

CONTRACT FOR PROJECT MANAGEMENT SERVICES
between
SAN DIEGO CONVENTION CENTER CORPORATION, INC.
and
CB URBAN DEVELOPMENT
CONTRACT NO. 10-1608-E

This Contract is entered into on May 19, 2010, by and between the SAN DIEGO CONVENTION CENTER CORPORATION, INC. (“Corporation”), a California nonprofit corporation with primary offices located at 111 West Harbor Drive, in San Diego City and County, California and CB URBAN DEVELOPMENT, a sole proprietorship, with primary office located at 14668 Encendido, San Diego, CA 92127 (“Contractor”), each individually referred to herein as a “party” or collectively as the “parties”.

RECITALS

WHEREAS, Corporation operates and manages the San Diego Convention Center (the “Center”); and,

WHEREAS, Corporation issued a Request For Qualifications #FY10-20 for the provision of Project Management Services for Phase III San Diego Convention Center Expansion Project; and,

WHEREAS, Contractor is engaged in the business of providing such consulting services and responded to the RFQ;

NOW THEREFORE, in consideration of the mutual covenants and conditions herein, the parties agree as follows:

SECTION 1. SCOPE OF SERVICES/PROJECT EXECUTIVE

101. **Scope and Nature of Services.**

Under the direction of Corporation’s President & CEO, and working in association with San Diego Unified Port District staff, Contractor shall serve as lead Project Manager and provide professional services (“Services”) to assist the Corporation in managing an 18-24 month Entitlement, Environmental Impact Review (EIR) and California Environmental Quality Act (CEQA) processes for a third phase expansion of the San Diego Convention Center (“Expansion Project”). Contractor shall provide the Services including but not limited to:

- A. Conduct regular meetings with Corporation, consultants, and other agencies as required;

- B. Assist the Corporation in processing all plans for the Expansion Project including EIR, California Coastal Commission, Port of San Diego, etc;
- C. Assist in the selection and management of all consultants including scope of work, lines of communication, authority and responsibility;
- D. Assist in the establishment and oversight of detailed budget and project scope for Entitlement, EIR and CEQA process;
- E. Assist in the implementation of all external communication regarding the Expansion Project;
- F. Meet with San Diego Unified Port District, California Coastal Commission and other agencies and assess environmental impact report (EIR);
- G. Assist in analyzing project financing for an integrated expansion and waterfront hotel;
- H. Manage relationships with community and environmental organizations regarding the Expansion Project;
- I. Other related services that would enable Corporation to complete an 18-24 month entitlement pre-development process.

Corporation understands that Contractor is a member of the State Bar of California and is of counsel to the law firm of Luce, Forward, Hamilton & Scripps LLP in San Diego, California. Notwithstanding the foregoing, the parties agree that the scope of services under this agreement does not include legal services of any kind or nature for which California State Bar membership is required. Neither the Corporation nor any employee or representative thereof will request that the Contractor perform legal services hereunder, it being understood that any such services would require a separate engagement letter between Corporation and Luce, Forward, Hamilton & Scripps LLP. Further, Corporation and Contractor agree that Corporation will separately provide for any and all legal services that may be necessary or desirable in connection with the Corporation's role in the Expansion Project. Finally, Corporation agrees it will not raise the facts and circumstances of the services provided hereunder to disqualify Luce, Forward, Hamilton & Scripps LLP from accepting representation of a third party adverse to the Corporation pursuant to Rule 3-310(C) and (E) of the California Rules of Professional Conduct, except as to matters related to the Expansion Project.

SECTION 2. TERM AND TERMINATION

All services required pursuant to this Contract shall commence on May 19, 2010 and shall continue until completion of Services or until terminated. Either party may terminate this Contract by giving ten (10) days written notice to the other party.

If this Contract is terminated for any reason, Corporation shall not be liable to Contractor for any damages, claims, losses, or any other amounts, except those amounts due for any Services provided prior to the notice of termination.

SECTION 3. FINANCIAL

301. **Total Compensation; Fees for Services.** The maximum total compensation, including fees and expense reimbursements, payable under this contract shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000).

The hourly rate payable for services performed shall be as follows:

Charles E. Black	\$350.00 per hour
------------------	-------------------

302. **Expense Reimbursement.** Corporation shall reimburse Contractor the actual amount (with no markup) for the following expenses incurred in performing the Services: photocopying, postage, long distance telephone charges and travel (pre-approved by Corporation).

303. **Method of Payment.** Contractor shall submit itemized monthly invoices to the San Diego Convention Center Corporation, Attn: Carol Wallace. Invoices shall (1) reference this contract number 10-1608-E; and (2) include a written description of work performed and time spent. Invoices approved by Corporation shall be paid within thirty (30) days of receipt. Corporation shall promptly notify Contractor of any disputed or disallowed charges for time or expenses.

304. **Billing Records.** Contractor shall maintain full and complete records of the time spent providing the Services and receipts for all expenses billed to the Corporation. Such records shall be retained for not less than three (3) years following expiration or termination of this Contract and provided to Corporation within five (5) business days following a written request.

305. **Funding Contingency.** Corporation's fiscal year is the period between July 1 of each calendar year and June 30 of the succeeding calendar year. Corporation's continued obligation to make payments under this Contract, beyond the current fiscal year, is contingent upon the availability of sufficient funding in each subsequent fiscal year(s).

SECTION 4. INSURANCE; INDEMNIFICATION

401. **Insurance.** Contractor shall procure and maintain all insurance required by law and good business practices.

402. **Indemnification.** Contractor shall indemnify, hold harmless and defend the Corporation, City of San Diego, San Diego Unified Port District, and their respective members, officers, directors, agents and employees from and against any and all

liabilities, damages, actions, costs, losses, claims and expenses (including reasonable attorneys fees), arising out of, caused by or resulting from, in whole or in part, any act, omission, negligence, fault or violation of law or ordinance, associated with Contractor's performance of this Contract, and any transactions arising out of or related to this Contract or performance of the Services herein. The effect and application of this indemnification provision shall survive the termination or expiration of this Contract.

SECTION 5. GENERAL PROVISIONS

501. **Independent Contractor Status.** Contractor is and shall remain an independent Contractor. Neither Contractor nor its agents or employees shall act as officers, agents, or employees of Corporation. Contractor has no authority to assume or create any commitment or obligation on behalf of Corporation, or to bind Corporation in any manner.

502. **Assignment; Subcontracting.** Notwithstanding Section 508. below, Contractor shall not assign or transfer any interest in this Contract, whether by assignment or novation, without the prior written consent of Corporation; and any purported assignment by Contractor, without prior written consent, shall be null and void, and constitute a material breach. Claims for money due or to become due to Contractor from Corporation pursuant to this Contract may be assigned to a bank, trust company, or other financial institutions, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to Corporation.

Except as specifically provided in this Contract, no performance required of Contractor herein may be subcontracted without Corporation's prior written approval.

503. **Ownership of Materials and Documents.** Any and all materials and documents prepared by the Contractor shall be the property of the Corporation from the moment of their preparation, and the Contractor shall deliver such materials and documents to the Corporation whenever requested to do so by the Corporation. However, the Contractor shall have the right to make duplicate copies of such materials and documents for its own file or for other purposes as may be authorized in writing by the Corporation.

504. **Confidential Information; Non-Disclosure.**

A. Corporation has and will develop, compile, and own certain proprietary techniques and confidential information that have great value in its business (said techniques and information are referred to in this Contract collectively as Confidential Information). Confidential Information includes the designs, plans, reports, investigations, materials, and documents prepared or acquired by the Contractor pursuant to this Contract, and all such information that has or could have commercial value or other utility in the business in which the Corporation is engaged. Confidential Information also includes all information of which the unauthorized disclosure could be detrimental to the interests of the Corporation.

B. Confidential Information shall not include (i) information which is currently in or becomes part of the public domain; (ii) information which Contractor documents that Contractor had in his/her possession prior to its disclosure hereunder by the Corporation; (iii) information which Contractor rightfully receives, without any restriction on disclosure or use, from a third party that is not restricted as to the dissemination of such information or materials; (iv) information which Contractor can document that he/she independently developed, and (v) information that could reasonably be obtained through sources available to persons not having access to information to which the Corporation has restricted access.

C. Contractor acknowledges and agrees that during Contractor's business relationship with the Corporation, he/she will hold in trust, keep confidential, and not disclose to any third party or make any use of the Confidential Information of the Corporation, except for the benefit of the Corporation and in the course of performing Contractor's duties under this Contract. Contractor acknowledges and agrees that the unauthorized disclosure of Confidential Information of the Corporation may be highly prejudicial to the Corporation's interests.

D. Contractor's obligations under this Section 504 shall survive for a period of three years following the termination of this Contract.

505. **Conflict of Interest.** During the term of this Contract, Contractor shall not perform Services of any kind for any person or entity that would conflict with the Services provided herein, without the prior written consent of the Corporation. By executing this Contract, Contractor warrants and represents that it does not, nor shall it, represent any client whose interests are adverse or hostile to the Corporation. Corporation shall have the right to terminate this Contract, effective immediately, upon determining a conflict exists.

This contract may be immediately terminated by the Corporation if Contractor employs an individual who, within twelve months immediately preceding such employment, in his/her capacity as a Corporation employee, participated in negotiations with or otherwise had an influence on the selection of the Contractor.

506. **Standard of Care; Licenses.** Contractor shall perform the Services in a skillful and competent manner. Contractor shall be responsible to Corporation for any errors or omissions in its performance of the Services. Contractor represents and warrants to Corporation that it has in effect, and shall retain, throughout the Term hereof, all licenses, permits, qualifications and approvals of whatever nature are required to practice its profession.

507. **Equal Opportunity Programs.** Contractor and each subcontractor, if any, shall fully comply with all applicable federal and state laws and regulations prohibiting discriminatory employment practices.

Contractor acknowledges that the Corporation seeks to promote employment and

business opportunities for local residents and firms on all Corporation contracts. To the extent legally possible, Contractor agrees to solicit applications for employment and bids and proposals for subcontracts, for work associated with this Agreement, from local residents and firms. Contractor agrees to hire qualified local residents and firms whenever feasible.

508. **Binding on Successors and Assigns.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto and each of their respective successors and assigns.

509. **Subordination.** This Contract and the Corporation's obligations herein shall be subordinate to any obligations (including leases deeds of trusts, mortgages, and bonds) created or given by Corporation with respect to the Center. Contractor shall, upon request, give and execute written acknowledgements of this subordination provision to the holder(s) of any such obligations.

510. **Force Majeure.** The obligation of any party to perform any acts herein shall be suspended during the period such performance is prevented by acts of God; war; riot; invasion; fire; accident; strike or walkout; government interference, regulation, appropriation, or rationing; or by inability to secure goods because of the foregoing conditions. The obligation to perform shall resume immediately upon cessation of the force majeure condition(s).

511. **Notices.** Any notice required by this Contract shall be deemed to have been sufficiently communicated when (1) personally delivered or (2) on the second (2nd) business day after mailing by overnight delivery, postage prepaid:

to Corporation addressed:

President and Chief Executive Officer
San Diego Convention Center
Corporation, Inc.
111 West Harbor Drive
San Diego, California 92101-7899

or to Contractor addressed:

Charles E. Black
President & CEO
CB Urban Development
14668 Encendido
San Diego, CA 92127

512. **Modifications and Amendments.** Any amendment or modification of this Contract shall be valid only when written and signed by each party.

513. **Partial Invalidity.** If any term or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

514. **Applicable Law.** This Contract is made and entered into in the State of California and its interpretation and enforcement and the construction of its terms shall be governed by California law.

515. **Attorneys' Fees.** If legal action, including arbitration or action for declaratory relief, is brought by either party to interpret or enforce any provisions of this Contract, the prevailing party shall be entitled to an award of reasonable attorneys' fees and other costs incurred, the award of which may be determined in the same action or a separate action brought for that purpose.

516. **Singular, Plural, and Gender.** As used herein, the singular shall include the plural and the masculine shall include the feminine or neuter.

517. **Headings.** All section and paragraph headings are for reference and convenience only and do not alter, amend, explain, interpret or otherwise affect the terms and conditions of this Contract.

518. **Entire Agreement.** This Contract represents the sole and entire agreement between Corporation and Contractor, and supersedes all prior negotiations, representations, agreements, arrangements or understandings, either oral or written, between or among the parties hereto, relating to the subject matter of this Contract.

IN WITNESS WHEREOF, the parties hereto have duly executed duplicate originals of this Contract effective the date set forth on the first page hereof.

CB Urban Development

San Diego Convention Center
Corporation, Inc.

By _____
Charles E. Black
Its: President

By _____
Carol C. Wallace
Its: President and CEO

Approved as to form and legality:

Theresa McAteer
General Counsel
San Diego Convention Center Corporation