

SERVICES AGREEMENT

BETWEEN THE

CITY OF SAN DIEGO



AND

HAWTHORNE MACHINERY CO.

**TO PROVIDE PARTS, TECHNICAL, AND REPAIR SERVICES
FOR CATERPILLAR ENGINES, GENERATORS AND
SWITCHGEARS**

SERVICES AGREEMENT

This Services Agreement (Agreement) is entered into by and between the City of San Diego, a municipal corporation (City), and Hawthorne Machinery Co. (Contractor).

RECITALS

City wishes to retain Contractor to provide parts, technical, and repair services for Caterpillar Co-Generation Engines (Co-Gen), Backup Generators, and associated Switchgears located at various Public Utilities Department facilities, as further described in the Scope of Services (Services), attached hereto as Exhibit A.

Contractor has the expertise, experience, and personnel necessary to provide the Services.

City and Contractor (collectively, the “Parties”) wish to enter into an agreement whereby City will retain Contractor to provide the Services.

This Agreement is exempt from competitive bidding requirements pursuant to San Diego Municipal Code (SDMC) section 22.3208(e) because the Purchasing Agent has certified that the award of a sole source contract is necessary under SDMC section 22.3016(a).

For good and valuable consideration, the sufficiency of which is acknowledged, City and Contractor agree as follows:

ARTICLE I CONTRACTOR SERVICES

1.1 Scope of Services. Contractor shall provide the Services to City as described in Exhibit A, Scope of Services, which is incorporated herein by reference.

1.2 Contract Administrator. The Public Utilities Department (Department) is the Contract Administrator for this Agreement. Contractor shall provide the Services under the direction of a designated representative of the Department as follows:

William Cursio, Interim Assistant Deputy Director
Wastewater Treatment and Disposal Division
9191 Kearny Villa Court
San Diego, CA 92123
wcurcio@sandiego.gov

1.3 General Contract Terms and Conditions. This Agreement incorporates by reference the General Contract Terms and Conditions, attached hereto as Exhibit B.

1.4 Submittals Required with the Agreement. Contractor is required to submit all forms and information delineated in Exhibit C before the Agreement is executed.

**ARTICLE II
DURATION OF AGREEMENT**

2.1 Term. This Agreement shall be for a period of five (5) years beginning effective on the date it is executed by the last Party to sign the Agreement. Unless otherwise terminated, this Agreement shall be effective when executed until completion of the Scope of Services. The term of this Agreement shall not exceed five years unless approved by the City Council by ordinance.

2.2 Effective Date. This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40.

**ARTICLE III
COMPENSATION**

3.1 Amount of Compensation. City shall pay Contractor for performance of all Services rendered in accordance with this Agreement in an amount not to exceed \$15,000,000.

**ARTICLE IV
WAGE REQUIREMENTS**

4.1 Wage Requirements. The Contract incorporates by reference the City's Wage Requirements, attached hereto as Exhibit D.

**ARTICLE V
CONTRACT DOCUMENTS**

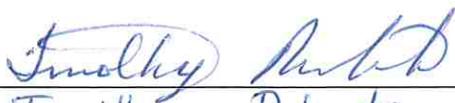
5.1 Contract Documents. This Agreement and its exhibits constitute the Contract Documents. The Contract Documents completely describes the goods and services to be provided.

5.2 Counterparts. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

IN WITNESS WHEREOF, this Agreement is executed by City and Contractor acting by and through their authorized officers.

CONTRACTOR

Hawthorne Machinery Co.

BY: 
Timothy Roberts
11/5/2021
DATE SIGNED

CITY OF SAN DIEGO
A Municipal Corporation

BY: 

Print Name:

Matthew Vespi
Chief Financial Officer

January 19, 2022
Date Signed

Approved as to form this 20 day of
January, 20 22.

MARA ELLIOTT, City Attorney

BY: 
Deputy City Attorney

**EXHIBIT A
SCOPE OF WORK**

A. OVERVIEW

The City of San Diego (City), Public Utilities Department (PUD), Wastewater Treatment and Disposal Division (WWTD), requires Hawthorne Machinery Co. (Hawthorne) to provide parts, technical, and repair services for Caterpillar Co-Generation Engines (Co-Gen), Backup Generators, and associated Switchgears located at various PUD facilities. The City is securing multiple levels of overhauling services for Gas Utilization Facility and back-up generators on an as needed basis throughout the term of the Agreement.

B. BACKGROUND

The City operates a Gas Utilization Facility (GUF) for the generation of electric power for internal and grid power generation from both the Point Loma Wastewater Treatment Plant (PLWTP) and the North City Water Reclamation Plant (NCWRP). At the GUF, methane gas is used to generate electrical power for the WWTD plant and selling back to the grid.

C. OVERHAULING AND REBUILDING SERVICES

Hawthorne will provide engine overhauling and rebuilding services as set forth in this Scope of Work. Hawthorne will be responsible for taking all required steps to provide this service which may include, but is not limited to, profiling, permitting, managing, meeting and conforming with federal, state and local regulations, recordkeeping, and reporting.

D. EQUIPMENT LOCATION

A listing of City locations covered under this Contract, City contact (name and phone number), equipment brand name/model and purpose is provided under Attachment A.

E. HAWTHORNE STANDARDS OF PERFORMANCE

Hawthorne shall perform all services required by this Contract in accordance with high professional standards prevailing in Hawthorne's field of work.

1. Unless otherwise required in the Scope of Work, all goods furnished shall be new and meet Original Equipment Manufacturer (OEM) standards.
2. Services performed and goods provided must be acceptable to the City, in strict conformity with all instructions, conditions, and terms of the Contract Documents and performed in accordance with the standards customarily adhered to by an experienced and competent professional using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California.
3. Where approval by the City, the City Mayor, or other representatives of the City is required, it is understood to be general approval only and does not relieve Hawthorne of responsibility for complying with all applicable laws, codes, regulations, and good business practices.

4. Hawthorne's performance of work and acceptability of equipment, materials, use of subcontractors, and efficient and effective means and methods of providing the Scope of Work described in this Contract will be subject to the satisfaction of the City. Performance standards include, but are not limited to:
 - a. Arrival at the designated time when providing Service.
 - b. Provide clear communication of service activities.
 - c. Professionally conduct all service activities described in this Contract.
 - d. Notify the City immediately of any equipment failure or accident leading to a Chemical Release.
5. Preparation and submittal of an accurate invoice in a legible and understandable format, with all supporting documentation and in a timely manner according to the requirements of this Contract. Invoices shall be submitted within thirty (30) days of the date of service.
6. All Core Charges must be returned within thirty (30) days after the City has returned the part for full credit consideration. Any parts the City returns that are not found to be in adequate condition for a full credit consideration, must have a written notice advising the City of the disposition within the thirty (30) day period detailing why any or all credit consideration was rejected. To assist the City in tracking the quantity count of items that may qualify for cores charges after Hawthorne assessment, the Core Charge Tracking Form must be completed at the time of pick up.

F. HAWTHORNE RESPONSIBILITIES

1. Hawthorne shall provide all tools necessary to complete the work specified under this Contract. Hawthorne shall have adequate and calibrated instrumentation and measuring equipment used for troubleshooting, repair, overhaul, and adjustment of the equipment associated with this Contract. Calibration shall be performed on an annual basis, or more frequently as required. All calibrations shall be documented.
2. Hawthorne shall submit to the Contract Administrator within thirty (30) days of award a list of equipment and most recent calibration certification(s).
3. All adjustments must be in accordance with the latest procedures provided by Caterpillar Engine Manufacturing Company. Operation and Maintenance (O & M) manuals to be used shall be the latest applicable edition provided by Caterpillar Engine Manufacturing Company.
4. A Laborer/Technician (LT), Service Technician (ST) and/or Service Engineer (SE) shall be on the premises in a timely manner depending on traffic and time of day. Workers shall be on site and working within four (4) hours hour after receiving a call from the Shift Supervisor. Hawthorne will only provide LIT, ST and SE personnel who have been Caterpillar certified.

5. Hawthorne shall submit to the Contract Administrator within thirty (30) days of award copies of certifications of personnel assigned to this Contract. At any time during the Contract, if new personnel are assigned, copies of their certification shall be provided to the Contract Administrator prior to commencement of work.
6. Hawthorne personnel working under this Contract, to include the primary company principal, project manager or facility manager, shall have at least five years of successful experience managing overhaul services for large co generating Caterpillar engines for a public agency or municipality within the United States or Canada. This experience must have been gained within the past ten (10) years.
7. For overhaul services, Hawthorne shall provide enough trained and experienced staff to work twelve (12) hours a day, six (6) days a week (Monday through Saturday) to complete the services as specified in this Contract.
8. Prior to commencing an overhaul, all parts and materials required to complete the overhaul must be stored on site or within 200 miles and be available within two (2) hours.

G. DAMAGES TO EQUIPMENT OR INJURY TO PEOPLE:

1. Hawthorne may use the City facility's overhead cranes at their own risk and is solely responsible and liable for any damage and injuries caused while using the equipment. The names and certifications of individuals authorized for crane operation shall be submitted prior to work.
2. Hawthorne shall immediately report to a City representative or Contract Administrator any accident, injury, property damage, or any other problem or irregularities that occurs when providing service as described in this Contract.
3. Hawthorne shall be responsible for all damages to people and/or property that occur because of the fault or negligence of said Hawthorne employees relating to the performance of this work.
4. Hawthorne shall be responsible for repairing or replacing any City owned or City supplied equipment damaged by Hawthorne or Hawthorne's subcontractor'(s) personnel. Repairs will not be performed until the City has inspected the damage and the City has agreed to the scope of any necessary repairs.

H. MEETINGS

Beginning from the Contract Administrator's Notice to Proceed on any overhaul or major repair and continuing until the week after formal startup, Hawthorne's Project Manager and on-site Supervising Technician or designee shall participate in a weekly overhaul status meeting at the job site. Day of the week, time, duration, and format of the meeting shall be mutually agreed to prior to Notice to Proceed. Hawthorne shall also meet weekly with the Senior Power Plant Supervisor or designee to discuss workplace safety. The Senior Power Plant Supervisor can be reached at (619) 221-8748.

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I. CUSTOMER SERVICE

Hawthorne shall provide a twenty-four (24) hour local or pager number to the Contract Administrator prior to award of contract. Local is defined as being in area codes 619, 858, or 760.

J. ADEQUATE STOCK

Hawthorne shall have shop facilities and/or a warehouse located within the County of San Diego with a sufficient quantity and variety of parts maintained to assure prompt deliveries. Deliveries shall be made within two (2) hours on common parts.

Hawthorne shall submit to the Contract Administrator within thirty (30) calendar days of award a list of stocked parts, and all terms and conditions of returned parts policy, warranty parts, and extra delivery charges.

K. PARTS LIST

Hawthorne shall provide the Contract Administrator with a current Caterpillar parts published price list identifying all parts and prices on a delivered basis. All terms and conditions of returned parts policy, warranty parts, and extra delivery charges must be outlined. Hawthorne shall furnish updates of price list whenever issued.

L. INSPECTION REQUIREMENTS

All engine components that are accessible and/or removed during overhaul shall be inspected. Whenever possible, clearances shall be measured and compared against the current applicable Caterpillar published values. All instrumentation, sensors and transducers required for engine control/monitoring shall be tested, verified and/or calibrated. All test/measuring instruments shall have current calibrations with documentation. All measurements and observed conditions shall be documented including serial numbers and calibration of test and measuring equipment.

1. PRE-OVERHAUL DOCUMENTATION.

Two (2) weeks prior to Notice to Proceed, an overhaul schedule shall be submitted to the City for review. The overhaul schedule shall include start and completion times for all major work tasks including delivery times for long lead-time components. Schedule shall also indicate critical path work and key interfaces between Hawthorne and the City.

Two (2) weeks prior to Notice to Proceed, Hawthorne shall provide a listing of all parts they are providing for the overhaul for City's review and approval. Listing shall include Caterpillar part number and a description of the part and indicate new or rebuilt. Hawthorne shall also provide a manufacturer's data sheet for all non-Caterpillar parts for review by the City.

An outage request shall be submitted to the City seven (7) days prior to shutdown of any equipment or process other than the engine that is being overhauled. Job Safety Analysis for all hazards expected to be encountered during the overhaul shall be

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submitted to the City seven (7) days prior to Notice to Proceed. A listing of all personnel assigned to the overhaul, their classification, job description and copy of required certification, shall be provided.

2. DURING OVERHAUL

Provide copies of Supervising Technician's daily report to the City staff at the end of each workday. A minimum report shall include major schedule tasks worked, estimated percent completed, a summary of any testing or inspections performed, a list any discrepancies found, a record of any material deliveries, and a list all personnel on site that day (An electronic report is acceptable).

Provide written agenda for the weekly status meeting. Agenda shall include a summary of work performed during previous week, an outline of work to be performed during the upcoming week, a revised schedule, a two (2) week look ahead, a list of any discrepancy found, and any potential issues for the upcoming week.

Provide a summary of topics covered during Hawthorne's weekly safety meeting and a list of personnel in attendance to the Contract Administrator or designee the following business day. Report any accidents that occurred during that week.

3. POST OVERHAUL

Within one (1) week of completion, provide overhaul report including at a minimum, documentation of all inspections and measurements and testing performed during and subsequent to the overhaul, a summary of work performed, a discussion of conditions found during the overhaul and an evaluation of overall engine condition. The report shall include all warranty conditions and durations to include the passing of the Air Pollution Control District (APCD) annual test for emission.

Hawthorne shall provide certified analysis reports of lubricating oil samples taken 24 hours, 30 days, and 90 days after completion of each overhaul to the Contract Administrator or designee.

4. TESTING

Cold and hot crankshaft web deflection, thrust and crankshaft run out shall be measured and recorded. All new component dimensions shall be verified against Caterpillar's documentation. Readings shall be compared to available previous readings. All measurements and observed conditions shall be documented including serial numbers and calibration of test/measuring equipment.

5. ENGINE CLEANING

Areas of the engine block made accessible during the overhaul shall be cleaned. All internal passages accessible during the overhaul shall be cleaned and verified clear.

M. GENERAL CLEANLINESS

Hawthorne's staff shall appear on site each day in clean, appropriate attire with no tears, holes or inappropriate symbols, slogans or images displayed. The job site shall be cleaned up at the end of each day and all of Hawthorne's tools and equipment either removed or securely locked up. Any materials, equipment, or tools borrowed from the facility shall be returned to the City staff, unless other prior arrangements have been made.

N. SECURITY ACCESS

Only those Hawthorne staff on the approved staff list will be allowed on the job sites. Individuals must sign in and out of the site each day with the onsite security personnel. Hawthorne personnel must have photo identification with Hawthorne's and staff person's name clearly stated. Hawthorne personnel will be issued a visitor badge daily upon check-in that must be worn to indicate that they are authorized to be on the site. The visitor badge is to be returned at the end of each workday.

O. CITY WORK RULES

Employees and agents of Hawthorne shall, while on the premises of the City, comply with all City rules and regulations. Hawthorne shall acquaint itself with conditions at the work site as not to interfere with City operations. Hawthorne shall not stop, delay, or interfere with City work schedules without the prior approval of the Contract Administrator.

P. SAFETY AND ACCIDENT PREVENTION

Hawthorne shall take all precautions necessary and shall bear sole responsibility for the safety of the work, the safety and adequacy of the methods and means it employs in performing the work, and the safety of all employees performing the work and all other persons who may be affected thereby.

Hawthorne shall, at all times, in the performance of the work, comply with and provide the safeguards required by all applicable federal, state, and local laws; rules and regulations concerning occupational safety and health, including but not limited to, the Occupational Safety and Health Act of 1970 (OSHA); and all applicable State labor laws and the regulations and standards issued thereunder.

If Hawthorne has ten (10) or more employees, Hawthorne shall have an injury/illness program as required by OSHA and shall submit a copy to the Contract Administrator.

Hawthorne warrants that any work performed in any location partially or entirely under Hawthorne's control shall be performed in accordance with OSHA requirements. Hawthorne further warrants that all material and equipment furnished under this Contract will conform to and comply with all applicable provisions of OSHA and the regulations and standards there under. Hawthorne shall require these warranties in adherence to OSHA from all subcontractors and suppliers it employs in the performance of this contract.

The Contract Administrator or designee reserves the right to issue restraint or cease and desist orders to Hawthorne when unsafe or harmful acts are observed or reported relative to

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the performance of work under this Contract and/or request Hawthorne remove from the work area any employee deemed to be working in an unsafe manner.

Personal protective equipment (PPE) shall be supplied by Hawthorne, shall be properly used by their employees, and costs for PPE included in the pricing submitted.

Q. STORM WATER PROTECTION

Hawthorne shall comply with the City's Jurisdictional Urban Runoff Management Plan encompassing citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution NO. 303351.

Hawthorne shall comply with each City facility or work site's Storm Water Pollution Prevention Plan and institute all controls needed while completing the Scope of Services to minimize any negative impact to the storm water collection system and environment.

R. CHEMICAL RELEASE REPORTING AND SPILL MANAGEMENT

Hawthorne shall be responsible for the containment, cleanup, and proper disposal of any spilled hazardous substance, to include Chemical Releases resulting or arising from the acts or omissions of Hawthorne, its officers, employees, agents, representatives and/or subcontractors, at no additional cost to the City.

Hawthorne shall notify the City immediately when a Chemical Release of a hazardous substance or petroleum product has occurred during performing the Scope of Services. Hawthorne shall make all regulatory notifications of the Chemical Release as required by law including, but not limited to, those required by California Code of Regulations, Title 19.

Hawthorne shall handle the resulting waste cleanup as Hazardous Waste by placing the waste in an appropriate container with a lid, affixing a completed Hazardous Waste label denoting the container contents, and properly disposing of the Hazardous Waste container within ninety (90) days of the Chemical Release date or on the same day if no storage location is available, using a licensed Hazardous Waste transporter.

If Hawthorne deems the spill absorbents and/or waste generated in the cleanup of the Chemical Release to be non-hazardous, petroleum contaminated solids, or non-regulated waste, Hawthorne shall notify City staff immediately. If there is no acceptable storage area on City property, the waste must be handled as Hazardous Waste unless the non-hazardous or non-regulated waste determination is mutually agreed to by City staff.

If Hawthorne deems the spill absorbents and/or waste generated in the clean up as non-hazardous waste, Hawthorne shall notify City staff of the incident immediately. If there are no acceptable storage areas on City property, the waste must be handled as hazardous waste. If there is an acceptable storage area on City property, then Hawthorne shall place the used spill absorbent or used Chemical Release cleanup wastes in an appropriate container with a lid and label the container with the contents.

The City and Hawthorne will jointly determine any necessary testing required to prove the non-hazardous or non-regulated waste determination.

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If required, Hawthorne, at no additional cost to the City, will take a representative sample of the waste to a State certified hazardous waste laboratory and submit the sample for testing for each agreed upon test.

Hawthorne and City will jointly review the testing results and the City will have the final approval if the waste will be determined to be hazardous or non-hazardous under applicable law. If the waste is determined to be classified as a regulated waste or Hazardous Waste by the City, the waste must be properly disposed of as soon as possible but not later than ninety (90) days from the date of generation by using a licensed Hazardous Waste transporter.

Hawthorne shall transport all hazardous wastes in a method which prevents leakage and complies with all applicable Department of Transportation regulations.

Hawthorne shall ensure that all transporters, storage facilities, treatment facilities, recycling facilities, incinerators, Class I landfills and any other disposal facilities used to provide service as described in this Contract are in compliance with all local, State, and Federal hazardous wastes and recycling regulations at all times.

Any change in transporter or treatment, storage, or disposal facility (TSDF) is subject to the pre-approval of the City. The City must be given thirty (30) days written notice of any change. Said notice will be sent to Contract Administrator. The City has the right to reject the hazardous waste transporter or any TSDF submitted. Hawthorne may provide information to the City for its consideration to respond to any concerns stated on why the transporter or TSDF was rejected.

Hawthorne must provide an annual updated list of proposed transporters, proposed TSDFs, and related information for consideration 30 days prior to the contract renewal date. The City must approve of all transporters and TSDFs prior to any engagement of service

S. Definitions

1. Chemical Release – means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, dumping, injecting, escaping, leaching, or disposing of a Hazardous Material/Hazardous Waste or chemical into the environment as defined by California Health and Safety Code Section 25501(s), 19 California Code of Regulations, 40 Code of Federal Regulations Part 302, and any other applicable regulatory definition.
2. Hazardous Materials, Hazardous Waste – has the meaning given such term in Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and Titles 22 and 26 of the California Code of Regulations and other regulations promulgated thereunder. It further means any waste (or radioactive materials which are source, special nuclear or by-product material as defined by 42 United States Code (U.S.C.) Section 2011 et seq. and the regulations contained in 10 Code of Federal Regulations (CFR) Part 40) which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may do either of the following: cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating

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reversible, illness, or pose a substantial threat or potential hazard to human health or the environment, or any waste which is defined or regulated as a Hazardous Waste, toxic substance, hazardous chemical substance or mixture, or asbestos under Applicable Law, as amended from time to time including, but not limited to: (a) the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.) and the regulations contained in 40 CFR Parts 260-281; (b) the Toxic Substances Control Act (15 U.S.C. Sections 2601, et seq.) and the regulations contained in 40 CFR Parts 761-766; (c) the California Health and Safety Code, Section 25117; (d) the California Public Resources Code, Section 40141; (e) future additional or substitute Applicable Law pertaining to the identification, characterization, treatment, storage, packaging, handling, management, processing, Recycling, sorting, conversion, transport, or Disposal of toxic substances or Hazardous Wastes; and (f) Title 22 California Code of Regulations Section 66261.9.

3. Petroleum Contaminated Solids Disposal and Recycling Facility – means a recycling or disposal facility which has a valid California Regional Water Quality Control Board permit including Waste Discharge Requirement(s) (WDR(s)) and valid air emission permit authorizing that facility to receive specific Petroleum Contaminated Solids for processing, bioremediation, recycling, alternative fuel, or disposal.

If Hawthorne proposes to deliver wastes or other materials under this Contract to a petroleum contaminated solids disposal and/or recycling facility which is located outside of California or within Indian Tribal lands, then a reference in this Contract to such a facility means a facility that has satisfied permitting requirements equivalent to those required by the State of California for in-State facilities and that is subject to regulations equivalent to those applied by the State of California to such in-State facilities.

4. Regulated Waste – means a waste that is not considered a Hazardous Waste, but due to its chemical or physical properties, petroleum contamination, or other properties, must be disposed at a facility with Regional Water Quality Control Board-approved Waste Discharge Requirement(s) (WDR(s)), such as a municipal Class III landfill or other facility with WDRs that allow disposal of the Regulated Waste.
5. Release – means the spilling, leaking, pumping, pouring, emitting, emptying, discharging, dumping, injecting, escaping, leaching, or disposing of any substance or material to the environment.
6. Treatment, Storage and Disposal Facilities (TSDF) – means a Hazardous Waste transfer, treatment, storage or disposal facility that has received, at a minimum, a California Department of Toxic Substances Control permit, or a variance or is otherwise authorized by California law and regulations to receive specific Resource Conservation and Recovery Act (RCRA) and/or non-RCRA Hazardous Wastes for Processing, Recycling, alternative fuel, or disposal. If the TSDF is located outside the jurisdiction of California, the agency(ies) with regulatory authority over the TSDF shall have the same or higher standards for the processing, recycling, or disposal of Hazardous Waste as the State of California.

Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), is a United States federal law designed to clean up sites contaminated with

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hazardous substances. Resource Conservation and Recovery Act (RCRA) protects human health and the environment from potential hazards by regulating waste disposal.

Code of Federal Regulations (CFR) is the codification of the general and permanent rules published in the Federal Register by departments and agencies of the Federal Government.

United States Code (U.S.C.) is the official compilation and codification of the general and permanent federal statutes of the United States.

T. REMOVAL OF EMPLOYEE

The City may request Hawthorne to immediately remove from assignment to the City any employee found unfit, careless, incompetent, or otherwise objectionable for reasonable cause to perform duties at the discretion of the City. Hawthorne shall comply with all such requests.

U. HARMONY

Hawthorne shall be entirely responsible for working in harmony with all others on the work site when Hawthorne is working on City premises.

V. SPECIFICATION REQUIREMENTS FOR TOP END OVERHAUL OF G3520 AT NORTH CITY WATER RECLAMATION PLANT

1. **COMPONENT INSPECTION AND CLEANING.** At a minimum, the following components shall be cleaned and inspected. Hawthorne shall advise and report any item needing to be rebuilt and/or replaced as required.
 - a. After cooler core
 - b. Exhaust Manifold
 - c. Oil Cooler core
 - d. Varistor shall be replace pending pricing
 - e. Windings
 - f. Oil Suction Screen
 - g. Flexible Coupling
 - h. Rotating Rectifier
 - i. Transformers

2. **REBUILT/NEW COMPONENT REPLACEMENT.** At a minimum, the following components shall be replaced, as needed, with new or rebuilt exact replacement parts. All rebuilt components shall meet Caterpillar specifications. Hawthorne shall refer to the Caterpillar's reusability publications to determine if a component is rebuildable and/or salvageable.
 - a. Pre-lube Pump
 - b. Starting Motor
 - c. Turbochargers
 - d. Water Pump

- e. Cylinder Head Assemblies
- f. Fumes Disposal Filter Element
- g. Spark Plugs
- h. Water Temperature Regulators
- i. Replace all Gaskets, O-rings and Seals that were removed

W. OVERHAUL OF G3612 AT POINT LOMA WASTEWATER TREATMENT PLANT, GAS UTILIZATION FACILITY (GUF)

1. **COMPONENT INSPECTION AND CLEANING.** At a minimum, the following components shall be cleaned and inspected. Hawthorne shall advise and report any item needing to be rebuilt and/or replaced as required.
 - a. Pre-lube Pump
 - b. Jacket Water Pump shall be replaced on top end overhaul. For all other overhauls, the weep hole shall be inspected for leakage.
 - c. Valve Bridges
 - d. Valve Lifters
 - e. Governor and Linkages
 - f. Front and Rear Crankshaft Seals
 - g. Rocker Arms
 - h. Exhaust Manifold (for leaks)
 - i. Oil Cooling Water Pump shall be replaced on top end overhaul. For all other overhauls, the weep hole shall be inspected for leakage.

2. **REBUILT/NEW COMPONENT REPLACEMENT.** At a minimum, the following components shall be replaced, as needed, with new or rebuilt exact replacement parts. All rebuilt components shall meet Caterpillar specifications. Hawthorne shall refer to the Caterpillar's reusability publications to determine if a component is rebuildable and/or salvageable.
 - a. After Cooler Temperature Regulator
 - b. Pre-chamber Fuel Check Valves
 - c. Oil Temperature Regulators
 - d. Jacket Water Temperature Regulator
 - e. Oil Cooler Temperature Regulator
 - f. Head Gaskets
 - g. Breather Elements
 - h. All Gaskets and Seals removed
 - i. Fuel Gas Valve
 - j. Turbochargers
 - k. Waste Gate
 - l. Cylinder Heads
 - m. Pre-combustion Chamber should be cleaned. Nozzles should be replaced
 - n. Exhaust Bellows
 - o. Actuators

X. SPECIFICATION REQUIREMENTS FOR TOP END OVERHAUL OF G3612 AT PUMP STATION 2

1. **COMPONENT INSPECTION AND CLEANING.** At a minimum, the following components shall be cleaned and inspected. Hawthorne shall advise and report any item needing to be rebuilt and/or replaced as required.
 - a. Pre-lube Pump
 - b. Jacket Water Pump
 - c. Valve Bridges
 - d. Valve Lifters
 - e. Governor and Linkages
 - f. Front and Rear Crankshaft Seals
 - g. Rocker Arms
 - h. Exhaust Manifold (for leaks)
 - i. Oil Cooling Water Pump

2. **REBUILT/NEW COMPONENT REPLACEMENT.** At a minimum, the following components shall be replaced, as needed, with new or rebuilt exact replacement parts. All rebuilt components shall meet Caterpillar specifications. Hawthorne shall refer to the Caterpillar's reusability publications to determine if a component is rebuildable and/or salvageable.
 - a. After Cooler Temperature value shall be replace with new.
 - b. Pre-chamber Fuel Check Valves shall be replaced with new.
 - c. Oil Temperature Regulators shall be replaced with new.
 - d. Jacket Water Temperature Regulator shall be replaced with new.
 - e. Oil Cooler Temperature Regulator shall be replaced with new
 - f. Head Gaskets
 - g. Breather Elements
 - h. All Gaskets and Seals removed
 - i. Fuel Gas Valve
 - j. Turbochargers
 - k. Waste Gate
 - l. Cylinder Heads
 - m. Pre-combustion Chamber
 - n. Exhaust Bellows
 - o. Actuators

Y. SPECIFICATION REQUIREMENTS FOR IN FRAME OVERHAUL OF G3520 AT NORTH CITY WATER RECLAMATION PLANT

Hawthorne shall include all work and/or materials required for a Top End Overhaul plus items specified below.

1. **COMPONENT INSPECTION AND CLEANING.** At a minimum, the following components shall be cleaned and inspected. Hawthorne shall advise and report any item needing to be rebuilt and/or replaced as required.
 - a. After Cooler Core cleaning every time

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- b. Compressor By-pass Valve cleaning every time
 - c. Exhaust System inspected for leaks only
 - d. Oil Pump
 - e. Throttle
 - f. Transformers and Extenders
 - g. Varistor shall be replaced
 - h. Windings
 - i. Rotating Rectifier
 - j. Oil Suction Screen
 - k. Flexible Coupling
2. **REBUILT/NEW COMPONENT REPLACEMENT.** At a minimum, the following components shall be replaced, as needed, with new or rebuilt exact replacement parts. All rebuilt components shall meet Caterpillar specifications. Hawthorne shall refer to the Caterpillar's reusability publications to determine if a component is rebuildable and/or salvageable.
- a. Turbochargers
 - b. Starting Motor
 - c. Pre-lube Pump
 - d. Water Pump
 - e. Oil Cooler
 - f. Fuel Metering Valve
3. **NEW COMPONENT REPLACEMENT.** At a minimum, the following components shall be replaced with remanufactures. If a remanufactured component isn't available, a new component shall be used.
- a. Cylinder Heads Assemblies
 - b. Cylinder Packs
 - c. Water Temperature Regulators
 - d. Connecting Rod Bearings
 - e. Main Bearings
 - f. Spark Plugs
 - g. Fumes Disposal Filter Elements
 - h. Replace all Gaskets, O-rings and seals that were removed

Z. SPECIFICATION REQUIREMENTS FOR IN FRAME OVERHAUL OF G3612 AT POINT LOMA WASTEWATER TREATMENT PLANT

Includes all work/material required for a Top End Overhaul plus items specified below.

1. **COMPONENT INSPECTION AND CLEANING.** At a minimum, the following components shall be cleaned and inspected. Hawthorne shall advise and report any item needing to be rebuilt and/or replaced as required.
- a. After Cooler cleaning every time
 - b. Oil Cooler cleaning every time
 - c. Pre-lube Pump
 - d. Spark Plug Transformer

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- e. Cylinder Liners
 - f. Pistons
2. **REBUILT/NEW COMPONENT REPLACEMENT.** At a minimum, the following components shall be replaced, as needed, with new or rebuilt exact replacement parts. All rebuilt components shall meet Caterpillar specifications. Hawthorne shall refer to the Caterpillar's reusability publications to determine if a component is rebuildable and/or salvageable.
- a. Fuel Gas valve
 - b. Turbochargers
 - c. Cylinder heads
 - d. Jacket Water Pump
 - e. Gas Admission Valves
 - f. Vibration Damper
 - g. Waste Gate
 - h. Oil Pump for Hydrax System
 - i. Engine oil pump
 - j. Actuators
3. **NEW COMPONENT REPLACEMENT.** At a minimum, the following components shall be replaced with new components.
- a. Cylinder Heads Gaskets
 - b. Pre-chamber Fuel Check Valves
 - c. Oil Temperature Regulators
 - d. Water Temperature Regulators
 - e. Connecting Rod Bearings
 - f. Crankshaft Seals
 - g. Exhaust Shields
 - h. Main Bearings
 - i. Piston Rings
 - j. All gaskets and seals removed
 - k. Pre-combustion Chambers and Body
 - l. Thermocouples and Bum Time Cables
 - m. Spark Plugs and Extensions

AA. SPECIFICATION REQUIREMENTS FOR IN FRAME OVERHAUL OF G3612 AT PUMP STATION 2

Includes all work/material required for a Top End Overhaul plus items specified below.

1. **COMPONENT INSPECTION AND CLEANING.** At a minimum, the following components shall be cleaned and inspected. Hawthorne shall advise and report any item needing to be rebuilt and/or replaced as required.
- a. After Cooler
 - b. Oil Cooler
 - c. Pre-lube Pump
 - d. Spark Plug Transformer

- e. Cylinder Liners
 - f. Pistons
2. **REBUILT/NEW COMPONENT REPLACEMENT.** At a minimum, the following components shall be replaced, as needed, with new or rebuilt exact replacement parts. All rebuilt components shall meet Caterpillar specifications. Hawthorne shall refer to the Caterpillar's reusability publications to determine if a component is rebuildable and/or salvageable.
- a. Fuel Gas valve
 - b. Turbochargers
 - c. Cylinder Heads
 - d. Jacket Water Pump
 - e. Actuators
 - f. Gas Admission Valves
 - g. Vibration Damper
 - h. Waste Gate
 - i. Oil Pump for Hydrax System
 - j. Engine Oil Pump
3. **NEW COMPONENT REPLACEMENT.** At a minimum, the following components shall be cleaned and inspected. Hawthorne shall advise and report any item needing to be rebuilt and/or replaced as required.
- a. Cylinder Heads Gaskets
 - b. Pre-chamber Fuel Check Valves
 - c. Oil Temperature Regulators
 - d. Water Temperature Regulators
 - e. Connecting Rod Bearings
 - f. Crankshaft Seals
 - g. Exhaust Shields
 - h. Main Bearings
 - i. Piston Rings
 - j. All Gaskets and Seals removed
 - k. Pre-combustion Chambers and Body
 - l. Thermocouples and Burn Time Cables
 - m. Spark plugs & extensions

BB. SPECIFIC REQUIREMENTS FOR MAJOR OVERHAUL OF G3612 AT POINT LOMA WASTEWATER TREATMENT PLANT

Includes all work/material required for a Top End Overhaul and In-frame Overhaul plus items specified below.

1. **COMPONENT INSPECTION AND CLEANING.** At a minimum, the following components shall be cleaned and inspected. Hawthorne shall advise and report any item needing to be rebuilt and/or replaced as required.
- a. Camshafts
 - b. Connecting Rods

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- c. Crankshaft
 - d. Pre-lube Pump
 - e. Gear Train Bearings
2. **REBUILT/NEW COMPONENT REPLACEMENT.** At a minimum, the following components shall be replaced, as needed, with new or rebuilt exact replacement parts. All rebuilt components shall meet Caterpillar specifications. Hawthorne shall refer to the Caterpillar's reusability publications to determine if a component is rebuildable and/or salvageable.
- a. Fuel Gas Regulator
 - b. Turbochargers
 - c. Inlet Air Piping "air boots"
 - d. Cylinder Heads
 - e. Water Pumps
 - f. Pistons
 - g. Waste Gate
 - h. Vibration Dampers
 - i. Camshaft Lifters
 - j. Exhaust Manifolds
3. **NEW COMPONENT REPLACEMENT.** At a minimum, the following components shall be replaced with new components.
- a. Actuator
 - b. Cylinder Heads Gaskets
 - c. Pre-chamber Fuel Check Valves
 - d. Oil Temperature Regulators
 - e. Water Temperature Regulators
 - f. Connecting Rod Bearings
 - g. Crankshaft Seals
 - h. Cylinder Liners
 - i. Exhaust Shields
 - j. Main Bearings
 - k. Piston Rings
 - l. After Cooler shall be sent out to be cleaned and resealed
 - m. All Gaskets and Seals removed
 - n. Pre-combustion Chambers and Body
 - o. Thermocouples and Burn Time Cables
 - p. Spark Plugs and Extensions
 - q. Camshaft Bearings
 - r. Engine Oil Pump
 - s. Oil Pump for Hydrax System

CC. SPECIFIC REQUIREMENTS FOR MAJOR OVERHAUL OF G3612 AT PUMP STATION 2

Includes all work/material required for a Top End Overhaul and In-frame Overhaul plus items specified below.

1. **COMPONENT INSPECTION AND CLEANING.** At a minimum, the following components shall be cleaned and inspected. Hawthorne shall advise and report any item needing to be rebuilt and/or replaced as required.
 - a. Camshafts
 - b. Connecting Rods
 - c. Crankshaft
 - d. Pre-lube Pump
 - e. Gear Train Bearings

2. **REBUILT/NEW COMPONENT REPLACEMENT.** At a minimum, the following components shall be replaced, as needed, with new or rebuilt exact replacement parts. All rebuilt components shall meet Caterpillar specifications. Hawthorne shall refer to the Caterpillar's reusability publications to determine if a component is rebuildable and/or salvageable.
 - a. Fuel Gas Regulator
 - b. Turbochargers
 - c. Inlet Air Piping "Air boots"
 - d. Cylinder Heads
 - e. Water Pumps
 - f. Pistons
 - g. Waste Gate
 - h. Vibration Dampers
 - i. Camshaft Lifters
 - j. Exhaust Manifolds

3. **NEW COMPONENT REPLACEMENT.** At a minimum, the following components shall be replaced with new components.
 - a. Actuator
 - b. Cylinder Heads Gaskets
 - c. Pre-chamber Fuel Check Valves
 - d. Oil Temperature Regulators
 - e. Water Temperature Regulators
 - f. Connecting Rod Bearings
 - g. Crankshaft Seals
 - h. Cylinder Liners
 - i. Exhaust Shields
 - j. Main Bearings
 - k. Piston Rings
 - l. After Cooler
 - m. All Gaskets and Seals removed
 - n. Pre-combustion Chambers and Body
 - o. Thermocouples and Burn Time Cables
 - p. Spark Plugs & Extensions
 - q. Camshaft Bearings
 - r. Engine Oil Pump
 - s. Oil Pump for Hydrax System

4. At a minimum, the following services shall be performed as part of the inspection and overhaul process:
 - a. Disassemble generator and remove rotor.
 - b. Visually inspect windings, diodes, and varistor for physical damage, inspect the CT (current transformer), and inspect the wiring for insulation damage.
 - c. Measure the insulation resistance to ground on all windings (main rotating assembly, stator assembly, exciter armature assembly, exciter and PMG (permanent magnet generator) stationary fields.
 - d. Inspect generator windings for dirt and debris and electric leakage from generator. If leakage is found, item should be sent out to third party vendor for clean dip and bake and inspection.
 - e. Inspect rotor shaft bearing for wear and scoring.
 - f. Replace bearing, bearing liners, oil seals, and oil.
 - g. Reassemble and check all electrical connections for tightness.
 - h. Check operations of the space heaters after installation.
 - i. Submit report of measurement findings.
 - j. Align generator with the engine using a laser alignment tool and submit final alignment reading.

Attachment A

ENGINE POPULATION LIST - WWTD

1. **Name of location:** Point Loma Wastewater Treatment Plant (PLWTP)/GUF
Unit 1& 2
Address: 1902 Gatchell Road, San Diego, CA 92106
Contract Person: David Marlow
Phone number: (619)221-8728
Equipment Brand Name: 1996 vintage D3512 Diesel-operates a 1500 kW Kato generator to provide standby power
2. **Name of location:** Pump Station 2, **Unit 1**
Address: 4077 N. Harbor Drive, San Diego, CA 92101
Contract Person: David Marlow
Phone number: (619)221-8728
Equipment Brand Name: 2000 kW Diesel Kato Generator
3. **Name of location:** Pump Station 2, **Unit 2**
Address: 4077 N. Harbor Drive, San Diego, CA 92101
Contract Person: David Marlow
Phone number: (619)221-8728
Equipment Brand Name: 2000 kW Diesel Kato Generator
4. **Name of location:** Pump Station 2, **Unit 3**
Address: 4077 N. Harbor Drive, San Diego, CA 92101
Contract Person: David Marlow
Phone number: (619)221-8728
Equipment Brand Name: 2012 C15 engine/generator-drives a 500kW to provide standby power
5. **Name of location:** South Bay Water Reclamation Plant (SBWRP)
Address: 2411 Dairy Mart Road, San Diego, CA 92154
Contact Person: Ernesto Molas
Phone number: (619)428-7320
Equipment Brand Name: 2002 vintage D3516 Diesel Engine- operates a 2,000 kW Kato generator to provide standby power- This unit may be converted to run on an 80/20 mix of natural gas/diesel and permitted for extended operation during summer peak periods generating 1,750kW/hr. as a distributed generator to offset utility costs.
6. **Name of location:** North City Water Reclamation Plant (NCWRP)
Address: 4949 Eastgate Mall, San Diego, CA 92121
Contract Person: Elisabete Pinto
Phone number: (858)824-6027
Equipment Brand Name: 2013 d3516 Diesel Engine - drives a 2,000-kw generator to provide standby power
7. **Name of location:** North City Water Reclamation Plant (NCWRP)
Address: 4949 Eastgate Mall, San Diego, CA 92121
Contract Person: Elisabete Pinto
Phone number: (858)824-6027

Attachment A

Equipment Brand Name: G3520 AT NORTH CITY WATER RECLAMATION PLANT

8. **Name of location:** Environmental Monitoring & Technical Services (EMTS)
Address: 2392 Kincaid Road, San Diego, CA 92101
Contract Person: David Marlow
Phone number: (619)221-8728
Equipment Brand Name: 2012 C15 Diesel Engine/Generator- drives a 500-kW generator to provide standby power
9. **Name of location:** Pump Station 1, **Unit 1**
Address: 3550 E. Harbor Drive, San Diego, CA 92123
Contract Person: David Marlow
Phone number: (619)221-8728
Equipment Brand Name: 2013 D3516 Diesel Engine - drives a 2,000kW generator to provide standby power
10. **Name of location:** Pump Station 1, **Unit 2**
Address: 3550 E. Harbor Drive, San Diego, CA 92123
Contract Person: David Marlow
Phone number: (619)221-8728
Equipment Brand Name: 2013 D3516 Diesel Engine - drives a 2,000kW generator to provide standby power
11. **Name of location:** Pump Station 64, **Unit 1**
Address: 10745 Roselle Street, San Diego, CA 92121
Contract Person: Elisabete Pinto
Phone number: (858)824-6027
Equipment Brand Name: 2013 D3516 Diesel Engine - drives a 2,000kW generator to provide standby power
12. **Name of location:** Pump Station 64, **Unit 2**
Address: 10745 Roselle Street, San Diego, CA 92121
Contract Person: Elisabete Pinto
Phone number: (858)824-6027
Equipment Brand Name: 2013 D3516 Diesel Engine - drives a 2,000kW generator to provide standby power
13. **Name of location:** Pump Station 65
Address: 12112 Sorrento Valley Road, San Diego, CA 92121
Contract Person: Elisabete Pinto
Phone number: (858)824-6027
Equipment Brand Name: 2013 D3516 Diesel Engine - drives a 2,000kW generator to provide standby power
14. **Name of location:** Penasquitos Pump Station
Address: 10150 Cara Way, San Diego, CA 92126
Contract Person: Elisabete Pinto
Phone number: (858)824-6027
Equipment Brand Name: 2013 D3516 Diesel Engine - drives a 2,000kW generator to provide standby power

Attachment A

15. **Name of location:** Metropolitan Biosolids Center (MBC), **Unit 1**
Address: 5240 Convoy Street, San Diego, CA 92111
Contract Person: Richard Pitchford
Phone number: (858)614-5509
Equipment Brand Name: 3406 DITA Diesel Engine - drives a 300kW generator to provide standby power
16. **Name of location:** Metropolitan Biosolids Center (MBC), **Unit 2**
Address: 5240 Convoy Street, San Diego, CA 92111
Contract Person: Richard Pitchford
Phone number: (858)614-5509
Equipment Brand Name: 3304 DITA Diesel Engine - drives a 125kW generator to provide standby power
17. **Name of location:** Metropolitan Biosolids Center (MBC), **Unit 3**
Address: 5240 Convoy Street, San Diego, CA 92111
Contract Person: Richard Pitchford
Phone number: (858)614-5509
Equipment Brand Name: DMT 70 Diesel Engine - drives a 70kW generator to provide standby power
18. **Name of location:** Metropolitan Operations Center (MOC)
Address: 9192 Topaz Way, San Diego, CA 92123
Contract Person: David Marlow
Phone number: (619)221-8728
Equipment Brand Name: Cummins Diesel Engine - drives a 500kW generator to provide standby power
19. **Name of location:** Grove Avenue Pump Station (GAPS)
Address: 2494 Grove Ave, San Diego, CA 92154
Contract Person: Ernesto Molas
Phone number: (619)428-7320
Equipment Brand Name: Cummins Diesel Engine - drives a 700kW generator to provide standby power
20. **Name of location:** Otay River Pump Station (ORPS)
Address: 1800 Boundary Avenue, San Diego, CA 92154
Contract Person: Ernesto Molas
Phone number: (619)428-7320
Equipment Brand Name: Detroit Diesel Engine - drives a 500kW generator to provide standby power



THE CITY OF SAN DIEGO

GENERAL CONTRACT TERMS AND PROVISIONS

APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS

Revised General Contract Terms and Provisions
Services Agreement - Hawthorne Machinery Co.

ARTICLE I
SCOPE AND TERM OF CONTRACT

1.1 Scope of Contract. The scope of contract between the City and a provider of goods and/or services (Contractor) is described in the Contract Documents. The Contract Documents are comprised of the Request for Proposal, Invitation to Bid, or other solicitation document (Solicitation); the successful bid or proposal; the letter awarding the contract to Contractor; the City's written acceptance of exceptions or clarifications to the Solicitation, if any; and these General Contract Terms and Provisions.

1.2 Effective Date. A contract between the City and Contractor (Contract) is effective on the last date that the contract is signed by the parties and approved by the City Attorney in accordance with Charter section 40. Unless otherwise terminated, this Contract is effective until it is completed or as otherwise agreed upon in writing by the parties, whichever is the earliest. A Contract term cannot exceed five (5) years unless approved by the City Council by ordinance.

1.3 Contract Extension. The City may, in its sole discretion, unilaterally exercise an option to extend the Contract as described in the Contract Documents. In addition, the City may, in its sole discretion, unilaterally extend the Contract on a month-to-month basis following contract expiration if authorized under Charter section 99 and the Contract Documents. Contractor shall not increase its pricing in excess of the percentage increase described in the Contract.

ARTICLE II
CONTRACT ADMINISTRATOR

2.1 Contract Administrator. The Purchasing Agent or designee is the Contract Administrator for purposes of this Contract, and has the responsibilities described in this Contract, in the San Diego Charter, and in Chapter 2, Article 2, Divisions 5, 30, and 32.

2.1.1 Contractor Performance Evaluations. The Contract Administrator will evaluate Contractor's performance as often as the Contract Administrator deems necessary throughout the term of the contract. This evaluation will be based on criteria including the quality of goods or services, the timeliness of performance, and adherence to applicable laws, including prevailing wage and living wage. City will provide Contractors who receive an unsatisfactory rating with a copy of the evaluation and an opportunity to respond. City may consider final evaluations, including Contractor's response, in evaluating future proposals and bids for contract award.

2.2 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 is effective on the date of personal delivery or five (5) days after deposit in a United States postal mailbox unless provided otherwise in the Contract. Notices to the City shall be sent to:

Purchasing Agent
City of San Diego, Purchasing and Contracting Division
1200 3rd Avenue, Suite 200
San Diego, CA 92101-4195

ARTICLE III COMPENSATION

3.1 Manner of Payment. Contractor will be paid monthly, in arrears, for goods and/or services provided in accordance with the terms and provisions specified in the Contract. All invoices should be paid within thirty (30) days of receipt. Unless specified otherwise in writing, the Services shall be performed during Contractor's publicized business hours. Services performed outside of such hours will be billed at applicable overtime or double-time rates.

3.2 Invoices.

3.2.1 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.

3.2.2 Service Contracts. Contractor must submit invoices for services to City by the 10th of the month following the month in which Contractor provided services. Invoices must include the address of the location where services were performed and the dates in which services were provided.

3.2.3 Goods Contracts. Contractor must submit invoices for goods to City within seven days of the shipment. Invoices must describe the goods provided.

3.2.4 Parts Contracts. Contractor must submit invoices for parts to City within seven calendar (7) days of the date the parts are shipped. Invoices must include the manufacturer of the part, manufacturer's published list price, percentage discount applied in accordance with Pricing Page(s), the net price to City, and an item description, quantity, and extension.

3.2.5 Extraordinary Work. City will not pay Contractor for extraordinary work unless Contractor receives prior written authorization from the Contract Administrator. Failure to do so will result in payment being withheld for services. If approved, Contractor will include an invoice that describes the work performed and the location where the work was performed, and a copy of the Contract Administrator's written authorization.

3.2.6 Reporting Requirements. Contractor must submit the following reports using the City's web-based contract compliance portal. Incomplete and/or delinquent reports may cause payment delays, non-payment of invoice, or both. For questions, please view the City's online tutorials on how to utilize the City's web-based contract compliance portal.

3.2.6.1 Monthly Employment Utilization Reports. Contractor and Contractor's subcontractors and suppliers must submit Monthly Employment Utilization Reports by the fifth (5th) day of the subsequent month.

3.2.6.2 Monthly Invoicing and Payments. Contractor and Contractor's subcontractors and suppliers must submit Monthly Invoicing and Payment Reports by the fifth (5th) day of the subsequent month.

3.3 Annual Appropriation of Funds. Contractor acknowledges that the Contract term may extend over multiple City fiscal years, and 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. This Contract may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by City Council.

3.4 Price Adjustments. Based on Contractor's written request and justification, the City may approve an increase in unit prices on Contractor's pricing pages consistent with the amount requested in the justification in an amount not to exceed the increase in the Consumer Price Index, San Diego Area, for All Urban Customers (CPI-U) as published by the Bureau of Labor Statistics, or 5.0%, whichever is less, during the preceding one year term. If the CPI-U is a negative number, then the unit prices shall not be adjusted for that option year (the unit prices will not be decreased). A negative CPI-U shall be counted against any subsequent increases in the CPI-U when calculating the unit prices for later option years. Contractor must provide such written request and justification no less than sixty days before the date in which City may exercise the option to renew the contract, or sixty days before the anniversary date of the Contract. Justification in support of the written request must include a description of the basis for the adjustment, the proposed effective date and reasons for said date, and the amount of the adjustment requested with documentation to support the requested change (e.g. CPI-U or 5.0%, whichever is less). City's approval of this request must be in writing.

ARTICLE IV SUSPENSION AND TERMINATION

4.1 City's Right to Suspend for Convenience. City may suspend all or any portion of Contractor's performance under this Contract at its sole option and for its convenience for a reasonable period of time not to exceed six (6) months. City must first give ten (10) days' written notice to Contractor of such suspension. City will pay to Contractor a sum equivalent to the reasonable value of the goods and/or services satisfactorily provided up to the date of suspension. City may rescind the suspension prior to or at six (6) months by providing Contractor with written notice of the rescission, at which time Contractor would be required to resume performance in compliance with the terms and provisions of this Contract. Contractor will be entitled to an extension of time to complete performance under the Contract equal to the length of the suspension unless otherwise agreed to in writing by the Parties.

4.2 City's Right to Terminate for Convenience. City may, at its sole option and for its convenience, terminate all or any portion of this Contract by giving thirty (30) days' written notice of such termination to Contractor. The termination of the Contract shall be effective upon

receipt of the notice by Contractor. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs otherwise); and (2) complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's affected performance under the Contract. After filing of documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or received by Contractor in performing this Contract, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Contract with regard to the affected performance.

4.3 City's Right to Terminate for Default. Contractor's failure to satisfactorily perform any material obligation required by this Agreement, when Contractor fails to cure such failure within thirty (30) days after written notice, constitutes a default. Examples of default include a determination by City that Contractor has: (1) failed to deliver goods and/or perform the services of the required quality or within the time specified; (2) failed to perform any of the obligations of this Agreement; and (3) failed to make sufficient progress in performance which may jeopardize full performance.

4.3.1 If Contractor fails to satisfactorily cure a default within thirty (30) calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Agreement.

4.3.2 If City terminates this Contract, in whole or in part, City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, equivalent goods or services and Contractor shall be liable to City for any excess costs. Contractor shall also continue performance to the extent not terminated.

4.4 Termination for Bankruptcy or Assignment for the Benefit of Creditors. If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to, or demand upon Contractor, terminate this Contract, and terminate each and every right of Contractor, and any person claiming rights by and through Contractor under this Contract.

4.5 Contractor's Right to Payment Following Contract Termination.

4.5.1 Termination for Convenience. If the termination is for the convenience of City an equitable adjustment in the Contract price shall be made. No amount shall be allowed for anticipated profit on unperformed services, and no amount shall be paid for an as needed contract beyond the Contract termination date.

4.5.2 Termination for Default. If, after City gives notice of termination for failure to fulfill Contract obligations to Contractor, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of City. In such event, adjustment in the Contract price shall be made as provided in Section 4.3.2. City's rights and remedies are in addition to any other rights and remedies provided by law or under this Contract.

4.6 Remedies Cumulative. City's remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which City may be lawfully entitled in case of any breach or threatened breach of any provision of this Contract.

ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS

5.1 Inspection and Acceptance. The City will inspect and accept goods provided under this Contract at the shipment destination unless specified otherwise. Inspection will be made and acceptance will be determined by the City department shown in the shipping address of the Purchase Order or other duly authorized representative of City.

5.2 Responsibility for Lost or Damaged Shipments. Contractor bears the risk of loss or damage to goods prior to the time of their receipt and acceptance by City. City has no obligation to accept damaged shipments and reserves the right to return damaged goods, at Contractor's sole expense, even if the damage was not apparent or discovered until after receipt.

5.3 Responsibility for Damages. Contractor is responsible for all damage that occurs as a result of Contractor's fault or negligence or that of its' employees, agents, or representatives in connection with the performance of this Contract. Contractor shall immediately report any such damage to people and/or property to the Contract Administrator.

5.4 Delivery. Delivery shall be made on the delivery day specified in the Contract Documents. The City, in its sole discretion, may extend the time for delivery. The City may order, in writing, the suspension, delay or interruption of delivery of goods and/or services.

5.5 Delay. Unless otherwise specified herein, time is of the essence for each and every provision of the Contract. Contractor must notify City in writing within 24 hours, or on the first business day following Contractor's first knowledge of, if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. City may terminate this Contract as provided herein if City, in its sole discretion, determines the delay is material.

5.5.1 If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, City may allow Contractor a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by City, which approval shall not be unreasonably withheld. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Contractor. This provision does not apply to a delay to the extent caused by Contractor's acts or omissions. Contractor is not entitled to an extension of time to perform if a delay is caused by Contractor's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof satisfactory to City of Contractor's inability to obtain materials, equipment, or labor, in which case City's approval must be in writing.

5.6 Restrictions and Regulations Requiring Contract Modification. Contractor shall immediately notify City in writing of any regulations or restrictions that may or will require Contractor to alter the material, quality, workmanship, or performance of the goods and/or services to be provided. City reserves the right to accept any such alteration, including any resulting reasonable price adjustments, or to cancel the Contract at no expense to the City.

5.7 Warranties. All goods and/or services provided under the Contract must be warranted by Contractor or manufacturer for at least twelve (12) months after acceptance by City, except automotive equipment. Automotive equipment must be warranted for a minimum of 12,000 miles or 12 months, whichever occurs first, unless otherwise stated in the Contract. Contractor is responsible to City for all warranty service, parts, and labor. Contractor is required to ensure that warranty work is performed at a facility acceptable to City and that services, parts, and labor are available and provided to meet City's schedules and deadlines. Contractor may establish a warranty service contract with an agency satisfactory to City instead of performing the warranty service itself. If Contractor is not an authorized service center and causes any damage to equipment being serviced, which results in the existing warranty being voided, Contractor will be liable for all costs of repairs to the equipment, or the costs of replacing the equipment with new equipment that meets City's operational needs.

5.8 Industry Standards. Contractor shall provide goods and/or services acceptable to City in strict conformance with the Contract. Contractor shall also provide goods and/or services in accordance with the standards customarily adhered to by an experienced and competent provider of the goods and/or services called for under this Contract using the degree of care and skill ordinarily exercised by reputable providers of such goods and/or services. Where approval by City, the Mayor, or other representative of City is required, it is understood to be general approval only and does not relieve Contractor of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.

5.9 Records Retention and Examination. Contractor shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Contract for five (5) years after receipt of final payment by City under this Contract. Contractor shall make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of City, including the Purchasing Agent or designee. Contractor shall make available all requested data and records at reasonable locations within City or County of San Diego at any time during normal business hours, and as often as City deems necessary. If records are not made available within the City or County of San Diego, Contractor shall pay City's travel costs to the location where the records are maintained and shall pay for all related travel expenses. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of the Contract. Contractor must include this provision in all subcontracts made in connection with this Contract.

5.9.1 Contractor shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint

venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

5.10 Quality Assurance Meetings. Upon City's request, Contractor shall schedule one or more quality assurance meetings with City's Contract Administrator to discuss Contractor's performance. If requested, Contractor shall schedule the first quality assurance meeting no later than eight (8) weeks from the date of commencement of work under the Contract. At the quality assurance meeting(s), City's Contract Administrator will provide Contractor with feedback, will note any deficiencies in Contract performance, and provide Contractor with an opportunity to address and correct such deficiencies. The total number of quality assurance meetings that may be required by City will depend upon Contractor's performance.

5.11 Duty to Cooperate with Auditor. The City Auditor may, in his sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review Contractor's records to confirm contract compliance. Contractor shall make reasonable efforts to cooperate with Auditor's requests.

5.12 Safety Data Sheets. If specified by City in the solicitation or otherwise required by this Contract, Contractor must send with each shipment one (1) copy of the Safety Data Sheet (SDS) for each item shipped. Failure to comply with this procedure will be cause for immediate termination of the Contract for violation of safety procedures.

5.13 Project Personnel. Except as formally approved by the City, the key personnel identified in Contractor's bid or proposal shall be the individuals who will actually complete the work. Changes in staffing must be reported in writing and approved by the City.

5.13.1 Criminal Background Certification. Contractor certifies that all employees working on this Contract have had a criminal background check and that said employees are clear of any sexual and drug related convictions. Contractor further certifies that all employees hired by Contractor or a subcontractor shall be free from any felony convictions.

5.13.2 Photo Identification Badge. Contractor shall provide a company photo identification badge to any individual assigned by Contractor or subcontractor to perform services or deliver goods on City premises. Such badge must be worn at all times while on City premises. City reserves the right to require Contractor to pay fingerprinting fees for personnel assigned to work in sensitive areas. All employees shall turn in their photo identification badges to Contractor upon completion of services and prior to final payment of invoice.

5.14 Standards of Conduct. Contractor is responsible for maintaining standards of employee competence, conduct, courtesy, appearance, honesty, and integrity satisfactory to the City.

5.14.1 Supervision. Contractor shall provide adequate and competent supervision at all times during the Contract term. Contractor shall be readily available to meet with the City. Contractor shall provide the telephone numbers where its representative(s) can be reached.

5.14.2 City Premises. Contractor's employees and agents shall comply with all City rules and regulations while on City premises.

5.14.3 Removal of Employees. City may request Contractor immediately remove from assignment to the City any employee found unfit to perform duties at the City. Contractor shall comply with all such requests.

5.15 Licenses and Permits. Contractor shall, without additional expense to the City, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to Contract performance. This includes, but is not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the work.

5.16 Contractor and Subcontractor Registration Requirements. Prior to the award of the Contract or Task Order, Contractor and Contractor's subcontractors and suppliers must register with the City's web-based vendor registration and bid management system. The City may not award the Contract until registration of all subcontractors and suppliers is complete. In the event this requirement is not met within the time frame specified by the City, the City reserves the right to rescind the Contract award and to make the award to the next responsive and responsible proposer of bidder.

ARTICLE VI INTELLECTUAL PROPERTY RIGHTS

6.1 Rights in Data. If, in connection with the services performed under this Contract, Contractor or its employees, agents, or subcontractors, create artwork, audio recordings, blueprints, designs, diagrams, documentation, photographs, plans, reports, software, source code, specifications, surveys, system designs, video recordings, or any other original works of authorship, whether written or readable by machine (Deliverable Materials), all rights of Contractor or its subcontractors in the Deliverable Materials, including, but not limited to publication, and registration of copyrights, and trademarks in the Deliverable Materials, are the sole property of City. Contractor, including its employees, agents, and subcontractors, may not use any Deliverable Material for purposes unrelated to Contractor's work on behalf of the City without prior written consent of City. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City, without the prior written consent of the City.

6.2 Intellectual Property Rights Assignment. For no additional compensation, Contractor hereby assigns to City all of Contractor's rights, title, and interest in and to the content of the Deliverable Materials created by Contractor or its employees, agents, or subcontractors, including copyrights, in connection with the services performed under this Contract. Contractor shall promptly execute and deliver, and shall cause its employees, agents, and subcontractors to promptly execute and deliver, upon request by the City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or

otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials. Contractor also shall cooperate and assist in the prosecution of any action or opposition proceeding involving such intellectual property rights and any adjudication of those rights.

6.3 Contractor Works. Contractor Works means tangible and intangible information and material that: (a) had already been conceived, invented, created, developed or acquired by Contractor prior to the effective date of this Contract; or (b) were conceived, invented, created, or developed by Contractor after the effective date of this Contract, but only to the extent such information and material do not constitute part or all of the Deliverable Materials called for in this Contract. All Contractor Works, and all modifications or derivatives of such Contractor Works, including all intellectual property rights in or pertaining to the same, shall be owned solely and exclusively by Contractor.

6.4 Subcontracting. In the event that Contractor utilizes a subcontractor(s) for any portion of the work that comprises the whole or part of the specified Deliverable Materials to the City, the agreement between Contractor and the subcontractor shall include a statement that identifies the Deliverable Materials as a “works for hire” as described in the United States Copyright Act of 1976, as amended, and that all intellectual property rights in the Deliverable Materials, whether arising in copyright, trademark, service mark or other forms of intellectual property rights, belong to and shall vest solely with the City. Further, the agreement between Contractor and its subcontractor shall require that the subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to City, all titles, rights and interests in and to the Deliverable Materials, including all copyrights, trademarks and other intellectual property rights. City shall have the right to review any such agreement for compliance with this provision.

6.5 Intellectual Property Warranty and Indemnification. Contractor represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this Contract are either original, or not encumbered, and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Contractor to produce, at Contractor’s own expense, new non-infringing materials, deliverables or works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Contractor further agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages, of any type, alleging or threatening that any Deliverable Materials, supplies, equipment, services or works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claim of Infringement). If a Third Party Claim of Infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

6.6 Software Licensing. Contractor represents and warrants that the software, if any, as delivered to City, does not contain any program code, virus, worm, trap door, back door, time or clock that would erase data or programming or otherwise cause the software to become

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inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of licensor-selected conditions or manually on command. Contractor further represents and warrants that all third party software, delivered to City or used by Contractor in the performance of the Contract, is fully licensed by the appropriate licensor.

6.7 Publication. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City without prior written consent from the City.

6.8 Royalties, Licenses, and Patents. Unless otherwise specified, Contractor shall pay all royalties, license, and patent fees associated with the goods that are the subject of this solicitation. Contractor warrants that the goods, materials, supplies, and equipment to be supplied do not infringe upon any patent, trademark, or copyright, and further agrees to defend any and all suits, actions and claims for infringement that are brought against the City, and to defend, indemnify and hold harmless the City, its elected officials, officers, and employees from all liability, loss and damages, whether general, exemplary or punitive, suffered as a result of any actual or claimed infringement asserted against the City, Contractor, or those furnishing goods, materials, supplies, or equipment to Contractor under the Contract.

ARTICLE VII INDEMNIFICATION AND INSURANCE

7.1 Indemnification. Subject to Section 13.20, Limitation of Liability, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City and its elected officials, officers, and employees, (Indemnified Parties) from and against any and all third party claims, losses, costs, damages, injuries (including, injury to or death of an employee of Contractor or its subcontractors), expense, and liability (including, without limitation, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) to the extent caused by the negligent acts, errors or omissions or willful misconduct of Contractor or its subcontractors. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the negligence or willful misconduct of the Indemnified Parties.

7.2 Insurance. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors.

Contractor shall provide, at a minimum, the following:

7.2.1 Commercial General Liability. Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

7.2.2 Commercial Automobile Liability. Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

7.2.3 Workers' Compensation. Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

7.2.4 Professional Liability (Errors and Omissions). For consultant contracts, insurance appropriate to Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

7.2.5 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

7.2.5.1 Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

7.2.5.2 Primary Coverage. For any claims related to this contract, Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self- insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

7.2.5.3 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

7.2.5.4 Waiver of Subrogation. Contractor hereby grants to City a waiver of any right to subrogation which the Workers' Compensation insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

7.2.5.5 Claims Made Policies (applicable only to professional liability). The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase “extended reporting” coverage for a minimum of five (5) years after completion of work.

7.3 Self Insured Retentions. Self-insured retentions must be declared to and approved by City. City may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

7.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A-VI, unless otherwise acceptable to City.

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

7.5 Verification of Coverage. Contractor shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor’s obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

7.6 Special Risks or Circumstances. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

7.7 Additional Insurance. Contractor may obtain additional insurance not required by this Contract.

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

7.9 Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as the CG 20 38 04 13 endorsement.

ARTICLE VIII BONDS

8.1 Payment and Performance Bond. Prior to the execution of this Contract, City may require Contractor to post a payment and performance bond (Bond). The Bond shall guarantee Contractor's faithful performance of this Contract and assure payment to contractors, subcontractors, and to persons furnishing goods and/or services under this Contract.

8.1.1 Bond Amount. The Bond shall be in a sum equal to twenty-five percent (25%) of the Contract amount, unless otherwise stated in the Specifications. City may file a claim against the Bond if Contractor fails or refuses to fulfill the terms and provisions of the Contract.

8.1.2 Bond Term. The Bond shall remain in full force and effect at least until complete performance of this Contract and payment of all claims for materials and labor, at which time it will convert to a ten percent (10%) warranty bond, which shall remain in place until the end of the warranty periods set forth in this Contract. The Bond shall be renewed annually, at least sixty (60) days in advance of its expiration, and Contractor shall provide timely proof of annual renewal to City.

8.1.3 Bond Surety. The Bond must be furnished by a company authorized by the State of California Department of Insurance to transact surety business in the State of California and which has a current A.M. Best rating of at least "A-, VIII."

8.1.4 Non-Renewal or Cancellation. The Bond must provide that City and Contractor shall be provided with sixty (60) days' advance written notice in the event of non-renewal, cancellation, or material change to its terms. In the event of non-renewal, cancellation, or material change to the Bond terms, Contractor shall provide City with evidence of the new source of surety within twenty-one (21) calendar days after the date of the notice of non-renewal, cancellation, or material change. Failure to maintain the Bond, as required herein, in full force and effect as required under this Contract, will be a material breach of the Contract subject to termination of the Contract.

8.2 Alternate Security. City may, at its sole discretion, accept alternate security in the form of an endorsed certificate of deposit, a money order, a certified check drawn on a solvent bank, or other security acceptable to the Purchasing Agent in an amount equal to the required Bond.

ARTICLE IX CITY-MANDATED CLAUSES AND REQUIREMENTS

9.1 Contractor Certification of Compliance. By signing this Contract, Contractor certifies that Contractor is aware of, and will comply with, these City-mandated clauses throughout the duration of the Contract.

9.1.1 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 the Contract by this reference.

9.1.2 Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations: Contractor shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City's ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor's agreement to abide by the provisions of the City's Council Policy and any applicable access laws and regulations.

9.1.3 Non-Discrimination Requirements.

9.1.3.1 Compliance with City's Equal Opportunity Contracting Program (EOCP). Contractor shall comply with 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.

9.1.3.2 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. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

9.1.3.3 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 Contract termination, debarment, and other sanctions.

9.1.4 Equal Benefits Ordinance Certification. Unless an exception applies, Contractor shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (SDMC). Failure to maintain equal benefits is a material breach of the Contract.

9.1.5 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.

9.1.6 Noise Abatement. Contractor shall operate, conduct, or construct without violating the City's Noise Abatement Ordinance codified in the SDMC.

9.1.7 Storm Water Pollution Prevention Program. Contractor shall comply with the City's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of City regardless of location.

Contractor shall comply with the City's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended.

Contractor shall comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

9.1.8 Service Worker Retention Ordinance. If applicable, Contractor shall comply with the Service Worker Retention Ordinance (SWRO) codified in the SDMC.

9.1.9 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.

9.1.10 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 (BTC) and to provide a copy of its BTC to the City before a Contract is executed.

9.1.11 Equal Pay Ordinance. Unless an exception applies, Contractor shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. Contractor shall certify in writing that it will comply with the requirements of the EPO.

9.1.11.1 Contractor and Subcontract Requirement. The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of a Contractor to the same extent as it would apply to that Contractor. Any Contractor subject to the Equal Pay Ordinance shall

require all of its subcontractors to certify compliance with the Equal Pay Ordinance in its written subcontracts.

ARTICLE X CONFLICT OF INTEREST AND VIOLATIONS OF LAW

10.1 Conflict of Interest Laws. Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, *et. seq.* and 81000, *et. seq.*, and the Ethics Ordinance, codified in the SDMC. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary documents to City.

10.2 Contractor's Responsibility for Employees and Agents. Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

10.3 Contractor's Financial or Organizational Interests. In connection with any task, Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

10.4 Certification of Non-Collusion. Contractor certifies that: (1) Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

10.5 Hiring City Employees. This Contract shall be unilaterally and immediately terminated by City if Contractor employs an individual who within the twelve (12) months immediately preceding such employment did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the selection of Contractor.

ARTICLE XI DISPUTE RESOLUTION

11.1 Mediation. If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and City shall use mandatory non-binding mediation before having recourse in a court of law.

11.2 Selection of Mediator. A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Contract, if possible.

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11.3 Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

11.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

11.5 Mediation Results. Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

ARTICLE XII MANDATORY ASSISTANCE

12.1 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the City under a Contract, Contractor, its agents, officers, and employees agree to assist in resolving the dispute or litigation upon City's request. Contractor's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

12.2 Compensation for Mandatory Assistance. City will compensate Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and employees, Contractor shall reimburse City for all fees paid to Contractor, its agents, officers, and employees for Mandatory Assistance.

12.3 Attorneys' Fees Related to Mandatory Assistance. In providing City with dispute or litigation assistance, Contractor or its agents, officers, and employees may incur expenses and/or costs. Contractor agrees that any attorney fees it may incur as a result of assistance provided under Section 12.2 are not reimbursable.

**ARTICLE XIII
MISCELLANEOUS**

13.1 Headings. All headings are for convenience only and shall not affect the interpretation of this Contract.

13.2 Non-Assignment. Contractor may not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due under this Contract, without City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the City's sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

13.3 Independent Contractors. Contractor and any subcontractors employed by Contractor are independent contractors and not agents of City. Any provisions of this Contract that may appear to give City any right to direct Contractor concerning the details of performing or providing the goods and/or services, or to exercise any control over performance of the Contract, shall mean only that Contractor shall follow the direction of City concerning the end results of the performance.

13.4 Subcontractors. All persons assigned to perform any work related to this Contract, including any subcontractors, are deemed to be employees of Contractor, and Contractor shall be directly responsible for their work.

13.5 Covenants and Conditions. All provisions of this Contract expressed as either covenants or conditions on the part of City or Contractor shall be deemed to be both covenants and conditions.

13.6 Compliance with Controlling Law. Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

13.7 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.

13.8 Venue. The venue for any suit concerning solicitations or the 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.

13.9 Successors in Interest. This Contract and all rights and obligations created by this Contract shall be in force and effect whether or not any parties to the Contract have been

succeeded by another entity, and all rights and obligations created by this Contract shall be vested and binding on any party's successor in interest.

13.10 No Waiver. No failure of either City or Contractor to insist upon the strict performance by the other of any covenant, term or condition of this Contract, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Contract, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Contract, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

13.11 Severability. The unenforceability, invalidity, or illegality of any provision of this Contract shall not render any other provision of this Contract unenforceable, invalid, or illegal.

13.12 Drafting Ambiguities. The parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms and conditions of this Contract, and the decision of whether to seek advice of legal counsel with respect to this Contract is the sole responsibility of each party. This Contract shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Contract.

13.13 Amendments. Neither this Contract nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of City and Contractor. Any alleged oral amendments have no force or effect. The Purchasing Agent must sign all Contract amendments.

13.14 Conflicts Between Terms. If this Contract conflicts with an applicable local, state, or federal law, regulation, or court order, applicable local, state, or federal law, regulation, or court order shall control. Varying degrees of stringency among the main body of this Contract, the exhibits or attachments, and laws, regulations, or orders are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Contract.

13.15 Survival of Obligations. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Contract, as well as all continuing obligations indicated in this Contract, shall survive, completion and acceptance of performance and termination, expiration or completion of the Contract.

13.16 Confidentiality of Services. All services performed by Contractor, and any sub-contractor(s) if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Contractor, are for the sole use of City, its agents, and employees. Neither the documents nor their contents shall be released by Contractor or any subcontractor to any third party without the prior written consent of City. This provision does not apply to information that: (1) was publicly known, or otherwise known to Contractor, at the time it was disclosed to Contractor by City; (2) subsequently becomes publicly known through no act or omission of Contractor; or (3) otherwise becomes known to Contractor other than through disclosure by City.

13.17 Insolvency. If Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the Purchasing Agent and the Contract Administrator responsible for administering the Contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of City contract numbers and contracting offices for all City contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Contract.

13.18 No Third Party Beneficiaries. Except as may be specifically set forth in this Contract, none of the provisions of this Contract are intended to benefit any third party not specifically referenced herein. No party other than City and Contractor shall have the right to enforce any of the provisions of this Contract.

13.19 Actions of City in its Governmental Capacity. Nothing in this Contract shall be interpreted as limiting the rights and obligations of City in its governmental or regulatory capacity.

13.20 Limitation of Liability. In no event will either party be liable to the other for any special, indirect, incidental, or consequential damages, punitive damages, cost of cover, business interruption, loss of data, or lost profits, however caused, under any theory of liability, even if advised of the possibility of such damages or loss. Contractor's liability for all claims arising out of this Agreement shall be limited to the lesser of the amount of fees paid by City to Contractor for the product or service from which the liability, or potential liability, arises or \$3,000,000.

EXHIBIT C
CITY REQUIRED FORMS

Contractor Standards Pledge of Compliance

Equal Opportunity Contracting forms, including Contractors Certification of Pending Actions and Work Force Report

Insurance Certificates with all endorsements (if applicable)

EXHIBIT D

WAGE REQUIREMENTS: SERVICE AND MAINTENANCE CONTRACTS EXECUTED ON OR AFTER JANUARY 1, 2015

By signing this Contract, Bidder certifies that he or she is aware of the wage provisions described herein and shall comply with such provisions before commencing services.

A. PREVAILING WAGES. Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Contract is subject to State prevailing wage laws. For construction work performed under this Contract cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Contract cumulatively exceeding \$15,000, Bidder and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below. This requirement is in addition to the requirement to pay Living Wage pursuant to San Diego Municipal Code Chapter 2, Article 2, Division 42. Bidder must determine which per diem rate is highest for each classification of work (i.e. Prevailing Wage Rate or Living Wage Rate), and pay the highest of the two rates to their employees. Living Wage applies to workers who are not subject to Prevailing Wage Rates.

1. Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, Bidder and its subcontractors shall ensure that all workers who perform work under this Contract are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

1.1. Copies of such prevailing rate of per diem wages are on file at the City of San Diego's Equal Opportunity Contracting Department and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Bidder and its subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

1.2. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Contract. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Contract in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Contract, each successive predetermined wage rate shall apply to this Contract on the date following the expiration date

of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Contract, such wage rate shall apply to the balance of the Contract.

2. Penalties for Violations. Bidder and its subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.

3. Payroll Records. Bidder and its subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Bidder shall require its subcontractors to also comply with section 1776. Bidder and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Bidder is responsible for ensuring its subcontractors submit certified payroll records to the City. Bidder and its subcontractors shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

4. Apprentices. Bidder and its subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Bidder shall be held responsible for their compliance as well as the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.

5. Working Hours. Bidder and its subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

6. Required Provisions for Subcontracts. Bidder shall include at a minimum a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

7. Labor Code Section 1861 Certification. Bidder in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Contract, Bidder certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract."

8. Labor Compliance Program. The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when

payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.

9. Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. A Bidder or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or enter into any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Section 1725.5. In accordance with Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

9.1. A Bidder's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

9.2. A Contract entered into with any Bidder or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a Contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, Bidder, or any subcontractor to comply with the requirements of section 1725.5 of this section.

9.3. By submitting a bid or proposal to the City, Bidder is certifying that he or she has verified that all subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Bidder shall provide proof of registration for themselves and all listed subcontractors to the City at the time of bid or proposal due date or upon request.

10. Stop Order. For Bidder or its subcontractor(s) engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered Bidder or unregistered subcontractor(s) on ALL public works until the unregistered Bidder or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.

11. List of all Subcontractors. The City may ask Bidder for the most current list of subcontractors (regardless of tier), along with their DIR registration numbers,

utilized on this contract at any time during performance of this contract, and Bidder shall provide the list within ten (10) working days of the City's request. Additionally, Bidder shall provide the City with a complete list of all subcontractors utilized on this contract (regardless of tier), within ten working days of the completion of the contract, along with their DIR registration numbers. The City shall withhold final payment to Bidder until at least 30 days after this information is provided to the City.

12. Exemptions for Small Projects. There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. The Bidder shall still comply with Labor Code sections 1720 et. seq. The only recognized exemptions are listed below:

12.1. Registration. The Bidder will not be required to register with the DIR for small projects. (Labor Code section 1771.1).

12.2. Certified Payroll Records. The records required in Labor Code section 1776 shall be required to be kept and submitted to the City of San Diego, but will not be required to be submitted online with the DIR directly. The Bidder will need to keep those records for at least three years following the completion of the contract. (Labor Code section 1771.4).

12.3. List of all Subcontractors. The Bidder shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in section 11 above. (Labor Code section 1773.3).

B. Living Wages. This Contract is subject to the City's Living Wage Ordinance (LWO), codified in San Diego Municipal Code Chapter 2, Article 2, Division 42. Bidder agrees to require all of its subcontractors, sublessees, and concessionaires subject to the LWO to comply with the LWO and all applicable regulations and rules.

1. Payment of Living Wages. Pursuant to San Diego Municipal Code section 22.4220(a), Bidder and its subcontractors shall ensure that all workers who perform work under this Contract are paid not less than the required minimum hourly wage rates and health benefits rate unless an exemption applies.

1.1 Copies of such living wage rates are available on the City website at <https://www.sandiego.gov/purchasing/programs/livingwage/>. Bidder and its subcontractors shall post a notice informing workers of their rights at each job site or a site frequently accessed by covered employees in a prominent and accessible place in accordance with San Diego Municipal Code section 22.4225(e).

1.2 LWO wage and health benefit rates are adjusted annually in accordance with San Diego Municipal Code section 22.4220(b) to reflect the Consumer Price Index. Service contracts, financial assistance agreements, and City facilities agreements must include this upward adjustment of wage rates to covered employees on July 1 of each year.

2. Compensated Leave. Pursuant to San Diego Municipal Code section 22.4220(c), Bidder and its subcontractors shall provide a minimum of eighty (80)

hours per year of compensated leave. Part-time employees must accrue compensated leave at a rate proportional to full-time employees.

3. Uncompensated Leave. Bidder and its subcontractors must also permit workers to take a minimum of eighty (80) hours of uncompensated leave per year to be used for the illness of the worker or a member of his or her immediate family when the worker has exhausted all accrued compensated leave.

4. Enforcement and Remedies. City will take any one or more of the actions listed in San Diego Municipal Code section 22.4230 should Bidder or its subcontractors are found to be in violation of any of the provisions of the LWO.

5. Payroll Records. Bidder and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Bidder is responsible for ensuring its subcontractors submit certified payroll records to the City.

5.1 For contracts subject to both living wage and prevailing wage requirements, only one submittal will be required. Submittals by a Bidder and all subcontractors must comply with both ordinance requirements.

6. Certification of Compliance. San Diego Municipal Code section 22.4225 requires each Bidder to fill out and file a living wage certification with the Living Wage Program Manager within thirty (30) days of Award of the Contract.

7. Annual Compliance Report. Bidder and its subcontractors must file an annual report documenting compliance with the LWO pursuant to San Diego Municipal Code section 22.4225(d). Records documenting compliance must be maintained for a minimum of three (3) years after the City's final payment on the service contract or agreement.

8. Exemption from Living Wage Ordinance. Pursuant to San Diego Municipal Code section 22.4215, this Contract may be exempt from the LWO. For a determination on this exemption, Bidder must complete the Living Wage Ordinance Application for Exemption.

C. Highest Wage Rate Applies. Bidder is required to pay the highest applicable wage rate where more than one wage rate applies.

Purchasing and Contracting Department
Sole Source Request and Certification Form



To: Director of Purchasing and Contracting
Cc: Deputy Chief Operating Officer, Infrastructure / Public Works
From: Craig Boyd, Interim Deputy Director, Wastewater Treatment and Disposal, WWTD
Date: October 1, 2020

In alignment with the guidance provided in the San Diego Municipal Code section 22.3016, the Purchasing Agent (Director of Purchasing and Contracting) must certify that the award of a sole source contract is necessary by memorializing in writing why strict compliance with a competitive process would be unavailing or would not produce an advantage, and why soliciting bids or proposals would therefore be undesirable, impractical, or impossible.

For consideration, this form must be completed and all required accompanying information must be submitted together, including any related contracts. Failure to do so will result in a delay of approval of the request.

Describe commodity or service(s) to be purchased. Include vendor contact information.

This sole source requests approval is being sort to establish a contract between the City of San Diego (City) Wastewater Treatment and Disposal (WWTD) of Public Utilities Department (PUD) and Hawthorne Power Systems (Hawthorne) to acquire parts and technical services for Caterpillar Co-generation engine, (Co-Gen) backup generators and associated switch-gears.

WWTD currently owns and operates 5 Co-Gen, Caterpillar engines generators, along with nineteen (19) smaller emergency generator units and associated electrical switch-gears, at several facilities. The Co Gen units are located at Gas Utilization facility, GUF, (two units), Pump Station 2 (2 units) and North City Water Reclamation Plant, (1 unit). Additional the Energy Reliability Project at Pump Station 2 will utilize two new Gas, Caterpillar Co Gen unit, which will be included once maintenance is needed past warranty period.

The Co-Gen units provide power for plant operations. With Point Loma Wastewater Treatment Disposal Plant GUF also provide approximately 11 Million of Kilowatt Hours (KWH) of electric credits to the City on an annual basis. Hawthorne is the only authorized parts supplier and technical services provider for Caterpillar Co Gen generators, emergency generators, and switch-gears. Hawthorne's Caterpillar factory-trained staffs have the expertise and certification needed to professionally service and repair Caterpillar equipment. In addition, this ensures maximum performance and minimum environmental impact."

Hawthorne is the only authorized parts supplier and technical services provider for Caterpillar engine generators and switch-gears. It is requested that you approve this procurement with Hawthorne Power Systems for a period of five (5) years for technical services and parts for Caterpillar engine generators and switch-gears for an amount not to exceed \$15 million over five (5) years period.

Vendor Contact Information:
Timothy Roberts Sales Manager
Phone: (858) 376-6882
Email: TRoberts@HawthorneCat.com

Justification

1. This product or service is available from only one supplier and meets at least one of the following criteria (please check all that are applicable):

- One-of-a-kind/Compatibility*
- a. Required by Warranty: the product matches existing equipment, infrastructure and is required by warranty. **(A letter from the provider which supports this claim must be provided.)**
 - b. Goods and Services:
 - i. the good has no competitive product or alternative on the market.
 - ii. the service requires a special skill, ability, or expertise linked to the current project that cannot be provided by another supplier.

(Documentation in support of either of the above claims must be provided by the requesting department.)

- City Standards* The product or service complies with established, existing City standards.
- Replacement* The product or service is the only compatible replacement component that supports a larger system. Or, the services are the only ones that can replace the existing service requirements.

2. Do any of the following situations exist?

- Limited Competition* Department made an attempt to find a second or multiple sources to no avail.
- Emergency* There is an urgent need for the item or service and time does not permit the City to solicit for competitive bids, as in the cases of emergencies as defined under SDMC section 22.3208,. (Delays in solicitation do not satisfy this criteria)

Cost/Market Analysis

Purchasing and Contracting will perform due diligence on each request. If Purchasing and Contracting can find a suitable, cost effective alternative, this request will be denied and that alternative will be pursued after your department has been contacted to discuss the revised determination.

This form does not take the place of an agreement and all sole source requests for a period of one year or longer will require the **submission of an agreement**. The requesting department must submit a purchase requisition and a copy of this certification to Purchasing and Contracting for a Purchase Order to be issued.

PCO Due Diligence (PCO to initial all that apply)

_____ Proof of warranty or maintenance requirement for standardized and replacement items confirmed.

MLW Vendor/Supplier confirmed submission of justification letter.

_____ Market test confirmed that there is no advantage to the City in competing this contracting opportunity to multiple vendors.

_____ Emergency verified with the department.

MLW Pricing agreement has been reviewed.

MLW Purchasing and Contracting has reviewed this request and affirms that this request for a sole source justification is appropriate.

This sole source is approved for:

- One (1) year from the signature date below.
- For the entire length of the contract, but not more than five (5) years.

The length of the contract must be consistent with the sole source approval. A sole source request must be submitted and approved by the Purchasing and Contracting Director prior to the award of each new contract and prior to each extension of an existing contract that was not contemplated in the initial contract term.

_____ After reviewing the provided information and due diligence, I cannot recommend the approval of this request.

Purchasing and Contracting Director Review

I certify that strict compliance with a competitive process would be unavailing or would not produce an advantage, and that soliciting bids or proposals would be therefore undesirable, impracticable or impossible. My approval is contingent on the information provided in this form.

In accordance with SDMC §22.3016, this request is approved.

Based on the information provided and due diligence recommendation of staff, this request is denied.



Christiana Gauger, Interim Director, Purchasing and Contracting

10/23/2020

Date

To: Delgado, Vanessa <CDelegado@sandiego.gov>

Subject: Draft Documents: SS 4186 - Hawthorne Machinery Co.

Vanessa,

Please find attached the draft documents in support of SS 4186 with Hawthorne Machinery Co.

Very Respectfully,

Mike

Michael Warner
Senior Procurement Contracting Officer
City of San Diego
Purchasing & Contracting Department

T: (619) 236-6154

mwarner@sandiego.gov

<SS 4186 Request_Hawthorne.pdf>

<Sole Source Provider Letter 02062020.pdf>

<2 - Article IV Signature page_v2.docx>

<3 - Exhibit A_Scope of Work.docx>

<4_Attachment A - Engine Population List_WWTD 10.1.2020.docx>

<1 - Service Agreement_v2.docx>

<SAM_Hawthorne Machinery Co.pdf>