

OLD TOWN SAN DIEGO CHAMBER OF COMMERCE

STANDARD PROFESSIONAL SERVICES AGREEMENT
WITH: RON LACHANCE

FOR: HARNEY STREET MARKET MANAGER SERVICES - RFP 2018-1

THIS AGREEMENT is made and entered into by and between THE OLD TOWN SAN DIEGO CHAMBER OF COMMERCE, a business improvement district, hereinafter referred to as “Chamber,” and RON LACHANCE hereinafter referred to as “Contractor.”

1. CONTRACTOR’S SERVICES. Contractor agrees to perform, during the term of this Agreement, the tasks, obligations and services set forth in the “Scope of Service” attached to and incorporated into this Agreement as Exhibit “A.” Performance will be measured as outlined under Section 22 of this Agreement.
2. TERM OF AGREEMENT. The term of this Agreement shall be from the effective date pursuant to Section 28 of this Agreement.
3. PAYMENT FOR SERVICES. The Chamber shall pay for the services performed by Contractor pursuant to the terms of this Agreement, the compensation set forth in the “Schedule of Compensation” attached to and incorporated into this Agreement as Exhibit “B.”
4. TIME FOR PERFORMANCE. Contractor shall not perform any work under this Agreement until (a) Contractor furnishes proof of insurances as required under Section 7 of this Agreement; and, (b) Chamber gives Contractor a written and signed Notice to Proceed.
5. DESIGNATED REPRESENTATIVE(S). RON LACHANCE shall be the designated Contractor Representative, and shall be responsible for job performance, negotiations, contractual matters and coordination with the Chamber. Contractor Representative shall actually perform or provide immediate supervision of Contractor’s performance of, the Scope of Service.
6. HOLD HARMLESS. To the fullest extent permitted by law, Contractor shall indemnify, defend (at Contractor’s sole expense, with legal counsel approved by the Chamber) and hold harmless the Old Town San Diego Chamber of Commerce members of its Board, officers, agents and employees (hereinafter, “Indemnitees”), from and against all loss, damage, cost, expense, liability, claims, demands, suits, reasonable attorneys’ fees and judgements arising out of or in any manner related to this Agreement. This

indemnification includes, but is not limited to, tort liability to a third person for bodily injury and property damage.

Contractor agrees that this obligation to indemnify, defend and hold harmless extends to liability and/or claims arising from Indemnitees' active or passive negligence.

Notwithstanding the foregoing, nothing herein shall be construed to require Contractor to indemnify an Indemnitee from any claim arising from the sole negligence or willful misconduct of that Indemnitee.

The duty to defend referenced herein is wholly independent from the duty to indemnify, arises upon written notice by the Chamber to Contractor of a claim within the potential scope of this indemnification provision, and exists regardless of any determination of the ultimate liability of Contractor, Chamber or any Indemnitee.

7. INSURANCE. Without limiting its obligations pursuant to Section 6 of this Agreement, the Contractor shall procure and maintain, at Contractor's own cost and expense and for the duration of this Agreement, insurance coverage as set forth in "Insurance Requirements" attached to and incorporated into this Agreement as Exhibit "C."
8. INDEPENDENT CONTRACTOR STATUS. Chamber and Contractor agree that Contractor, in performing the services herein specified, shall act as an independent contractor and shall have control of all work and the manner in which it is performed. Contractor shall be free to contract for similar services to be performed for other employers while under contract with the Chamber. Contractor is not an agent or employee of the Chamber and is not entitled to participate in any pension plan, insurance, bonus, worker's compensation or similar benefits the Chamber provides for its employees. Contractor shall be responsible to pay and hold the Chamber harmless from any and all payroll and other taxes and interest thereon and penalties therefor which may become due as a result of services performed hereunder.
9. NON-APPROPRIATION OF FUNDS. Payment due and payable to Contractor for current services in within the current budget and within an available, unexhausted and unencumbered appropriation of the Chamber. In the event the Chamber has not appropriated sufficient funds for payment of Contractor services beyond the current fiscal year, this Agreement shall cover only those costs incurred up to the conclusion of the current fiscal year.
10. ASSIGNMENT. This agreement is for the specific services with the Contractor as set forth herein. Any attempt by Contractor to assign the benefits or burdens of this Agreement without written approval of the Chamber shall be prohibited and shall be null and void; except that Contractor may assign payments due under this Agreement to a financial institution.

18. RIGHT TO UTILIZE OTHERS. Chamber reserves the right to utilize others to perform work similar to the services provided hereunder.
19. MODIFICATION OF AGREEMENT. This Agreement may not be modified, nor may any of the terms, provisions or conditions be modified or waived or otherwise affected, except by a written amendment signed by all parties hereto.
20. WAIVER. If at any time one party shall waive any term, provision or condition of this Agreement, either before or after any breach thereof, no party shall thereafter be deemed to have consented to any future failure of full performance hereunder.
21. COVENANTS AND CONDITIONS. Each term and each provision of this Agreement to be performed by Contractor shall be construed to be both a covenant and a condition.
22. PERFORMANCE MEASUREMENT. Chamber will evaluate performance based on the Scope of Services and provide feedback as needed. If there is failure to meet the expectations of the Scope of Services the Chamber will take corrective action on the Manager. If there is failure to meet expectations after corrective action is taken, the Chamber reserves the right to terminate the agreement as outlined in Section 23 of this Agreement.
23. RIGHT TO TERMINATE. Chamber may terminate this Agreement at any time, with or without cause, in its sole discretion, with thirty-days ('30-days') written notice.
24. EFFECT OF TERMINATION. Upon termination as stated in Section 23 of this Agreement, Chamber shall be liable to Contractor only for work satisfactorily performed by Contractor up to and including the date of termination of this Agreement, unless the termination is for cause, in which event Contractor need to be compensated only to the extent required by law.
25. GOVERNING LAW. The terms of this Agreement shall be interpreted according to the laws of the State of California. If litigation arises out of this Agreement, then venue shall be in the Superior Court of San Diego County.
26. LITIGATION FEES. If Litigation arises out of this Agreement for the performance thereof, then the court shall award costs and expenses, including reasonable attorney's fees, to the prevailing party. In awarding attorney's fees, the court shall not be bound by any court fee schedule but shall award the full amount of costs, expenses and attorney's fees paid or incurred in good faith.
27. INTEGRATED AGREEMENT. This Agreement represents the entire agreement between Chamber and Contractor regarding the subject matter hereof, and constitutes a complete and exclusive statement of the terms of the agreement between the parties with respect

to the subject matter. No verbal agreement or implied covenant shall be held to vary the provisions of this Agreement. This Agreement shall bind and inure to the benefit of the parties to this Agreement and any subsequent successors and assigns.

28. EFFECTIVE DATE. The effective date of this Agreement is the date it is signed on behalf of the Chamber. This Agreement shall remain in full force and effect for five (5) years or until amended or terminated; provided, that the indemnification and hold harmless provision shall survive the termination. The Chamber reserves the option to renew or extend the agreement for up to two (2) additional years.

OLD TOWN SAN DIEGO CHAMBER OF COMMERCE

By: Sunny Lee
Sunny Lee, Executive Director

11/20/2018

Date

(CONTRACTOR)

By: Ron LaChance
(CONTRACTOR)

11/20/2018

Date

EXHIBIT A

OLD TOWN SAN DIEGO CHAMBER OF COMMERCE

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SCOPE OF SERVICE

General

1. Curate an Artisans Market that provides quality items desired by the Old Town Chamber of Commerce in accordance with all State, County and City of San Diego requirements and regulations.
2. Abide by all Federal, State and local laws, rules and regulations, and all City policies and directions.
3. Keep, update and maintain weekly auditable records of vendors, sales and revenue in an orderly fashion accessible for inspection by the Chamber.
4. Adhere to specific security measures as denoted by the City of San Diego Police Department (SDPD) and the City of San Diego Fire Department (SDFD). Each end of the Market (at San Diego Avenue and Congress Street) must be blocked by barricades such that vehicles cannot enter the Market during operating hours.
5. Follow vendor fee collection practice as outlined by Chamber staff
6. Provide management of the weekly Market operations as required by Chamber, including but not limited to supervision of Market staff (as hired and paid for by Chamber), placement of vendors, collection of fees, interaction and coordination with local and state officials, and preparation of deposit. Contractor responsibilities include but are not limited to reviewing vendor applications, communication with interested and current vendors, providing information and documentation to permitting agencies, maintenance of Market equipment, and ongoing coordination with Chamber and its staff.
7. Deposits will be delivered to the Chamber office each Tuesday between 11:00 a.m. and 2:00 p.m. Deposits will be the full amount of funds earned during Market.
8. Prevent unauthorized vendors and/or local merchants from participation in market without prior specific approval of Chamber's market administrator.
9. Instruct any persons attempting to film within the Market that the Chamber does not allow filming within the Market. Failure to abide by this instruction should be reported to the SDPD staff on site (if applicable).
10. **Reports and Records.** Contractor shall prepare and submit a monthly accounting report detailing weekly vendor attendance, sales, fees and any expenses incurred on behalf of the Market. The report shall be delivered to Chamber via email no later than 10 days following the last Sunday of the applicable reporting period. (Example: the report for January shall be

delivered no later than February 7th.) Time is of the essence with respect to the date of the submission of the report so as to allow the Chamber to timely pay amounts due based on any report within the time specified by the contract.

Market Specific

1. The Market shall include approximately 30-50 vendors, of which 75 percent sell art in some fashion and 25 percent sell goods, services and prepared foods. The Manager shall provide the Chamber with a list of vendors, their contact information and their certifications on a quarterly basis to ensure compliance with the required threshold proportions.
2. Operate the Market on Saturdays and Sundays from 9:00 a.m. to 4:00 p.m. as weather permits at a location determined by the Chamber (currently on Harney Street between San Diego Avenue and Congress Street).
3. Close streets and turning lanes not less than 1 hour prior to Market operation time using appropriate signage and physical mechanisms as prescribed by the prevailing authorities.
4. Open all streets and passageways, including the removal of signage and physical mechanisms, no later than two (2) hours after the close of each Market event.
5. Secure storm drain curtains during all Market activities each week.
6. Ensure trip guards are used with all cables, cords, wires and conduits placed upon or running over ground.
7. Maintain and make available a Community Outreach Table to be used by Old Town San Diego Members or Chamber staff.
8. Provide portable generators and related equipment capable of providing adequate electrical power to light vendors' booths after sundown, as needed.
9. Perform all janitorial duties including collection/disposal of trash during and after each Market event.

CHAMBER RESPONSIBILITIES:

Duties. Chamber shall be responsible for the following:

1. Prepare and submit all local, county and state permit applications, reports and fees required
2. Properly account for and maintain Market revenues and ensure adequate funds are available to pay Market-related fees and costs, including but not limited to fees for permitting, inspection, and Direct Marketing, operations costs and equipment in a timely manner.
3. Marketing and advertising the Market to the community and engaging local businesses in the support and patronage of the Market.

Originals of all documents prepared by the Chamber, and on behalf of the Chamber, including permit applications and fees paid, shall be maintained by the Chamber and kept on file in the Chamber office.

EXHIBIT B

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SCHEDULE OF COMPENSATION

1. METHOD OF PAYMENT. Payment for all work performed by Contractor pursuant to the terms of this Agreement shall be made on the basis of the per employee or hourly rates (as requested in Chamber's RFP) set forth in Contractor's proposal.
2. ADDITIONAL FEES. Any remaining fees not previously detailed in the above as agreed to by the Chamber.
3. BILLING. The fee shall be paid to the Contractor no later than 10 days following acceptance of the Contractor's monthly accounting report for any given monthly period. If Contractor fails to submit the report, timely payment may not be received within the month that the report was submitted.

Contractor shall submit an invoice to the Chamber at the following address:

Old Town San Diego Chamber of Commerce
Attention: Sunny Lee, Executive Director
2415 San Diego Avenue, Suite 104
San Diego, CA 92110

The invoice submitted pursuant to this paragraph shall show the Chamber Agreement Number, the dates on which the services were performed, a description of the services performed, actual out-of-pocket expenses incurred in the performance of the services and such other information as the Chamber may reasonably require.

4. TIME OF PAYMENT. Payment to contractor shall be made within ten (10) days following the receipt of the invoice.
5. MAXIMUM COMPENSATION. Contractor shall complete all the work and tasks described in Exhibit A for a total amount of compensation that does not exceed 45% of profit of Market which amount includes all out-of-pocket expenses.

EXHIBIT C

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INSURANCE REQUIREMENTS

A. **Policy Requirements.**

Contractor shall submit duly executed certificates of insurance for the following:

1. Contractor will provide a valid ACORD certificate of insurance reflecting policies that are in effect for the duration of the contract for each of the following coverage types: a) Commercial General Liability Insurance with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of at least Two Million Dollars (\$2,000,000); b) Automobile Liability Insurance with a limit of at least One Million Dollars (\$1,000,000) per occurrence; c) Worker's Compensation Insurance with Employer's Liability coverage with a limit of at least One Million Dollars (\$1,000,000) if applicable. Contractor shall name Chamber as additional insured for its management of the Market.
2. The Old Town San Diego Chamber of Commerce, members of its Board of Directors, officers, agents and employees will be named as an additional insured in an endorsement to the policy, which shall be provided to the Chamber.
3. Reserved.
4. Contractor shall provide the Chamber with at least thirty days prior written notice of any modification, reduction or cancellation of any of the Policies required in Paragraph A, or a minimum of ten days' notice for cancellation due to non-payment.
5. Chamber may increase the scope or dollar amount of coverage required under any of the policies described above or may require different or additional coverages upon written notice to Contractor.
6. If your insurance carrier charges an additional fee, you must include that amount in your project costs.