property, a waiver of liability and hold harmless agreement upon terms satisfactory to the CITY.

14. **INSURANCE.** ARTS, at its sole cost and expense, shall purchase and maintain, and shall require its subcontractors, and third party organizations ARTS invites onto the property to purchase and maintain, throughout the term of this agreement, the following insurance policies:

- (a) If checked, **Professional Liability Insurance** (errors and omissions) with minimum limits of \$1,000,000 per occurrence.
- (b) **Automobile Insurance** covering all bodily injury and property damage incurred during the performance of this agreement, with a minimum coverage of \$1,000,000 combined single limit per accident. Such automobile insurance shall include owned, non-owned, and hired vehicles. The policy shall name the CITY and its officers, agents, employees, and volunteers as additional insureds, and a separate additional insured endorsement shall be provided.
- (c) **Commercial General Liability Insurance**, with minimum limits of either \$2,000,000 per occurrence and \$4,000,000 aggregate, or \$1,000,000 per occurrence and \$2,000,000 aggregate with a \$2,000,000 umbrella policy, covering all bodily injury and property damage arising out of its operations, work, or performance under this agreement. The policy shall name the CITY and its officers, agents, employees, and volunteers as additional insureds, and a separate additional insured endorsement

shall be provided. The general aggregate limit must apply solely to this "project" or "location". The "project" or "location" should be noted with specificity on an endorsement that shall be incorporated into the policy. The Commercial General Liability required by this Section must include Sexual Misconduct Liability coverage.

- (d) **Workers' Compensation Insurance** in an amount sufficient to meet statutory requirements covering all of ARTS employees and employers' liability insurance with limits of at least \$1,000,000 per accident. In addition, the policy shall be endorsed with a waiver of subrogation in favor of the CITY. Said endorsement shall be provided prior to commencement of work under this Agreement.
- (e) If CONSULTANT has no employees subject to the California Workers' Compensation and Labor laws, ARTS shall execute a Declaration to that effect. Said Declaration shall be provided to ARTS by CITY.
- (f) The aforesaid policies shall constitute primary insurance as to the CITY, its officers, officials, employees, and volunteers, so that any other policies held by the CITY shall not contribute to any loss under said insurance. Said policies shall provide for thirty (30) days prior written notice to the CITY's Risk Manager, at the address listed in subsection (h) below, of cancellation or material change.
- (g) If required insurance coverage is provided on a "claims made" rather than "occurrence" form, the CITY shall maintain such insurance coverage for three years after expiration of the term (and any extensions) of this agreement. In addition, the "retro" date must be on or before the date of this agreement.
- (h) The Certificate Holder for all policies of insurance required by this Section shall be:

City of National City
c/o Risk Manager
1243 National City Boulevard
National City, CA 91950-4397

- (i) Insurance shall be written with only insurers authorized to conduct business in California that hold a current policy holder's alphabetic and financial size category rating of not less than A:VII according to the current Best's Key Rating Guide, or a company of equal financial stability that is approved by the CITY'S Risk Manager. In the event coverage is provided by non-admitted "surplus lines" carriers, they must be included on the most recent List of Approved Surplus Line Insurers ("LASLI") and otherwise meet rating requirements.
- (j) This agreement shall not take effect until certificate(s) or other sufficient proof that these insurance provisions have been complied with, are filed with and approved by the CITY'S Risk Manager. If ARTS does not keep all insurance policies required by this Article 14 in full force and effect at all times during the term of this agreement, the CITY may treat the

failure to maintain the requisite insurance as a breach of this agreement and terminate the agreement as provided herein.

- (k) All deductibles and self-insured retentions in excess of \$10,000 must be disclosed to and approved by the CITY. CITY reserves the right to modify the insurance requirements of this Article 14, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- (l) If ARTS maintains broader coverage or higher limits (or both) than the minimum limits shown above, the CITY shall be entitled to the broader coverage or higher limits (or both) maintained by ARTS. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY.

15. **LEGAL FEES.** If any CITY or ARTS brings a suit or action against the other arising from any breach of any of the covenants or agreements or any inaccuracies in any of the representations and warranties on the part of the other party arising out of this agreement, then in that event, the prevailing party in such action or dispute, whether by final judgment or out-of-court settlement, shall be entitled to have and recover of and from the other party all costs and expenses of suit, including attorneys' fees.

For purposes of determining who is to be considered the prevailing party, it is stipulated that attorney's fees incurred in the prosecution or defense of the action or suit shall not be considered in determining the amount of the judgment or award. Attorney's fees to the prevailing party if other than the CITY shall, in addition, be limited to the amount of attorney's fees incurred by the CITY in its prosecution or defense of the action, irrespective of the actual amount of attorney's fees incurred by the prevailing party.

16. **TERMINATION.**

- (a) This agreement may be terminated with or without cause by the CITY. Termination without cause shall be effective only upon 60-day's written notice to ARTS. During said 60-day period ARTS shall perform all services in accordance with this agreement.
- (b) This agreement may also be terminated immediately by the CITY for cause in the event of a material breach of this agreement, misrepresentation by the ARTS in connection with the formation of this agreement or the performance of services, or the failure to perform services as directed by the CITY.
- (c) Termination with or without cause shall be effected by delivery of written Notice of Termination to ARTS as provided for herein.
- (d) CITY further reserves the right to immediately terminate this agreement upon: (1) the filing of a petition in bankruptcy affecting ARTS; (2) a reorganization of ARTS for the benefit of creditors; or (3) a business reorganization, change in business name or change in business status of the ARTS.

17. **HAZARDOUS MATERIALS LAWS.** As used in this Article 17, the term "Hazardous Materials' Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law") relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under, or about the Property, soil and ground water conditions, or other similar substances or conditions. ~~The following legal authority is a non-exhaustive list of the legal authority that applies~~ to the definition of the term "Hazardous Materials Laws": the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C., Section 9601 et seq.); the Hazardous Materials Transportation Act, as amended (49 U.S.C., Section 1801 et seq.); and the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C., Section 6901 et seq.).

17.2 **HAZARDOUS MATERIALS DEFINITION.** As used in this Article the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that:

- (a) is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials;
- (b) is controlled, referred to, designated in or governed by any Hazardous Materials Laws;
- (c) gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws, or;
- (d) is any other material or substance giving rise to any liability, responsibility or duty upon the CITY or the ARTS with respect to any third person under any Hazardous Materials Law.

17.3 **ARTS REPRESENTATIONS AND WARRANTIES.** ARTS represents and warrants that, during the Term or any extension thereof, ARTS shall comply with the following provisions of this Article unless otherwise specifically approved in writing by the CITY, subject to the terms and conditions of the ARTS' maintenance obligations provided elsewhere in this Agreement:

- (a) ARTS shall not cause or permit any Hazardous Materials to be brought, kept or used in or about the property by ARTS, its agents, employees, assigns, contractors or invitees, except as required by ARTS' permitted use of the property in the normal course of operations;
- (b) Any handling, transportation, storage, treatment, or usage by ARTS of Hazardous Materials that is to occur on the property following the Effective Date shall be in compliance with all applicable Hazardous Materials Laws;
- (c) Any leaks, spills, release, discharge, emission or disposal of Hazardous Materials which may occur on the Property following the Effective Date shall be promptly and thoroughly cleaned and removed

- from the Property by ARTS at its sole expense, and any such discharge shall be promptly reported in writing to the CITY, and to any other appropriate governmental regulatory authorities;
- (d) No friable asbestos shall be constructed, placed on, deposited, stored, disposed of, or located by ARTS on the property;
 - (e) No underground improvements, including but not limited to treatment or storage tanks, or water, gas or oil wells shall be located by ARTS on the property without the CITY's prior written consent.
 - (f) ARTS shall promptly supply the CITY with copies of all notices, reports, correspondence, and submissions made by ARTS to the United States Environmental Protection Agency, the United Occupational Safety and Health Administration, and any other local, state or federal authority which requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to applicable Hazardous Materials' Laws; and

17.4 ARTS shall promptly notify the CITY of any liens threatened or attached against the Property pursuant to any Hazardous Materials' Law. If such a lien is filed against the Property, then, within the earlier of (i) twenty (20) days following such filing, or (ii) before any governmental authority commences proceedings to sell the Property pursuant to the lien, ARTS shall either:

- (a) pay the claim and remove the lien from the Property, or
- (b) furnish either: (1) a bond or cash deposit reasonably satisfactory to the CITY in an amount not less than the claim from which the lien arises, or; (2) other security satisfactory to the CITY in an amount not less than that which is sufficient to discharge the claim from which the lien arises.

17.5. At the end of this agreement, ARTS shall surrender the property to the CITY free of any and all Hazardous Materials and in compliance with all Hazardous Materials' Laws affecting the Property.

18. ARTS shall not voluntarily or involuntarily assign or otherwise transfer all or any portion of its rights and duties under this agreement without the CITY's prior written consent. Any attempted assignment or transfer without the CITY's prior written consent shall be void.

18.1 ARTS may engage third party organizations to provide special services or programming at the Property if: a) CITY consents, in writing, to the third party organizations' proposed use of the Property and; b) the third party organization obtains policies of insurance acceptable to the City's Risk Manager and Article 14 of this agreement.

19. **EVENTS OF DEFAULT; REMEDIES.** The following sub-articles shall apply if either ARTS or the CITY neglects, fails to perform, or fails to observe any of their respective obligations under the terms, covenants, or conditions contained in this agreement ("Default"):

19.1 **THIRTY-DAY CORRECTION OF DEFAULT.** If either ARTS or the CITY determines that the other party is in default, then the non-defaulting party must provide the defaulting party written notice of the Default and thirty (30) days to correct the default.

19.2 **EXTENDED CORRECTION OF DEFAULT.** If the defaulting party determines that more than thirty (30) days is required to correct the Default, the defaulting party must provide the other party written notice of the reasons why additional time is required to correct such Default. The defaulting party must use diligent efforts to correct a Default under this Article 13.1.2 and, in any case, must correct such Default within ninety (90) days from the date of the written notice of default.

19.3 **REMEDIES FOR FAILURE TO CORRECT DEFAULT.** If the defaulting party fails to comply with Article 19.1. or 19.2, then the non-defaulting party may immediately terminate this agreement. The defaulting party shall be liable to the non-defaulting party for any and all damages sustained by the non-defaulting party as a result of the defaulting parties' breach.

20. **ABANDONMENT.** ARTS shall not vacate or abandon the property at any time during the Term nor permit the property to remain unoccupied for a period of longer than five (5) consecutive days during the term of this agreement. These provisions shall not apply if the property is closed and operation is temporarily discontinued therein on account of strikes, lockouts, acts of nature, or similar causes beyond the reasonable control of ARTS. Any exceptions must be submitted in writing to the City Manager or designee for approval.

21. **ARTS' DUTY TO REPAIR CASUALTY.** ARTS shall, as expeditiously as reasonably possible, repair any damages to the property caused by fire, earthquake, or any other identifiable event of a sudden, unexpected, or unusual nature ("Casualty"), and repair, restore, and replace any such damaged or destroyed Fixtures, Improvements or Personal Property ("Casualty Repairs"). Any Casualty Repairs made are: (a) to be performed at ARTS' sole cost and expense; (b) subject to all other terms and conditions of this agreement.

21.1 **CONSTRUCTION PROVISIONS.** In the event of any reconstruction of the property, fixtures or improvements required of ARTS pursuant to this Article, ARTS shall repair the property, and repair or rebuild such fixtures and improvements, to substantially the same condition they were in immediately preceding such casualty.

21.2 **NO ABATEMENT.** In the event of reconstruction, replacement, or repair by ARTS pursuant to this Article, ARTS shall continue its operations on the property during any such period to the extent reasonably practicable from the standpoint of prudent business management, and in continuing compliance with applicable laws and regulations. ARTS shall not be entitled to any compensation or damages from CITY for: (a) loss of use of the whole or any part of the property; (b) ARTS' Personal Property; or

(c) any inconvenience or annoyance occasioned by such damage, reconstruction, or replacement.

21.3 **MAJOR DESTRUCTION**. Notwithstanding any of the foregoing provisions of this Article to the contrary, if, at any time after the Effective Date, (a) the improvements are damaged or destroyed to the extent of more than twenty-five percent (25%) of their replacement cost, or (b) the damage is such that the improvements cannot be repaired and restored within one hundred and eighty (180) days after the casualty, then ARTS shall have the right to terminate this agreement upon thirty (30) days' prior written notice to the CITY.

22. **CONDEMNATION**. ARTS may terminate this agreement within twenty (20) days after the date that a condemning authority (by a party other than the CITY) takes possession of the property by delivery of written notice of such condemnation if: (a) all of the property is taken under eminent domain proceedings; or (b) less than all of the property is taken under such eminent domain proceeding and the part taken substantially impairs the ability of ARTS to use the remainder of the property for the purposes permitted by this agreement.

22.1 In the absence of such written notice from a condemning authority, ARTS may terminate this agreement within twenty (20) days after the condemning authority shall have taken possession.

22.2 **CONTINUATION OF OPERATING AGREEMENT AFTER CONDEMNATION**. If this agreement is not terminated by ARTS, it shall remain in full force and effect as to any portion of the property remaining, and this agreement will end as of the date possession of the part taken by the public entity as to the part of the property that is taken.

22.3 **AWARD**. All monies awarded in any condemnation shall belong to the CITY. The CITY shall have no liability to ARTS for any award not provided by the condemning authority.

23. **SALE OR MORTGAGE**. The CITY may, pursuant to existing and subsequently enacted CITY ordinances and State laws, at any time, and without the consent of ARTS, vacate, sell, purchase, exchange, transfer, assign, lease, encumber or convey the CITY's interest in whole or in part, in the property (collectively referred to in this Article as a "Sale"). The CITY shall provide to ARTS written notice of the CITY's intent to a Sale or discontinuance pursuant to this Article at least ninety (90) days prior to said proposed transfer.

23.1 **RELEASE ON SALE**. From and after a Sale or discontinuance of the CITY's entire interest in the Property, the CITY shall be released from all liability to ARTS and ARTS successors and assigns arising from this Agreement because of any act, occurrence, or omission of the CITY occurring after such Sale.

24. **RIGHT OF ENTRY**. CITY, its agents, employees, and contractors may enter the Property at any time with or without notice to ARTS to: (a) respond to

health and safety concerns; (b) inspect the property and improvements; (c) determine whether ARTS is complying with its obligations in this Agreement (including its obligations with respect to compliance with Hazardous Materials Laws); (d) post notices of non-responsibility or similar notices; (e) inspect the progress of construction of any improvement; or (f) make repairs that this agreement requires or allows CITY to make, or make repairs to any adjoining space or utility services, or make repairs, alterations, or improvements to any other portion of the Property

24.1 All work enumerated in this Article 24 must be done as promptly as reasonably possible and so as to cause as little interference to ARTS as reasonably possible.

25. **NOTICES.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered; or sent by overnight mail (Federal Express or the like); or sent by registered or certified mail, postage prepaid, return receipt requested; or sent by ordinary mail, postage prepaid; or telegraphed or cabled; or delivered or sent by telex, telecopy, facsimile or fax; and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if sent by overnight mail, the business day following its deposit in such overnight mail facility, (iii) if mailed by registered, certified or ordinary mail, five (5) days (ten (10) days if the address is outside the State of California) after the date of deposit in a post office, mailbox, mail chute, or other like facility regularly maintained by the United States Postal Service, (iv) if given by telegraph or cable, when delivered to the telegraph company with charges prepaid, or (v) if given by telex, telecopy, facsimile or fax, when sent. Any notice, request, demand, direction or other communication delivered or sent as specified above shall be directed to the following persons:

CITY: City Manager
City of National City
1243 National City Boulevard
National City, CA 91950-4397

With a copy to:

Library & Community Services Director
City of National City
1401 National City Boulevard
National City, CA 91950

ARTS:A Reason to Survive, Inc.
Executive Director
200 East 12th Street
National City, CA 91950

25.1 Notice of change of address shall be given by written notice in the manner specified in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent. Any notice, request, demand, direction or other communication sent by cable, telex, telecopy, facsimile or fax must be confirmed within forty-eight (48) hours by letter mailed or delivered as specified in this Article.

26. **ARTS' DUTY TO KEEP RECORDS.** ARTS shall, at all times during the term, and for a period of five (5) years following expiration or earlier termination of this agreement, keep or cause to be kept, true and complete books, records and accounts of all: (a) construction undertaken pursuant to the rights conferred on ARTS under this agreement, and (b) financial transactions in the operation of all business activities, of whatever nature, conducted pursuant to the rights granted by this agreement. Such records shall also include the source and disposition of all trash and other waste collected and disposed of by ARTS in the operation of its business. Said records must be supported by source documents such as receipts, invoices, sales slips, cash register tapes, purchase invoices or other pertinent documents.

26.1 **CITY'S RIGHT TO AUDIT.** All ARTS books, accounts, and records shall be kept and made available at one location within the limits of the County of San Diego. The CITY shall have the right at any reasonable time to examine and perform audits of ARTS' records pertaining to (a) construction undertaken pursuant to the rights conferred on ARTS under this Agreement, and (b) its operations on the Property, including , without limitation , any records pertaining to ARTS' use of utilities on the Property. The cost of said audits shall be borne by the CITY, except that ARTS shall provide to the CITY, at ARTS' expense, necessary data to enable the CITY to fully comply with each and every requirement of the State of California or by the United States of America for information or reports relating to this Agreement and to ARTS' use of the Property.

27. **ADMINISTRATIVE PROVISIONS.**

- A. **Amendment to this Agreement.** The terms of this agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.
- B. **Applicable Law.** This agreement shall be governed by and construed in accordance with the laws of the State of California. The venue for any legal action arising under this agreement shall be in either state or federal court in the County of San Diego, State of California.
- C. **Assignment & Assumption of Rights.** ARTS shall not assign this agreement, in whole or in part, to any other party without first obtaining the written consent of CITY.
- D. **Audit.** If this agreement exceeds ten-thousand dollars (\$10,000), the parties shall be subject to the examination and audit of the State Auditor for a period of three (3) years after final payment under the agreement, per Government Code Section 8546.7.

- E. **Authority.** ARTS represents and warrants that it has full power and authority to execute and fully perform its obligations under this agreement pursuant to its governing instruments, without the need for any further action, and that the person executing this agreement on behalf of ARTS is the duly designated agent of ARTS and is authorized to do so.
- F. **Captions.** Any captions to, or headings of, the sections or subsections of this agreement are solely for the convenience of the parties hereto, are not a part of this agreement, and shall not be used for the interpretation or determination of the validity of this agreement or any provision hereof.
- G. **Computation of Time Periods.** If any date or time period provided for in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, then such date shall automatically be extended until 5:00 p.m. Pacific Time of the next day which is not a Saturday, Sunday or federal, state, or legal holiday.
- H. **Conflict of Interest and Political Reform Act Obligations.** During the term of this agreement, ARTS shall not perform services of any kind for any person or entity whose interests conflict in any way with those of the City of National City. ARTS shall at all times comply with the terms of the Political Reform Act and the National City Conflict of Interest Code. ARTS shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the CITY in which ARTS has a financial interest as defined in Government Code Section 87103. ARTS represents that it has no knowledge of any financial interests that would require it to disqualify itself from any matter on which it might perform services for the CITY.
- I. **Construction.** The parties acknowledge and agree that (i) each party is of equal bargaining strength, (ii) each party has actively participated in the drafting, preparation and negotiation of this agreement, (iii) each such party has consulted with or has had the opportunity to consult with its own, independent counsel and such other professional advisors as such party has deemed appropriate, relative to any and all matters contemplated under this agreement, (iv) each party and such party's counsel and advisors have reviewed this agreement, (v) each party has agreed to enter into this agreement following such review and the rendering of such advice, and (vi) any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this agreement, or any portions hereof, or any amendments hereto.
- J. **Counterparts.** This agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.
- K. **Entire Agreement.** This agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between the parties as to the subject matter hereof.

No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of any party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby

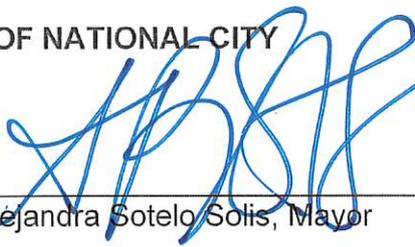
- L. **Exhibits and Schedules.** The Exhibits and Schedules attached hereto are hereby incorporated herein by this reference for all purposes. To the extent any exhibits, schedules, or provisions thereof conflict or are inconsistent with the terms and conditions contained in this agreement, the terms and conditions of this agreement shall control.
- M. **Force Majeure.** If either party is prevented or delayed from performing any act or discharging any obligation hereunder, because of any and all causes beyond either party' s reasonable control, including unusual delays in deliveries, abnormally adverse weather conditions, unavoidable casualties, strikes, labor disputes, inability to obtain labor, materials or equipment, acts of God, governmental restrictions, regulations or controls, any hostile government actions, acts of terrorism, civil commotion and fire or other casualty, legal actions attacking the validity of this agreement or the CITY or ARTS' operations of the property, or any other casualties beyond the reasonable control of either party ("Force Majeure"), performance of such act shall be excused for the period of such delay, and the period for performance of such act shall be extended for a period equivalent to the period of such delay. Force Majeure shall not include any bankruptcy, insolvency , or other financial inability on the part of either party hereto.
- N. **Independent Contractor.** ARTS acknowledges that it is an independent contractor; that it alone retains control of the manner of conducting its activities in furtherance of this agreement; and that it, as well as any persons, contractors or agents it may employ, are not employees of CITY for any purpose.
- O. **No Obligations to Third Parties.** Except as otherwise expressly provided herein, the execution and delivery of this agreement shall not be deemed to confer any rights upon, or obligate any of the parties hereto, to any person or entity other than the parties hereto.
- P. **Partial Invalidity.** If any provision of this agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this agreement shall not be affected thereby. Each provision shall be valid and enforceable to the fullest extent permitted by law.
- Q. **Subcontractors or Subconsultants.** The CITY is engaging the services of the ARTS identified in this agreement. ARTS shall not subcontract any portion of the work, unless such subcontracting was part of the original proposal or is allowed by the CITY in writing, or within the terms of this agreement. In the event any portion of the work under this agreement is subcontracted, the subconsultant(s) shall be required to comply with and agree to, for the benefit of and in favor of the CITY,

provision shall be valid and enforceable to the fullest extent permitted by law.

- Q. **Subcontractors or Subconsultants.** The CITY is engaging the services of the ARTS identified in this agreement. ARTS shall not subcontract any portion of the work, unless such subcontracting was part of the original proposal or is allowed by the CITY in writing, or within the terms of this agreement. In the event any portion of the work under this agreement is subcontracted, the subconsultant(s) shall be required to comply with and agree to, for the benefit of and in favor of the CITY, both the insurance provisions and the indemnification and hold harmless provisions of this Agreement.
- R. **Successors and Assigns.** This agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.
- S. **Waiver.** The waiver or failure to enforce any provision of this agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date and year first above written.

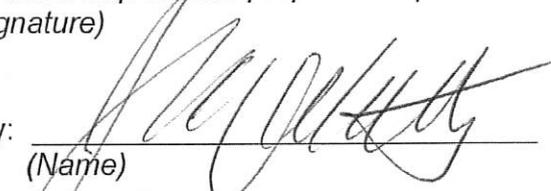
CITY OF NATIONAL CITY

By: 
 Alejandra Sotelo Solis, Mayor

A REASON TO SURVIVE (ARTS)

(Corporation – signatures of two corporate officers required)

(Partnership or Sole proprietorship – one signature)

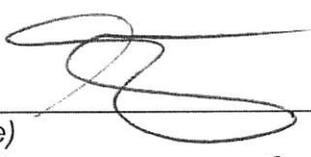
By: 
 (Name)

JAMES HALLIDAY
 (Print)

EXECUTIVE DIRECTOR
 (Title)

APPROVED AS TO FORM:

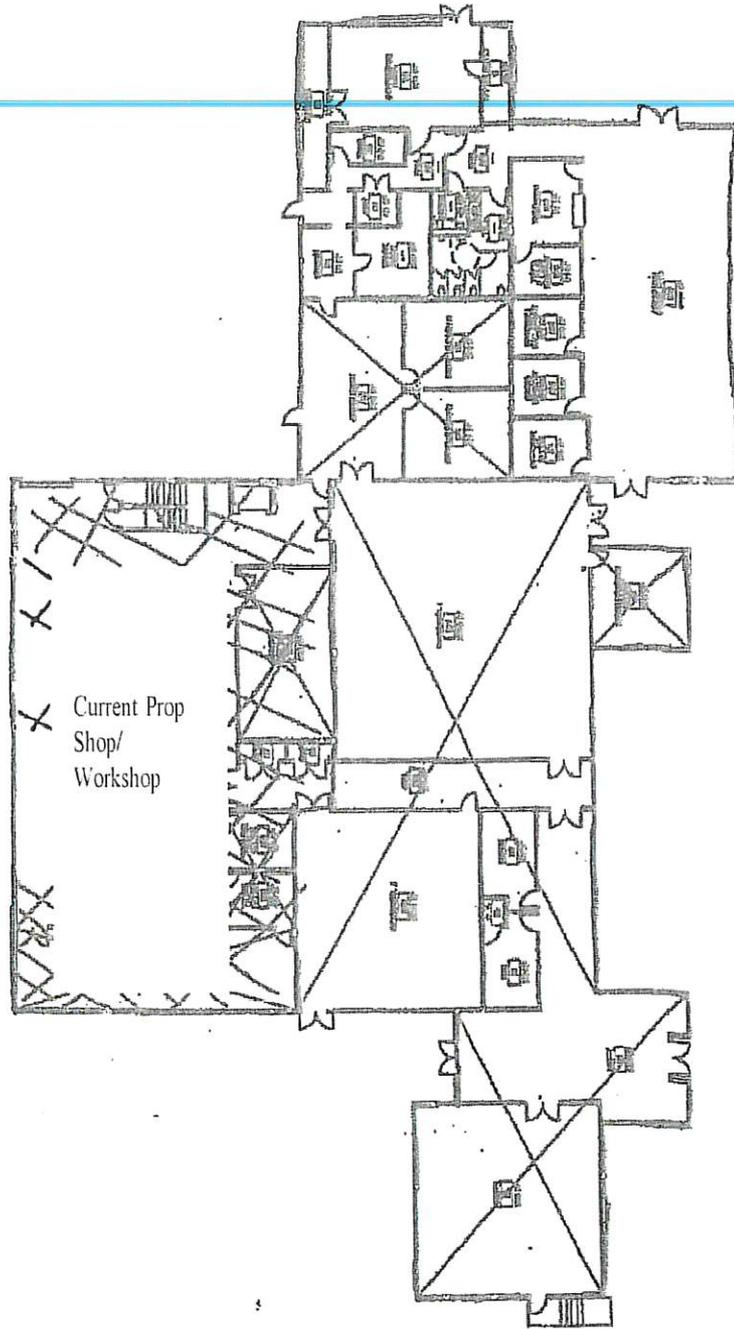
By: 
 Gabriela Torres
 Deputy City Attorney

By: 
 (Name)

Jacqueline Reynoso
 (Print)

Board Chair woman
 (Title)

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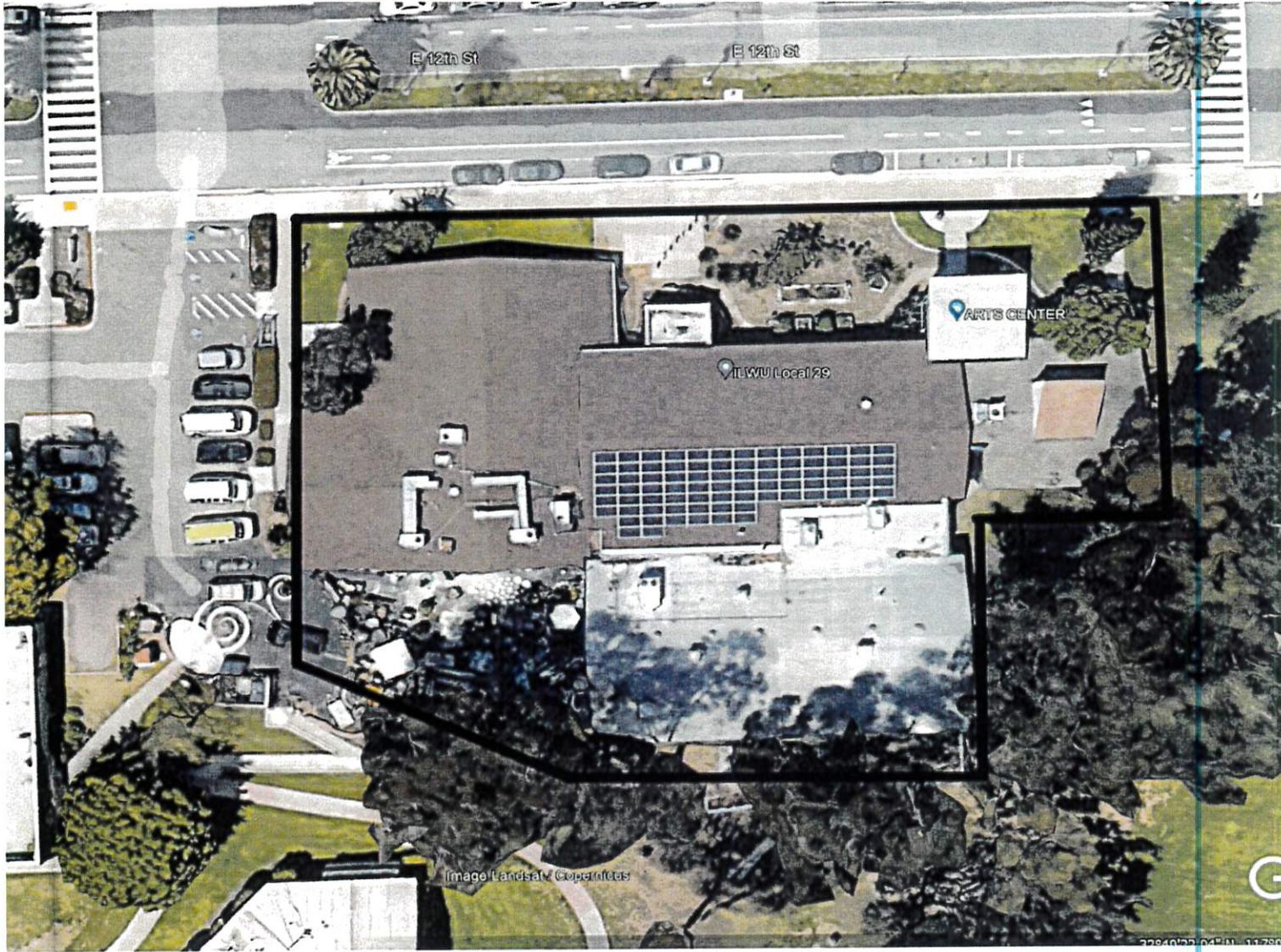


EXHIBIT B - ARTS CENTER, 200 East 12th Street, National City CA

**AGREEMENT
BY AND BETWEEN
THE CITY OF NATIONAL CITY
AND
A REASON TO SURVIVE (ARTS)**

THIS AGREEMENT is entered into on this 1st day of November, 2022, by and between the CITY OF NATIONAL CITY, a municipal corporation (the "CITY"), and A REASON TO SURVIVE (ARTS), a corporation (the "CONSULTANT").

R E C I T A L S

WHEREAS, the CITY desires to employ a CONSULTANT to provide design, creation and installation of public artwork as part of capital improvement projects in the City of National City.

WHEREAS, the CITY has determined that the CONSULTANT is a California non-profit corporation skilled in creating public art, including capital arts projects, and is qualified by experience and ability to perform the services desired by the CITY, and the CONSULTANT is willing to perform such services.

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

1. **ENGAGEMENT OF CONSULTANT.** The CITY agrees to engage the CONSULTANT to design, create and install public artwork as outlined in Exhibit "A" Scope of Services, and the CONSULTANT agrees to perform the services set forth here in accordance with all terms and conditions contained herein.

The CONSULTANT represents that all services shall be performed directly by the CONSULTANT or under direct supervision of the CONSULTANT.

2. **EFFECTIVE DATE AND LENGTH OF AGREEMENT.** This Agreement will become effective on November 1, 2022. The duration of this Agreement is for the period of November 1, 2022 through December 31, 2024. Completion dates or time durations for specific portions of the project are set forth in Exhibit "A". This Agreement may be extended by mutual agreement upon the same terms and conditions for an additional one (1) year term. The Parties may exercise up to three one-year extensions. Any extension of this Agreement must be approved in writing by the City Manager.

3. **SCOPE OF SERVICES.** The CONSULTANT will perform services as set forth in the attached Exhibit "A".

The CONSULTANT shall be responsible for all research and reviews related to the work and shall not rely on personnel of the CITY for such services, except as authorized in advance by the CITY. The CONSULTANT shall be responsible for pulling all permits associated with Services specified in Exhibit "A." The CONSULTANT shall appear at meetings specified in Exhibit "A" to keep staff and City Council advised of the progress on the project.

The CITY may unilaterally, or upon request from the CONSULTANT, from time to time reduce or increase the Scope of Services to be performed by the CONSULTANT under this Agreement. Upon doing so, the CITY and the CONSULTANT agree to meet in good faith and confer for the purpose of negotiating a corresponding reduction or increase in the compensation associated with said change in services.

4. **PROJECT COORDINATION AND SUPERVISION.** The Library and Community Services Director hereby is designated as the Project Coordinator for the CITY and will monitor the progress and execution of this Agreement. The CONSULTANT shall assign a single Project Director to provide supervision and have overall responsibility for the progress and execution of this Agreement for the CONSULTANT. Executive Director of ARTS thereby is designated as the Project Director for the CONSULTANT.

5. **COMPENSATION AND PAYMENT.** The compensation for the CONSULTANT shall be based on monthly billings covering actual work performed. Billings shall include labor classifications, respective rates, hours worked and also materials, if any. Time and material rates shall be as previously defined in the Agreement between the CITY and CONSULTANT dated December 7, 2021 (Exhibit "B"). The total cost for all work described in Exhibit "A" shall not exceed \$205,000, and the amount allowed for each project shall be determined per the process defined in Exhibit "A". Monthly invoices will be processed for payment and remitted within thirty (30) days from receipt of invoice, provided that work is accomplished consistent with the scope and budgets developed per Exhibit "A", as determined by the CITY.

The CITY reserves the right to allocate projects costs towards the CONSULTANT'S \$125,000 lease obligation to the CITY as stated in Section 3 of the Agreement between the CITY and CONSULTANT dated December 7, 2021 (Exhibit "B") in lieu of providing direct compensation for work performed under this Agreement. Any project costs to be allocated in this manner will be determined at a later date by the CITY and will be noted as part of the Project Cost Estimate. The CONSULTANT shall maintain all books, documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred, and shall make such materials available at its office at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment under this Agreement, for inspection by the CITY, and for furnishing of copies to the CITY, if requested.

6. **ACCEPTABILITY OF WORK.** The CITY shall decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the acceptable completion of this Agreement, and the amount of compensation due. In the event the CONSULTANT and the CITY cannot agree to the quality or acceptability of the work, the manner of performance and/or the compensation payable to the CONSULTANT in this Agreement, the CITY or the CONSULTANT shall give to the other written notice. Within ten (10) business days, the CONSULTANT and the CITY shall each prepare a report which supports their position and file the same with the other party. The CITY shall, with reasonable diligence, determine the quality or acceptability of the work, the manner of performance and/or the compensation payable to the CONSULTANT.

7. **DISPOSITION AND OWNERSHIP OF DOCUMENTS.** The Memoranda, Reports, Maps, Drawings, Plans, Specifications, and other documents prepared by the

CONSULTANT for this project, whether paper or electronic, shall: (1) be free from defects; (2) become the property of the CITY for use with respect to this project; and (3) shall be turned over to the CITY upon completion of the project, or any phase thereof, as contemplated by this Agreement.

Contemporaneously with the transfer of documents, the CONSULTANT hereby assigns to the CITY, and CONSULTANT thereby expressly waives and disclaims any copyright in, and the right to reproduce, all written material, drawings, plans, specifications, or other work prepared under this Agreement, except upon the CITY'S prior authorization regarding reproduction, which authorization shall not be unreasonably withheld. The CONSULTANT shall, upon request of the CITY, execute any further document(s) necessary to further effectuate this waiver and disclaimer.

The CONSULTANT agrees that the CITY may use, reuse, alter, reproduce, modify, assign, transfer, or in any other way, medium, or method utilize the CONSULTANT'S written work product for the CITY'S purposes, and the CONSULTANT expressly waives and disclaims any residual rights granted to it by Civil Code Sections 980 through 989 relating to intellectual property and artistic works.

Any modification or reuse by the CITY of documents, drawings, or specifications prepared by the CONSULTANT shall relieve the CONSULTANT from liability under Section 14, but only with respect to the effect of the modification or reuse by the CITY, or for any liability to the CITY should the documents be used by the CITY for some project other than what was expressly agreed upon within the Scope of Services of this project, unless otherwise mutually agreed.

8. **INDEPENDENT CONTRACTOR.** Both parties hereto in the performance of this Agreement will be acting in an independent capacity and not as agents, employees, partners, or joint venturers with one another. Neither the CONSULTANT nor the CONSULTANT'S employees are employees of the CITY, and are not entitled to any of the rights, benefits, or privileges of the CITY'S employees, including but not limited to retirement, medical, unemployment, or workers' compensation insurance.

This Agreement contemplates the personal services of the CONSULTANT and the CONSULTANT'S employees, and it is recognized by the parties that a substantial inducement to the CITY for entering into this Agreement was, and is, the professional reputation and competence of the CONSULTANT and its employees. Neither this Agreement, nor any interest herein, may be assigned by the CONSULTANT without the prior written consent of the CITY. Nothing herein contained is intended to prevent the CONSULTANT from employing or hiring as many employees, or SUBCONSULTANTS, as the CONSULTANT may deem necessary for the proper and efficient performance of this Agreement. All agreements by CONSULTANT with its SUBCONSULTANT(S) shall require the SUBCONSULTANT(S) to adhere to the applicable terms of this Agreement.

9. **CONTROL.** Neither the CITY, nor its officers, agents, or employees shall have any control over the conduct of the CONSULTANT or any of the CONSULTANT'S employees, except as set forth in this Agreement. The CONSULTANT, or the CONSULTANT'S agents, servants, or employees are not in any manner agents, servants, or employees of the CITY. The CONSULTANT and its agents, servants, and employees are wholly independent from the CITY and CONSULTANT'S obligations to the CITY are solely prescribed by this Agreement.

10. **COMPLIANCE WITH APPLICABLE LAW.** The CONSULTANT, in the performance of the services to be provided herein, shall comply with all applicable state and federal statutes and regulations, and all applicable ordinances, rules, and regulations of the City of National City, whether now in force or subsequently enacted. The CONSULTANT and each of its SUBCONSULTANT(S), shall obtain and maintain a current City of National City business license prior to and during performance of any work pursuant to this Agreement.

11. **LICENSES, PERMITS, ETC.** The CONSULTANT represents and covenants that it has all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. CONSULTANT must promptly produce a copy of any such license, permit, or approval to CITY upon request. The CONSULTANT represents and covenants that the CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval which is legally required for the CONSULTANT to practice its profession.

12. **STANDARD OF CARE.**

A. The CONSULTANT, in performing any services under this Agreement, shall perform in a manner consistent with that level of care and skill ordinarily exercised by members of the CONSULTANT'S trade or profession currently practicing under similar conditions and in similar locations. The CONSULTANT shall take all special precautions necessary to protect the CONSULTANT'S employees and members of the public from risk of harm arising out of the nature of the work and/or the conditions of the work site.

B. Unless disclosed in writing prior to the date of this Agreement, the CONSULTANT warrants to the CITY that it is not now, nor has it for the five (5) years preceding, been debarred by a governmental agency or involved in debarment, arbitration or litigation proceedings concerning the CONSULTANT'S professional performance or the furnishing of materials or services relating thereto.

C. The CONSULTANT is responsible for identifying any unique products, treatments, processes or materials whose availability is critical to the success of the project the CONSULTANT has been retained to perform, within the time requirements of the CITY, or, when no time is specified, then within a commercially reasonable time. Accordingly, unless the CONSULTANT has notified the CITY otherwise, the CONSULTANT warrants that all products, materials, processes or treatments identified in the project documents prepared for the CITY are reasonably commercially available. Any failure by the CONSULTANT to use due diligence under this sub-section will render the CONSULTANT liable to the CITY for any increased costs that result from the CITY'S later inability to obtain the specified items or any reasonable substitute within a price range that allows for project completion in the time frame specified or, when not specified, then within a commercially reasonable time.

13. **NON-DISCRIMINATION PROVISIONS.** The CONSULTANT shall not discriminate against any employee or applicant for employment because of age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. The CONSULTANT will take positive action to insure that applicants are employed without regard to their age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for

training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.

14. **CONFIDENTIAL INFORMATION.** The CITY may from time to time communicate to the CONSULTANT certain confidential information to enable the CONSULTANT to effectively perform the services to be provided herein. The CONSULTANT shall treat all such information as confidential and shall not disclose any part thereof without the prior written consent of the CITY. The CONSULTANT shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the services to be provided herein. The foregoing obligation of this Section 14, however, shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information; (ii) is, through no fault of the CONSULTANT, hereafter disclosed in publicly available sources of information; (iii) is already in the possession of the CONSULTANT without any obligation of confidentiality; or (iv) has been or is hereafter rightfully disclosed to the CONSULTANT by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party.

The CONSULTANT shall not disclose any reports, recommendations, conclusions or other results of the services or the existence of the subject matter of this Agreement without the prior written consent of the CITY. In its performance hereunder, the CONSULTANT shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

CONSULTANT shall be liable to CITY for any damages caused by breach of this condition, pursuant to the provisions of Section 15.

15. **INDEMNIFICATION AND HOLD HARMLESS.** To the maximum extent provided by law, The CONSULTANT agrees to defend, indemnify and hold harmless the City of National City, its officers, officials, agents, employees, and volunteers against and from any and all liability, loss, damages to property, injuries to, or death of any person or persons, and all claims, demands, suits, actions, proceedings, reasonable attorneys' fees, and defense costs, of any kind or nature, including workers' compensation claims, of or by anyone whomsoever, resulting from or arising out of the CONSULTANT'S performance or other obligations under this Agreement; provided, however, that this indemnification and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the CITY, its agents, officers, employees or volunteers. CITY will cooperate reasonably in the defense of any action, and CONSULTANT shall employ competent counsel, reasonably acceptable to the City Attorney.

The indemnity, defense, and hold harmless obligations contained herein shall survive the termination of this Agreement for any alleged or actual omission, act, or negligence under this Agreement that occurred during the term of this Agreement.

16. **EMPLOYEE PAYMENTS AND INDEMNIFICATION.**

16.1 **PERS Eligibility Indemnification.** If CONTRACTOR's employee(s) providing services under this Agreement claims, or is determined by a court of competent jurisdiction or the California Public Employees Retirement System ("PERS") to be eligible for enrollment in PERS of the CITY, CONTRACTOR shall indemnify, defend, and hold harmless CITY for the payment of any employer and employee contributions for PERS benefits on behalf of the employee as well

as for payment of any penalties and interest on such contributions which would otherwise be the responsibility of the CITY.

CONTRACTOR'S employees providing service under this Agreement shall not: (1) qualify for any compensation and benefit under PERS; (2) be entitled to any benefits under PERS; (3) enroll in PERS as an employee of CITY; (4) receive any employer contributions paid by CITY for PERS benefits; or (5) be entitled to any other PERS-related benefit that would accrue to a CITY employee. CONTRACTOR's employees hereby waive any claims to benefits or compensation described in this Section 16. This Section 16 applies to CONTRACTOR notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary.

16.2 Limitation of CITY Liability. The payment made to CONTRACTOR under this Agreement shall be the full and complete compensation to which CONTRACTOR and CONTRACTOR's officers, employees, agents, and subcontractors are entitled for performance of any work under this Agreement. Neither CONTRACTOR nor CONTRACTOR's officers, employees, agents, and subcontractors are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to CITY employees. The CITY will not make any federal or state tax withholdings on behalf of CONTRACTOR. The CITY shall not be required to pay any workers' compensation insurance on behalf of CONTRACTOR.

16.3 Indemnification for Employee Payments. CONTRACTOR agrees to defend and indemnify the CITY for any obligation, claim, suit, or demand for tax, retirement contribution including any contribution to PERS, social security, salary or wages, overtime payment, or workers' compensation payment which the CITY may be required to make on behalf of (1) CONTRACTOR, (2) any employee of CONTRACTOR, or (3) any employee of CONTRACTOR construed to be an employee of the CITY, for work performed under this Agreement. This is a continuing obligation that survives the termination of this Agreement.

17. WORKERS' COMPENSATION. The CONSULTANT shall comply with all of the provisions of the Workers' Compensation Insurance and Safety Acts of the State of California, the applicable provisions of Division 4 and 5 of the California Labor Code and all amendments thereto; and all similar State or federal acts or laws applicable; and shall indemnify, and hold harmless the CITY and its officers, employees, and volunteers from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description, including reasonable attorney's fees and defense costs presented, brought or recovered against the CITY or its officers, employees, or volunteers, for or on account of any liability under any of said acts which may be incurred by reason of any work to be performed by the CONSULTANT under this Agreement.

18. INSURANCE. The CONSULTANT, at its sole cost and expense, shall purchase and maintain, and shall require its SUBCONSULTANT(S), when applicable, to purchase and maintain throughout the term of this Agreement, the following insurance policies:

A. If checked, **Professional Liability Insurance** (errors and omissions) with minimum limits of \$1,000,000 per occurrence.

B. **Automobile Insurance** covering all bodily injury and property damage incurred during the performance of this Agreement, with a minimum coverage of \$1,000,000

combined single limit per accident. Such automobile insurance shall include owned, non-owned, and hired vehicles. The policy shall name the CITY and its officers, agents, employees, and volunteers as additional insureds, and a separate additional insured endorsement shall be provided.

C. **Commercial General Liability Insurance**, with minimum limits of either \$2,000,000 per occurrence and \$4,000,000 aggregate, or \$1,000,000 per occurrence and \$2,000,000 aggregate with a \$2,000,000 umbrella policy, covering all bodily injury and property damage arising out of its operations, work, or performance under this Agreement. The policy shall name the CITY and its officers, agents, employees, and volunteers as additional insureds, and a separate additional insured endorsement shall be provided. The general aggregate limit must apply solely to this “project” or “location”. The “project” or “location” should be noted with specificity on an endorsement that shall be incorporated into the policy.

D. **Workers’ Compensation Insurance** in an amount sufficient to meet statutory requirements covering all of CONSULTANT’S employees and employers’ liability insurance with limits of at least \$1,000,000 per accident. In addition, the policy shall be endorsed with a waiver of subrogation in favor of the CITY. Said endorsement shall be provided prior to commencement of work under this Agreement.

If CONSULTANT has no employees subject to the California Workers’ Compensation and Labor laws, CONSULTANT shall execute a Declaration to that effect. Said Declaration shall be provided to CONSULTANT by CITY.

E. The aforesaid policies shall constitute primary insurance as to the CITY, its officers, officials, employees, and volunteers, so that any other policies held by the CITY shall not contribute to any loss under said insurance. Said policies shall provide for thirty (30) days prior written notice to the CITY’S Risk Manager, at the address listed in subsection G below, of cancellation or material change.

F. If required insurance coverage is provided on a “claims made” rather than “occurrence” form, the CONSULTANT shall maintain such insurance coverage for three years after expiration of the term (and any extensions) of this Agreement. In addition, the “retro” date must be on or before the date of this Agreement.

G. The Certificate Holder for all policies of insurance required by this Section shall be:

City of National City
c/o Risk Manager
1243 National City Boulevard
National City, CA 91950-4397

H. Insurance shall be written with only insurers authorized to conduct business in California that hold a current policy holder’s alphabetic and financial size category rating of not less than A:VII according to the current Best’s Key Rating Guide, or a company of equal financial stability that is approved by the CITY’S Risk Manager. In the event coverage is provided by non-admitted “surplus lines” carriers, they must be included on the most recent List of Approved Surplus Line Insurers (“LASLI”) and otherwise meet rating requirements.

I. This Agreement shall not take effect until certificate(s) or other sufficient proof that these insurance provisions have been complied with, are filed with and approved by the CITY'S Risk Manager. If the CONSULTANT does not keep all insurance policies required by this Section 18 in full force and effect at all times during the term of this Agreement, the CITY may treat the failure to maintain the requisite insurance as a breach of this Agreement and terminate the Agreement as provided herein.

J. All deductibles and self-insured retentions in excess of \$10,000 must be disclosed to and approved by the CITY. CITY reserves the right to modify the insurance requirements of this Section 18, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

K. If the CONSULTANT maintains broader coverage or higher limits (or both) than the minimum limits shown above, the CITY shall be entitled to the broader coverage or higher limits (or both) maintained by the CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY.

19. **LEGAL FEES.** If any party brings a suit or action against the other party arising from any breach of any of the covenants or agreements or any inaccuracies in any of the representations and warranties on the part of the other party arising out of this Agreement, then in that event, the prevailing party in such action or dispute, whether by final judgment or out-of-court settlement, shall be entitled to have and recover of and from the other party all costs and expenses of suit, including attorneys' fees.

For purposes of determining who is to be considered the prevailing party, it is stipulated that attorney's fees incurred in the prosecution or defense of the action or suit shall not be considered in determining the amount of the judgment or award. Attorney's fees to the prevailing party if other than the CITY shall, in addition, be limited to the amount of attorney's fees incurred by the CITY in its prosecution or defense of the action, irrespective of the actual amount of attorney's fees incurred by the prevailing party.

20. **TERMINATION.**

A. This Agreement may be terminated with or without cause by the CITY. Termination without cause shall be effective only upon 60-day's written notice to the CONSULTANT. During said 60-day period the CONSULTANT shall perform all services in accordance with this Agreement.

B. This Agreement may also be terminated immediately by the CITY for cause in the event of a material breach of this Agreement, misrepresentation by the CONSULTANT in connection with the formation of this Agreement or the performance of services, or the failure to perform services as directed by the CITY.

C. Termination with or without cause shall be effected by delivery of written Notice of Termination to the CONSULTANT as provided for herein.

D. In the event of termination, all finished or unfinished Memoranda Reports, Maps, Drawings, Plans, Specifications and other documents prepared by the CONSULTANT, whether paper or electronic, shall immediately become the property of and be delivered to the CITY, and the CONSULTANT shall be entitled to receive just and equitable compensation for any work satisfactorily completed on such documents and other materials up to the effective date of the Notice of Termination, not to exceed the amounts payable hereunder, and less any damages

caused the CITY by the CONSULTANT'S breach, if any. Thereafter, ownership of said written material shall vest in the CITY all rights set forth in Section 7.

E. The CITY further reserves the right to immediately terminate this Agreement upon: (1) the filing of a petition in bankruptcy affecting the CONSULTANT; (2) a reorganization of the CONSULTANT for the benefit of creditors; or (3) a business reorganization, change in business name or change in business status of the CONSULTANT.

21. **NOTICES.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered; or sent by overnight mail (Federal Express or the like); or sent by registered or certified mail, postage prepaid, return receipt requested; or sent by ordinary mail, postage prepaid; or telegraphed or cabled; or delivered or sent by telex, telecopy, facsimile or fax; and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if sent by overnight mail, the business day following its deposit in such overnight mail facility, (iii) if mailed by registered, certified or ordinary mail, five (5) days (ten (10) days if the address is outside the State of California) after the date of deposit in a post office, mailbox, mail chute, or other like facility regularly maintained by the United States Postal Service, (iv) if given by telegraph or cable, when delivered to the telegraph company with charges prepaid, or (v) if given by telex, telecopy, facsimile or fax, when sent. Any notice, request, demand, direction or other communication delivered or sent as specified above shall be directed to the following persons:

To CITY: Joyce Ryan
Library & Community Services Director
Library & Community Services
City of National City
1243 National City Boulevard
National City, CA 91950-4397

To CONSULTANT:
James Halliday
A REASON TO SURVIVE (ARTS)
200 East 12th Street
National City, CA 91950

Notice of change of address shall be given by written notice in the manner specified in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent. Any notice, request, demand, direction or other communication sent by cable, telex, telecopy, facsimile or fax must be confirmed within forty-eight (48) hours by letter mailed or delivered as specified in this Section.

22. **CONFLICT OF INTEREST AND POLITICAL REFORM ACT OBLIGATIONS.** During the term of this Agreement, the CONSULTANT shall not perform services of any kind for any person or entity whose interests conflict in any way with those of the City of National City. The CONSULTANT also agrees not to specify any product, treatment, process or material for the project in which the CONSULTANT has a material financial interest,

either direct or indirect, without first notifying the CITY of that fact. The CONSULTANT shall at all times comply with the terms of the Political Reform Act and the National City Conflict of Interest Code. The CONSULTANT shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the CITY in which the CONSULTANT has a financial interest as defined in Government Code Section 87103. The CONSULTANT represents that it has no knowledge of any financial interests that would require it to disqualify itself from any matter on which it might perform services for the CITY.

If checked, the CONSULTANT shall comply with all of the reporting requirements of the Political Reform Act and the National City Conflict of Interest Code. Specifically, the CONSULTANT shall file a Statement of Economic Interests with the City Clerk of the City of National City in a timely manner on forms which the CONSULTANT shall obtain from the City Clerk.

The CONSULTANT shall be strictly liable to the CITY for all damages, costs or expenses the CITY may suffer by virtue of any violation of this Section 22 by the CONSULTANT.

23. **PREVAILING WAGES.** State prevailing wage rates may apply to work performed under this Agreement. State prevailing wages rates apply to all public works contracts as set forth in California Labor Code, including but not limited to, Sections 1720, 1720.2, 1720.3, 1720.4, and 1771. Consultant is solely responsible to determine if State prevailing wage rates apply and, if applicable, pay such rates in accordance with all laws, ordinances, rules, and regulations.

24. **ADMINISTRATIVE PROVISIONS.**

A. *Computation of Time Periods.* If any date or time period provided for in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, then such date shall automatically be extended until 5:00 p.m. Pacific Time of the next day which is not a Saturday, Sunday or federal, state, or legal holiday.

B. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.

C. *Captions.* Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

D. *No Obligations to Third Parties.* Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, or obligate any of the parties hereto, to any person or entity other than the parties hereto.

E. *Exhibits and Schedules.* The Exhibits and Schedules attached hereto are hereby incorporated herein by this reference for all purposes. To the extent any exhibits, schedules, or provisions thereof conflict or are inconsistent with the terms and conditions contained in this Agreement, the terms and conditions of this Agreement shall control.

F. *Amendment to this Agreement.* The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

G. *Assignment & Assumption of Rights.* CONSULTANT shall not assign this Agreement, in whole or in part, to any other party without first obtaining the written consent of CITY.

H. *Waiver.* The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

I. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California. The venue for any legal action arising under this Agreement shall be in either state or federal court in the County of San Diego, State of California.

J. *Audit.* If this Agreement exceeds ten-thousand dollars (\$10,000), the parties shall be subject to the examination and audit of the State Auditor for a period of three (3) years after final payment under the Agreement, per Government Code Section 8546.7.

K. *Entire Agreement.* This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between the parties as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of any party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.

L. *Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

M. *Subcontractors or Subconsultants.* The CITY is engaging the services of the CONSULTANT identified in this Agreement. The CONSULTANT shall not subcontract any portion of the work, unless such subcontracting was part of the original proposal or is allowed by the CITY in writing. In the event any portion of the work under this Agreement is subcontracted, the subconsultant(s) shall be required to comply with and agree to, for the benefit of and in favor of the CITY, both the insurance provisions in Section 18 and the indemnification and hold harmless provision of Section 15 of this Agreement.

N. *Construction.* The parties acknowledge and agree that (i) each party is of equal bargaining strength, (ii) each party has actively participated in the drafting, preparation and negotiation of this Agreement, (iii) each such party has consulted with or has had the opportunity to consult with its own, independent counsel and such other professional advisors as such party has deemed appropriate, relative to any and all matters contemplated under this Agreement, (iv) each party and such party's counsel and advisors have reviewed this Agreement, (v) each party has agreed to enter into this Agreement following such review and the rendering of such advice, and (vi) any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

CITY OF NATIONAL CITY

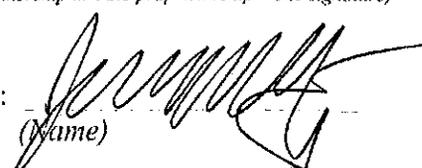
By: _____
Alejandra Sotelo Solis, Mayor

-- OR --

A REASON TO SURVIVE (ARTS)

*(Corporation - signatures of two corporate officers required)
(Partnership or Sole proprietorship - one signature)*

By: _____
(Name)


JAMES HALLIDAY

Brad Raulston, City Manager

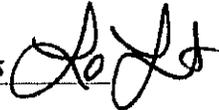
(Print)

EXECUTIVE DIRECTOR, ARTS

(Title)

APPROVED AS TO FORM:

By: _____
Barry J. Schultz
Interim City Attorney

By: Lauren Lockhart 
(Name)

-- OR --

(Print)

Chair, ARTS Board

(Title)

By: _____
Jennifer K. Gilman
Assistant City Attorney

Exhibit "A"

SCOPE OF SERVICES

This is an exhibit attached to, and made part of, the AGREEMENT entered into this 1st day of November 2022 by and between the CITY OF NATIONAL CITY, a municipal corporation (the "CITY"), and A REASON TO SURVIVE (ARTS), a non-profit organization (the "CONSULTANT").

CONSULTANT shall perform services as detailed in the following sections.

SECTION 1. GENERAL

A. General Description: CONSULTANT shall design, produce specifications, create artwork and deliver or complete the installation (when requested) of such artwork at several CITY facilities and/or project locations, including but not limited to the following:

- a. Kimball Park
 - i. Sister Cities Gateway Arch
- b. Las Palmas Park
 - i. Mural
- c. El Toyon Park
 - i. Farmstand Green House
- d. W. 19th Street Greenway
- e. Eastside I805 Community Greenbelt

B. General Performance Requirement:

- a. The performance of all services by CONSULTANT shall be in the satisfaction of the CITY, in accordance with the express terms hereof, including but not limited to the terms set out in detail in this scope of services and the standard care provisions obtained in this AGREEMENT.
- b. CONSULTANT shall coordinate this scope of services with the CITY as well as with other CITY contractors, as needed or directed by the CITY.
- c. CONSULTANT's services shall be performed as expeditiously as is consistent with professional skill and care in the orderly process of the work. The schedule for the PROJECT may be adjusted by mutual agreement.

C. Project Execution

CONSULTANT and CITY shall jointly plan, schedule, and provide resources for the project to reach the agreed upon completion milestones. CONSULTANT shall provide overall project management for each scope item, and lead the process from design concept through installation, when applicable. In some instances, to be identified during project kickoff and defined in the plan for each, the artwork creation will be performed in coordination with a capital improvement project by the CITY.

SECTION 2. PROJECT SCOPE

- A. Scope Development:** CONSULTANT and CITY will jointly develop the scope of work for each of the locations indicated in Section 1. Project Director shall lead the design ideation process to develop such scope in accordance with any guidelines or policies set forth by the CITY, including any that are necessary to comply with funding source requirements.
- B. Project Kickoff:** After execution of the Agreement and no later than February 1, 2023, CITY will initiate and schedule a meeting with the project team to review the foreseeable list of projects to be completed, with their respective source funding targets and deadlines.
- C. Project Plan:** CONSULTANT shall then prepare a Project Plan for each of the projects identified. As part of the Project Plan, the Project Cost Estimate will include a budget for project, including costs to be incurred as part of ARTS' lease obligation. Such plan must contain the following deliverables:
 - a. Project Overview
 - b. Project Timeline
 - c. Project Execution Team
 - d. Project Cost Estimate
- D. Approvals:** Following submission of each Project Plan by CONSULTANT, the CITY shall review and provide comments on said plan, and subsequently approve proceeding with the design process for the proposed project.

The provisions set forth upon this exhibit and any other attached exhibits hereto are hereby incorporated in and made a part of this AGREEMENT.



AGENDA REPORT

Department: City Clerk's Office
Prepared by: Joyce Ryan, Library & Community Services Director
Meeting Date: Tuesday, November 1, 2022
Approved by: Brad Raulston, City Manager

SUBJECT:

Approval of Amendment to the Agreement between City of National City and A Reason to Survive (ARTS)

RECOMMENDATION:

Adopt a Resolution entitled "Resolution of the City Council of the City of National City, California, authorizing the Mayor to enter into the First Amendment to the Agreement between the City of National City ("City") and A Reason to Survive ("ARTS") for the maintenance and operation of the ARTS Center located at 200 East 12th Street in National City."

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

Since 2012, A Reason to Survive (ARTS) has had a home in National City in the old Library building at 200 East 12th Street. Since then, ARTS has worked to positively impact the lives of our young community residents and bring their creativity and imagination to the surface through free programs at the Arts Center. The staff at ARTS have been instrumental in the installation of art projects throughout the City, including the "A" Avenue Art Wall. ARTS staff have also participated in programs and events, including the Dia de los Muertos event and Community Services Day. ARTS staff also work closely with local schools to create classes and internships for our local students through "Arts at Work" and other programs.

The agreement approved last year (from January 1, 2022 to December 31, 2022) allowed for up to three two-year amendments. This first amendment allows for the City's use of the ARTS Center basement.

In return for maintaining and operating the property at 200 East 12th Street, ARTS provides to the City \$125,000 worth of projects and programs annually per the current agreement. ARTS has provided quarterly reporting and effectively shown that this lease obligation has been fulfilled in FY22.

FINANCIAL STATEMENT:

There is no fiscal impact to the General Fund. ARTS' \$125,000 lease obligation is fulfilled in projects and programs to the benefit of the municipality.

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Parks, Recreation and Library

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review. CCR15378; PRC 21065.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

Not Applicable

EXHIBITS:

1. Amendment to the Agreement Between the City of National City and ARTS – January 1, 2023
2. Agreement Between the City of National City and ARTS – December 7, 2021
3. Resolution

**AMENDMENT TO THE AGREEMENT
BY AND BETWEEN
THE CITY OF NATIONAL CITY
AND
A REASON TO SURVIVE**

THIS FIRST AMENDMENT TO THE AGREEMENT is entered into on this 1st day of November, 2022, by and between the CITY OF NATIONAL CITY, a municipal corporation ("CITY"), and A REASON TO SURVIVE ("ARTS"), a California non-profit corporation.

RECITALS

WHEREAS, the CITY owns the improved real property located at 200 East 12th Street, National City, California. This real property is commonly known as the Arts Center Building ("ARTS CENTER"); and

WHEREAS, the CITY and ARTS (collectively referred to as the "parties") entered into an Agreement on December 7, 2021 ("Agreement"), wherein the CITY granted ARTS a revocable license to enter and operate the ARTS CENTER, and ARTS agreed to operate and maintain the ARTS CENTER for the benefit of residents and visitors; and

WHEREAS, originally Article 2, Term, of the Agreement established the term of the Agreement as January 1, 2022 through December 31, 2022; and

WHEREAS, Article 2, Term, of the Agreement establishes the agreement may be extended by mutual agreement for an additional two (2) year term, and the parties may exercise up to three two-year extensions; and

WHEREAS, the parties desire to amend the Agreement by exercising the first (1st) of the three (3) two-year extensions to extend the term of the Agreement to December 31, 2024.

AGREEMENT

NOW, THEREFORE, the parties hereto agree that:

1. Term. Pursuant to Article 2 of the Agreement, the CITY and ARTS hereby agree to amend the Agreement by exercising this first (1st) of the three (3) two-year extensions to extend the term of the Agreement to December 31, 2024.
2. Use of Basement. The CITY and ARTS hereby agree to amend Article 1.1, License for Use of Property, by adding Article 1.1.2, Use of Basement, to read as follows:

The CITY shall maintain access to the basement of the ARTS CENTER. The CITY reserves the right to utilize the basement for storage, as necessary.

- 3 The parties further agree that, with the foregoing exceptions, each and every other term and provision of the December 7, 2021 Agreement shall remain in full force and effect

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to the Agreement on the date and year first above written

CITY OF NATIONAL CITY

By _____
Alejandra Sotelo Solis, Mayor

APPROVED AS TO FORM:

By _____
Barry J. Schultz
Interim City Attorney

A REASON TO SURVIVE (ARTS)

(Corporation – signatures of two corporate officers required)

(Partnership or Sole proprietorship – one signature)

By 

(Name)

Lauren Lockhart

(Print)

Chair, ARTS Board of Directors

(Title)

By 

(Name)

JAMES HALLIDAY

(Print)

EXECUTIVE DIRECTOR

(Title)

**AGREEMENT
BY AND BETWEEN
THE CITY OF NATIONAL CITY
AND
A REASON TO SURVIVE**

THIS AGREEMENT is entered into on this 7 day of December, 2021, by and between the CITY OF NATIONAL CITY, a municipal corporation (the "CITY"), and A REASON TO SURVIVE (the "ARTS").

RECITALS

WHEREAS, the CITY owns the improved real property located at 200 East 12th Street, National City, California. This real property is commonly known as the Arts Center Building (the "ARTS CENTER"). A description of the ARTS CENTER is attached hereto as Exhibit "A" and Exhibit "B", incorporated herein by reference;

WHEREAS, one of the goals of the CITY's General Plan is to develop a cultural arts program that encourages and facilitates the development of art in public spaces and promotes greater awareness of architectural, urban design, and the cultural heritage of the CITY;

WHEREAS, ARTS is a California non-profit corporation skilled in creating public art, including capital arts projects;

WHEREAS, the CITY desires to employ ARTS to maintain the ARTS CENTER for the benefit of the community and ARTS is willing and able to maintain the ARTS CENTER for such purpose;

WHEREAS, in exchange for maintaining the ARTS CENTER for the benefit of residents and visitors, the CITY desires to grant ARTS a revocable license to enter and operate the ARTS CENTER located at 200 East 12th Street, National City, California;

WHEREAS, the CITY previously entered into a similar arts maintenance agreement with ARTS which commenced on January 1, 2018 and expires on December 31, 2021;

WHEREAS, the CITY wishes to enter into this new agreement for continued arts maintenance with ARTS.

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

1. **ENGAGEMENT OF CONSULTANT.** The CITY agrees to engage ARTS to maintain and operate the real property located at 200 East 12th Street, National City, California and known as the ARTS CENTER, in accordance with all the terms and

conditions contained herein. ARTS represents that all services shall be performed directly by ARTS or under direct supervision of ARTS.

1.1 **LICENSE FOR USE OF PROPERTY.** The CITY grants ARTS a revocable license to enter and operate the ARTS CENTER, subject to the covenants and conditions hereinafter set forth, as of the Effective Date of this agreement.

1.1.1 Parking. CITY will maintain control of the public parking lot adjacent to the Arts Center. ARTS shall neither have reserved parking nor exclusive on-site parking spaces.

1.2 **OWNERSHIP OF PERSONAL PROPERTY AND IMPROVEMENTS.** The rights and obligations of CITY and ARTS regarding the ownership of personal property and improvements on the property known as the ARTS CENTER shall be as follows:

1.2.1 Ownership of Personal Property. All improvements existing on the property known as the ARTS CENTER, together with all fixtures permanently attached to the property as of the effective date of this agreement shall remain the property of the CITY during the Term. ARTS shall not remove any improvements or fixtures from the property and shall not waste, destroy, or modify any improvements or fixtures, except as permitted by this agreement.

1.2.2 Ownership of Improvements and Equipment. All improvements made to the ARTS CENTER by ARTS shall become property of the CITY.

2. **TERM.** This agreement will become effective on January 1, 2022. The duration of this agreement is for the period of January 1, 2022 through December 31, 2022. This agreement may be extended by mutual agreement upon the same terms and conditions for an additional two (2) year term. CITY and ARTS may exercise up to three two-year extensions. Any extension of this agreement must be approved by resolution of the City Council.

3. **SCOPE OF SERVICES.** It is the intenton of this agreement that the operation of the Arts Center by ARTS will encourage and foster arts education programming, creative youth development, project based learning, and support services for the students and families at the ARTS CENTER, as well as the creation of public art projects in the community.

In exchange for its use of the ARTS CENTER, ARTS shall provide capital projects and programming services (the "Projects and Programs") within National City's jurisdictional boundaries during the Term. Such Projects shall serve as consideration for the use of the property and shall include: a) capital improvements to the ARTS CENTER; b) the performance of works of authorship as described in California Civil Code 980-989 and United States Code Title 17, Article 106(A) and Section 113(d) (hereafter "Public Art"), throughout the community utilizing various media; c) community event banners; d)

public gateway improvements, that may include aspects of Public Art;e) landscape, streetscape, and park improvements; and f) art consultancy, art installation and art maintenance of ARTS-installed temporary art pieces done on behalf of and for the benefit of the City of National City or National City programs such as, but not exclusively limited to, the annual Dia de los Muertos and Community Services Day programs and events. ARTS is not obligated to maintain permanent public art or public art pieces unless the parties agree. The scope of services described in this Article 3 are in addition to all other property maintenance obligations more specifically described herein.

3.1 **VALUE OF PROJECTS AND PROGRAMS.** The annual value of the Projects and Programs shall total at least one hundred and twenty-five thousand dollars (\$125,000.00). Of this \$125,000, ARTS must obtain at least \$25,000 for the Projects and Programs through fundraising.

3.2 **METHOD OF DETERMINING VALUE OF PROJECTS AND PROGRAMS.** The value of all Projects and Programs shall be determined according to a) the dollar value of each Project and Program, as represented by a separate written agreement approved by the City Manager or designee, or b) copies of invoices, receipts, or bills demonstrating the dollar value of materials purchased for a Project and Program. ARTS must promptly make all invoices, receipts, or bills demonstrating the dollar value of materials purchased for a Project or Program available to the City Manager or designee within 3 days of a written request.

3.3 **WAIVER OF ARTISTIC RIGHTS.** ARTS expressly waives and disclaims any residual rights in the Projects and Programs granted to ARTS by state or federal law, including the California Civil Code, Articles 980-989, relating to intellectual property and artistic works and Title 17 United States Code Section 106A and Section 113(d) relating to artistic rights.

3.4 **HOURS OF OPERATION.** ARTS will open the property known as the ARTS CENTER to the public Monday through Friday from 10:00 a.m. to 5:00 p.m.

3.5 **SERVICE FEES.** ARTS shall not provide any programs and services for profit. However, ARTS may charge user fees for classes and programs offered to school groups and the community to offset costs incurred by ARTS in its maintenance and operation of the ARTS CENTER. Any fees charged this Article 3.5 must be approved by the City Manager or designee. There will no fee for the public to gain access to the ARTS CENTER during the hours of operation listed in Article 3.4.

3.6 **REPORTING BY ARTS.** ARTS shall provide quarterly reports to the City Manager, or designee, that provide Statistical Information (defined below) for the immediately preceding quarter. Each quarterly report shall contain, at a minimum, the total number of a) National City residents who participated in ARTS' Projects or Programs; b) participants and volunteers who participated in ARTS' Projects or Programs; c) all events and programs coordinated; d) the capital projects completed. The quarterly reports shall also include reports on ARTS' operating and maintenance

plans, long-term and short-term goals, and any other pertinent statistics. The information required to appear in the quarterly reports by this Article 3.6 will be referred to as "Statistical Information." Each quarterly report will include all previous quarters' Statistical Information", if any. ARTS will deliver the quarterly report to the City Manager or designee within 30 days of the end of each quarter.

3.7 **ANNUAL BUDGET.** ARTS shall provide the City Manager, or designee, with a courtesy copy of the proposed budget for ARTS' estimated maintenance and operating expenses for the ARTS CENTER by July 1 of each year during the Term. ARTS shall provide to the City Manager or designee, an audited financial report and tax return, ninety (90) days following June 30 of each year during the Term.

3.8 **VOLUNTEER MANAGEMENT.** ARTS may utilize volunteers to operate the ARTS CENTER, and in providing the Projects and Programs required by this agreement. ARTS is responsible for recruiting, training, and managing all volunteers on the property. Volunteers are considered the responsibility of ARTS for the purpose of workers compensation or general liability.

3.9 **ALCOHOL USE.** ARTS or third parties with permission from ARTS, may, hold events at the ARTS CENTER where alcoholic beverages are served. Alcoholic beverages shall be served subject to the following requirements.

- (a) Alcohol will not be served during youth programming under any circumstance.
- (b) Alcohol will be served in limited areas of the ARTS CENTER designated by ARTS in advance of any event and approved by the City Manager or designee.
- (c) Alcoholic beverages must be served by a licensed bartender,. The bartender must have a copy of their bartender's license located at the property.
- (d) The event host must obtain approval from the California Department of Alcoholic Beverage Control to serve alcohol.
- (e) The event host is responsible for all guests' behavior during and following the service of alcohol.
- (f) "Last call" for service of alcohol shall be at least thirty (30) minutes prior to the scheduled end of the event.
- (g) When third parties (with permission from ARTS) serve alcoholic beverages, the following additional requirements shall apply:
 1. The third party shall provide the CITY proof of liability insurance acceptable to the City's Risk Manager;
 2. The third party shall provide two licensed security guards for every 100 guests registered to attend the event;
 3. ARTS shall reserve the authority to immediately terminate an event if ARTS determines, in its sole discretion, the

third party has not complied with any requirements of this Article 3.9.

4. ARTS shall provide the CITY a copy of their third party rental agreement template for approval.

4. **CONSIDERATION.** ARTS' payment of \$1.00 to the CITY, in addition to ARTS' provision of Projects and Programs under Article 3 of this agreement and the mutual benefit to be derived from ARTS' performance under the remainder of this agreement, shall serve as the sole consideration due the CITY for ARTS license to use and operate the ARTS CENTER.

5. **OWNERSHIP RIGHTS AND LICENSES TO ARTWORK: WAIVER.** Through its provision of Projects and Programs to the CITY, ARTS makes an unconditional donation, in perpetuity, of all Public Art created to the CITY. ARTS acknowledges that the CITY is authorized to accept donations of Public Art pursuant to Sections 37354 and 37355 of the Government Code. Before beginning each Project or Program that contains Public Art, ARTS and all individuals participating in the Project or Program must sign a CITY-approved waiver that expressly waives and disclaims any and all rights they each may have under the California Art Preservation Act, as set forth in Civil Code Section 980-989, and any rights under the Visual Artists Rights Act, as set forth at 17 U.S.C. Section 106A and Section 113(d) to any Public Art created pursuant to this agreement. ARTS, and all participants who create Public Art, shall not attempt to defeat Sections 3.2.3 and 9.2 by cooperating with any organization which seeks to bring an action under Civil Code Article 989 or any other applicable provision of law.

5.1 **OWNERSHIP OF MATERIALS.** Ownership of all materials and concepts produced for the CITY under this agreement, including but not limited to completed Projects, and all rights to licensing and reproductions of Public Art, shall pass to and become the property of the CITY once the CITY accepts the completed Project. The CITY, at its option, will store all drawings and materials that may assist with future repairs.

5.2 **ASSIGNMENT.** ARTS hereby assigns to the CITY all rights to produce, give, sell, and distribute still or motion images and models or other likeness of any kind of Public Art but shall exercise no rights thereto inconsistent with any provision of this Article 5.0. Any Memoranda, Reports, Maps, Drawings, Renderings, Photos, Plans, Specifications, and other documents prepared by ARTS for any Project or Program, whether paper or electronic, shall become the property of the CITY for use with respect to the specific Project or Program provided to the CITY, and shall be turned over to the CITY upon completion of the Project or Program, or any phase thereof, as contemplated by this Agreement.

5.3 **SURVIVAL.** The provisions of Article 5.0 to 5.2 shall survive the termination of this agreement.

6. **COMPLIANCE WITH LAWS.** ARTS, at its sole discretion, shall procure, maintain, and hold available for the CITY's inspection any governmental license or permit required for the proper and lawful conduct of ARTS' operation of the ARTS CENTER. ARTS shall not use the ARTS CENTER for any use or purpose in violation of the laws of the United States of America, or the laws, ordinances, regulations, orders, or requirements of the State of California, the County of San Diego, the CITY, or of other lawful authorities. ARTS shall, at its sole expense, comply with all applicable statutes, laws, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the Term regulating the use by ARTS of the ARTS CENTER.

7. **UTILITY SERVICES.** The CITY shall be responsible for maintaining reasonable utility services to the ARTS CENTER. The CITY shall pay for Twenty Thousand dollars (\$20,000) worth of electricity and reasonable water usage at the property known as the ARTS CENTER. ARTS shall pay for all costs of electricity that exceeds the sum listed in this Article 7. If the CITY determines, in its sole discretion, that ARTS is negligent in its use of the utilities, including water usage, the CITY may hold a good faith meet and confer meeting with ARTS to discuss its utilities usage.

8. **ARTS REPAIRS AND MAINTENANCE OBLIGATIONS.** ARTS acknowledges that it has made a thorough inspection of the ARTS CENTER and that it accepts the property "as-is" as of the Effective Date of this agreement. At ARTS' own cost and expense, ARTS shall repair, replace, and maintain the ARTS CENTER in good, tenable condition as necessary. ARTS shall not be obligated to repair or replace damage to the Property caused by ordinary wear and tear. ARTS shall maintain the property in an accessible manner for use by individuals with disabilities and comply with federal and state law regarding accessibility, including but not limited to the Americans with Disabilities Act and the California's Disabled Persons Act. Other than repair work in emergency situations, not exceeding Three Thousand Dollars (\$3,000), ARTS shall not perform any repair work without the CITY's prior written consent. As used in this Article 8, "emergency" means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. All emergency repairs performed by the CITY on the property known as the ARTS CENTER are governed by Public Contract Code Section 22050. ARTS' obligations under this Article shall apply regardless of whether the repairs, restorations, and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or noncapital, the fault or not the fault of ARTS, its agents, employees, volunteers, invitees, visitors, or contractors. All replacements made by the ARTS shall be of like size, kind, and quality to the items replaced.

8.1 **CITY REPAIR AND MAINTENANCE OBLIGATIONS.** For any repair and maintenance work exceeding Three Thousand Dollars (\$3,000), the CITY will consider the nature and priority of the work and available funding to determine if and when such repairs will be completed.

8.2 **CITY RIGHT TO INSPECT.** ARTS shall permit the CITY to enter

the ARTS CENTER at all times during usual hours of operation to inspect the property. Any entry pursuant to this Article 8.2 shall not unreasonably interfere with with ARTS operation of the ARTS CENTER. However, nothing contained in this Article 8.2 shall create any duty on the part of the CITY to do any work which, under any provision of this agreement ARTS may be required to do.

9. **ALTERATIONS**. ARTS may alter, replace, add to, change, or construct additional improvements to the ARTS CENTER, as ARTS may find necessary or convenient for its operation of the property. Any alteration performed by ARTS under this Article 9 shall be performed: a) ARTS' sole cost and expense; b) with the CITY's prior written consent; and c) in accordance with construction plans submitted to and approved by the CITY.

9.1 **CONSTRUCTION PERMITS AND LICENSES**. At all times during the Term, ARTS shall procure, at its sole cost and expense, all permits and licenses that are necessary or required from any local governmental agency for the proposed construction of any alterations. The CITY may, in its sole discretion, waive CITY permitting fees where applicable.

9.2 **PROPOSED PLANS**. In its sole discretion, the CITY may require ARTS to do any of the following: a) submit a complete set of proposed plans of any alterations to the CITY; b) apply for and receive a permit from the Building Department to complete any alterations; c) within sixty (60) days of a written request, furnish CITY with a complete set of "as-built" plans for any CITY-approved alterations.

9.3. **PREVAILING WAGES**. ARTS shall comply with prevailing wage statutes for any work not performed by volunteers. State prevailing wage rates may apply to work performed under this agreement. State prevailing wages rates apply to all public works contracts as set forth in California Labor Code, including but not limited to, Sections 1720, 1720.2, 1720.3, 1720.4, and 1771. Consultant is solely responsible to determine if State prevailing wage rates apply and, if applicable, pay such rates in accordance with all laws, ordinances, rules, and regulations.

10. **MECHANICS' LIENS: STOP NOTICES**. ARTS shall pay, or cause to be paid, the total cost and expense of all works of improvement, as that phrase is defined in the Mechanics Lien Law in effect at time and place of construction, done by it, or caused to be done by it, on the property known as the ARTS CENTER, and for all materials furnished for, or in connection with any such work. If any lien or stop notice is filed against the property known as the ARTS CENTER, ARTS shall cause the lien or stop notice to be discharged of record within one hundred eighty (180) days after it is filed. ARTS shall indemnify, defend, and hold the CITY harmless from any and all liability, loss, damage, costs, attorneys' fees, and all other expenses on account of claims of lien of laborers, materialmen, or others for work performed, or materials or supplies furnished for ARTS or persons claiming under ARTS.

10.1 **NOTICE OF LIEN OR STOP NOTICE**. Should any claim of lien or stop notice related to ARTS' work of improvement of the property be filed against the property, or any action be filed against the property, or any action affecting the title to the property be commenced, the party receiving notice of such lien or stop notice or action shall immediately give the other party written notice thereof.

10.2 **NOTICE OF NON-RESPONSIBILITY**. The CITY or its representatives shall have the right to post and keep posted on the property notices on non-responsibility or such other notices which the CITY may deem to be proper for the protections of the CITY's interest in the property. ARTS shall, before the commencement of any work which might result in any such lien or stop notice, give to the CITY written notice of its intention to do so with sufficient time to enable posting of such notices.

11. **DEFINITION OF TAXES**. "Taxes" shall mean all taxes, governmental bonds, special assessments, charges, or transfer taxes, license and transaction fees, including, but not limited to: (a) any state, local, federal income tax, or any real or personal property tax; (b) increases in taxes attributable to ARTS' operation of the property, or; (c) any taxes which are essentially payments to a governmental agency, other than the CITY, for the right to make improvements to the property.

11.1 **POSSESSORY INTEREST**. Notwithstanding Articles 1 to 1.2, ARTS acknowledges that this agreement may create a possessory interest subject to property taxation and that ARTS may be subject to the payment of taxes levied on such interest. ARTS shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon the property.

11.2 **RESPONSIBILITY FOR PAYMENT OF TAXES**. The CITY shall not be obligated to pay any Taxes accruing against any interest in ARTS' use of the property at any time before or during the Term. ARTS shall pay any Taxes that accrue against any interest in ARTS' use of the property. Additionally, ARTS shall pay any Taxes levied upon any improvements, fixtures, or personal property located on the property to the extent such Taxes result from ARTS operation or other activities held upon, or in connection with, the property.

12. **PROJECT COORDINATION AND SUPERVISION**. The Library & Community Services Director hereby is designated as the Project Coordinator for the CITY and will monitor the progress and execution of this agreement. ARTS shall assign a single Project Director to provide supervision and have overall responsibility for the progress and execution of this agreement for the ARTS. The ARTS Executive Director thereby is designated as the Project Director for the ARTS.

13. **INDEMNIFICATION AND HOLD HARMLESS.** To the maximum extent provided by law, ARTS agrees to defend, indemnify and hold harmless the City of National City, its officers, officials, agents, employees, and volunteers against and from any and all liability, loss, damages to property, injuries to, or death of any person or persons, and all claims, demands, suits, actions, proceedings, reasonable attorneys' fees, and defense costs, of any kind or nature, including workers' compensation claims, of or by anyone whomsoever, resulting from or arising out of ARTS' performance or other obligations under this Agreement, or arising either directly or indirectly from, any act, error, omission, or negligence of ARTS or its contractors, licensees, invitees, members, agents, servants or employees; provided, however, that this indemnification and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of CITY, its agents, officers, employees or volunteers. CITY will cooperate reasonably in the defense of any action, and ARTS shall employ competent counsel, reasonably acceptable to the City Attorney.

The indemnity, defense, and hold harmless obligations contained herein shall survive the termination of this Agreement for any alleged or actual omission, act, or negligence under this agreement that occurred during the term of this agreement.

13.1 **THIRD PARTY INDEMNITY.** ARTS shall not invite third party organizations onto the property known as the ARTS CENTER until said third party organization furnishes CITY a written agreement in which it indemnifies and holds CITY harmless, upon terms satisfactory to CITY.

13.2 **WAIVERS FROM THIRD PARTIES.** ARTS agrees to obtain from all guests, invitees, or third party organizations whose participants visit the property, a waiver of liability and hold harmless agreement upon terms satisfactory to the CITY.

14. **INSURANCE.** ARTS, at its sole cost and expense, shall purchase and maintain, and shall require its subcontractors, and third party organizations ARTS invites onto the property to purchase and maintain, throughout the term of this agreement, the following insurance policies:

- (a) If checked, **Professional Liability Insurance** (errors and omissions) with minimum limits of \$1,000,000 per occurrence.
- (b) **Automobile Insurance** covering all bodily injury and property damage incurred during the performance of this agreement, with a minimum coverage of \$1,000,000 combined single limit per accident. Such automobile insurance shall include owned, non-owned, and hired vehicles. The policy shall name the CITY and its officers, agents, employees, and volunteers as additional insureds, and a separate additional insured endorsement shall be provided.
- (c) **Commercial General Liability Insurance**, with minimum limits of either \$2,000,000 per occurrence and \$4,000,000 aggregate, or \$1,000,000 per occurrence and \$2,000,000 aggregate with a \$2,000,000 umbrella policy, covering all bodily injury and property damage arising out of its operations, work, or performance under this agreement. The policy shall name the CITY and its officers, agents, employees, and volunteers as additional insureds, and a separate additional insured endorsement

shall be provided. The general aggregate limit must apply solely to this "project" or "location". The "project" or "location" should be noted with specificity on an endorsement that shall be incorporated into the policy. The Commercial General Liability required by this Section must include Sexual Misconduct Liability coverage.

- (d) **Workers' Compensation Insurance** in an amount sufficient to meet statutory requirements covering all of ARTS employees and employers' liability insurance with limits of at least \$1,000,000 per accident. In addition, the policy shall be endorsed with a waiver of subrogation in favor of the CITY. Said endorsement shall be provided prior to commencement of work under this Agreement.
- (e) If CONSULTANT has no employees subject to the California Workers' Compensation and Labor laws, ARTS shall execute a Declaration to that effect. Said Declaration shall be provided to ARTS by CITY.
- (f) The aforesaid policies shall constitute primary insurance as to the CITY, its officers, officials, employees, and volunteers, so that any other policies held by the CITY shall not contribute to any loss under said insurance. Said policies shall provide for thirty (30) days prior written notice to the CITY's Risk Manager, at the address listed in subsection (h) below, of cancellation or material change.
- (g) If required insurance coverage is provided on a "claims made" rather than "occurrence" form, the CITY shall maintain such insurance coverage for three years after expiration of the term (and any extensions) of this agreement. In addition, the "retro" date must be on or before the date of this agreement.
- (h) The Certificate Holder for all policies of insurance required by this Section shall be:

City of National City
c/o Risk Manager
1243 National City Boulevard
National City, CA 91950-4397

- (i) Insurance shall be written with only insurers authorized to conduct business in California that hold a current policy holder's alphabetic and financial size category rating of not less than A:VII according to the current Best's Key Rating Guide, or a company of equal financial stability that is approved by the CITY'S Risk Manager. In the event coverage is provided by non-admitted "surplus lines" carriers, they must be included on the most recent List of Approved Surplus Line Insurers ("LASLI") and otherwise meet rating requirements.
- (j) This agreement shall not take effect until certificate(s) or other sufficient proof that these insurance provisions have been complied with, are filed with and approved by the CITY'S Risk Manager. If ARTS does not keep all insurance policies required by this Article 14 in full force and effect at all times during the term of this agreement, the CITY may treat the

failure to maintain the requisite insurance as a breach of this agreement and terminate the agreement as provided herein.

- (k) All deductibles and self-insured retentions in excess of \$10,000 must be disclosed to and approved by the CITY. CITY reserves the right to modify the insurance requirements of this Article 14, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- (l) If ARTS maintains broader coverage or higher limits (or both) than the minimum limits shown above, the CITY shall be entitled to the broader coverage or higher limits (or both) maintained by ARTS. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY.

15. **LEGAL FEES.** If any CITY or ARTS brings a suit or action against the other arising from any breach of any of the covenants or agreements or any inaccuracies in any of the representations and warranties on the part of the other party arising out of this agreement, then in that event, the prevailing party in such action or dispute, whether by final judgment or out-of-court settlement, shall be entitled to have and recover of and from the other party all costs and expenses of suit, including attorneys' fees.

For purposes of determining who is to be considered the prevailing party, it is stipulated that attorney's fees incurred in the prosecution or defense of the action or suit shall not be considered in determining the amount of the judgment or award. Attorney's fees to the prevailing party if other than the CITY shall, in addition, be limited to the amount of attorney's fees incurred by the CITY in its prosecution or defense of the action, irrespective of the actual amount of attorney's fees incurred by the prevailing party.

16. **TERMINATION.**

- (a) This agreement may be terminated with or without cause by the CITY. Termination without cause shall be effective only upon 60-day's written notice to ARTS. During said 60-day period ARTS shall perform all services in accordance with this agreement.
- (b) This agreement may also be terminated immediately by the CITY for cause in the event of a material breach of this agreement, misrepresentation by the ARTS in connection with the formation of this agreement or the performance of services, or the failure to perform services as directed by the CITY.
- (c) Termination with or without cause shall be effected by delivery of written Notice of Termination to ARTS as provided for herein.
- (d) CITY further reserves the right to immediately terminate this agreement upon: (1) the filing of a petition in bankruptcy affecting ARTS; (2) a reorganization of ARTS for the benefit of creditors; or (3) a business reorganization, change in business name or change in business status of the ARTS.

17. **HAZARDOUS MATERIALS LAWS.** As used in this Article 17, the term "Hazardous Materials' Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law") relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under, or about the Property, soil and ground water conditions, or other similar substances or conditions. ~~The following legal authority is a non-exhaustive list of the legal authority that applies~~ to the definition of the term "Hazardous Materials Laws": the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C., Section 9601 et seq.); the Hazardous Materials Transportation Act, as amended (49 U.S.C., Section 1801 et seq.); and the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C., Section 6901 et seq.).

17.2 **HAZARDOUS MATERIALS DEFINITION.** As used in this Article the term " Hazardous Materials" means any chemical, compound, material, substance or other matter that:

- (a) is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials;
- (b) is controlled, referred to, designated in or governed by any Hazardous Materials Laws;
- (c) gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws, or;
- (d) is any other material or substance giving rise to any liability, responsibility or duty upon the CITY or the ARTS with respect to any third person under any Hazardous Materials Law.

17.3 **ARTS REPRESENTATIONS AND WARRANTIES.** ARTS represents and warrants that, during the Term or any extension thereof, ARTS shall comply with the following provisions of this Article unless otherwise specifically approved in writing by the CITY, subject to the terms and conditions of the ARTS' maintenance obligations provided elsewhere in this Agreement:

- (a) ARTS shall not cause or permit any Hazardous Materials to be brought, kept or used in or about the property by ARTS, its agents, employees, assigns, contractors or invitees, except as required by ARTS' permitted use of the property in the normal course of operations;
- (b) Any handling, transportation, storage, treatment, or usage by ARTS of Hazardous Materials that is to occur on the property following the Effective Date shall be in compliance with all applicable Hazardous Materials Laws;
- (c) Any leaks, spills, release, discharge, emission or disposal of Hazardous Materials which may occur on the Property following the Effective Date shall be promptly and thoroughly cleaned and removed

- from the Property by ARTS at its sole expense, and any such discharge shall be promptly reported in writing to the CITY, and to any other appropriate governmental regulatory authorities;
- (d) No friable asbestos shall be constructed, placed on, deposited, stored, disposed of, or located by ARTS on the property;
 - (e) No underground improvements, including but not limited to treatment or storage tanks, or water, gas or oil wells shall be located by ARTS on the property without the CITY's prior written consent.
 - (f) ARTS shall promptly supply the CITY with copies of all notices, reports, correspondence, and submissions made by ARTS to the United States Environmental Protection Agency, the United Occupational Safety and Health Administration, and any other local, state or federal authority which requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to applicable Hazardous Materials' Laws; and

17.4 ARTS shall promptly notify the CITY of any liens threatened or attached against the Property pursuant to any Hazardous Materials' Law. If such a lien is filed against the Property, then, within the earlier of (i) twenty (20) days following such filing, or (ii) before any governmental authority commences proceedings to sell the Property pursuant to the lien, ARTS shall either:

- (a) pay the claim and remove the lien from the Property, or
- (b) furnish either: (1) a bond or cash deposit reasonably satisfactory to the CITY in an amount not less than the claim from which the lien arises, or; (2) other security satisfactory to the CITY in an amount not less than that which is sufficient to discharge the claim from which the lien arises.

17.5. At the end of this agreement, ARTS shall surrender the property to the CITY free of any and all Hazardous Materials and in compliance with all Hazardous Materials' Laws affecting the Property.

18. ARTS shall not voluntarily or involuntarily assign or otherwise transfer all or any portion of its rights and duties under this agreement without the CITY's prior written consent. Any attempted assignment or transfer without the CITY's prior written consent shall be void.

18.1 ARTS may engage third party organizations to provide special services or programming at the Property if: a) CITY consents, in writing, to the third party organizations' proposed use of the Property and; b) the third party organization obtains policies of insurance acceptable to the City's Risk Manager and Article 14 of this agreement.

19. **EVENTS OF DEFAULT; REMEDIES.** The following sub-articles shall apply if either ARTS or the CITY neglects, fails to perform, or fails to observe any of their respective obligations under the terms, covenants, or conditions contained in this agreement ("Default"):

19.1 **THIRTY-DAY CORRECTION OF DEFAULT.** If either ARTS or the CITY determines that the other party is in default, then the non-defaulting party must provide the defaulting party written notice of the Default and thirty (30) days to correct the default.

19.2 **EXTENDED CORRECTION OF DEFAULT.** If the defaulting party determines that more than thirty (30) days is required to correct the Default, the defaulting party must provide the other party written notice of the reasons why additional time is required to correct such Default. The defaulting party must use diligent efforts to correct a Default under this Article 13.1.2 and, in any case, must correct such Default within ninety (90) days from the date of the written notice of default.

19.3 **REMEDIES FOR FAILURE TO CORRECT DEFAULT.** If the defaulting party fails to comply with Article 19.1. or 19.2, then the non-defaulting party may immediately terminate this agreement. The defaulting party shall be liable to the non-defaulting party for any and all damages sustained by the non-defaulting party as a result of the defaulting parties' breach.

20. **ABANDONMENT.** ARTS shall not vacate or abandon the property at any time during the Term nor permit the property to remain unoccupied for a period of longer than five (5) consecutive days during the term of this agreement. These provisions shall not apply if the property is closed and operation is temporarily discontinued therein on account of strikes, lockouts, acts of nature, or similar causes beyond the reasonable control of ARTS. Any exceptions must be submitted in writing to the City Manager or designee for approval.

21. **ARTS' DUTY TO REPAIR CASUALTY.** ARTS shall, as expeditiously as reasonably possible, repair any damages to the property caused by fire, earthquake, or any other identifiable event of a sudden, unexpected, or unusual nature ("Casualty"), and repair, restore, and replace any such damaged or destroyed Fixtures, Improvements or Personal Property ("Casualty Repairs"). Any Casualty Repairs made are: (a) to be performed at ARTS' sole cost and expense; (b) subject to all other terms and conditions of this agreement.

21.1 **CONSTRUCTION PROVISIONS.** In the event of any reconstruction of the property, fixtures or improvements required of ARTS pursuant to this Article, ARTS shall repair the property, and repair or rebuild such fixtures and improvements, to substantially the same condition they were in immediately preceding such casualty.

21.2 **NO ABATEMENT.** In the event of reconstruction, replacement, or repair by ARTS pursuant to this Article, ARTS shall continue its operations on the property during any such period to the extent reasonably practicable from the standpoint of prudent business management, and in continuing compliance with applicable laws and regulations. ARTS shall not be entitled to any compensation or damages from CITY for: (a) loss of use of the whole or any part of the property; (b) ARTS' Personal Property; or

(c) any inconvenience or annoyance occasioned by such damage, reconstruction, or replacement.

21.3 **MAJOR DESTRUCTION**. Notwithstanding any of the foregoing provisions of this Article to the contrary, if, at any time after the Effective Date, (a) the improvements are damaged or destroyed to the extent of more than twenty-five percent (25%) of their replacement cost, or (b) the damage is such that the improvements cannot be repaired and restored within one hundred and eighty (180) days after the casualty, then ARTS shall have the right to terminate this agreement upon thirty (30) days' prior written notice to the CITY.

22. **CONDEMNATION**. ARTS may terminate this agreement within twenty (20) days after the date that a condemning authority (by a party other than the CITY) takes possession of the property by delivery of written notice of such condemnation if: (a) all of the property is taken under eminent domain proceedings; or (b) less than all of the property is taken under such eminent domain proceeding and the part taken substantially impairs the ability of ARTS to use the remainder of the property for the purposes permitted by this agreement.

22.1 In the absence of such written notice from a condemning authority, ARTS may terminate this agreement within twenty (20) days after the condemning authority shall have taken possession.

22.2 **CONTINUATION OF OPERATING AGREEMENT AFTER CONDEMNATION**. If this agreement is not terminated by ARTS, it shall remain in full force and effect as to any portion of the property remaining, and this agreement will end as of the date possession of the part taken by the public entity as to the part of the property that is taken.

22.3 **AWARD**. All monies awarded in any condemnation shall belong to the CITY. The CITY shall have no liability to ARTS for any award not provided by the condemning authority.

23. **SALE OR MORTGAGE**. The CITY may, pursuant to existing and subsequently enacted CITY ordinances and State laws, at any time, and without the consent of ARTS, vacate, sell, purchase, exchange, transfer, assign, lease, encumber or convey the CITY's interest in whole or in part, in the property (collectively referred to in this Article as a "Sale"). The CITY shall provide to ARTS written notice of the CITY's intent to a Sale or discontinuance pursuant to this Article at least ninety (90) days prior to said proposed transfer.

23.1 **RELEASE ON SALE**. From and after a Sale or discontinuance of the CITY's entire interest in the Property, the CITY shall be released from all liability to ARTS and ARTS successors and assigns arising from this Agreement because of any act, occurrence, or omission of the CITY occurring after such Sale.

24. **RIGHT OF ENTRY**. CITY, its agents, employees, and contractors may enter the Property at any time with or without notice to ARTS to: (a) respond to

health and safety concerns; (b) inspect the property and improvements; (c) determine whether ARTS is complying with its obligations in this Agreement (including its obligations with respect to compliance with Hazardous Materials Laws); (d) post notices of non-responsibility or similar notices; (e) inspect the progress of construction of any improvement; or (f) make repairs that this agreement requires or allows CITY to make, or make repairs to any adjoining space or utility services, or make repairs, alterations, or improvements to any other portion of the Property

24.1 All work enumerated in this Article 24 must be done as promptly as reasonably possible and so as to cause as little interference to ARTS as reasonably possible.

25. **NOTICES.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered; or sent by overnight mail (Federal Express or the like); or sent by registered or certified mail, postage prepaid, return receipt requested; or sent by ordinary mail, postage prepaid; or telegraphed or cabled; or delivered or sent by telex, telecopy, facsimile or fax; and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if sent by overnight mail, the business day following its deposit in such overnight mail facility, (iii) if mailed by registered, certified or ordinary mail, five (5) days (ten (10) days if the address is outside the State of California) after the date of deposit in a post office, mailbox, mail chute, or other like facility regularly maintained by the United States Postal Service, (iv) if given by telegraph or cable, when delivered to the telegraph company with charges prepaid, or (v) if given by telex, telecopy, facsimile or fax, when sent. Any notice, request, demand, direction or other communication delivered or sent as specified above shall be directed to the following persons:

CITY: City Manager
City of National City
1243 National City Boulevard
National City, CA 91950-4397

With a copy to:

Library & Community Services Director
City of National City
1401 National City Boulevard
National City, CA 91950

ARTS:A Reason to Survive, Inc.
Executive Director
200 East 12th Street
National City, CA 91950

25.1 Notice of change of address shall be given by written notice in the manner specified in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent. Any notice, request, demand, direction or other communication sent by cable, telex, telecopy, facsimile or fax must be confirmed within forty-eight (48) hours by letter mailed or delivered as specified in this Article.

26. **ARTS' DUTY TO KEEP RECORDS.** ARTS shall, at all times during the term, and for a period of five (5) years following expiration or earlier termination of this agreement, keep or cause to be kept, true and complete books, records and accounts of all: (a) construction undertaken pursuant to the rights conferred on ARTS under this agreement, and (b) financial transactions in the operation of all business activities, of whatever nature, conducted pursuant to the rights granted by this agreement. Such records shall also include the source and disposition of all trash and other waste collected and disposed of by ARTS in the operation of its business. Said records must be supported by source documents such as receipts, invoices, sales slips, cash register tapes, purchase invoices or other pertinent documents.

26.1 **CITY'S RIGHT TO AUDIT.** All ARTS books, accounts, and records shall be kept and made available at one location within the limits of the County of San Diego. The CITY shall have the right at any reasonable time to examine and perform audits of ARTS' records pertaining to (a) construction undertaken pursuant to the rights conferred on ARTS under this Agreement, and (b) its operations on the Property, including , without limitation , any records pertaining to ARTS' use of utilities on the Property. The cost of said audits shall be borne by the CITY, except that ARTS shall provide to the CITY, at ARTS' expense, necessary data to enable the CITY to fully comply with each and every requirement of the State of California or by the United States of America for information or reports relating to this Agreement and to ARTS' use of the Property.

27. **ADMINISTRATIVE PROVISIONS.**

- A. **Amendment to this Agreement.** The terms of this agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.
- B. **Applicable Law.** This agreement shall be governed by and construed in accordance with the laws of the State of California. The venue for any legal action arising under this agreement shall be in either state or federal court in the County of San Diego, State of California.
- C. **Assignment & Assumption of Rights.** ARTS shall not assign this agreement, in whole or in part, to any other party without first obtaining the written consent of CITY.
- D. **Audit.** If this agreement exceeds ten-thousand dollars (\$10,000), the parties shall be subject to the examination and audit of the State Auditor for a period of three (3) years after final payment under the agreement, per Government Code Section 8546.7.

- E. **Authority.** ARTS represents and warrants that it has full power and authority to execute and fully perform its obligations under this agreement pursuant to its governing instruments, without the need for any further action, and that the person executing this agreement on behalf of ARTS is the duly designated agent of ARTS and is authorized to do so.
- F. **Captions.** Any captions to, or headings of, the sections or subsections of this agreement are solely for the convenience of the parties hereto, are not a part of this agreement, and shall not be used for the interpretation or determination of the validity of this agreement or any provision hereof.
- G. **Computation of Time Periods.** If any date or time period provided for in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, then such date shall automatically be extended until 5:00 p.m. Pacific Time of the next day which is not a Saturday, Sunday or federal, state, or legal holiday.
- H. **Conflict of Interest and Political Reform Act Obligations.** During the term of this agreement, ARTS shall not perform services of any kind for any person or entity whose interests conflict in any way with those of the City of National City. ARTS shall at all times comply with the terms of the Political Reform Act and the National City Conflict of Interest Code. ARTS shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the CITY in which ARTS has a financial interest as defined in Government Code Section 87103. ARTS represents that it has no knowledge of any financial interests that would require it to disqualify itself from any matter on which it might perform services for the CITY.
- I. **Construction.** The parties acknowledge and agree that (i) each party is of equal bargaining strength, (ii) each party has actively participated in the drafting, preparation and negotiation of this agreement, (iii) each such party has consulted with or has had the opportunity to consult with its own, independent counsel and such other professional advisors as such party has deemed appropriate, relative to any and all matters contemplated under this agreement, (iv) each party and such party's counsel and advisors have reviewed this agreement, (v) each party has agreed to enter into this agreement following such review and the rendering of such advice, and (vi) any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this agreement, or any portions hereof, or any amendments hereto.
- J. **Counterparts.** This agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.
- K. **Entire Agreement.** This agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between the parties as to the subject matter hereof.

No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of any party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby

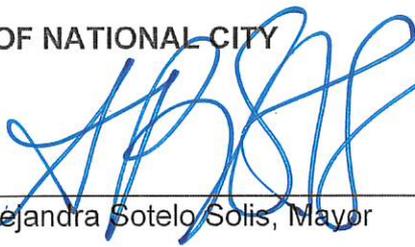
- L. **Exhibits and Schedules.** The Exhibits and Schedules attached hereto are hereby incorporated herein by this reference for all purposes. To the extent any exhibits, schedules, or provisions thereof conflict or are inconsistent with the terms and conditions contained in this agreement, the terms and conditions of this agreement shall control.
- M. **Force Majeure.** If either party is prevented or delayed from performing any act or discharging any obligation hereunder, because of any and all causes beyond either party' s reasonable control, including unusual delays in deliveries, abnormally adverse weather conditions, unavoidable casualties, strikes, labor disputes, inability to obtain labor, materials or equipment, acts of God, governmental restrictions, regulations or controls, any hostile government actions, acts of terrorism, civil commotion and fire or other casualty, legal actions attacking the validity of this agreement or the CITY or ARTS' operations of the property, or any other casualties beyond the reasonable control of either party ("Force Majeure"), performance of such act shall be excused for the period of such delay, and the period for performance of such act shall be extended for a period equivalent to the period of such delay. Force Majeure shall not include any bankruptcy, insolvency , or other financial inability on the part of either party hereto.
- N. **Independent Contractor.** ARTS acknowledges that it is an independent contractor; that it alone retains control of the manner of conducting its activities in furtherance of this agreement; and that it, as well as any persons, contractors or agents it may employ, are not employees of CITY for any purpose.
- O. **No Obligations to Third Parties.** Except as otherwise expressly provided herein, the execution and delivery of this agreement shall not be deemed to confer any rights upon, or obligate any of the parties hereto, to any person or entity other than the parties hereto.
- P. **Partial Invalidity.** If any provision of this agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this agreement shall not be affected thereby. Each provision shall be valid and enforceable to the fullest extent permitted by law.
- Q. **Subcontractors or Subconsultants.** The CITY is engaging the services of the ARTS identified in this agreement. ARTS shall not subcontract any portion of the work, unless such subcontracting was part of the original proposal or is allowed by the CITY in writing, or within the terms of this agreement. In the event any portion of the work under this agreement is subcontracted, the subconsultant(s) shall be required to comply with and agree to, for the benefit of and in favor of the CITY,

provision shall be valid and enforceable to the fullest extent permitted by law.

- Q. **Subcontractors or Subconsultants.** The CITY is engaging the services of the ARTS identified in this agreement. ARTS shall not subcontract any portion of the work, unless such subcontracting was part of the original proposal or is allowed by the CITY in writing, or within the terms of this agreement. In the event any portion of the work under this agreement is subcontracted, the subconsultant(s) shall be required to comply with and agree to, for the benefit of and in favor of the CITY, both the insurance provisions and the indemnification and hold harmless provisions of this Agreement.
- R. **Successors and Assigns.** This agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.
- S. **Waiver.** The waiver or failure to enforce any provision of this agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date and year first above written.

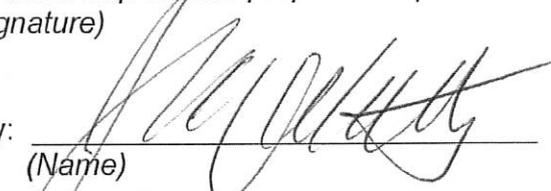
CITY OF NATIONAL CITY

By: 
 Alejandra Sotelo Solis, Mayor

A REASON TO SURVIVE (ARTS)

(Corporation – signatures of two corporate officers required)

(Partnership or Sole proprietorship – one signature)

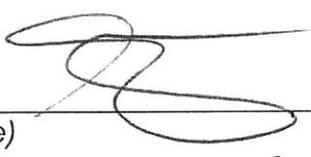
By: 
 (Name)

JAMES HALLIDAY
 (Print)

EXECUTIVE DIRECTOR
 (Title)

APPROVED AS TO FORM:

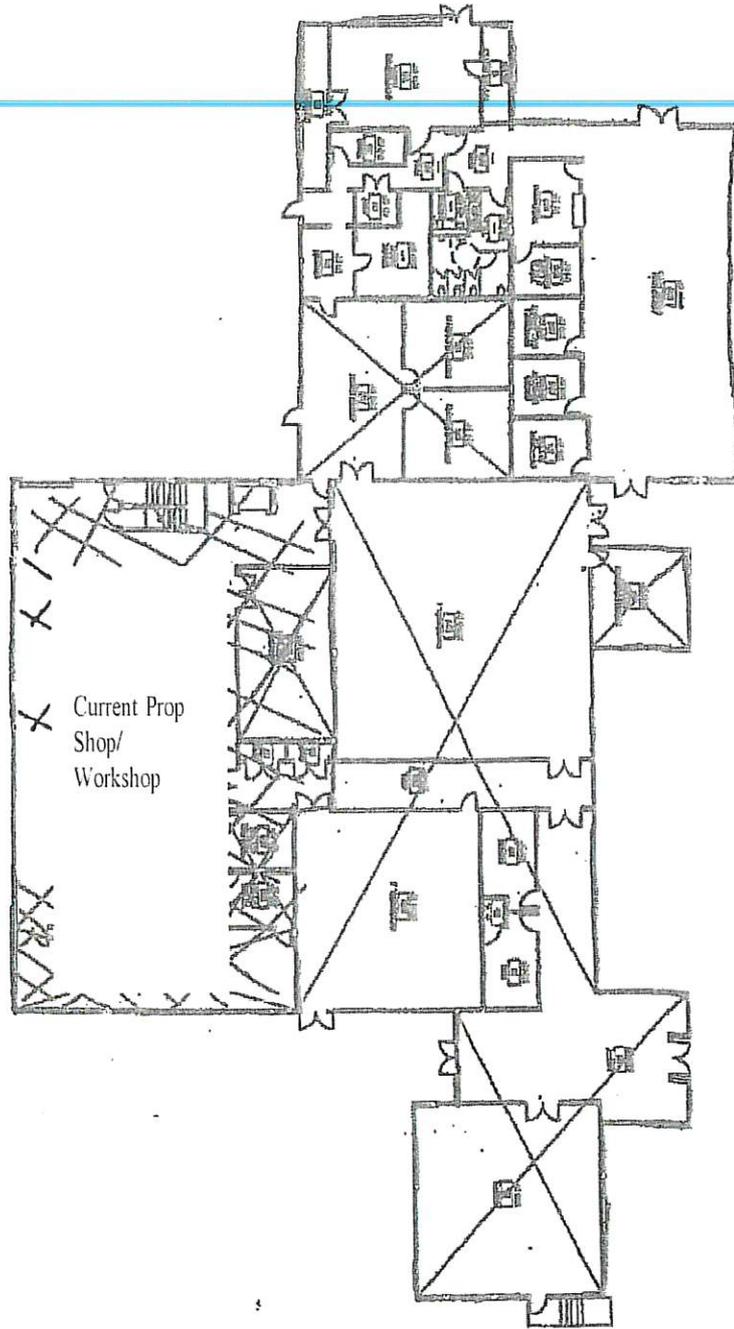
By: 
 Gabriela Torres
 Deputy City Attorney

By: 
 (Name)

Jacqueline Reynoso
 (Print)

Board Chair woman
 (Title)

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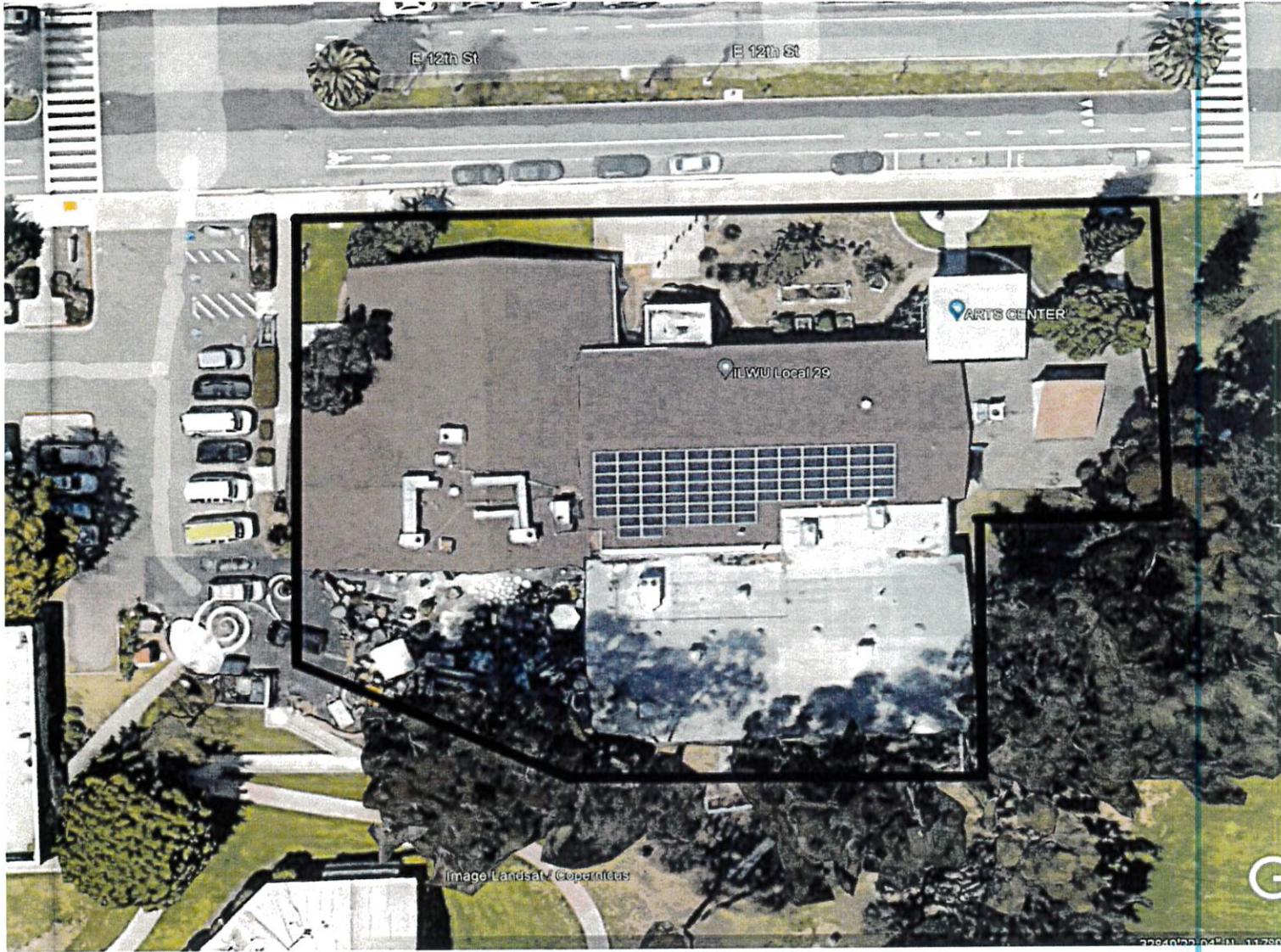


EXHIBIT B - ARTS CENTER, 200 East 12th Street, National City CA

RESOLUTION NO. 2022 -

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, AUTHORIZING THE MAYOR TO ENTER INTO THE FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF NATIONAL CITY (“CITY”) AND A REASON TO SURVIVE (“ARTS”) FOR THE MAINTENANCE AND OPERATION OF THE ARTS CENTER LOCATED AT 200 EAST 12TH STREET IN NATIONAL CITY.

WHEREAS, the CITY owns the improved real property located at 200 East 12th Street, National City, California. This real property is commonly known as the Arts Center Building (the “ARTS CENTER”);

WHEREAS, one of the goals of the CITY’s General Plan is to develop a cultural arts program that encourages and facilitates the development of art in public spaces and promotes greater awareness of architectural, urban design, and the cultural heritage of the CITY;

WHEREAS, ARTS is a California non-profit corporation skilled in creating public art, including capital arts projects;

WHEREAS, the CITY desires to employ ARTS to maintain the ARTS CENTER for the benefit of the community and ARTS is willing and able to maintain the ARTS CENTER for such purpose;

WHEREAS, in exchange for maintaining the ARTS CENTER for the benefit of residents and visitors, the CITY desires to grant ARTS a revocable license to enter and operate the ARTS CENTER located at 200 East 12th Street, National City, California;

WHEREAS, the CITY previously entered into a maintenance agreement with ARTS which commenced on January 1, 2022 and expires on December 31, 2022;

WHEREAS, the Parties desire to amend the Agreement by exercising the first of the three (3) two-year extensions to extend the term of the Agreement to December 31, 2024 and to allow the City to utilize the basement for storage as necessary.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1: Authorizes the Mayor to enter into a First Amendment to Agreement between the City of National City and ARTS for the Maintenance and Operation of the ARTS Center located at 200 East 12th Street in National City, attached as Exhibit 1 to the Agenda Report.

Resolution No. 2022 –
Page Two

Section 2: The City Clerk shall certify the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED and ADOPTED this 1st day of November, 2022.

Alejandra Sotelo-Solis, Mayor

ATTEST:

Luz Molina, City Clerk

APPROVED AS TO FORM:

Barry J. Schultz, City Attorney



AGENDA REPORT

Department: Engineering
Prepared by: Tirza Gonzales, Management Analyst II
Meeting Date: Tuesday, November 1, 2022
Approved by: Brad Raulston, City Manager

SUBJECT:

Amendments to On-Call Consultant Agreements for City's Capital Improvement Program (CIP) increasing the not-to-exceed dollar amounts and extending each agreement by one year as allowed by original agreement.

RECOMMENDATION:

Adopt a Resolution Entitled, "Resolution of the City Council of the City of National City, California, authorizing the Mayor to increase On-Call Consultant Agreements by a not-to-exceed amount of \$1,000,000, including hourly rate updates, extend by one year, and execute 1) First Amendments to the following On-Call Consultants: a) Anser Advisory; b) HDR Engineering, Inc.; c) Innovative Construction Consulting Services, Inc.; d) Kimley-Horn and Associates, Inc.; e) KTU&A; f) NV5, Inc.; g) STC Traffic, Inc.; and, h) WSP USA Inc.; and 2) Second Amendments to the following On-Call Consultants: a) Chen Ryan Associates, Inc.; and, b) Project Professionals Corporation."

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

The Engineering & Public Works Department advertised a Request for Qualifications (RFQ) for various engineering, architectural and construction support services, housing and real estate development services, and environmental compliance services on May 1, 2019.

The RFQ was advertised on the City's website, published in the San Diego Union Tribune, e-mailed to over 100 professional consulting firms and also advertised on PlanetBids where over 400 firms were notified. Additionally, the City hosted an Information Session regarding the RFQ process on May 14, 2019 at the MLK Jr. Community Center to encourage local participation, which was attended by over 100 people. The Department received 71 Statement of Qualifications (SOQs) from various firms by the June 10, 2019 deadline.

Based on the strength of their SOQs, interviews and past performance, the City of National City entered into Agreements with several consultants to provide on-call support services for National City's Capital Improvement Program (CIP). The original Agreements were all for a not-to-exceed amount of \$2,000,000 and a term of three years, with the option to extend for two one-year extensions.

On September 7, 2021, City Council adopted Resolution 2021-122 and 2021-121 approving First Amendments for Chen Ryan Associates, Inc., and Project Professionals Corporation, respectively, based on said consultants' performance, quality of work, and expiring agreements, increased City staffing demands, and to ensure timely completion of CIPs.

If approved tonight, action would authorize the City to execute First Amendments to extend Agreements of the below listed consultants (1-8) by one year and increase each of the not-to exceed amounts by \$1,000,000, including hourly rate updates, for total Agreement amounts of \$3,000,000; and,

1. **Anser Advisory:** Project management; engineering; construction management, inspections and certified payroll; plan reviews; constructability reviews; community outreach and communications
2. **HDR Engineering, Inc.:** Project management; civil engineering; plan reviews; constructability reviews; construction support; long range planning for multiple disciplines; grants management; community outreach and communications
3. **Innovative Construction Consulting Services, LLC:** Project management; engineering construction management; inspection and certified payroll; plan reviews; constructability reviews; community outreach and communications
4. **Kimley-Horn and Associates, Inc.:** Project management; civil engineering; traffic engineering; transportation planning; plan reviews; constructability reviews; long-range planning on multiple disciplines; grants management; community outreach and communications
5. **KTU&A:** Project management; landscape architecture and urban design; transportation planning; geographic information systems; long-range planning for multiple disciplines; grants management; community outreach and communications
6. **NV5, Inc.:** Project management; engineering; construction management, inspections and certified payroll; plan reviews; constructability review; land surveying; environmental assessments; geotechnical; construction support; community outreach and communications
7. **STC Traffic, Inc.:** Project management; traffic engineering; transportation planning; traffic signal communications infrastructure and systems integration; plan reviews; constructability reviews; construction support; grants management; community outreach and communications
8. **WSP USA Inc.:** Project management; traffic engineering; transportation planning; plan reviews; constructability reviews; long-range planning on multiple disciplines; grants management; community outreach and communications

Second Amendments to extend Agreements of the below listed consultants (9-10) by one year and increase each of the not-to exceed amounts by \$1,000,000, including hourly rate updates, for total Agreement amounts of \$4,000,000:

9. **Chen Ryan Associates, Inc.:** Project management; civil engineering; traffic engineering; transportation planning; plan reviews; constructability reviews; long range planning for multiple disciplines; grants management; and, community and communications

10. Project Professionals Corporation: Project management; engineering construction management; inspection and certified payroll; plan reviews; constructability reviews; community outreach and communications.

Due to the size and type of projects and the expertise of the consultants, expenditure amounts may vary amongst the firms. To remain consistent, staff is requesting equivalent increases for consultants based on current workforce staffing levels and grant application and implementation efforts required to meet demanding deadlines. It should be noted that the increases do not constitute utilization of the entirety of funds. Consultant tasks will be performed on an as-needed on-call basis and funded by appropriations approved through CIP and Budget process. The City's 5-Year CIP projects estimated at approximately \$73 million in capital improvements over the next five years. The City's implementation rate averages about fifteen projects a year totaling approximately \$15.3 million.

Staff recommends authorizing the Mayor to increase On-Call Consultant Agreements by a not-to-exceed amount of \$1,000,000, including hourly rate updates, extend by one year, and execute 1) First Amendments to the following On-Call Consultants: a) Anser Advisory; b) HDR Engineering, Inc.; c) Innovative Construction Consulting Services, Inc.; d) Kimley-Horn and Associates, Inc.; e) KTU&A; f) NV5, Inc.; g) STC Traffic, Inc.; and, h) WSP USA Inc.; and 2) Second Amendments to the following On-Call Consultants: a) Chen Ryan Associates, Inc.; and, b) Project Professionals Corporation.

Consultant*	Reso No.	Agreement Start Date	Original Agreement	First Amendment	Second Amendment	Total Agreement	Total Expenditures & Encumbrances as of Sept. 2022
1. Anser Advisory	2019-150	11/5/2019	\$2,000,000	\$1,000,000		\$3,000,000	\$324,948.56
2. HDR Engineering, Inc.	2019-175	12/3/2019	\$2,000,000	\$1,000,000		\$3,000,000	\$710,318.50
3. Innovative Construction Consulting Services, LLC	2019-151	11/5/2019	\$2,000,000	\$1,000,000		\$3,000,000	\$1,390,693.50
4. Kimley-Horn and Associates, Inc.	2020-11	01/21/2020	\$2,000,000	\$1,000,000		\$3,000,000	\$958,621.14
5. KTU&A	2019-176	12/3/2019	\$2,000,000	\$1,000,000		\$3,000,000	\$258,199.00
6. NV5, Inc.	2019-177	12/3/2019	\$2,000,000	\$1,000,000		\$3,000,000	\$333,698.89
7. STC Traffic, Inc.	2019-164	11/19/2019	\$2,000,000	\$1,000,000		\$3,000,000	\$497,141.48
8. WSP USA Inc.	2019-178	12/3/2019	\$2,000,000	\$1,000,000		\$3,000,000	\$1,631,917.91
9. Chen Ryan Associates, Inc. First Amendment	2019-163 2021-122	11/19/2019 09/07/2021	\$2,000,000	\$1,000,000	\$1,000,000	\$4,000,000	\$1,965,520.72
10. Project Professionals Corporation First Amendment	2019-152 2021-121	11/5/2019 09/07/2021	\$2,000,000	\$1,000,000	\$1,000,000	\$4,000,000	\$2,684,668.28

*See Exhibit A for Consultant Projects/Tasks

FINANCIAL STATEMENT:

Funding appropriations approved by CIP and Budget process.

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Transportation Choices and Infrastructure

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review.CCR15378;
PRC 21065.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

Not Applicable

EXHIBITS:

Exhibit A – Consultant Projects/Tasks

Exhibit B – Amendments

Exhibit C – Resolution

1. Anser Advisory

CIP/TASK #	DESCRIPTION
19-18	National City Blvd. Bikeway
19-20	Sweetwater Rd Protected Bike
19-80	Grant Services
19-81	Grant Management
22-35	Construction Management On-Call
22-47	Wastewater Rate Analysis

2. HDR Engineering, Inc.

CIP/TASK #	DESCRIPTION
18-11	Paradise Creek Water Quality and Community Enhancements at Plaza
19-11	Paradise Creek at Plaza Phase II
19-35	Paradise Creek Kimball Additional Permit Support
20-01	NC EX-P1 Sewer Line Upsizing
22-36	EX-P1 Sewer Line Upsizing Design Services Modification
22-48	CCTV Inspection and Cleaning Services for 10"VCP at Wilson Ave

3. Innovative Construction Consulting Services, Inc.

CIP/TASK #	DESCRIPTION
15-05	Paradise Creek Restoration
18-10	Euclid Bicycle & Ped Enhancements
18-11	Paradise Creek Water Quality
18-14	Sweetwater Bike Path
19-02	El Toyon Las Palmas Bicycle Corridor
19-04	Citywide Safe Routes to School
19-05	Palm Ave Rehab
19-17	Division - Euclid to Harbison
19-19	Roosevelt Smart Growth
19-35	Paradise Creek Mitigation Project at Kimball Way
19-38	16th St. Rehab
19-45	Civic Center ADA Access
22-01	Las Palmas Pool
21-18	Paradise Creek Drainage Channel Improvement

4. Kimley Horn and Associates, Inc.

CIP/TASK #	DESCRIPTION
18-05	Traffic Counts & Analysis
18-14	Sweetwater/30th Bike
19-02	El Toyon Las Palmas
19-04	Safe Routes to School
19-18	NC Blvd Inter-City Bike Connection Amendment 2
19-19	Roosevelt PSE Smart Growth
19-23	Central Community Mobility
19-25	CNC Bike Wayfinding
19-33	Paradise Creek Park Extension
19-44	8th Street & Roosevelt Ave ATP
19-83	Division Street DSDC
19-84	East Paradise Grants
19-85	Civic Center Access Improve
19-86	Euclid Ave Bike/Ped DSDC
19-87	Euclid Ave. Construction Support
21-03	ATP Cycle 5 Grants
21-13	Traffic Counts & Analysis
21-28	Ocean Protection Council – Coastal Justice Grant
21-80	Urban Greening Program Round 4
22-82	Project Support Services
22-09	Eastside I-805 Community Greenbelt Project
22-34	Caltrans Holiday Lights Permit
22-41	Manchester Street Striping

5. KTU&A

CIP/TASK #	DESCRIPTION
19-19	Roosevelt Ave. Smart Growth
19-44	8th St and Roosevelt Ave Caltrans ATP
19-88	Clean Mobility TUNES Capital Project
21-81	CMO Pre-Planning
22-09	Clean CA Program Grant
22-38	Strategic Growth Council Transformative Planning Grant
22-80	NC Transformative Grant

6. NV5, Inc.

CIP/TASK #	DESCRIPTION
18-07	Paradise Creek Park
18-08	Paradise Creek LOMR
19-46	Las Palmas pool Electric System Replacement
20-81	Sewer Rate Assessment
20-82	Implementation of Dashboard GIS Work
21-15	MLK Community Center Remodel
21-17	SOW CIP Online GIS
21-23	Plan Check Services
21-82	NC GIS Webserver
21-83	2021 Sewer User Survey & Prep of Tax Roll
22-12	FY23 2023 Sewer Tax Roll
22-24	Military installation Sustainability Planning Grant
22-81	2022 Sewer Tax Roll

7. STC Traffic, INC.

CIP/TASK #	DESCRIPTION
19-12	Sweetwater Road Median and Lighting Improvement HSIP8
19-22	HSIP 9 Citywide Protected Left-Turn Enhancements
19-89	General Professional Services
19-90	Citywide Traffic Signal and ADA Improve (HSI6)
19-91	Pedestrian ADA Improvements
19-92	Traffic Signal Communications Upgrade
19-93	Paradise Creek Construction Support
21-04	HSIP Cycle 10 Grant Applications
21-12	Caltrans STP Grant Division and Osborn Traffic Signal Plan Review
21-20	Parking Action Plan Implementation Amendment
21-84	Citywide Camera Services
21-85	Palm Ave and 16th St Signal Modification
21-86	Euclid Avenue Bicycle and Pedestrian Enhancements
21-87	Mile of Cars Way Signal Timing Improvements
21-88	Cameras at Paradise Creek Park
21-89	Camera Troubleshooting
22-29	Downtown National City Parking Occupancy Survey
22-51	Plaza Blvd. Traffic Signal System Assess/Corridor Synchronization
22-52	22/23 Engineering and Traffic Surveys of Speed Limits
22-82	Parking Management Support Services
22-83	Traffic Signal and Systems Support Services

8. WSP USA Inc.

CIP/TASK #	DESCRIPTION
21-90	Bike Master Plan
21-91	Parking Master Plan
21-10	Parking Policy & Regulatory Criteria, \$49,906

9. Chen Ryan Associates, INC.

CIP/TASK #	DESCRIPTION
19-18	National City Blvd. Bike Connection
19-20	Sweetwater Road Protected Bikeway
19-24	Bayshore Bikeway Segment 5
19-94	National City SSARP
19-95	24th Street TODO
21-02	Sustainable Transportation Equity Project GRANT Application (STEP)
21-25	W. 19th Street Greenway
21-92	As-Need Professional Support Services
22-13	Highland Ave Inter-City Bike Connection PA/ED
22-16	Citywide Pedestrian Safety Enhancements
22-23	NC Bayfront EIR

10. Project Professionals Corporation

CIP/TASK #	DESCRIPTION
18-07	Paradise Creek Park III
18-10	Euclid Ave Ped & Bike Enhancements
18-14	Sweetwater River Bikeway
18-16	Paradise Creek Park Expansion
19-05	Palm Ave Road Rehab
19-08	Fiber Optic TS Interconnect (HSIP)
19-09	Pedestrian ADA Improvements (HSIP)
19-12	Sweetwater Rd Safety Enhancements (HSIP)
19-13	Citywide Ped Safety Imps (HSIP)
19-14	E. 4th St. Protected L-T Enh (HSIP)
19-15	Citywide Safety Lighting Enh (HSIP)
19-33	Paradise Creek Educational Park Extension
19-43	P1- Sewer Upsizing
19-50	Las Palmas Pool Facility Roof
19-51	Camacho Gym Roof Replace
19-52	Compliance Monitoring for Civic Center Boiler
19-53	Compliance Review for City Hall Replacement
20-01	P1- Sewer Upsizing Phase II

20-03	Civic Center Basement Power Upgrade
20-05	Police Pistol Range Safety Improvements
20-06	Camacho Gym Windows
20-07	Camacho Rec Center HVAC
20-85	Earle Drive Sinkhole Repair
20-86	Granger Avenue Sinkhole Repair
21-01	City Hall New Hallway Door
21-06	City Hall City Clerk Window Upgrade
21-07	City Hall Neighborhood Services Window
21-19	Conceptual Master Plan Update
21-24	City Hall Seismic Retrofit
22-19	SB1 Street Resurfacing
22-39	Storm Drain Repair on V Ave
22-40	Camacho Red Center ADA
22-42	Police Dept. Parking Structure Waterproofing Project
22-50	Camacho Gym Doors

**FIRST AMENDMENT TO THE AGREEMENT BY AND
BETWEEN
THE CITY OF NATIONAL CITY AND
ANSER ADVISORY**

THIS FIRST AMENDMENT TO THE AGREEMENT is entered into by and between the CITY OF NATIONAL CITY, a municipal corporation ("CITY"), and ANSER ADVISORY, a limited liability company (the "CONSULTANT").

RECITALS

WHEREAS, the City Council adopted Resolution No. 2019-150 approving an Agreement ("the Agreement") with the CONSULTANT for the term of November 5, 2019 through November 4, 2022, wherein the CONSULTANT agreed to provide on-call project support services for CITY's Capital Improvement Program (CIP), including but not limited to, project management; engineering; construction management, inspections and certified payroll; plan reviews; constructability reviews; community outreach and communications, for a not-to-exceed amount of \$2,000,000, and an initial term of three (3) years, with the option to extend this term for up to 2 (two), one-year extensions; and,

WHEREAS, based on the CONSULTANT's performance and quality of work, and to ensure timely completion of CIPs, the CITY desires to have the CONSULTANT continue providing on-call project support services for the CITY's CIP, and the CONSULTANT is willing to perform such services; and

WHEREAS, the parties desire to amend the Agreement by exercising the first of the 2 (two), one-year extensions to extend the term of the Agreement to November 4, 2023 and to increase the not-to-exceed amount by \$1,000,000 for a not-to-exceed amount of \$3,000,000.

AGREEMENT

NOW, THEREFORE, the parties hereto agree that:

1. The November 5, 2019 Agreement, in exercise of the extension provision, is hereby amended to extend the term of the Agreement by 1 (one) year to November 4, 2023.
2. The November 5, 2019 Agreement is hereby amended to increase the not-to-exceed amount by \$1,000,000 for a total not-to-exceed amount of \$3,000,000.
3. The parties further agree that, with the foregoing exceptions, each and every other term and provision of the November 5, 2019 Agreement shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to the Agreement on the date and year written below.

CITY OF NATIONAL CITY

ANSER ADVISORY, A LIMITED LIABILITY COMPANY

(Corporation – signatures of two corporate officers required)

By: _____
Alejandra Sotelo-Solis, Mayor

By: 

(Name) Lucas Rathe
(Title) Vice President

Date: _____

Date: 10/11/2022

APPROVED AS TO FORM:

By: 

(Name) Craig Halvorson
(Title) Executive Vice President

By: _____
City Attorney

Date: 10/11/2022

**FIRST AMENDMENT TO THE AGREEMENT BY AND
BETWEEN
THE CITY OF NATIONAL CITY AND
HDR ENGINEERING, INC.**

THIS FIRST AMENDMENT TO THE AGREEMENT is entered into by and between the CITY OF NATIONAL CITY, a municipal corporation (“CITY”), and HDR ENGINEERING, INC., a Nevada corporation (the “CONSULTANT”).

RECITALS

WHEREAS, the City Council adopted Resolution No. 2019-175 approving an Agreement (“the Agreement”) with the CONSULTANT for the term of December 3, 2019 through December 2, 2022, wherein the CONSULTANT agreed to provide on-call project support services for CITY’s Capital Improvement Program (CIP), including but not limited to, project management; civil engineering; plan reviews; constructability reviews; construction support; long range planning for multiple disciplines; grants management; community outreach and communications, for a not-to-exceed amount of \$2,000,000, and an initial term of three (3) years, with the option to extend this term for up to 2 (two), one-year extensions; and,

WHEREAS, based on the CONSULTANT’s performance and quality of work, and to ensure timely completion of CIPs, the CITY desires to have the CONSULTANT continue providing on-call project support services for the CITY’s CIP, and the CONSULTANT is willing to perform such services; and

WHEREAS, the parties desire to amend the Agreement by exercising the first of the 2 (two), one-year extensions to extend the term of the Agreement to December 2, 2023 and to increase the not-to-exceed amount by \$1,000,000 for a not-to-exceed amount of \$3,000,000.

AGREEMENT

NOW, THEREFORE, the parties hereto agree that:

1. The December 3, 2019 Agreement, in exercise of the extension provision, is hereby amended to extend the term of the Agreement by 1 (one) year to December 2, 2023.
2. The December 3, 2019 Agreement is hereby amended to increase the not-to-exceed amount by \$1,000,000 for a total not-to-exceed amount of \$3,000,000.
3. The parties further agree that, with the foregoing exceptions, each and every other term and provision of the December 3, 2019 Agreement shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to the Agreement on the date and year written below.

CITY OF NATIONAL CITY

HDR ENGINEERING, INC., A NEVADA CORPORATION

(Corporation – signatures of two corporate officers required)



By: _____
Alejandra Sotelo-Solis, Mayor

By: _____
(Name) Anna Lantin
(Title) Vice President

Date: _____

Date: 09/29/2022

APPROVED AS TO FORM:

By:  _____
(Name)
(Title)

By: _____
City Attorney

Date: 09/29/2022

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to the Agreement on the date and year written below.

CITY OF NATIONAL CITY

By: _____
Alejandra Sotelo-Solis, Mayor

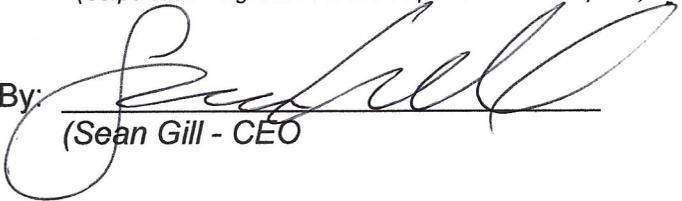
Date: _____

APPROVED AS TO FORM:

By: _____
City Attorney

**INNOVATIVE CONSTRUCTION
CONSULTING SERVICES, A LIMITED
LIABILITY COMPANY**

(Corporation – signatures of two corporate officers required)

By:  _____
(Sean Gill - CEO)

Date: 9-28-22

By: _____
(Name)
(Title)

Date: _____

**FIRST AMENDMENT TO THE AGREEMENT BY AND
BETWEEN
THE CITY OF NATIONAL CITY AND
KIMLEY-HORN AND ASSOCIATES, INC.**

THIS FIRST AMENDMENT TO THE AGREEMENT is entered into by and between the CITY OF NATIONAL CITY, a municipal corporation ("CITY"), and KIMLEY-HORN AND ASSOCIATES, INC., a North Carolina corporation (the "CONSULTANT").

RECITALS

WHEREAS, the City Council adopted Resolution No. 2020-11 approving an Agreement ("the Agreement") with the CONSULTANT for the term of January 21, 2020 through January 20, 2023, wherein the CONSULTANT agreed to provide on-call project support services for CITY's Capital Improvement Program (CIP), including but not limited to, project management; civil engineering; traffic engineering; transportation planning; plan reviews; constructability reviews; long-range planning on multiple disciplines; grants management; community outreach and communications, for a not-to-exceed amount of \$2,000,000, and an initial term of three (3) years, with the option to extend this term for up to 2 (two), one-year extensions; and,

WHEREAS, based on the CONSULTANT's performance and quality of work, and to ensure timely completion of CIPs, the CITY desires to have the CONSULTANT continue providing on-call project support services for the CITY's CIP, and the CONSULTANT is willing to perform such services; and

WHEREAS, the parties desire to amend the Agreement by exercising the first of the 2 (two), one-year extensions to extend the term of the Agreement to January 20, 2024 and to increase the not-to-exceed amount by \$1,000,000 for a not-to-exceed amount of \$3,000,000.

AGREEMENT

NOW, THEREFORE, the parties hereto agree that:

1. The January 21, 2020 Agreement, in exercise of the extension provision, is hereby amended to extend the term of the Agreement by 1 (one) year to January 20, 2024.
2. The January 21, 2020 Agreement is hereby amended to increase the not-to-exceed amount by \$1,000,000 for a total not-to-exceed amount of \$3,000,000.
3. The parties further agree that, with the foregoing exceptions, each and every other term and provision of the January 21, 2020 Agreement shall remain in full force and effect.

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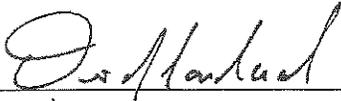
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IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to the Agreement on the date and year written below.

CITY OF NATIONAL CITY

**KIMLEY-HORN AND ASSOCIATES, INC.,
A NORTH CAROLINA CORPORATION**
(Corporation – signatures of two corporate officers required)

By: _____
Alejandra Sotelo-Solis, Mayor

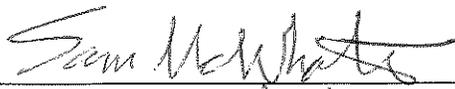
By: 

(Name) Dennis Landaal, PE (RCE 50270)
(Title) Senior Vice President

Date: _____

Date: 9/27/2022

APPROVED AS TO FORM:

By: 

(Name) Sam McWhorter
(Title) Vice President

By: _____
City Attorney

Date: 9/27/22

**FIRST AMENDMENT TO THE AGREEMENT BY AND
BETWEEN
THE CITY OF NATIONAL CITY AND
KTU&A**

THIS FIRST AMENDMENT TO THE AGREEMENT is entered into by and between the CITY OF NATIONAL CITY, a municipal corporation ("CITY"), and KTU&A, a California corporation (the "CONSULTANT").

RECITALS

WHEREAS, the City Council adopted Resolution No. 2019-176 approving an Agreement ("the Agreement") with the CONSULTANT for the term of December 3, 2019 through December 2, 2022, wherein the CONSULTANT agreed to provide on-call project support services for CITY's Capital Improvement Program (CIP), including but not limited to, project management; landscape architecture and urban design; transportation planning; geographic information systems; long-range planning for multiple disciplines; grants management; community outreach and communications, for a not-to-exceed amount of \$2,000,000, and an initial term of three (3) years, with the option to extend this term for up to 2 (two), one-year extensions; and,

WHEREAS, based on the CONSULTANT's performance and quality of work, and to ensure timely completion of CIPs, the CITY desires to have the CONSULTANT continue providing on-call project support services for the CITY's CIP, and the CONSULTANT is willing to perform such services; and

WHEREAS, the parties desire to amend the Agreement by exercising the first of the 2 (two), one-year extensions to extend the term of the Agreement to November 18, 2023 and to increase the not-to-exceed amount by \$1,000,000 for a not-to-exceed amount of \$3,000,000.

AGREEMENT

NOW, THEREFORE, the parties hereto agree that:

1. The December 3, 2019 Agreement, in exercise of the extension provision, is hereby amended to extend the term of the Agreement by 1 (one) year to December 2, 2023.
2. The December 3, 2019 Agreement is hereby amended to increase the not-to-exceed amount by \$1,000,000 for a total not-to-exceed amount of \$3,000,000.
3. The parties further agree that, with the foregoing exceptions, each and every other term and provision of the December 3, 2019 Agreement shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to the Agreement on the date and year written below.

CITY OF NATIONAL CITY

By: _____
Alejandra Sotelo-Solis, Mayor

Date: _____

APPROVED AS TO FORM:

By: _____
City Attorney

KTU&A., A CALIFORNIA CORPORATION
(Corporation – signatures of two corporate officers required)

By: 

(Name) Michael L. Singleton
(Title) CEO / President of KTUA

Date: Sept. 27, 2022

By: 

(Name) Mark Carpenter
(Title) Corporate Treasurer / KTUA

Date: Sept. 27, 2022

**FIRST AMENDMENT TO THE AGREEMENT BY AND
BETWEEN
THE CITY OF NATIONAL CITY AND
NV5, INC.**

THIS FIRST AMENDMENT TO THE AGREEMENT is entered into by and between the CITY OF NATIONAL CITY, a municipal corporation ("CITY"), and NV5, INC., a California corporation (the "CONSULTANT").

RECITALS

WHEREAS, the City Council adopted Resolution No. 2019-177 approving an Agreement ("the Agreement") with the CONSULTANT for the term of December 3, 2019 through December 2, 2022, wherein the CONSULTANT agreed to provide on-call project support services for CITY's Capital Improvement Program (CIP), including but not limited to, project management; engineering; construction management, inspections and certified payroll; plan reviews; constructability review; land surveying; environmental assessments; geotechnical; construction support; community outreach and communications, for a not-to-exceed amount of \$2,000,000, and an initial term of three (3) years, with the option to extend this term for up to 2 (two), one-year extensions; and,

WHEREAS, based on the CONSULTANT's performance and quality of work, and to ensure timely completion of CIPs, the CITY desires to have the CONSULTANT continue providing on-call project support services for the CITY's CIP, and the CONSULTANT is willing to perform such services; and

WHEREAS, the parties desire to amend the Agreement by exercising the first of the 2 (two), one-year extensions to extend the term of the Agreement to December 2, 2023 and to increase the not-to-exceed amount by \$1,000,000 for a not-to-exceed amount of \$3,000,000.

AGREEMENT

NOW, THEREFORE, the parties hereto agree that:

1. The December 3, 2019 Agreement, in exercise of the extension provision, is hereby amended to extend the term of the Agreement by 1 (one) year to December 2, 2023.
2. The December 3, 2019 Agreement is hereby amended to increase the not-to-exceed amount by \$1,000,000 for a total not-to-exceed amount of \$3,000,000.
3. The parties further agree that, with the foregoing exceptions, each and every other term and provision of the December 3, 2019 Agreement shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to the Agreement on the date and year written below.

CITY OF NATIONAL CITY

NV5, INC., A CALIFORNIA CORPORATION

(Corporation – signatures of two corporate officers required)

By: _____
Alejandra Sotelo-Solis, Mayor

By: _____
(Name) Jeffrey M. Cooper
(Title) Senior Vice President

Date: _____

Date: Sept 28, 2022

APPROVED AS TO FORM:

By: _____
(Name) MARY JO OBRIEN
(Title) CORPORATE SECRETARY

By: _____

Date: SEPTEMBER 28, 2022

City Attorney

**FIRST AMENDMENT TO THE AGREEMENT BY AND
BETWEEN
THE CITY OF NATIONAL CITY AND
STC TRAFFIC, INC.**

THIS FIRST AMENDMENT TO THE AGREEMENT is entered into by and between the CITY OF NATIONAL CITY, a municipal corporation ("CITY"), and STC TRAFFIC INC., a California corporation (the "CONSULTANT").

RECITALS

WHEREAS, the City Council adopted Resolution No. 2019-164 approving an Agreement ("the Agreement") with the CONSULTANT for the term of November 19, 2019 through November 18, 2022, wherein the CONSULTANT agreed to provide on-call project support services for CITY's Capital Improvement Program (CIP), including but not limited to, project management; traffic engineering; transportation planning; traffic signal communications infrastructure and systems integration; plan reviews; constructability reviews; construction support; grants management; community outreach and communications, for a not-to-exceed amount of \$2,000,000, and an initial term of three (3) years, with the option to extend this term for up to 2 (two), one-year extensions; and,

WHEREAS, based on the CONSULTANT's performance and quality of work, and to ensure timely completion of CIPs, the CITY desires to have the CONSULTANT continue providing on-call project support services for the CITY's CIP, and the CONSULTANT is willing to perform such services; and

WHEREAS, the parties desire to amend the Agreement by exercising the first of the 2 (two), one-year extensions to extend the term of the Agreement to November 18, 2023 and to increase the not-to-exceed amount by \$1,000,000 for a not-to-exceed amount of \$3,000,000.

AGREEMENT

NOW, THEREFORE, the parties hereto agree that:

1. The November 19, 2019 Agreement, in exercise of the extension provision, is hereby amended to extend the term of the Agreement by 1 (one) year to November 18, 2023.
2. The November 19, 2019 Agreement is hereby amended to increase the not-to-exceed amount by \$1,000,000 for a total not-to-exceed amount of \$3,000,000.
3. The parties further agree that, with the foregoing exceptions, each and every other term and provision of the November 19, 2019 Agreement shall remain in full force and effect.

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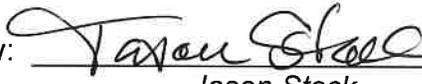
IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to the Agreement on the date and year written below.

CITY OF NATIONAL CITY

STC TRAFFIC, INC., A CALIFORNIA CORPORATION

(Corporation – signatures of two corporate officers required)

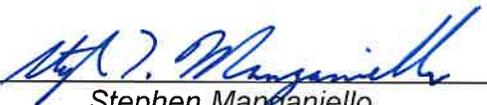
By: _____
Alejandra Sotelo-Solis, Mayor

By:  _____
Jason Stack
President

Date: _____

Date: 09/27/22

APPROVED AS TO FORM:

By:  _____
Stephen Manganiello
Vice President

By: _____
City Attorney

Date: 09/27/22

**FIRST AMENDMENT TO THE AGREEMENT BY AND
BETWEEN
THE CITY OF NATIONAL CITY AND
WSP USA INC.**

THIS FIRST AMENDMENT TO THE AGREEMENT is entered into by and between the CITY OF NATIONAL CITY, a municipal corporation ("CITY"), and WSP USA INC., a New York corporation (the "CONSULTANT").

RECITALS

WHEREAS, the City Council adopted Resolution No. 2019-178 approving an Agreement ("the Agreement") with the CONSULTANT for the term of December 3, 2019 through December 2, 2022, wherein the CONSULTANT agreed to provide on-call project support services for CITY's Capital Improvement Program (CIP), including but not limited to, project management; traffic engineering; transportation planning; plan reviews; constructability reviews; long-range planning on multiple disciplines; grants management; community outreach and communications, for a not-to-exceed amount of \$2,000,000, and an initial term of three (3) years, with the option to extend this term for up to 2 (two), one-year extensions; and,

WHEREAS, based on the CONSULTANT's performance and quality of work, and to ensure timely completion of CIPs, the CITY desires to have the CONSULTANT continue providing on-call project support services for the CITY's CIP, and the CONSULTANT is willing to perform such services; and

WHEREAS, the parties desire to amend the Agreement by exercising the first of the 2 (two), one-year extensions to extend the term of the Agreement to December 2, 2023 and to increase the not-to-exceed amount by \$1,000,000, including hour rate updates (See attached Exhibit A), for a not-to-exceed amount of \$3,000,000.

AGREEMENT

NOW, THEREFORE, the parties hereto agree that:

1. The December 3, 2019 Agreement, in exercise of the extension provision, is hereby amended to extend the term of the Agreement by 1 (one) year to December 2, 2023.
2. The December 3, 2019 Agreement is hereby amended to increase the not-to-exceed amount by \$1,000,000, including hourly rate updates (see attached Exhibit A), for a total not-to-exceed amount of \$3,000,000.
3. The parties further agree that, with the foregoing exceptions, each and every other term and provision of the December 3, 2019 Agreement shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to the Agreement on the date and year written below.

CITY OF NATIONAL CITY

WSP USA INC., A NEW YORK CORPORATION

(Corporation – signatures of two corporate officers required)

By: _____
Alejandra Sotelo-Solis, Mayor

By:  _____
(Name) Patti Boekamp
(Title) Senior Director

Date: _____

Date: 10/12/2022

APPROVED AS TO FORM:

By:  _____
(Name) Ali H. Mir, ENV SP
(Title) Vice President

By: _____
Barry J. Schultz
Interim City Attorney

Date: 10/13/2022

Name	Current Raw Rate	Current Title	Proposed Rate
Patti Boekamp	\$ 132.96	Senior Director, Local Business Leader	\$ 365.64
Joe De La Garza	\$ 99.67	Director, Traffic Engineer	\$ 274.09
Karen Kosup	\$ 115.29	Senior Director, Civil Engineer	\$ 317.05
Tara Lake	\$ 111.97	Senior Director, Land/Urban Planner	\$ 307.92
Stephanie Whitmore	\$ 97.31	Director, Environmental Planner	\$ 267.60
Dante Valdez	\$ 69.42	Lead Structural Engineer	\$ 190.91
Ryan Whipple	\$ 64.57	Lead Traffic Engineer	\$ 177.57
Pete Ruscitti	\$ 77.34	Director, Transportation Planner	\$ 212.69
Tara Olsen	\$ 112.55	Senior Supervising Engineer	\$ 309.51
Erich Flessner	\$ 93.54	Civil Project Manager	\$ 257.24
Steven Lewis	\$ 65.04	Lead Civil Engineer	\$ 178.86
Moi Arzamendi	\$ 96.14	Director, Geotechnical Engineer	\$ 264.39
John Loughran	\$ 92.23	Director, Land/Urban Planner	\$ 253.63
Don Emerson	\$ 135.50	Senior Director, Advisory Services	\$ 372.63
Doris Lee	\$ 95.79	Director, Advisory Services	\$ 263.42
Rob Hicks	\$ 92.14	Director, National Business Line	\$ 253.39
Brandi Bay	\$ 64.44	Senior Manager, Project Accounting	\$ 177.21
Juan Alberto Bonilla	\$ 51.51	Lead Planner	\$ 141.65
Rick Curry	\$ 94.05	Senior Director, Advisory Services	\$ 258.64
Jielin Sun	\$ 67.18	Lead Consultant, Data Scientist	\$ 184.75
Jorge Nozot	\$ 44.44	Land/Urban Planner	\$ 122.21
Michelle Penrice	\$ 52.26	Senior Project Accountant	\$ 143.72
Annie Lee	\$ 44.61	Environmental Planner	\$ 122.68
Alana Flaherty	\$ 45.87	Environmental Planner	\$ 126.14
Marlo Maynigo	\$ 55.20	Senior Consultant, Traffic Engineer	\$ 151.80
Vamshi Akkinapally	\$ 73.93	Lead Traffic Engineer	\$ 203.31
Debby Reece	\$ 126.30	Senior Director, Civil Engineer	\$ 347.33
Domenic Lupo	\$ 114.45	Senior Director, Civil Engineer	\$ 314.74
David Suls	\$ 64.69	Senior Lead Consultant, Land/Urban Planner	\$ 177.90
Megan Thorne	\$ 69.86	Senior Lead Consultant, Land/Urban Planner	\$ 192.12
Celia Sanchez	\$ 36.83	Assistant Consultant, Land/Urban Planner	\$ 101.28
Eric Jordan (Serre)	\$ 40.69	Planner	\$ 111.90
Karl Fielding	\$ 74.06	Senior Lead Consultant, Transportation Planner	\$ 203.67
Spencer Jaeger	\$ 46.53	Environmental Planner	\$ 127.96
Jeremy Halpern	\$ 47.53	Environmental Planner	\$ 130.71
Adrian Alvarez	\$ 93.06	Director, Transportation Planner	\$ 255.92
Elizabeth Bigham	\$ 37.97	Associate Consultant, Land/Urban Planner	\$ 104.42
Christina Baghdasarian	\$ 48.63	Environmental Planner	\$ 133.73
Wesley Tam	\$ 34.84	Assistant Land/Urban Planner	\$ 95.81
Theresa Dickerson	\$ 89.57	Director, Environmental Planner	\$ 246.32
Rebecca Kalaskas	\$ 86.78	Director, Environmental Planner	\$ 238.65
David Schumacher	\$ 49.76	Senior Transportation Planner	\$ 136.84
Krystle Rayos	\$ 27.87	Assistant Land/Urban Planner	\$ 76.64
Gabi Brazzil	\$ 69.15	Manager, Communication & Public Involvement	\$ 190.16
Fabian Campos	\$ 50.01	Consultant, Advisory Services	\$ 137.53
Reed Alvarado	\$ 42.30	Consultant, Communication and Public Involvement	\$ 116.33
Ryan Adamson	\$ 44.78	Consultant, Communication and Public Involvement	\$ 123.15
Michal Helman	\$ 47.97	Sr Consultant, Communicatoin and Public Involvement	\$ 131.92
Kit Powis	\$ 84.86	Director, Communication and Public Involvement	\$ 233.37
John Hong	\$ 46.78	Assistant Civil Engineer	\$ 128.65
Caleb Mulick	\$ 42.53	Civil Engineering Intern	\$ 116.96

**SECOND AMENDMENT TO THE AGREEMENT BY
AND BETWEEN
THE CITY OF NATIONAL CITY AND
CHEN RYAN ASSOCIATES, INC.**

THIS SECOND AMENDMENT TO THE AGREEMENT is entered into by and between the CITY OF NATIONAL CITY, a municipal corporation (“CITY”), and CHEN RYAN ASSOCIATES, INC., dba CR ASSOCIATES, a California corporation (the “CONSULTANT”).

RECITALS

WHEREAS, the City Council adopted Resolution No. 2019-163 approving an Agreement (“the Agreement”) with the CONSULTANT for the term of November 19, 2019 through November 18, 2022, wherein the CONSULTANT agreed to provide on-call project support services for CITY’s Capital Improvement Program (CIP), including but not limited to, project management; civil engineering; traffic engineering; transportation planning; plan reviews; constructability reviews; long range planning for multiple disciplines; grants management; and, community and communications, for a not-to-exceed amount of \$2,000,000, and an initial term of three (3) years, with the option to extend this term for up to 2 (two), one-year extensions; and,

WHEREAS, the City Council adopted Resolution No. 2021-122 approving the First Amendment to the Agreement, increasing the \$2,000,000 not-to-exceed amount by \$1,000,000, for a total not-to-exceed amount of \$3,000,000; and,

WHEREAS, based on the CONSULTANT’s performance and quality of work, and to ensure timely completion of CIPs, the CITY desires to have the CONSULTANT continue providing on-call project support services for the CITY’s CIP, and the CONSULTANT is willing to perform such services; and

WHEREAS, the parties desire to amend the Agreement by exercising the first of the 2 (two), one-year extensions to extend the term of the Agreement to November 18, 2023 and to increase the not-to-exceed amount by \$1,000,000, including hourly rate updates (see Exhibit A), for a not-to-exceed amount of \$4,000,000.

AGREEMENT

NOW, THEREFORE, the parties hereto agree that:

1. The November 19, 2019 Agreement, in exercise of the extension provision, is hereby amended to extend the term of the Agreement by 1 (one) year to November 18, 2023.
2. The November 19, 2019 Agreement is hereby amended to increase the not-to-exceed amount by \$1,000,000, including hourly rate updates (see attached Exhibit A), for a total not-to-exceed amount of \$4,000,000.
3. The parties further agree that, with the foregoing exceptions, each and every other term and provision of the November 19, 2019 Agreement shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to the Agreement on the date and year written below.

CITY OF NATIONAL CITY

CHEN RYAN ASSOCIATES, INC., A CALIFORNIA CORPORATION

(Corporation – signatures of two corporate officers required)

By: _____
Alejandra Sotelo-Solis, Mayor

By: Matthew B Capuzzi
(Name) Matthew Capuzzi
(Title) Principal

Date: _____

Date: 10/3/2022

APPROVED AS TO FORM:

By: Monique Chen
(Name) Monique Chen
(Title) President

By: _____
City Attorney

Date: 10/3/2022



On-Call Project Support Services for National City's Capital Improvement Program (CIP)

Rate Schedule

Effective through December 31, 2023

<u>Classification</u>	<u>Billing Rate per Hour</u>
Principal	\$290.00
Senior Professional II	\$250.00
Senior Professional I	\$220.00
Professional II	\$195.00
Professional I	\$180.00
Analyst	\$160.00
Support Staff	\$100.00

Direct expenses such as but not limited to printing and reproductions, travel expenses, deliveries, materials, shipping, postage, etc. will be invoiced at cost.

**SECOND AMENDMENT TO THE AGREEMENT BY
AND BETWEEN
THE CITY OF NATIONAL CITY AND
PROJECT PROFESSIONALS CORPORATION**

THIS SECOND AMENDMENT TO THE AGREEMENT is entered into by and between the CITY OF NATIONAL CITY, a municipal corporation ("CITY"), and PROJECT PROFESSIONALS CORPORATION, a California corporation (the "CONSULTANT").

RECITALS

WHEREAS, the City Council adopted Resolution No. 2019-152 approving an Agreement ("the Agreement") with the CONSULTANT for the term of November 5, 2019 through November 4, 2022, wherein the CONSULTANT agreed to provide on-call project support services for CITY's Capital Improvement Program (CIP), including but not limited to, project management; engineering construction management; inspection and certified payroll; plan reviews; constructability reviews; community outreach and communications, for a not-to-exceed amount of \$2,000,000, and an initial term of three (3) years, with the option to extend this term for up to 2 (two), one-year extensions; and,

WHEREAS, the City Council adopted Resolution No. 2021-121 approving the First Amendment to the Agreement, increasing the \$2,000,000 not-to-exceed amount by \$1,000,000 for a total not-to-exceed amount of \$ \$3,000,000; and,

WHEREAS, based on the CONSULTANT's performance and quality of work, and to ensure timely completion of CIPs, the CITY desires to have the CONSULTANT continue providing on-call project support services for the CITY's CIP, and the CONSULTANT is willing to perform such services; and

WHEREAS, the parties desire to amend the Agreement by exercising the first of the 2 (two), one-year extensions to extend the term of the Agreement to November 4, 2023 and to increase the not-to-exceed amount by \$1,000,000 for a not-to-exceed amount of \$4,000,000.

AGREEMENT

NOW, THEREFORE, the parties hereto agree that:

1. The November 5, 2019 Agreement, in exercise of the extension provision, is hereby amended to extend the term of the Agreement by 1 (one) year to November 4, 2023.
2. The November 5, 2019 Agreement is hereby amended to increase the not-to-exceed amount by \$1,000,000 for a total not-to-exceed amount of \$4,000,000.
3. The parties further agree that, with the foregoing exceptions, each and every other term and provision of the November 5, 2019 Agreement shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to the Agreement on the date and year written below.

CITY OF NATIONAL CITY

PROJECT PROFESSIONALS CORP., A CALIFORNIA CORPORATION

(Corporation – signatures of two corporate officers required)

By: _____
Alejandra Sotelo-Solis, Mayor

Date: _____

APPROVED AS TO FORM:

By: _____
City Attorney

By:  _____
(Name)
(Title)

Date: 9-29-22

By:  _____, CFO
(Name)
(Title)

Date: 9/29/22

RESOLUTION NO. 2022 - 102

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, AUTHORIZING THE MAYOR TO INCREASE ON-CALL CONSULTANT AGREEMENTS BY A NOT-TO-EXCEED AMOUNT OF \$1,000,000, INCLUDING HOURLY RATE UPDATES, EXTEND BY ONE YEAR, AND EXECUTE 1) FIRST AMENDMENTS TO THE FOLLOWING ON-CALL CONSULTANTS: A) ANSER ADVISORY; B) HDR ENGINEERING, INC.; C) INNOVATIVE CONSTRUCTION CONSULTING SERVICES, INC.; D) KIMLEY-HORN AND ASSOCIATES, INC.; E) KTU&A; F) NV5, INC.; G) STC TRAFFIC, INC.; AND, H) WSP USA INC.; AND 2) SECOND AMENDMENTS TO THE FOLLOWING ON-CALL CONSULTANTS: A) CHEN RYAN ASSOCIATES, INC.; AND, B) PROJECT PROFESSIONALS CORPORATION.

WHEREAS, Staff is recommending the City Council authorize the Mayor to increase On-Call Consultant Agreements by a not-to-exceed amount of \$1,000,000, including hourly rate updates, extend by one year, and execute 1) First Amendments to the following On-Call Consultants: a) Anser Advisory; b) HDR Engineering, Inc.; c) Innovative Construction Consulting Services, Inc.; d) Kimley-Horn and Associates, Inc.; e) KTU&A; f) NV5, Inc.; g) STC Traffic, Inc.; and, h) WSP USA Inc.; and 2) Second Amendments to the following On-Call Consultants: a) Chen Ryan Associates, Inc.; and, b) Project Professionals Corporation; and

WHEREAS, The Engineering & Public Works Department advertised a Request for Qualifications (RFQ) for various engineering, architectural and construction support services, housing and real estate development services, and environmental compliance services on May 1, 2019; and

WHEREAS, Based on the strength of their SOQs, interviews and past performance, the City of National City entered into Agreements with several consultants to provide on-call support services for National City's Capital Improvement Program (CIP). The original Agreements were all for a not-to-exceed amount of \$2,000,000 and a term of three years, with the option to extend for two one-year extensions; and

WHEREAS, On September 7, 2021, City Council adopted Resolution 2021-122 and 2021-121 approving First Amendments for Chen Ryan Associates, Inc., and Project Professionals Corporation, respectively, based on performance, quality of work, and expiring agreements of said consultants, increased staffing demands, and to ensure timely completion of CIPs.

WHEREAS, Based on the consultant's performances and quality of work, expiring agreements, increased staffing demands, and to ensure timely completion of CIPs, the City and the below listed consultants desire to execute First (consultants 1-8) and Second Amendments (consultants 9-10) to extend each Agreement by one year and increase each of the not-to exceed amounts by \$1,000,000, for total Agreement amounts of \$3,000,000 and \$4,000,000 respectively.

1. **Anser Advisory:** Project management; engineering; construction management, inspections and certified payroll; plan reviews; constructability reviews; community outreach and communications
2. **HDR Engineering, Inc.:** Project management; civil engineering; plan reviews; constructability reviews; construction support; long range planning for multiple disciplines; grants management; community outreach and communications
3. **Innovative Construction Consulting Services, LLC:** Project management; engineering construction management; inspection and certified payroll; plan reviews; constructability reviews; community outreach and communications
4. **Kimley-Horn and Associates, Inc.:** Project management; civil engineering; traffic engineering; transportation planning; plan reviews; constructability reviews; long-range planning on multiple disciplines; grants management; community outreach and communications
5. **KTU&A:** Project management; landscape architecture and urban design; transportation planning; geographic information systems; long-range planning for multiple disciplines; grants management; community outreach and communications
6. **NV5, Inc.:** Project management; engineering; construction management, inspections and certified payroll; plan reviews; constructability review; land surveying; environmental assessments; geotechnical; construction support; community outreach and communications
7. **STC Traffic, Inc.:** Project management; traffic engineering; transportation planning; traffic signal communications infrastructure and systems integration; plan reviews; constructability reviews; construction support; grants management; community outreach and communications
8. **WSP USA Inc.:** Project management; traffic engineering; transportation planning; plan reviews; constructability reviews; long-range planning on multiple disciplines; grants management; community outreach and communications
9. **Chen Ryan Associates, Inc.:** Project management; civil engineering; traffic engineering; transportation planning; plan reviews; constructability reviews; long range planning for multiple disciplines; grants management; and, community and communications
10. **Project Professionals Corporation:** Project management; engineering construction management; inspection and certified payroll; plan reviews; constructability reviews; community outreach and communications

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1: That the City Council hereby authorizes the Mayor to increase On-Call Consultant Agreements by a not-to-exceed amount of \$1,000,000, including hourly rate updates, extend by one year, and execute 1) First Amendments to the following On-Call Consultants: a) Anser Advisory; b) HDR Engineering, Inc.; c) Innovative Construction Consulting Services, Inc.; d) Kimley-Horn and Associates, Inc.; e) KTU&A; f) NV5, Inc.; g) STC Traffic, Inc.; and, h) WSP USA Inc.; and 2) Second Amendments to the following On-Call Consultants: a) Chen Ryan Associates, Inc.; and, b) Project Professionals Corporation. The proposed amendments are attached to the Agenda Report as Exhibit B.

PASSED and ADOPTED this 1st day of November 2022.

Alejandra Sotelo-Solis, Mayor

ATTEST:

Luz Molina, City Clerk

APPROVED AS TO FORM:

Barry J. Schultz, Interim City Attorney



AGENDA REPORT

Department: City Clerk's Office
Prepared by: Walter Amedee, Management Analyst III
Meeting Date: Tuesday, November 1, 2022
Approved by: Brad Raulston, City Manager

SUBJECT:

FY21 UASI Amendment adding \$40,000 toward training for the Police Department.

RECOMMENDATION:

Adopt a Resolution entitled, "Resolution of the City Council of the City of National City, California Authorizing the Mayor to Execute the City of San Diego Office of Homeland Security Grant Subaward Amendment for an Additional Appropriation of \$40,000 for a New Total of \$56,800 to the Reimbursable Grant Citywide Account for the Fy21 Urban Area Security Initiative (UASI) Grant for the Reimbursable Grant Purchase of Training for the Police Department"

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

Resolution 2022-127 executed an Agreement between the City of San Diego Office of Homeland Security (OHS) and the City of National City, and authorized the establishment of an appropriation and corresponding revenue budget in the amount of \$16,800 from the FY21 Urban Area Security Initiative (UASI) Grant to purchase training for the Fire Department. In past fiscal years, including FY21 UASI, OHS has awarded funds to procure training for both Fire and Police Departments. In light of this, the OHS has amended awards to include funds for \$40,000 for Baseline Close Quarters Clearance Course for the Police Department. \$40,000 should be added to the pre-existing Reimbursable Grant Citywide account of \$16,800 for a total of \$56,800 for training for the Fire and Police Departments.

FINANCIAL STATEMENT:

Expenditure Account: 282-411-959-226-0000 Training - \$40,000.00
282-412-959-226-0000 Training - \$16,800.00
Revenue Account: 282-11959-3498 - \$40,000.00; 282-12959-3498 - \$16,800.00.
No City match required.

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Public Safety

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review.CCR15378; PRC 21065.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

Not Applicable

EXHIBITS:

Exhibit A - City of San Diego Office of Homeland Security Grant Subaward Amendment
Exhibit B - Resolution

City of San Diego Office of Homeland Security

GRANT SUBAWARD AMENDMENT **DATE** 8-18-22 **GRANT NAME** FY21 UASI

Federal Grant # 2021-0081 **CalOES #** 073-66000 **Amendment #** 1

Project # 003 **UEI #** DWSKT6H5J5F3 **Final Claim Due Date** 12/31/2023

This amendment is between the City of San Diego Office of Homeland Security, hereafter called OHS, and the Grant Subrecipient: City of National City

Increase Project 003 - Law Enforcement Training - \$40,000. The new project 003 total is \$40,000.

Subrecipient (Certification and Signature of Authorized Agent)

By (Authorized Signature)	Date
	November 1, 2022
Printed Name	Title
Alejandra Sotelo-Solis	Mayor
Address	
1243 National City Boulevard, National City, CA 91950	
Mail Original Signed form to OHS: 9601 Ridgehaven Court, MS 1101C, San Diego, CA 92123	

For OHS use only	
I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above	
Signature of OHS Program Manager	Date

RESOLUTION NO. 2022 -

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA AUTHORIZING THE MAYOR TO EXECUTE THE CITY OF SAN DIEGO OFFICE OF HOMELAND SECURITY GRANT SUBAWARD AMENDMENT FOR AN ADDITIONAL APPROPRIATION OF \$40,000 FOR A NEW TOTAL OF \$56,800 TO THE REIMBURSABLE GRANT CITYWIDE ACCOUNT FOR THE FY21 URBAN AREA SECURITY INITIATIVE (UASI) GRANT FOR THE REIMBURSABLE GRANT PURCHASE OF TRAINING FOR THE POLICE DEPARTMENT

WHEREAS, the United States Department of Homeland Security (DHS) designated the City of San Diego as an eligible high-risk urban area through an analysis of relative risk of terrorism; and

WHEREAS, the San Diego Urban Area (SDUA) was established for the purpose of application for and allocation and distribution of federal Urban Areas Security Initiative (UASI) program grant funds; and

WHEREAS, the UASI grant provides funding for equipment, planning, and training needed to respond to natural or man-made disasters or terrorism incidents that may occur in the San Diego urban area; and

WHEREAS, the San Diego County Unified Disaster Council established a collaborative subcommittee called the Urban Area Working Group (UAWG); and

WHEREAS, the UAWG was established as the "Approval Authority" for the SDUA and was also established to (1) provide overall governance of the homeland security grant program across the SDUA; (2) coordinate development and implementation of all UASI program initiatives; and (3) to ensure compliance with all UASI program requirements; and

WHEREAS, pursuant to grant allocation decisions by the UAWG, the UASI Management Team asked the City of San Diego to distribute a portion of the regional UASI grant funds to sub-recipients, such as the City of National City; and

WHEREAS, the Distribution of FY 2021 UASI Grant Funds Agreement ensures the roles, responsibilities, and expectations at the local, state, and federal levels, and ensures that the City of National City, as a grant program participant, agrees to meet state and federal requirements; and

WHEREAS, Resolution 2022-127 executed an Agreement between the City of San Diego Office of Homeland Security (OHS) and the City of National City, and authorized the establishment of an appropriation and corresponding revenue budget in the amount of \$16,800 from the FY21 Urban Area Security Initiative (UASI) Grant to purchase \$16,800 for training for the Fire Department; and

WHEREAS, in past fiscal years, including FY21 UASI, OHS has awarded UASI Grant funds for training for the Police Department; and

WHEREAS, the OHS is amending awards for the Police Department to receive FY21 UASI Grant funding for Baseline Close Quarters Clearance Course training; and

WHEREAS, staff is requesting an amendment of \$40,000 for a not to exceed amount of \$56,800 to the pre-existing Reimbursable Grant Citywide account for training for the National City Police Department.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1: That the City Council hereby authorizes the Mayor to execute the City of San Diego Office of Homeland Security Grant Subaward amendment for an additional appropriation of \$40,000 for a not to exceed total amount of \$56,800 to the Reimbursable Grant Citywide account for the FY21 Urban Area Security Initiative (UASI) Grant for the reimbursable grant purchase of training for the Police Department.

Section 2: That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED and ADOPTED this 1st day of November, 2022.

Alejandra Sotelo-Solis, Mayor

ATTEST:

Luz Molina, City Clerk

APPROVED AS TO FORM:

Barry J. Schultz, Interim City Attorney



AGENDA REPORT

Department: Finance
Prepared by: Karla Apalategui, Sr. Accounting Assistant
Meeting Date: Tuesday, November 1, 2022
Approved by: Brad Raulston, City Manager

SUBJECT:

Warrant Register #11 for the period of 9/9/22 through 9/15/22 in the amount of \$959,384.91.

RECOMMENDATION:

Ratify Warrants Totaling \$959,384.91

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

Per Government Section Code 37208, below are the payments issued for period 9/9/22 – 9/15/22. Consistent with Department of Finance’s practice, listed below are all payments above \$50,000.

<u>Vendor</u>	<u>Check/Wire</u>	<u>Amount</u>	<u>Explanation</u>
Crest Equipment Inc	359871	136,024.90	CIP 19-02 El Toyon/Las Palmas Bicycle Co
Kaiser Foundation	359891	208,042.65	October 2022- Grp# 104220
Tri-Group Const & Dev	359929	83,584.02	CIP19-04 Safe Routes to School Eng/PW
Public Emp Ret System	220915	268,747.78	Service Period 8/23/22 – 9/05/22

FINANCIAL STATEMENT:

Warrant total \$959,384.91

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Not Applicable

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review.CCR15378; PRC 21065.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

Not Applicable

EXHIBITS:

Warrant Register No. 11



**WARRANT REGISTER # 11
9/15/2022**

<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>CHK NO</u>	<u>DATE</u>	<u>AMOUNT</u>
DEAN GAZZO ROISTACHER LLP	LIABILITY CLAIM COST	359849	9/15/22	1,873.00
DEAN GAZZO ROISTACHER LLP	LIABILITY CLAIM COST	359850	9/15/22	1,567.00
DEAN GAZZO ROISTACHER LLP	LIABILITY CLAIM COST	359851	9/15/22	600.00
DEAN GAZZO ROISTACHER LLP	LIABILITY CLAIM COST	359852	9/15/22	382.28
DEMARIA	LIABILITY CLAIM COST	359853	9/15/22	3,675.93
ACE UNIFORMS & ACCESSORIES INC	ACE UNIFORMS / NSD	359854	9/15/22	491.28
ALDEMCO	FOOD / NUTRITION CENTER	359855	9/15/22	4,755.93
ALL FRESH PRODUCTS	FOOD / NUTRITION CENTER	359856	9/15/22	5,378.92
ALTA LANGUAGE SERVICES INC	EMPLOYEE BILINGUAL TESTING	359857	9/15/22	132.00
AMAZON	SUPPLIES USED TO ASSIST WITH EVENTS	359858	9/15/22	316.98
ANDERSON	ADV LODGING SUBSISTENCE - NORTH AMERICAN	359859	9/15/22	179.14
BRINK'S INCORPORATED	TRANSPORTATION - BILLING PERIOD 9/1/22	359860	9/15/22	360.61
CALIFORNIA PARK & REC	CPRS MEMBERSHIP DUES AND RENEWALS	359861	9/15/22	715.00
CANON SOLUTIONS AMERICA INC.	CANON PLOTTER AND SCANNER MAINTENANCE	359862	9/15/22	84.85
CHAVEZ	CITATION REFUNDS - AUGUST 2022	359863	9/15/22	80.00
CITY OF NATIONAL CITY	PETTY CASH REPLENISHMENT - JULY THRU AUG	359864	9/15/22	23.60
CLEARs	TRAINING TUITION CLEARs CAMRGO	359865	9/15/22	475.00
CLF WAREHOUSE INC	MOP 80331. SUPPLIES FOR PW'S	359866	9/15/22	304.83
CODE ENFORCEMENT OFFICERS	CACEO CONFERENCE / NSD	359867	9/15/22	620.00
CORODATA RECORDS	RECORD STORAGE - CORODATA	359868	9/15/22	52.50
COZZINI BROS., INC.	KNIFE/DELI SLICER/CAN OPENER SHARPENING	359869	9/15/22	36.00
CPPA	HEARING EXAMINER / NSD	359870	9/15/22	350.00
CREST EQUIPMENT INC	CIP 19-02 EL TOYON LAS PALMAS BICYCLE CO	359871	9/15/22	136,024.90
DANIELS TIRE SERVICE	TIRES FOR CITY FLEET FOR FY 2023	359872	9/15/22	3,858.26
DATA DETECTION GROUP	DATA CONVERSION P&E	359873	9/15/22	3,485.00
DIRECT CHASSISLINK INC	CITATION REFUNDS - AUGUST 2022	359874	9/15/22	120.00
DISCOUNT SPECIALTY CHEMICALS	RED GREASE SPRAY	359875	9/15/22	391.33
D-MAX ENGINEERING INC	CIP 22-46 NC STORM WATER SERVICES- ENG/PW	359876	9/15/22	3,298.23
FABILA	CITATION REFUNDS - AUGUST 2022	359877	9/15/22	190.00
FASTSIGNS	ACRYLIC.1875 (3/16") WITH CUT / PW	359878	9/15/22	7,025.19
FEDEX	LATE FEE	359879	9/15/22	4.63
FLEET SERVICES INC	MOP 67804 AUTO SUPPLIES- PW	359880	9/15/22	136.97
G2SOLUTIONS, INC	NEW EMPLOYEE FINGERPRINT SUBMISSION - JUL	359881	9/15/22	18.75
GEOSYNTEC CONSULTANTS INC	CIP 21-16 CNC COMPLIANCE WORK - ENG/PW	359882	9/15/22	12,649.72
GONZALEZ	CWEA ASSOCIATION MEMBERSHIP & RENEWAL	359883	9/15/22	297.00
H&E EQUIPMENT SERVICES INC	HAULING SERVICE / PW	359884	9/15/22	804.80
HAAKER EQUIPMENT COMPANY	PARTS AND SMALL EQUIPMENT PURCHASES	359885	9/15/22	203.38
HDR ENGINEERING, INC.	CIP 20-01 EX-P1 SEWER LINE UPSIZING - ENG	359886	9/15/22	423.00
HEARTSMART	DCF-A2460EN-CC/AED LIFELINE ECG/ FIRE	359887	9/15/22	5,750.98
HERNANDEZ	CITATION REFUNDS - AUGUST 2022	359888	9/15/22	130.00
HOME DEPOT CREDIT SERVICES	2-12" GOLD SCREW 1LB	359889	9/15/22	241.07
HYATT REGENCY ORANGE COUNTY	HOTEL CACEO CONFERENCE SORIANO / NSD	359890	9/15/22	2,050.94
KAISER FOUNDATION HEALTH PLAN	OCTOBER 2022 - GRP#104220	359891	9/15/22	208,042.65
KIMLEY HORN	CIP 19-25 CNC BIKE WAYFINDING - ENG/PW	359892	9/15/22	42,661.66
KREISBERG LAW FIRM	CM- 00015 BILL FOR LEGAL SERVICE	359893	9/15/22	60.00
LASER SAVER INC	TONER CARTRIDGE FOR SECTION 8 DEPARTMENT	359894	9/15/22	971.90
LEFORT'S SMALL ENGINE REPAIR	MOP 80702 AUTO SUPPLIES- PW	359895	9/15/22	329.51
MASON'S SAW	MOP 45729 LANDSCAPE SUPPLIES- PW	359896	9/15/22	915.38



WARRANT REGISTER # 11
9/15/2022

<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>CHK NO</u>	<u>DATE</u>	<u>AMOUNT</u>
MINUTEMAN PRESS	PRINTING JOB 7998 FOR 2022 CAFR	359897	9/15/22	293.80
NATIONAL CITY MOTORCYCLES	SERVICE AND REPAIR FOR EMERGENCY FY 2023	359898	9/15/22	1,502.00
NATIONAL CREDIT REPORTING	AUGUST -2022 FEE FOR CRIMINAL REPORT	359899	9/15/22	161.40
OFFICE SOLUTIONS BUSINESS	MOP 83778 OFFICE SUPPLIES/FINANCE	359900	9/15/22	91.02
PACIFIC REFRIGERATION INC	SERVICE CALL FOR WALKIN COOLER	359901	9/15/22	261.00
PALMA	CLASS CANCELATION REFUND	359902	9/15/22	120.00
PARTS AUTHORITY METRO LLC	MOP 75943 AUTO SUPPLIES PW	359903	9/15/22	493.89
PENSKE FORD	R&M CITY VEHICLES FY 2023	359904	9/15/22	1,297.19
PRECISION CONCRETE CUTTING	CONCRETE CUTTING SLICING ASSESSMENT SIDE	359905	9/15/22	49,061.45
PRO BUILD COMPANY	MOP 45707 GENERAL SUPPLIES- PW	359906	9/15/22	685.29
PROFESSIONAL SEARCH GROUP LLC	TEMP WORKER WEEK ENDING 8/28/22	359907	9/15/22	14,960.00
PRUDENTIAL OVERALL SUPPLY	LAUNDRY SERVICES / NUTRITION CENTER	359908	9/15/22	888.22
RMG COMMUNICATIONS	COMMUNICATION & OUTREACH SERVICES	359909	9/15/22	5,136.25
RODRIGUEZ	CITATION REFUNDS - AUGUST 2022	359910	9/15/22	275.00
RUIZ	REFUND FOR AILEEN RUIZ	359911	9/15/22	60.00
SAN DIEGO HYDRAULICS	MOP 85005 AUTO SUPPLIES- PW	359912	9/15/22	248.80
SAN DIEGO MIRAMAR COLLEGE	TRAINING ROT SANCHEZ AND SPORTELLI	359913	9/15/22	46.00
SAN DIEGO MIRAMAR COLLEGE	TRAINING ROT ORTIZ AND PIERSON	359914	9/15/22	46.00
SAN DIEGO MIRAMAR COLLEGE	TRAINING ROT FERNANDEO AND STANICH	359915	9/15/22	46.00
SAN DIEGO MIRAMAR COLLEGE	TRAINING ROT FOR PAUU	359916	9/15/22	23.00
SEAPORT MEAT COMPANY	FOOD / NUTRITION CENTER	359917	9/15/22	1,649.75
SHRED-IT	JULY MONTHLY SERVICE FOR SECTION 8 DEPT	359918	9/15/22	252.24
SITEONE LANDSCAPE SUPPLY LLC	MOP 69277 LANDSCAPE SUPPLIES PW	359919	9/15/22	471.49
SMART & FINAL	MOP 45756 SMART & FINAL YOUTH SNACKS / CSD	359920	9/15/22	334.46
STAPLES BUSINESS ADVANTAGE	MOP #45704/OFFICE SUPPLIES/HR	359921	9/15/22	2,308.08
STC TRAFFIC	CIP 19-22 HSIP CITY PROTEC LEFT TURN - ENG	359922	9/15/22	407.13
SWEETWATER AUTHORITY	WATER BILL FOR PARKS DIVISION FY 2023	359923	9/15/22	251.72
SYSCO SAN DIEGO INC	FOOD / NUTRITION CENTER	359924	9/15/22	14,721.05
THE EPOCH TIMES	PUBLIC NOTICES - ELECTION ADS - CHINESE	359925	9/15/22	170.00
THE FILIPINO PRESS INC	PUBLIC NOTICING - ELECTION - FILIPINO PR	359926	9/15/22	1,280.00
THE STAR NEWS	PUBLIC NOTICING - STAR NEWS	359927	9/15/22	1,042.94
TRANS-LANG	TRANSLATION SERVICES - TRANS-LANG	359928	9/15/22	3,622.25
TRI-GROUP CONSTRUCTION AND DEV	CIP 19-04 SAFE ROUTES TO SCHOOL - ENG/PW	359929	9/15/22	83,584.02
U S BANK	CREDIT CARD PYMT FOR J MATLOCK/FIRE	359930	9/15/22	1,310.93
UNDERGROUND SERVICE ALERT	UNDERGROUND SERVICE ALERT FY 2023	359931	9/15/22	465.83
VALLEY INDUSTRIAL SPECIALTIES	MOP 46453 BUILDING SUPPLIES- PW	359932	9/15/22	633.00
VASQUEZ	TRAINING POST AND ADV LDG SUB	359933	9/15/22	495.90
WAXIE SANITARY SUPPLY	JANITORIAL SUPPLIES FOR FIRE STATIONS	359934	9/15/22	2,564.83
WHITAKER BROTHERS	RIBBON 5650 PURPLE	359935	9/15/22	60.68
WILLY'S ELECTRONIC SUPPLY	MOP 45763 ELECTRIC SUPPLIES- PW	359936	9/15/22	36.21
			A/P Total	643,898.92
WIRED PAYMENTS				
SDG&E	UTILITIES FOR NUTRITION	486875	9/14/22	3,141.68
SDG&E	UTILITIES FOR NUTRITION	486887	9/14/22	495.43
CITY NATIONAL BANK	CNC LEASE PAYMENT #50	34977	9/15/22	43,101.10
PUBLIC EMP RETIREMENT SYSTEM	SERVICE PERIOD 8/23/22 - 9/5/22	220915	9/15/22	268,747.78
	GRAND TOTAL			\$ 959,384.91



AGENDA REPORT

Department: Finance
Prepared by: Karla Apalategui, Sr. Accounting Assistant
Meeting Date: Tuesday, November 1, 2022
Approved by: Brad Raulston, City Manager

SUBJECT:

Warrant Register #12 for the period of 9/16/22 through 9/22/22 in the amount of \$1,346,098.20.

RECOMMENDATION:

Ratify Warrants Totaling \$1,346,098.20

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

Per Government Section Code 37208, below are the payments issued for period 9/16/22 – 9/22/22. Consistent with Department of Finance’s practice, listed below are all payments above \$50,000.

<u>Vendor</u>	<u>Check/Wire</u>	<u>Amount</u>	<u>Explanation</u>
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NO WARRANTS OVER \$50,000.00 FOR THIS PERIOD

FINANCIAL STATEMENT:

Warrant total \$1,346,098.20

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Not Applicable

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review.CCR15378; PRC 21065.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

Not Applicable

EXHIBITS:

Warrant Register No. 12



**WARRANT REGISTER # 12
9/22/2023**

<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>CHK NO</u>	<u>DATE</u>	<u>AMOUNT</u>
ADMINSURE INC	WORKERS' COMPENSATION CLAIMS - OCTOBER	359939	9/22/2022	8,353.00
ALLSTAR FIRE EQUIPMENT INC	LION HD395142 REDZONE /FIRE	359940	9/22/2022	2,240.25
APS LIGHTING & SAFETY PRODUCTS	1960, SIGNAL-STAT, LED, RED	359941	9/22/2022	37.60
AT&T	AT&T & SBC ANNUAL PHONE SERVICE FOR FY23	359942	9/22/2022	2,109.42
AT&T	AT&T & SBC ANNUAL PHONE SERVICE FOR FY23	359943	9/22/2022	91.17
BENTLEY SYSTEMS, INCORPORATED	BENTLEY OPENROADS SIGNCAD	359944	9/22/2022	976.00
BOOT WORLD	MOP 64096 BOOT WORLD / NSD	359945	9/22/2022	127.22
CALIFORNIA DIESEL COMPLIANCE	UNIT 80 MILEAGE: 5137~	359946	9/22/2022	480.00
CAMACHO	ADV LODGING SUBSISTENCE PRC T2672	359947	9/22/2022	217.91
CLF WAREHOUSE INC	MOP 80331 AUTO SUPPLIES PW	359948	9/22/2022	58.30
CORODATA RECORDS	FILE STORAGE - CORODATA	359949	9/22/2022	52.50
COX COMMUNICATIONS	COX DATA, VIDEO SERVICES FY23	359950	9/22/2022	536.75
DEPARTMENT OF JUSTICE	NEW EMPLOYEE FINGERPRINT RESULTS - AUGUST	359951	9/22/2022	320.00
DOCUSIGN, INC.	DOCUSIGN ESIGNATURE RENEWAL 6/28/22 -	359952	9/22/2022	4,830.00
ESGIL LLC	PLAN CHECKS FOR FIRE DEPT, FY 2023	359953	9/22/2022	769.50
FEDEX	EMPLOYEE WORKERS' COMP CHECK	359954	9/22/2022	44.53
FIRE ETC	FIRE SAFETY STATION BOOTS/FOOTWEAR-FIRE	359955	9/22/2022	759.08
FUSTON	ADV LDG SUB PRC T2700 - DUI DETECTION	359956	9/22/2022	485.52
GARCIA	REIMBURSEMENTS FOR MEAL AND MILEAGE	359957	9/22/2022	248.40
GRANICUS	GRANICUS ANNUAL RENEWAL~	359958	9/22/2022	18,761.34
LASER SAVER INC	LASER SAVER MOP FY23	359959	9/22/2022	695.78
MELLADO DESIGNS	POLOS MELLADO / NSD	359960	9/22/2022	191.60
MTS	MTS FLAGGING SERVICES FOR FY23 / NSD	359961	9/22/2022	139.36
NATIONAL CITY TROPHY	NAME PLATE-NC TROPHY MOP 66556	359962	9/22/2022	43.17
NGUOI VIET TODAY NEWS	ELECTION PUBLIC NOTICE - NGUOI VIET	359963	9/22/2022	30.00
NV5 INC	T&A 90572 - 2010 HAFFLEY AVE - ENG/PW	359964	9/22/2022	8,070.00
OFFICE SOLUTIONS BUSINESS	OFFICE SOLUTIONS-MOP 83778	359965	9/22/2022	115.85
O'REILLY AUTO PARTS	MOP 75877 AUTO SUPPLIES PW	359966	9/22/2022	26.08
PARTS AUTHORITY METRO LLC	MOP 75943 AUTO SUPPLIES PW	359967	9/22/2022	31.39
PERRY FORD-NATIONAL CITY LLC	DG1Z 8501 D: PUMP ASY - WATER	359968	9/22/2022	1,668.87
PRO BUILD COMPANY	MOP 45707 GENERAL SUPPLIES PW	359969	9/22/2022	2,860.19
PRUDENTIAL OVERALL SUPPLY	MOP 45742 LAUNDRY SERVICES PW	359970	9/22/2022	447.08
SCHOR VOGELZANG & CHUNG LLP	PROFESSIONAL SERVICES / CAO	359971	9/22/2022	16,850.50
SDG&E	GAS AND ELECTRIC FOR FACILITIES FOR FY23	359972	9/22/2022	4,373.22
SHARP ELECTRONICS CORPORATION	MAINTENANCE 20 SHARP COPIERS FOR FY23	359973	9/22/2022	6,670.85
SHRED IT USA	FILE DESTRUCTION - SHRED IT	359974	9/22/2022	963.90
SO CAL PPE, LLC	TURNOUT COAT AND PANTS CLEANING /FIRE	359975	9/22/2022	121.24
SPOK INC	SPOK METROCALL PAGING FY23	359976	9/22/2022	673.00
STAPLES BUSINESS ADVANTAGE	OFFICE SUPPLIES / CAO	359977	9/22/2022	281.33
STARTECH COMPUTERS	STARTECH COMPUTERS MOP FY23	359978	9/22/2022	1,000.86
SWAGIT PRODUCTION LLC	SWAGIT WEBCAST FOR FY23	359979	9/22/2022	1,920.83
SWEETWATER AUTHORITY	WATER BILL / WASTEWATER FY 2023	359980	9/22/2022	287.32
T MAN TRAFFIC SUPPLY	STA-RITE 78" WHITE SIGN POST / PW	359981	9/22/2022	407.24
TELLEZ	ADV LODGING SUBSISTENCE T2663	359982	9/22/2022	1,240.20
THE STAR NEWS	PUBLIC NOTICING - STAR NEWS	359983	9/22/2022	837.93
THOMSON REUTERS WEST	THOMSON REUTERS WEST / CAO	359984	9/22/2022	578.54
U S BANK	CREDIT CARD STATEMENT - CMO	359985	9/22/2022	476.75



**WARRANT REGISTER # 12
9/22/2023**

<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>CHK NO</u>	<u>DATE</u>	<u>AMOUNT</u>
VISION SERVICE PLAN	AUGUST 2022 - VISION SERVICE PLAN (CA)	359986	9/22/2022	814.59
WILLY'S ELECTRONIC SUPPLY	ELECTRONICS ACCESSORIES	359987	9/22/2022	78.15
Z A P MANUFACTURING INC	BLANKS W 1 1/2" R/C NO HOLES	359988	9/22/2022	1,070.00
			A/P Total	94,464.31
 WIRED PAYMENTS				
PAYCHEX BENEFIT TECH INC	BENETRAC ESR SERVICES BASE FEE - SEPTEMB	792458	9/16/2022	597.74
 SECTION 8 HAPS				
	Start Date	End Date		
	9/16/2022	9/22/2022		29,390.00
 PAYROLL				
Pay period	Start Date	End Date	Check Date	
20	9/6/2022	9/19/2022	9/28/2022	1,221,646.15
			GRAND TOTAL	<u>1,346,098.20</u>



AGENDA REPORT

Department: Finance
Prepared by: Karla Apalategui, Sr. Accounting Assistant
Meeting Date: Tuesday, November 1, 2022
Approved by: Brad Raulston, City Manager

SUBJECT:

Warrant Register #13 for the period of 9/23/22 through 9/29/22 in the amount of \$1,170,264.82

RECOMMENDATION:

Ratify Warrants Totaling \$1,170,264.82

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

Per Government Section Code 37208, below are the payments issued for period 9/23/22 – 9/29/22. Consistent with Department of Finance’s practice, listed below are all payments above \$50,000.

<u>Vendor</u>	<u>Check/Wire</u>	<u>Amount</u>	<u>Explanation</u>
Bureau Veritas	360050	262,778.58	Plan Review Services / Building
ESGIL LLC	360058	95,585.52	Plan Review Services for FY 23
Health Net Inc	360063	80,846.28	Grp# R1192A – October 2022
Mile of Cars Assoc	360067	55,133.70	FY22 / Landscape Maintenance Services
Public Emp Ret Syst	220929	269,987.16	Service Period 9/6/22 – 9/19/22

FINANCIAL STATEMENT:

Warrant total \$1,170,264.82

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Not Applicable

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review.CCR15378; PRC 21065.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

Not Applicable

EXHIBITS:

Warrant Register No. 13



WARRANT REGISTER # 13
9/29/2022

<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>CHK NO</u>	<u>DATE</u>	<u>AMOUNT</u>
ACE UNIFORMS & ACCESSORIES INC	ACE EMB PATCH W/ VELCRO / NSD	359989	9/29/22	32.33
ACME SAFETY & SUPPLY CORP	10' X 1 3/4 UNI POST ~	359990	9/29/22	371.65
AMAZON	SENIOR PROGRAMING RECREATION SUPPLIES	359991	9/29/22	573.25
AMAZON	SENIOR CRAFT SUPPLIES	359992	9/29/22	315.12
AT&T	AT&T & SBC ANNUAL PHONE SERVICE FOR FY23	359993	9/29/22	15,237.31
AT&T	AT&T & SBC ANNUAL PHONE SERVICE FOR FY23	359994	9/29/22	490.50
BROADWAY AUTO GLASS	OFF-SITE WINDOW TINT & REPAIR / PW	359995	9/29/22	512.48
CAL PACIFIC TRUCK CENTER, LLC	GLASS,KIT,CNVX MIRR AND MNTNG / PW	359996	9/29/22	95.71
CDWG	CYLANCE ANTIVIRUS DESKTOP ANTIVIRUS	359997	9/29/22	25,085.07
CHRISTENSEN & SPATH LLP	CDC-HA AGREEMENT / HOUSING	359998	9/29/22	172.25
CLAIMS MANAGEMENT ASSOCIATES	PROFESSIONAL SERVICES	359999	9/29/22	6,400.00
COX COMMUNICATIONS	COX DATA, VIDEO SERVICES FY23	360000	9/29/22	2,164.38
DE LAGE LANDEN	DLL 20 SHARP COPIERS LEASE FOR FY23	360001	9/29/22	2,939.63
DEPT OF JUSTICE	AUGUST FINGERPRINTING	360002	9/29/22	454.00
DEVANEY PATE MORRIS & CAMERON	ATTORNEY SERVICES	360003	9/29/22	20,677.50
ESCRIBE SOFTWARE LTD.	ESCRIBE DIGITAL READINESS BUNDLE	360004	9/29/22	28,386.80
EXPRESS PIPE AND SUPPLY	CITYWIDE PLUMBING PARTS, MATERIALS TOOL	360005	9/29/22	3,507.68
FBI NATIONAL ACADEMY	G. YOUNG / A. HERNANDEZ MEMBERSHIP DUES	360006	9/29/22	250.00
FERNANDO	TRAINING ADV LDG PEER SUPPORT	360007	9/29/22	397.02
GIL	REIMB: SUPPLIES FOR WATCH COMMANDER	360008	9/29/22	71.28
HAAKER EQUIPMENT COMPANY	PARTS AND SMALL EQUIPMENT PURCHASES	360009	9/29/22	166.53
HOME DEPOT CREDIT SERVICES	GENERAL SUPPLIES AS NEEDED FOR BUILDING	360010	9/29/22	7,967.71
HOSE AUTOMOTIVE	IND- HOSE - ASSY) EA- 2-1/2" X 36 FEET	360011	9/29/22	1,026.82
HUDSON SAFE-T-LITE	3/4 X 100' ROLL BANDING	360012	9/29/22	498.49
JJJ ENTERPRISES	FIRE AND SECURITY ALARM MONITORING	360013	9/29/22	602.72
KASEYA US LLC	KASEYA PSA SEVICE DESK	360014	9/29/22	4,877.94
MES CALIFORNIA	SILV-EX PLUS FOAM CONCNRTE 5 GAL/FIRE	360015	9/29/22	1,606.62
NATIONAL CITY CHAMBER	CM- 00018 - GOLF TOURNAMENT	360016	9/29/22	1,000.00
NATIONAL CITY ELECTRIC	CITYWIDE ON-SITE ELECTRICAL	360017	9/29/22	485.00
NTT AMERICA, INC	SMARTNET SOFTWARE~	360018	9/29/22	16,597.35
O'REILLY AUTO PARTS	MOP 75877 AUTO SUPPLIES PW	360019	9/29/22	65.74
PACIFIC PRODUCTS & SERVICES	SUPPLIES FOR PW	360020	9/29/22	1,427.34
PARTS AUTHORITY METRO LLC	XX 16835 PARTS PULLED	360021	9/29/22	570.73
PENSKE FORD	R&M CITY VEHICLES FY 2023	360022	9/29/22	84.14
PORAC	RESERVE OFFICER MEMBERSHIP	360023	9/29/22	36.00
PRO BUILD COMPANY	MOP 45707 GENERAL SUPPLIES PW	360024	9/29/22	1,606.45
PROFESSIONAL SEARCH GROUP LLC	TEMPORARY SERVICES - EMILY PORTES	360025	9/29/22	1,457.00
PRUDENTIAL OVERALL SUPPLY	MOP 45742 LAUNDRY SERVICES PW	360026	9/29/22	180.29
RADY CHILDREN'S HOSPITAL SAN DIEGO	SART EXAM	360027	9/29/22	1,100.00
S D COUNTY SHERIFF'S DEPT	JULY RANGE USE	360028	9/29/22	1,150.00
SAF COLLISION CENTER	LABOR	360029	9/29/22	1,502.00
SAN DIEGO MECHANICAL ENERGY	PREVENTATIVE MAINTENANCE FOR HVAC	360030	9/29/22	508.00
SMART & FINAL	MOP 45756 SENIOR SATURDAYS AND TEEN SUPP	360031	9/29/22	337.63
SONSRAY MACHINERY LLC	VALVE HYDRAULIC / PW	360032	9/29/22	8,448.22
SOUTHWEST SIGNAL SERVICE	STREET LIGHTING SERVICES / PW	360033	9/29/22	44,460.74
STANICH	TRAINING ADV SUB PEER SUPPORT	360034	9/29/22	397.02
STAPLES BUSINESS ADVANTAGE	MOP 45704 SUPPLIES FOR SENIOR SATURDAYS	360035	9/29/22	37.51



**WARRANT REGISTER # 13
9/29/2022**

<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>CHK NO</u>	<u>DATE</u>	<u>AMOUNT</u>
SWEETWATER AUTHORITY	WATER BILL FOR FACILITIES FY 2023~	360037	9/29/22	716.10
TECHNOLOGY INTEGRATION GROUP	MISC MIS EQUIP	360038	9/29/22	110.93
TERMINIX INTERNATIONAL	CITY FACILITIES ONGOING PEST CONTROL	360039	9/29/22	1,233.00
THE COUNSELING TEAM	AUGUST SUPPORT FEE	360040	9/29/22	800.00
THE COUNSELING TEAM INTERNATIONAL	TRAINING BASIC PEER SUPRT STANICH/FERNAN	360041	9/29/22	598.00
T-MOBILE MOBILE USA INC.	GPS LOCATE CASE # 2227310	360042	9/29/22	25.00
TURF STAR INC	LH SPINDLE ASM 107-2942-03	360043	9/29/22	432.67
U S BANK	AUGUST US BANK STATEMENT - CSD	360044	9/29/22	47.88
VCA EMERGENCY ANIMAL HOSPITAL	STRAY ANIMAL CARE	360045	9/29/22	5,895.52
VORTEX INDUSTRIES INC	CITYWIDE ON-SITE SERVICE & REPAIRS	360046	9/29/22	28,712.10
WILLY'S ELECTRONIC SUPPLY	MOP 45763 ELETRIC SUPPLIES PW	360047	9/29/22	197.15
WSP USA INC	FOCUSED GENERAL PLAN UPDATE	360048	9/29/22	33,015.40
ASSI SECURITY INC	PROVIDE SECURITY SERVICES AND REPAIRS	360049	9/29/22	8,850.00
BUREAU VERITAS N AMERICA INC	PLAN REVIEW SERVICES /BUILDING	360050	9/29/22	262,778.58
CONCENTRA MEDICAL CENTERS	PRE-EMPLOYMENT PHYSICALS	360051	9/29/22	270.00
COUNTY OF SAN DIEGO	LAFCO COST FOR FY 23	360052	9/29/22	23,354.44
DELTA DENTAL INSURANCE CO	OCTOBER 2022 GRP #05-7029600000	360053	9/29/22	1,945.19
DELTA DENTAL INSURANCE CO	OCTOBER 2022 - GRP #05-7029600002	360054	9/29/22	211.44
DELTA DENTAL OF CALIFORNIA	OCTOBER 2022 GRP #05-0908600000	360055	9/29/22	14,211.78
DELTA DENTAL OF CALIFORNIA	OCTOBER 2022 - GRP #05-0908601002	360056	9/29/22	45.22
DEVANEY PATE MORRIS & CAMERON	LEGAL SERVICES	360057	9/29/22	17,627.10
ESGIL LLC	PLAN REVIEW SERVICES ESGIL FOR FY 23	360058	9/29/22	95,585.52
HEALTH NET	GRP #N7176A - OCT 2022	360059	9/29/22	1,884.24
HEALTH NET	GRP #N7176F - OCTOBER 2022	360060	9/29/22	1,646.41
HEALTH NET	GRP #N7177A - OCTOBER 2022	360061	9/29/22	1,277.44
HEALTH NET	GRP #R1192R-OCTOBER 2022	360062	9/29/22	857.33
HEALTH NET INC	GRP #R1192A - OCTOBER 2022	360063	9/29/22	80,846.28
HEALTH NET INC	GRP #LB439A - OCTOBER 2022	360064	9/29/22	6,191.32
HEALTH NET INC	GRP #LB439F - OCTOBER 2022	360065	9/29/22	735.61
LIEBERT CASSIDY WHITMORE	PERSONNEL MATTER	360066	9/29/22	3,645.00
MILE OF CARS ASSOCIATION	FY22 / LANDSCAPE MAINTENANCE SERVICES	360067	9/29/22	55,133.70
NATIONAL CITY TROPHY	MOP #66556/EMPLOYEE OF THE QUARTER/HR	360068	9/29/22	428.48
OFFICE SOLUTIONS BUSINESS	MOP OFFICE SUPPLIES FOR SECTION 8 DEPART	360069	9/29/22	1,039.76
PROFESSIONAL SEARCH GROUP LLC	TEAM STAFF-DANIEL GONZALEZ	360070	9/29/22	1,780.00
SHRED-IT	SEPTEMBER 2022 MONTHLY SERVICE FOR SEC8	360071	9/29/22	121.73
SILVER & WRIGHT LLP	LEGAL SERVICES / CAO	360072	9/29/22	5,856.00
THE LINCOLN NATIONAL LIFE INS	GRP #415491 -SEPTEMBER 2022	360073	9/29/22	8,750.49
VISION SERVICE PLAN	SEPT 2022 - VISION SERVICE PLAN (CA)	360074	9/29/22	828.90
WOODRUFF, SPRADLIN & SMART APC	RSWA- LEGAL AND GEN MANAGER SVCS	360075	9/29/22	23,510.00
WOODRUFF, SPRADLIN & SMART APC	RSWA - CONSULTING SERVICES AUGUST 2022	360076	9/29/22	2,750.00
			A/P Total	900,277.66
WIRED PAYMENTS				
PUBLIC EMP RETIREMENT SYSTEM	SERVICE PERIOD 9/6/22 - 9/19/22	220929	9/29/22	269,987.16

GRAND TOTAL

\$ 1,170,264.82



AGENDA REPORT

Department: Community Development
Prepared by: Martin Reeder, AICP, Planning Manager
Meeting Date: Tuesday, November 1, 2022
Approved by: Brad Raulston, City Manager

SUBJECT:

Public Hearing and Introduction of an Ordinance Amending Section 18.30.310 (Tattoo Parlors and Body-Piercing Establishments) of Title 18 (Zoning) of the National City Municipal Code related to the location of tattoo and body-piercing establishments.

RECOMMENDATION:

Introduce the Ordinance

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

The Planning Commission recommended amending NCMC 18.30.310 as proposed.

EXPLANATION:

Section 18.30.310 (Tattoo parlors and body-piercing establishments) of Title 18 (Zoning) of the National City Municipal Code, states as follows:

A. Restrictions.

1. No tattoo or body piercing establishment shall be located within one-mile of another such establishment.
2. Tattoo parlors and body-piercing establishments shall be located no less than 1,000 feet from a church, school, or playground.
3. Tattoo parlors and body-piercing establishments shall be no closer than two hundred fifty feet from a residential zone.
4. No tattoo and body-piercing establishments shall be located east of Interstate 805.
5. A Conditional Use Permit is required.

The Council initiated a Code Amendment related to the prohibition of tattoo shops east of Interstate 805 at their meeting of September 20, 2022. The business owner initiating the discussion of amendment is interested in leasing a commercial suite in Westfield Plaza Bonita, but was prevented from applying for a Conditional Use Permit (CUP) due to Section 18.30.310 A. 4.

Proposed Changes

Staff is recommending amending Section 18.30.310 A. 4. To read as follows:

4. No tattoo and body-piercing establishments shall be located east of Interstate 805 except within the MXD-2 zone.

Analysis

The areas of the City east of I-805 that are zoned MXD-2 (Major Mixed-Use District) are as follows:

- Westfield Plaza Bonita
- North side of Sweetwater Road at Cypress Street (Super 8 Hotel, 7-Eleven)
- Both sides of Plaza Blvd. between I-805 and Euclid Avenue
- Approximate 3 by 4 block area east of Paradise Valley Hospital between East 4th and 8th Streets

Due to the other distance requirements (i.e. 250 feet from residential zones, 1,000 feet from a school), the only MXD-2 zoned area east of I-805 that would allow for a tattoo shop would be Westfield Plaza Bonita.

Findings

There are two findings required for approval of a Code Amendment, one related to General Plan consistency and one related to compliance with the California Environmental Quality Act (CEQA).

General Plan Conformance

The requested amendment to this section is consistent with the General Plan, in that tattoo and body-piercing establishments are already permitted in the MXD-2 zones elsewhere in the City. There is no regulation at the local, state, or federal level that prohibits tattoo and body-piercing establishments from a specific geographic area (i.e. east of I-805). It is also unknown why such a restriction was applied in the first place. A tattoo and body-piercing establishment is a commercial use in a commercial zone, which would be consistent with land use policies in the General Plan.

CEQA Compliance

This application is not considered to be a project under CEQA as any changes would either be in relation to discretionary projects that have their own CEQA review. Being that a tattoo or body-piercing establishment is a commercial use that would function within an existing commercial suite, it would most likely qualify for a CEQA exemption under the CUP process application process.

Summary

Staff is recommending the change to the City's Municipal Code related to tattoo parlors and body-piercing establishments. Section 18.30.310 still requires a CUP for such an establishment. Therefore, approval of this Code Amendment in and of itself would not authorize any new businesses. The Planning Commission held a public hearing on the item at their meeting of October 17, 2022, at which time they recommended approval of the proposed amendment.

FINANCIAL STATEMENT:

Not Applicable

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Balanced Budget and Economic Development

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review.CCR15378;
PRC 21065.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

First Reading

EXHIBITS:

Ordinance

ORDINANCE NO. 2022 –

AN ORDINANCE AMENDING SECTION 18.30.310 (TATTOO PARLORS AND BODY-PIERCING ESTABLISHMENTS) OF TITLE 18 (ZONING) OF THE NATIONAL CITY MUNICIPAL CODE RELATED TO THE LOCATION OF TATTOO AND BODY-PIERCING ESTABLISHMENTS

WHEREAS, the City of National City (the “City”), pursuant to the police powers delegated to it by the California Constitution, has the authority to enact or amend laws which promote the public health, safety, and general welfare of its residents; and

WHEREAS, pursuant to the terms and provisions of the Government Code of the State of California, proceedings were duly initiated for the amendment of the National City Municipal Code; and

WHEREAS, on October 17, 2022, a noticed public hearing was held by the Planning Commission, and all persons interested were given the opportunity to appear and be heard before the National City Planning Commission; and

WHEREAS, the Planning Commission regularly and duly certified its report to the City Council of National City and has recommended approval of amending NCMC Title 18; and

WHEREAS, pursuant to a published 10-day notice of the adoption of said ordinance, a public hearing was held by the City Council on November 1, 2022, and at said public hearing, all persons interested were given the opportunity to appear and be heard before the City Council.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NATIONAL CITY DOES ORDAIN AS FOLLOWS:

Section 1. Section 18.30.310 (Tattoo Parlors and Body-Piercing Establishments) is hereby amended to read as follows:

18.30.310 – Tattoo parlors and body-piercing establishments

A. Restrictions.

1. No tattoo or body-piercing establishment shall be located within one-mile of another such establishment.
2. Tattoo parlors and body-piercing establishments shall be located no less than 1,000 feet from a church, school, or playground.

3. Tattoo parlors and body-piercing establishments shall be no closer than two hundred fifty feet from a residential zone.
4. No tattoo and body-piercing establishments shall be located east of Interstate 805 except within the MXD-2 zone.
5. A Conditional Use Permit is required.

Section 2. Severability. If any section, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

Section 3. This Ordinance shall take effect and be in force thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days after its passage, it or a summary of it, shall be published once, with the names of the members of the City Council voting for and against the same in the Star News, a newspaper of general circulation published in the County of San Diego, California.

PASSED and ADOPTED this 15th day of November, 2022.

Alejandra Sotelo-Solis, Mayor

ATTEST:

Luz Molina, City Clerk

APPROVED AS TO FORM:

Barry J. Schultz, Interim City Attorney



AGENDA REPORT

Department: Housing Authority
Prepared by: Carlos Aguirre, Director
Meeting Date: Tuesday, November 1, 2022
Approved by: Brad Raulston, City Manager

SUBJECT:

Public hearing and introduction of an Ordinance of the City Council of the City of National City, California, amending Title 9 of the National City Municipal Code by adding Chapter 9.64 pertaining to Mobilehome Park Rent Stabilization.

RECOMMENDATION:

Introduce the Ordinance and conduct the Public Hearing.

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

The ongoing housing crisis affecting National City has been exacerbated by the negative economic effects of COVID-19 and the increase of homelessness throughout the region. The County of San Diego recently declared a public health crisis due to the rapid increase in homelessness on September 22, 2022. The National City City Council has received numerous comments and complaints regarding significant rent increases on mobilehome space rents. The supply of mobilehome parks is very limited in National City, with little to no vacancies advertised at most mobilehome parks. The limited supply of such spaces and mobilehomes contributes to escalating rents in a manner that would, in absence of regulation, result in the elimination of mobilehomes as a source of affordable housing for seniors, veterans, and families.

The State of California' Mobilehome Residency Law ("MRL"), found in California Civil Code Section 798 establishes the rights and responsibilities of homeowners and park management including the terms and conditions for tenancies. The MRL was recently amended by Assembly Bill 978 which prohibits management of a qualified mobilehome park from increasing the gross rental rate for a tenancy for a mobilehome space more than 3% plus the percentage change in the cost of living, as defined, or 5%, whichever is lower, of the lowest gross rental rate charged at any time during the immediately preceding 12 months. Assembly Bill 978 also prohibits management of a qualified mobilehome park from increasing the gross rental rate for a tenancy in more than 2 increments over a 12-month period, after the tenant maintains a tenancy over a 12-month period. The State's law defines "qualified mobilehome park" as a mobilehome park that is located within and governed by the jurisdiction of two or more incorporated cities.

National City has four mobilehome parks with one park currently covered by the rent cap implemented by AB 978 since a portion of the park is located in City of San Diego and a portion in National City.

National City Mobilehome Parks

Mobilehome Park Name	Address	Approx. No. of Spaces	AB 978 Qualified Mobilehome Park
Bonita Paradise	3131 Valley Road, National City	167*	Yes
Bonita Vista	2621 Sweetwater Road, National City	87	No
Happy Hollow	999 E. Division Street, National City	90	No
Keystone	3221 National City Blvd., National City	91	No

*approximately half of the total units are in the City of National City

There are six jurisdictions in County of San Diego that have ordinances regulating rent in mobilehome parks. The most recent ordinance was adopted by emergency by the City of Imperial Beach on October 5, 2022 and does not allow rent to be increased more than 3% during the term of the ordinance. The term of the ordinance for Imperial Beach would end 60 days after the end of the local COVID-19 emergency or the County of San Diego’s declaration of a public health crisis due to the rapid increase in homelessness, whichever occurs first.

Mobile Home Rent Stabilization Ordinances in San Diego County

City	Year of Ordinance	No. of Mobile Home Parks	No. of Units	Rent Cap Structure
Chula Vista	1997	30	3414	100% CPI < 3%, 75% CPI > 3%
Escondido	1988	30	3185	Board/ Commission Review
Imperial Beach	2022	*	*	3% cap during State of Emergency
Oceanside	1982	20	2401	100% CPI, 8% cap
San Marcos	1980	12	2312	Board/ Commission Review
Santee	1989	11	2004	See Title 2, Chapter 2.44 of Santee Municipal Code

*data not available

The attached Mobilehome Park Rent Stabilization Ordinance (“Ordinance”) for City Council’s consideration would implement the rent cap adopted by the State of California to mobilehome parks in National City not currently regulated by the provisions of AB 978. The Ordinance would prohibit management of a mobilehome park from increasing the gross rental rate for a tenancy for a mobilehome space more than 3% plus the percentage change in the San Diego Metropolitan Area U (broader base) Consumer Price Index, as defined, or 5%, whichever is lower, from the lowest gross rental rate charged at any time during the immediately preceding 12 months. The Ordinance would not allow the rent to be increased more than two times in any 12-month period during the term of the Ordinance.

The Ordinance also provides for both civil and criminal remedies if rent in excess of the maximum rent allowable is collected. The Ordinance would be retroactive to July 1, 2022 and rent increases occurring on or after July 1, 2022 would have to be in conformance with the Ordinance. The Ordinance serves as a temporary relief measure for two years and would expire on June 30, 2024.

The second reading and adoption of the Ordinance is scheduled for November 15, 2022.

FINANCIAL STATEMENT:

There is no financial impact to the City.

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Housing and Community Development

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review.CCR15378;
PRC 21065.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

First Reading

EXHIBIT:

Exhibit A - Ordinance

ORDINANCE NO. 2022 –

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, AMENDING TITLE 9 OF THE NATIONAL CITY MUNICIPAL CODE BY ADDING CHAPTER 9.64 PERTAINING TO MOBILEHOME PARK RENT STABILIZATION

NOW, THEREFORE, the City Council of the City of National City does ordain as follows:

Section 1. FINDINGS. The City Council of the City of National City hereby finds and declares as follows:

WHEREAS, The City Council finds that there is a severe housing crisis within the City of National City and on September 27, 2022, the County of San Diego voted to unanimously to declare a public health crisis for homelessness throughout the County of San Diego; and

WHEREAS, the housing crisis has been exacerbated by the COVID-19 outbreak and further substantial and long term economic impacts caused by COVID-19 and the County public health crisis on homelessness are anticipated, leaving tenants vulnerable to eviction and rent increases; and

WHEREAS, a tenant's sudden and immediate displacement caused by an eviction or unsustainable rent increase can have a profound impact in the financial, emotional, physical health, and professional stability of a tenant's life, which impacts are compounded by the ongoing COVID-19 emergency and County public health crisis on homelessness; and

WHEREAS, the City Council finds that there is presently, within the City of National City, a shortage of rental spaces for the location of mobilehomes, and an inadequate number of mobilehome rental spaces to meet the total demand in this City for those spaces; and

WHEREAS, the City Council further finds that the unique nature of the ownership of a mobilehome within a mobilehome park makes mobilehome owners particularly vulnerable to the threat of loss of their investment in their mobilehome. Due to the high cost of moving mobilehomes; the potential for damage resulting from moving mobilehomes; the requirements for installing a mobilehome, including permits, landscaping and site preparation; the lack of alternative mobilehome spaces for mobilehome owners; and the substantial investment mobilehome owners make in their coaches, mobilehome owners lack the ability to move their mobilehomes without a substantial loss in their investment. This lack of mobility, coupled with a shortage of rental spaces, provides park owners with the ability to establish excessive and unconscionable rents which, if unregulated, would result in the impairment of a mobilehome owner's investment in their home; and

WHEREAS, the City Council further finds that the limited supply of mobilehome rental spaces available in this City would, in the absence of space rent regulation, allow for an unconscionable loss of the resale value of mobilehomes by existing mobilehome park residents; and

WHEREAS, The City Council further finds that mobilehomes comprise a significant form of housing available within the City of National City and can be a more affordable housing choice than single-family homes. The City Council finds that the supply of both mobilehome spaces and mobilehomes available for rent is not adequate to meet the demand, and that as a result, the limited supply of such spaces and mobilehomes contributes to escalating rents in a manner that would, in the absence of regulation, result in the elimination of mobilehomes as a more affordable housing choice; and

WHEREAS, the City Council further finds that many of National City's mobile home owners are seniors, veterans, and families seeking an affordable community environment in which to live; and

WHEREAS, the City has been informed that, in at least one case, a mobilehome landlord has given notices of rent increases of 14% or more. These proposed rent increases would affect at least – units which are occupied by and thus disproportionately impact older Americans, persons with disabilities and low income families.

NOW THEREFORE, it is the intent of the City Council in enacting this ordinance to protect mobilehome owners and mobile home park residents in mobilehome parks from excessive and unconscionable rent increases during the COVID-19 health crisis and the resulting economic uncertainties.

SECTION 2. Title 9 of the National City Municipal Code is hereby amended by adding Chapter 9.64 to read as follows:

Chapter 9.64

MOBILEHOME PARK RENT STABILIZATION ORDINANCE

- 9.64.010 Purpose
- 9.64.020 Definitions
- 9.64.030 General Applicability and Exemptions
- 9.64.040 Retroactivity and Rent Rollback
- 9.64.050 Annual Permissive Rent Increases and Notices of CPI

9.64.060	Mobilehome Residents Right of Refusal
9.64.070	Retaliatory Eviction
9.64.080	Civil Remedies
9.64.090	Criminal Remedies
9.64.100	Severability
9.64.110	Sunset Provision

9.64.010 Purpose.

A. The City Council intends by this chapter to protect mobilehome owners and mobile home park residents in mobilehome parks from excessive and unconscionable rent increases.

B. The City Council intends by this chapter:

1. To prevent existing mobilehome owners, who are rendered largely incapable of moving their mobilehomes without suffering a substantial loss in their value, from loss of their investment and the resale value of their mobilehomes due to the fact that a new mobilehome resident is being charged excessive rents;
2. To protect and promote the availability of mobilehomes as a more affordable housing choice; and
3. To avoid immediate displacement caused by an eviction or unsustainable rent increases during the COVID-19 health crisis.

9.64.020 Definitions.

Words used in this chapter shall have the meaning described to them in this section:

A. "Mobilehome" is a structure designed for human habitation and for being moved on a street or highway under permit pursuant to Section [35790](#) of the California Vehicle Code. As used in this chapter, "mobilehome" has the same meaning as California Civil Code Section [798.3](#).

B. "Manufactured home" is a unit built post June 15, 1976, that meets U.S. Department of Housing and Urban Development (HUD) specifications. The term "manufactured home" for the purpose of this chapter only shall be synonymous with the term "mobilehome."

C. "Mobilehome space" means a portion of a mobilehome park designated or used for the occupancy of one mobilehome.

D. "Mobilehome park" or "park" is an area of land where two or more mobilehomes or mobilehome spaces are rented, or held out for rent, to accommodate mobilehomes used for human habitation.

E. "Mobilehome park owner" or "owner" means and includes the owner, lessor, operator, or manager of a mobilehome park.

F. "Mobilehome owner" means a person who owns a mobilehome which is legally located in a mobilehome space within a mobilehome park in the City of National City.

G. "Mobilehome resident" or "resident" means a person who occupies a mobilehome in a mobilehome park in the City of National City as a primary residence by virtue of having a rental agreement. "Mobilehome resident" or "resident" is inclusive of a mobilehome owner.

H. "Rent" means the consideration, including any bonus, benefit or gratuity, demanded or received in connection with the use and occupancy of a mobilehome or mobilehome space in a mobilehome park, including services, or in connection with the transfer of a lease for a mobilehome space or the subleasing of a mobilehome space. "Rent" shall not include amounts paid by residents for such separately metered utilities or services, as provided in California Civil Code Section [798.41](#), or any separate charge for those fees, assessments or costs which may be charged to mobilehome residents pursuant to the California Civil Code.

I. "Consumer Price Index" or "CPI" means the All Urban Consumers/All Items component of the San Diego Metropolitan Area U (broader base) Consumer Price Index prepared by the Bureau of Labor Statistics. If the United States Bureau of Labor Statistics does not publish the San Diego Metropolitan Area U (broader base) Consumer Price Index or there is no alternative CPI All Urban Consumers/All Items index published by the Bureau of Labor Statistics that applies to National City, CPI will be defined as the California Consumer Price Index for All Urban Consumers for All Items as published by the California Department of Industrial Relations.

F. "Percentage Change in CPI" means the percentage change in the CPI as defined above and computed as follows:

For rent increases that take effect before August 1 of any calendar year, the following shall apply:

(1) The percentage change shall be the percentage change in the amount published for April of the immediately preceding calendar year and April of the year before that.

(2) If there is not an amount published in April for the applicable geographic area, the percentage change shall be the percentage change in the amount published for March of the immediately preceding calendar year and March of the year before that.

For rent increases that take effect on or after August 1 of any calendar year, the following shall apply:

- (1) The percentage change shall be the percentage change in the amount published for April of that calendar year and April of the immediately preceding calendar year.
- (2) If there is not an amount published in April for the applicable geographic area, the percentage change shall be the percentage change in the amount published for March of that calendar year and March of the immediately preceding calendar year

The percentage change shall be rounded to the nearest one-tenth of 1 percent.

9.64.030 General applicability and exemptions.

This chapter shall apply to all mobilehome parks, mobilehome park owners, mobilehome residents and mobilehomes in mobilehome parks within the City of National City, unless otherwise exempted by state law or the provisions of this chapter.

This chapter shall not apply to leases for a term exceeding one year which are exempted by California Civil Code Section [798.17](#), so long as such leases contain all the required provisions for exemption, including a statement in the first sentence of the first paragraph, in at least 12 point type or capital letters, giving notice to the mobilehome resident that, by entering into the lease, the rent control provisions of this ordinance will be automatically superseded by the lease provisions regarding rent and rent increases.

9.64.040 Retroactivity and rent rollback

This ordinance is retroactive to July 1, 2022 and any rent increases occurring on or after July 1, 2022 shall be in conformance with this ordinance.

9.64.050 Annual Permissive Rent Increases and Notices of CPI

A. Subject to subdivision (B), of this section management shall not over the course of any 12 month period, increase the gross rental rate for a tenancy in a mobile home park more than 3 percent plus the percentage change in the Consumer Price Index, or 5 percent, whichever is lower, of the lowest gross rental rate charged for tenancy at any time during the 12 months prior to the effective date of the increase.

B. If the same homeowner maintains a tenancy over any 12 month period, the gross rental rate for the tenancy shall not be increased in more than two increments over that 12-month period, subject to the other restrictions of this chapter governing gross rental rate increase.

C. For a new tenancy in which no homeowner from the prior tenancy remains in lawful possession of the mobile home space, management may establish the initial rental rate not subject to subdivision (A). Subdivision (A) shall be applicable to subsequent increases after that initial rental rate has been established.

D. Management shall provide notice of any increase in the rental rate, pursuant to subdivision (a), to each homeowner in accordance with Civil Code Section 798.30.

9.64.060 Mobilehome residents right of refusal

A mobilehome resident may refuse to pay any increase in rent which is in violation of the chapter. Such refusal to pay shall be a defense in any action brought to recover possession of a mobile home space or to collect a rent increase.

9.64.070 Retaliatory eviction

In any action brought to recover possession of a mobile home or mobile home space, the court shall consider as grounds for denial any violation of this chapter. Further the determination that the action was brought in retaliation for the exercise of any rights conferred by this chapter shall be grounds for denial.

9.64.080 Civil remedies.

A. Civil Action. Any person who demands, accepts, receives or retains any payment of rent in excess of the maximum rent allowable by this chapter shall be liable in a civil action, including unlawful detainer, to the person upon whom the demand was made or from whom the rent was accepted in an amount of up to triple the amount of such improperly collected rent, and for such reasonable attorney's fees and costs as may be determined by the court.

9.64.090 Criminal remedies

Any person committing a violation of this chapter shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under the provision of this chapter shall be punished by a fine of not more than \$1,000 or by imprisonment in the county jail for a period of six months in jail or by both such fine or imprisonment. The following nonexclusive acts, without limitation due to enumeration, shall constitute a criminal violation of this chapter, including the owner of a park if done by the owner's agent with the knowledge and consent of the owner:

- A. Knowingly demanding, accepting or retaining any rent in excess of the amount fixed by this chapter.

- B. Knowingly commencing, or threatening to commence, or maintain an eviction or unlawful detainer proceeding against a resident to for the failure to pay a rent in excess of the amount fixed pursuant to this chapter.

9.64.100 Severability

It is the intent of the City Council of the City of National City to supplement applicable state and federal law and not to duplicate or contradict such law, and this Ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of National City hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

9.64.110 Sunset Provision

This Chapter shall remain in effect for only two years after its effective date and as of that date is repealed.

SECTION 3. Environmental Determination

The City Council finds that the adoption and implementation of this ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the ordinance may have a significant effect on the environment, because this ordinance preserves the status quo and the ability of tenants/mobilehome owners to occupy their rental spaces.

SECTION 4. This Ordinance shall take effect and be enforced thirty (30) days following its adoption by the City Council.

SECTION 5. The City Clerk shall certify to the adoption of this Ordinance and shall publish in accordance with the law.

INTRODUCED at a regular meeting of the City Council of the City of National City, held on this ___ day of _____, 2022

PASSED and ADOPTED this _____ day of _____, 2022.

Alejandra Sotelo-Solis, Mayor

ATTEST:

Luz Molina, City Clerk

APPROVED AS TO FORM:

Barry J. Schultz, Interim City Attorney