

**COOPERATIVE PROCUREMENT CONTRACT BETWEEN
THE CITY OF SAN DIEGO
AND
NIXON EGLI EQUIPMENT CO. FOR
WRITGEN AMERICA, INC. ROADWAY PAVING EQUIPMENT
6000021-25- O**

I. RECITALS

A. San Diego Municipal Code (SDMC) section 22.3208 authorizes the City of San Diego, a municipal corporation (City), to use a cooperative procurement contract awarded by another agency where the City's Purchasing Agent certifies in writing that the cooperative procurement contract is in the City's best interests, to the City's economic advantage, and the agency's contract was awarded using a process that complies with the policies, rules, and regulations developed and implemented by the City Manager.

B. Sourcewell (Agency) issued a Request for Proposal (RFP) Number 060122 for Roadway Paving Equipment by posting the solicitation on Agency's website (Sourcewell Procurement Portal) at least ten (10) days before the proposal was due.

C. On August 10, 2022, based on the results of the competitive process, Agency awarded a contract with Wirtgen America, Incorporated and executed the RFP Number 060122-WAI for Roadway Paving Equipment Contract with Wirtgen America, Inc., identified as Sourcewell RFP Number 060122-WAI, (cumulatively referred to as the "Agency Agreement"), attached as Exhibit 1; and

D. On November 6, 2024, The City's Purchasing Agent certified in writing that the Agency Agreement meets the requirements set forth in SDMC section 22.3208.

E. Nixon Egli Equipment Co. (Contractor) has agreed to provide to City the same pricing offered to Agency for the procurement of Roadway Paving Equipment consistent with the terms and conditions in the Agency Agreement except as modified herein. The parties agree and acknowledge that no consulting services will be procured under this Contract as defined in SDMC section 22.3003.

F. As of the date of execution of this Contract, Contractor is known and understood to be an authorized distributor of Wirtgen America Inc. and is the City's authorized distributor for the purpose of this Contract. Wirtgen America Inc. represents that the authorized distributor for the City is Contractor, and that City must purchase the goods and services through Contractor. As allowed under the Contract Documents, which include the Agency Agreement, Contractor will provide the goods and services to be procured under this Contract. Pursuant to the Agency Agreement at Article Two Section C. Dealers, Distributors, and/or Resellers, authorized distributors are allowed. Contractor represents it is authorized to execute and sign this Contract as an authorized distributor of Wirtgen America Inc. for the City. As an authorized distributor of Wirtgen America Inc., Contractor is authorized to utilize the Sourcewell RFP Number 060122-WAI Contract and its pricing to meet the needs of the City.

II. GENERAL PROVISIONS

In consideration of the above recitals and mutual covenants and conditions set forth in this Contract, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, City and Contractor hereby agree to the terms and conditions as set forth in the Agency Agreement with the exception of the following modifications:

1. Incorporation. This Contract shall fully incorporate the Recitals which the parties agree are true and correct.

2. Effective Date. This Contract is effective on the last date that this Contract is signed by City and Contractor and approved by the City Attorney through August 1, 2026, with up to an additional one (1) year option period, which may be exercised at City's sole and absolute discretion subject to the restrictions in San Diego Charter section 99 and provided that Agency exercises its one (1) year option within its Agency Agreement. City, through the Mayor or his designee, may exercise the option by written notice to Contractor sent thirty (30) days prior to the expiration of the current term. Contractor may not decline the option to renew. The total duration of this Contract, including the exercise of any options under this section, shall not exceed five (5) years without approval of the City of San Diego Council by Ordinance.

3. Early Termination. Contractor must provide written notice within ten (10) calendar days of the date in which the Agency Agreement is terminated to the Contract Administrator identified in Section III, below. Such written notice must explain the basis for termination and the date upon which the termination is effective. Early termination of the Agency Agreement by Agency or Wirtgen America Inc., or failure by Agency to exercise an option to extend the Agency Agreement, shall not in any way affect the existence of this Contract.

4. Compliance with Controlling Laws. Contractor shall comply with all applicable local, state, and federal laws and regulations. In addition, Contractor shall comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations.

5. Governing Law. The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

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

7. Modifications. The modifications described in Exhibit 2, which is attached hereto and incorporated herein by reference, shall affect only the page(s) and section(s) and terms and conditions referred to therein. All other terms and conditions of the Agency Agreement shall be in full force and effect as to City and Contractor as incorporated in this Contract.

III. CONTRACT ADMINISTRATOR

1. Contract Administrator. The Department of General Services, Fleet Operations Division (Department) is the Contract Administrator for the purposes of this Contract. Contractor shall provide the Goods and Services under the direction of a designated representative of the Department as follows:

Fleet Operations Division
Attention: Rex Ragucos
2740 Caminito Chollas
San Diego, CA 92101
(619) 525-8535
rexragucos@sandiego.gov

2. Notices. Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the Purchasing Agent. Proper notice shall be effective on the date of personal delivery or five (5) days after deposit in the United States postal mailbox. Notices shall be sent to:

Purchasing and Contracting Department
Attention: Oscar Garcia
1200 3rd Avenue - Suite 200
San Diego, CA 92101
OLGarcia@sandiego.gov
(619) 236-6037

IV. COMPENSATION

1. City shall pay Contractor for the goods or services provided in accordance with this Contract in an amount not to exceed \$3,000,000. Contractor is not obligated to provide goods or services in excess of this amount, and does so at its own risk, unless this Contract is amended in writing duly executed by City and Contractor increasing this not-to-exceed amount.

2. Annual Appropriation of Funds. Contractor acknowledges that the contract term may extend over multiple City fiscal years, and agrees that work and compensation under this Contract is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. City may terminate the Contract if sufficient funds are not duly appropriated and authorized for any given fiscal year, or if funds appropriated and authorized for this Contract are exhausted before the fiscal year concludes. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by the City Council.

V. CONTRACT

1. Contract Documents. This Contract consists of this Contract and its Exhibits; the Sourcewell's Solicitation RFP Number 060122; the Wirtgen America Inc.'s Response to Solicitation, including all Specifications and the Proposer's Affidavit and Assurance of Compliance; and the Agency Agreement (all of which include current pricing information and

any pricing sheets, and any properly executed written amendment(s) to the Agency Agreement), which are attached as Exhibits hereto and incorporated by reference (collectively, "Contract Documents"). Pursuant to Article 4 "PRODUCT AND PRICING CHANGE REQUESTS" of the Agency Agreement, a fully executed Sourcewell Price and Product Request Form will be an amendment to the Agency Agreement and be incorporated by reference into the Agency Agreement; when this occurs, the Contract between City and Contractor must be amended in writing by and through their authorized officers to incorporate the fully executed Sourcewell Price and Product Request Form into the Contract between City and Contractor. These documents together contain all the terms and conditions of the Contract between City and Contractor.

2. Contract Interpretation. The Contract Documents completely describe the goods and/or services to be provided. Contractor shall provide any goods or services that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for or identified in the Contract Documents. Words or phrases which have a well-known technical or construction industry trade meaning and are used to describe goods or services will be interpreted in accordance with that meaning unless a different definition has been provided in the Contract Documents.

3. Precedence. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, City and Contractor will use the order of precedence as set forth below. The document in highest order of precedence controls. Inconsistent provisions in the Contract Documents that address the same subject, are consistent, and have different degrees of specificity, are not in conflict and the more specific language will control. The order of precedence from highest to lowest is as follows:

- 1st This Contract
- 2nd Agency Contract and any properly executed written amendment(s) to the Agency Contract
- 3rd Wirtgen America Inc.'s Response to Solicitation, including all Specifications and the Proposer's Affidavit and Assurance of Compliance
- 4th Agency's Solicitation and any Addenda

4. Counterparts. This Contract may be executed in counterparts which, when taken together, shall constitute a single signed original as though all parties executed the same page.

5. Public Agencies. Other public agencies as defined by California Government Code section 6500 may choose to use the terms of this Contract, subject to Contractor's acceptance. City is not liable or responsible for any obligations related to a subsequent agreement between Contractor and another public agency.

VI. CITY'S ADDITIONAL TERMS

1. Drug-Free Workplace Certification. Contractor shall comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into this Contract by reference.

2. ADA Certification. Contractor shall comply with the City's Americans with Disabilities Act Compliance/City Contracts requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference.

3. Non-Discrimination Ordinance. Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors, or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. Contracts between Contractor and any subcontractors or suppliers shall contain this language.

4. Compliance with the City's Equal Employment Opportunity Outreach Program (EOCP): Contractor shall comply with the City's EOCP requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a prime Contractor liable for any discriminatory practice of its subcontractors.

5. Compliance Investigations. Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in remedies being ordered against Contractor up to and including contract termination, debarment, and other sanctions.

6. Business Tax Certificate. Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate and to provide a copy to the City before any contract is executed.

7. Product Endorsement. Contractor shall comply with Council Policy 000-41 which requires that other than listing the City as a client and other limited endorsements, any advertisements, social media, promotions or other marketing referring to the City as a user of a product or service will require prior written approval of the Mayor or designee. Use of the City Seal or City logos is prohibited.

8. Noise Abatement. Contractor shall not operate, conduct, or construct within City's jurisdictional limits in violation of the City's Noise Abatement Ordinance codified in SDMC sections 59.5.0101 through 59.5.0301.

9. Contractor Standards. Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor

Standards may be considered a material breach of the Contract and may result in Contract termination, debarment and other sanctions.

IN WITNESS WHEREOF, this Contract is executed by City and Contractor acting by and through their authorized officers. Contractor agrees to comply with and be bound by the terms of this Contract as an authorized distributor of Wirtgen America Inc.

NIXON EGLI EQUIPMENT CO.

By: [Signature]
Nixon Egli Equipment Co., an authorized distributor of Wirtgen America, Inc.

Name: GREG SUMMOT

Title: VICE PRESIDENT

Date: 11/5/2024

THE CITY OF SAN DIEGO

By: [Signature]

Name: Claudia C. Abarca

Title: Director of Purchasing & Contracting

Date: November 7, 2024

Approved as to form this 13th day of November, 2024.

MARA W. ELLIOTT, City Attorney

By: [Signature]
Deputy City Attorney

Print Name: Markecia Simmons

EXHIBIT 1: AGENCY AGREEMENT

EXHIBIT 2: MODIFICATIONS TO THE AGENCY AGREEMENT

1. References. All references to “Sourcewell” in the Agency Agreement shall mean and be understood to be “City of San Diego”. All references to “Vendor” or “Supplier” in the Agency Agreement shall mean and be understood to be “Wirtgen America, Inc.” and “Nixon Egli Equipment Co.”. All references to “Authorized Dealer(s)”, “Authorized Distributor(s)”, or “Authorized Reseller(s)” in the Agency Agreement shall mean and be understood to be “Nixon Egli Equipment Co. ”.

2. Invoice Detail. Contractor’s invoice must be on Contractor’s stationary with Contractor’s name, address, and remittance address if different. Contractor’s invoice must have a date, an invoice number, a purchase order number, a description of the goods or services provided, and an amount due. Invoices must be emailed to:

Email: IOB-Fleet-AcctsPayable PWAcctsPayable@sandiego.gov

3. Delivery and Inspection. As described in the Contract Documents.

4. Warranty. As described in the Contract Documents.

5. Insurance. As described in the Contract Documents.

6. Indemnification; and Liability. As described in the Contract Documents.

7. Purchases under this Contract must comply with all applicable laws and regulations, including the City’s Transparent and Responsible Use of Surveillance Technology Ordinance requirements set forth in SDMC section 210.0101 et. seq.

8. The remaining portions of the Agency Agreement shall remain in full force and effect.

EXHIBIT 3: PRICING PAGES