

ORIGINAL

CITY OF SAN DIEGO

PURCHASING & CONTRACTING DEPARTMENT

1200 Third Avenue, Suite 200

San Diego, CA 92101-4195

Fax: (619)236-5904

ADDENDUM B

RFP No. 10089648-20-K

RFP Closing Date: April 8, 2020  
@2:00p.m.

Request for Quotes for furnishing the City of San Diego with **Parking Meters and Related Supplies**

The following changes to the specifications are hereby made effective as though they were originally shown and/or written:

1. Delete Addendum A Request for Proposal signature page and replace with attached Addendum B Request for Proposal signature page.
2. Delete original Request for Proposal, Exhibit B, pages 26 & 27 and replace with attached Addendum B Request for Proposal, Exhibit B, pages 26 & 27. (**NOTE:** Changes made in bold)

CITY OF SAN DIEGO PURCHASING & CONTRACTING DEPARTMENT

*Brent Krohn*

Brent Krohn  
Program Coordinator  
(619)236-6044

August 11, 2020

R- 313239

ORIGINAL

**CONTRACT RESULTING FROM REQUEST FOR PROPOSAL NUMBER 10089648-20-K,  
PARKING METERS AND RELATED SERVICES**

This Contract (Contract) is entered into by and between the City of San Diego, a municipal corporation (City), and the successful proposer to Request for Proposal (RFP) # 10089648-20-K, PARKING METERS AND RELATED SERVICES (Contractor).

**RECITALS**

On or about 3/6/2020, City issued an RFP to prospective proposers on services to be provided to the City. The RFP and any addenda and exhibits thereto are collectively referred to as the "RFP." The RFP is attached hereto as Exhibit A.

City has determined that Contractor has the expertise, experience, and personnel necessary to provide the Parking Meters and Related Services.

City wishes to retain Contractor to provide Parking Meters and Related Services as further described in the Scope of Work, attached hereto as Exhibit B. (Parking Meters and Related Services Scope of Work).

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 Work.** Contractor shall provide the Parking Meters and Related Services Scope of Work to City as described in Exhibit B which is incorporated herein by reference. Contractor will submit all required forms and information described in Exhibit A to the Purchasing Agent before providing Parking Meters and Related Services Scope of Work.

**1.2 General Contract Terms and Provisions.** This Contract incorporates by reference the General Contract Terms and Provisions, attached hereto as Exhibit C.

**ARTICLE II  
DURATION OF CONTRACT**

**2.1 Term.** This Contract shall be for a period of 5 years beginning on the Effective Date. The term of this Contract shall not exceed five years unless approved by the City Council by ordinance.

**2.2 Effective Date.** This Contract shall be effective on the date it is executed by the last Party to sign the Contract, 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 Contract in an amount not to exceed **\$12,091,818.00** OPR Initials  
10/22/2020 Date  
(The not to exceed amount will be added in this final Contract prior to the final execution of the Contract by the City, with the Contractor's initials indicating acceptance. In no case shall the not to exceed amount exceed \$3,000,000 without prior City Council authorization.)

### ARTICLE IV WAGE REQUIREMENTS

**4.1** By submitting a response to this RFP, Contractor certifies that he or she is aware of, and agrees to comply with, the wage provisions described in Exhibit D, Wage Requirements, which is incorporated herein by reference, before commencing Services.

### ARTICLE V CONTRACT DOCUMENTS

**5.1 Contract Documents.** The following documents comprise the Contract between the City and Contractor: this Contract and all exhibits thereto, the RFP; the Notice to Proceed; and the City's written acceptance of exceptions or clarifications to the RFP, if any.

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

**5.3 Precedence.** In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the Parties will use the order of precedence as set forth below. The 1<sup>st</sup> document has the highest priority. Inconsistent provisions in the Contract Documents that address the same subject, are consistent, and have different degrees of specificity, are not in conflict and the more specific language will control. The order of precedence from highest to lowest is as follows:

- 1<sup>st</sup> Any properly executed written amendment to the Contract
- 2<sup>nd</sup> The Contract
- 3<sup>rd</sup> The RFP and the City's written acceptance of any exceptions or clarifications to the RFP, if any
- 4<sup>th</sup> Contractor's Pricing



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

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

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

**CONTRACTOR**

\_\_\_\_\_  
IPS Group Inc.  
**Proposer**  
\_\_\_\_\_  
7737 Kenamar Ct  
**Street Address**  
\_\_\_\_\_  
San Diego, CA 92121  
**City**  
\_\_\_\_\_  
858-404-0607  
**Telephone No.**  
\_\_\_\_\_  
sales@ipsgroup.com  
**E-Mail**

**CITY OF SAN DIEGO**  
A Municipal Corporation

BY:



Print Name:

  
Director, Purchasing & Contracting  
Department ACCO

Date Signed

10/29/2020

BY:

  
\_\_\_\_\_  
**Signature of**  
**Proposer's Authorized**  
**Representative**  
\_\_\_\_\_  
Chad P Randall  
**Print Name**  
\_\_\_\_\_  
Chief Operating Officer  
**Title**  
\_\_\_\_\_  
8/12/2020  
**Date**

Approved as to form this 5<sup>th</sup> day of

November, 20 20.  
MARA W. ELLIOTT, City Attorney



BY:

Deputy City Attorney





**B. DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION NUMBER.** Per Section II.A.9:

	Registration No.	Expiration Date	Name
DIR Registration No.	1000062382	6/30/2022	IPS GROUP INC.

**C. CONTRACT ADMINISTRATOR.** The Office of the City Treasurer (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:

Jonathan Carey, Parking Program Manager  
Plaza Hall, 202 C Street  
San Diego, CA 92101  
619-533-3610  
[jcarey@sandiego.gov](mailto:jcarey@sandiego.gov)

**D. PAYMENT CARD INDUSTRY DATA SECURITY DOCUMENTS**

**1 PCI Compliance.** Contractor acknowledges and agrees that to the extent that credit card data is collected, processed, stored or transmitted, Contractor must adhere to the Payment Card Industry Data Security Standards (PCI DSS) and must specifically comply with the City PCI requirements described in this Section D.

**2 Contractor Compliance with Payment Card Industry Security Standards Council Standards.** Contractor must maintain full compliance with all current and applicable Payment Card Industry Security Standards Council Standards (PCI SSC), for all Services performed under this Contract or other contracts managed by Contractor. Contractor acknowledges and agrees that it will ensure that any subcontractors or other service providers that it uses to assist with performance of this Contract will also maintain full compliance with all current and applicable PCI SSC standards.

**3 Attestation of PCI Compliance.** Contractor must, upon request of the City annually on the anniversary of the Effective Date, provide the City with a copy of the Level 1 Service Provider attestation of compliance which must be approved and signed by a qualified security assessor (QSA) company recognized by the PCI SSC. Any deficiencies noted in an annual assessment must be communicated to City, in writing, within thirty (30) days of the report, and include a remediation date in accordance with the PCI SSC's prioritized approach. Any deficiencies noted in an annual assessment must be remediated at Contractor's sole cost and expense.

**4 Contractor Remediation.** Contractor must remediate, in a timely manner and at Contractor's sole cost and expense, any outstanding audit finding by Contractor or City's QSA as it relates to Contractor's provision of PCI related hardware or services in compliance with the most current PCI DSS and PCI SSC.

**5 Service Provider Responsibility Matrix.** Contractor must complete a Service Provider Responsibility Matrix (Matrix) in either the form provided by City, or in a format approved by City, and account for all management services that will be



supplied to the City as they relate to cardholder data that is stored, processed, or transmitted on behalf of City. The Matrix shall be updated in regularly and in a timely manner to reflect any changes in the provision of such management services. Upon its completion, the Matrix is hereby incorporated into the Contract and any updates or revisions to the Matrix will also be incorporated into this Contract without need for an amendment.

**6 Contractor Hardware Inspections, Checklist and Notice of Unauthorized Access.** Inspection of all kiosk devices, merchant terminals, and related payment hardware, used in the acceptance, transmission, or storage of credit card data, will be performed as defined in the Service Provider Responsibility Matrix. If applicable, Contractor must document all hardware inspections using a checklist in accordance with PCI DSS requirement 9.9 (Checklist), located at:

[https://www.pcisecuritystandards.org/document\\_library?category=pcidss&document=pci\\_dss](https://www.pcisecuritystandards.org/document_library?category=pcidss&document=pci_dss)

or located at such other website as the PCI SSC may describe from time to time.

**6.01** If applicable, Contractor must report immediately to the City, via email and phone call, any known device tampering or other breach, intrusion, or unauthorized access to cardholder data stored by or on behalf of Contractor. For purposes of this subsection a, reporting to the City's Information Security Officer (CISO) and the Office of the City Treasurer will be deemed sufficient for notifying the City. Contractor also agrees to assume responsibility for informing all affected individuals in accordance with applicable law.

**6.02** If applicable, upon the City's request, Contractor must provide to City a copy of the Checklist.



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

CONTRACTOR

CITY OF SAN DIEGO  
A Municipal Corporation

\_\_\_\_\_  
Proposer

BY: \_\_\_\_\_

\_\_\_\_\_  
Street Address

Print Name: \_\_\_\_\_

\_\_\_\_\_  
City

\_\_\_\_\_  
Director, Purchasing & Contracting  
Department

\_\_\_\_\_  
Telephone No.

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
E-Mail

BY: \_\_\_\_\_

\_\_\_\_\_  
Signature of  
Proposer's Authorized  
Representative

\_\_\_\_\_  
Print Name

Approved as to form this \_\_\_\_ day of

\_\_\_\_\_  
Title

\_\_\_\_\_, 20\_\_\_\_.  
MARA W. ELLIOTT, City Attorney

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
Deputy City Attorney

**EXHIBIT A  
PROPOSAL SUBMISSION AND REQUIREMENTS**

**A. PROPOSAL SUBMISSION**

**1. Timely Proposal Submittal.** Proposals must be submitted as described herein to the Purchasing & Contracting Department (P&C).

**1.1 Reserved.**

**1.2 Paper Proposals.** The City will accept paper proposals in lieu of eProposals. Paper proposals must be submitted in a sealed envelope to the Purchasing & Contracting Department (P&C) located at 1200 Third Avenue, Suite 200, San Diego, CA 92101. The Solicitation Number and Closing Date must be referenced in the lower left-hand corner of the outside of the envelope. Faxed proposals will not be accepted.

**1.3 Proposal Due Date.** Proposals must be submitted prior to the Closing Date indicated on the eBidding System. E-mailed and/or faxed proposals will not be accepted.

**1.4 Pre-Proposal Conference.** No pre-proposal conference will be held for RFP.

**1.4.1 Reserved.**

**1.5 Questions and Comments.** Written questions and comments must be submitted electronically via the eBidding System no later than the date specified on the eBidding System. Only written communications relative to the procurement shall be considered. The City's eBidding System is the only acceptable method for submission of questions. All questions will be answered in writing. The City will distribute questions and answers without identification of the inquirer(s) to all proposers who are on record as having received this RFP, via its eBidding System. No oral communications can be relied upon for this RFP. Addenda will be issued addressing questions or comments that are determined by the City to cause a change to any part of this RFP.

**1.6 Contact with City Staff.** Unless otherwise authorized herein, proposers who are considering submitting a proposal in response to this RFP, or who submit a proposal in response to this RFP, are prohibited from communicating with City staff about this RFP from the date this RFP is issued until a contract is awarded.

**2. Proposal Format and Organization.** Unless electronically submitted, all proposals should be securely bound and must include the following completed and executed forms and information presented in the manner indicated below:

**Tab A - Submission of Information and Forms.**

**2.1 Completed and signed Contract Signature Page.** If any addenda are issued, the latest Addendum Contract Signature Page is required.

**2.1 Exceptions requested by proposer, if any.** The proposer must present written factual or legal justification for any exception requested to the Scope of Work, the Contract, or the Exhibits thereto. Any exceptions to the Contract that have not been accepted



by the City in writing are deemed rejected. The City, in its sole discretion, may accept some or all of proposer's exceptions, reject proposer's exceptions, and deem the proposal non-responsive, or award the Contract without proposer's proposed exceptions. The City will not consider exceptions addressed elsewhere in the proposal.

**2.2 The Contractor Standards Pledge of Compliance Form.**

**2.3 Equal Opportunity Contracting forms including the Work Force Report and Contractors Certification of Pending Actions.**

**2.4 Living Wage Ordinance Certification of Compliance.**

**2.5 Licenses as required in Exhibit B.**

**2.6 Manufacturer's Price List.**

**2.6 Additional Information as required in Exhibit B.**

**2.7 Reserved.**

**2.8 Reserved.**

**2.9 Reserved.**

**Tab B - Executive Summary and Responses to Specifications.**

**2.10 A title page.**

**2.11 A table of contents.**

**2.12 An executive summary, limited to one typewritten page, that provides a high-level description of the proposer's ability to meet the requirements of the RFP and the reasons the proposer believes itself to be best qualified to provide the identified services.**

**2.13 Proposer's response to the RFP.**

**Tab C - Price Proposal.** Proposers shall submit a price proposal (Exhibit E-Pricing Workbook) in the form and format described herein. Failure to provide cost(s) in the form and format requested may result in proposal being declared non-responsive and rejected.

**3. Proposal Review.** Proposers are responsible for carefully examining the RFP, the Specifications, this Contract, and all documents incorporated into the Contract by reference before submitting a proposal. If selected for award of contract, proposer shall be bound by same unless the City has accepted proposer's exceptions, if any, in writing.

**4. Addenda.** The City may issue addenda to this RFP as necessary. All addenda are incorporated into the Contract. The proposer is responsible for determining whether addenda were issued prior to a proposal submission. Failure to respond to or properly address addenda may result in rejection of a proposal.

**5. Quantities.** The estimated quantities provided by the City are not guaranteed. These quantities are listed for informational purposes only. Quantities vary depending on the demands of the City. Any variations from the estimated quantities shall not entitle the proposer to an adjustment in the unit price or any additional compensation.

**6. Quality.** Unless otherwise required, all goods furnished shall be new and the best of their kind.

**6.1 Items Offered.** Proposer shall state the applicable trade name, brand, catalog, manufacturer, and/or product number of the required good, if any, in the proposal.

**6.2 Brand Names.** Any reference to a specific brand name in a solicitation is illustrative only and describes a component best meeting the specific operational, design, performance, maintenance, quality, or reliability standards and requirements of the City. Proposer may offer an equivalent or equal in response to a brand name referenced (Proposed Equivalent). The City may consider the Proposed Equivalent after it is subjected to testing and evaluation which must be completed prior to the award of contract. If the proposer offers an item of a manufacturer or vendor other than that specified, the proposer must identify the maker, brand, quality, manufacturer number, product number, catalog number, or other trade designation. The City has complete discretion in determining if a Proposed Equivalent will satisfy its requirements. It is the proposer's responsibility to provide, at their expense, any product information, test data, or other information or documents the City requests to properly evaluate or demonstrate the acceptability of the Proposed Equivalent, including independent testing, evaluation at qualified test facilities, or destructive testing.

**7. Modifications, Withdrawals, or Mistakes.** Proposer is responsible for verifying all prices and extensions before submitting a proposal.

**7.1 Modification or Withdrawal of Proposal Before Proposal Opening.** Prior to the Closing Date, the proposer or proposer's authorized representative may modify or withdraw the proposal by providing written notice of the proposal modification or withdrawal to the City Contact via the eBidding System. E-mail or telephonic withdrawals or modifications are not permissible.

**7.2 Proposal Modification or Withdrawal of Proposal After Proposal Opening.** Any proposer who seeks to modify or withdraw a proposal because of the proposer's inadvertent computational error affecting the proposal price shall notify the City Contact identified on the eBidding System no later than three working days following the Closing Date. The proposer shall provide worksheets and such other information as may be required by the City to substantiate the claim of inadvertent error. Failure to do so may bar relief and allow the City recourse from the bid surety. The burden is upon the proposer to prove the inadvertent error. If, as a result of a proposal modification, the proposer is no longer the apparent successful proposer, the City will award to the newly established apparent successful proposer. The City's decision is final.

**8. Incurred Expenses.** The City is not responsible for any expenses incurred by proposers in participating in this solicitation process.

**9. Public Records.** By submitting a proposal, the proposer acknowledges that any information submitted in response to this RFP is a public record subject to disclosure unless the City determines that a specific exemption in the California Public Records Act (CPRA)

applies. If the proposer submits information clearly marked confidential or proprietary, the City may protect such information and treat it with confidentiality to the extent permitted by law. However, it will be the responsibility of the proposer to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the CPRA should the City choose to withhold such information. General references to sections of the CPRA will not suffice. Rather, the proposer must provide a specific and detailed legal basis, including applicable case law, that clearly establishes the requested information is exempt from the disclosure under the CPRA. If the proposer does not provide a specific and detailed legal basis for requesting the City to withhold proposer's confidential or proprietary information at the time of proposal submittal, City will release the information as required by the CPRA and proposer will hold the City, its elected officials, officers, and employees harmless for release of this information. It will be the proposer's obligation to defend, at proposer's expense, any legal actions or challenges seeking to obtain from the City any information requested under the CPRA withheld by the City at the proposer's request. Furthermore, the proposer shall indemnify and hold harmless the City, its elected officials, officers, and employees from and against any claim or liability, and defend any action brought against the City, resulting from the City's refusal to release information requested under the CPRA which was withheld at proposer's request. Nothing in the Contract resulting from this proposal creates any obligation on the part of the City to notify the proposer or obtain the proposer's approval or consent before releasing information subject to disclosure under the CPRA.

**10. Right to Audit.** The City Auditor may access proposer's records as described in San Diego Charter section 39.2 to confirm contract compliance.

## **B. PRICING**

**1. Fixed Price.** All prices shall be firm, fixed, fully burdened, FOB destination, and include any applicable delivery or freight charges, and any other costs required to provide the requirements as specified in this RFP. The lowest total estimated contract price of all the proposals that meet the requirements of this RFP will receive the maximum assigned points to this category as set forth in this RFP. The other price schedules will be scored based on how much higher their total estimated contract prices compare with the lowest:

$$(1 - \frac{(\text{contract price} - \text{lowest price})}{\text{lowest price}}) \times \text{maximum points} = \text{points received}$$

For example, if the lowest total estimated contract price of all proposals is \$100, that proposal would receive the maximum allowable points for the price category. If the total estimated contract price of another proposal is \$105 and the maximum allowable points is 60 points, then that proposal would receive  $(1 - ((105 - 100) / 100) \times 60 = 57$  points, or 95% of the maximum points. The lowest score a proposal can receive for this category is zero points (the score cannot be a negative number). The City will perform this calculation for each Proposal.

**2. Taxes and Fees.** Taxes and applicable local, state, and federal regulatory fees should not be included in the price proposal. Applicable taxes and regulatory fees will be added to the net amount invoiced. The City is liable for state, city, and county sales taxes but is exempt from Federal Excise Tax and will furnish exemption certificates upon request. All

or any portion of the City sales tax returned to the City will be considered in the evaluation of proposals.

**3. Escalation.** An escalation factor is not allowed unless called for in this RFP. If escalation is allowed, proposer must notify the City in writing in the event of a decline in market price(s) below the proposal price. At that time, the City will make an adjustment in the Contract or may elect to re-solicit.

**4. Unit Price.** Unless the proposer clearly indicates that the price is based on consideration of being awarded the entire lot and that an adjustment to the price was made based on receiving the entire proposal, any difference between the unit price correctly extended and the total price shown for all items shall be offered shall be resolved in favor of the unit price.

### **C. EVALUATION OF PROPOSALS**

**1. Award.** The City shall evaluate each responsive proposal to determine which proposal offers the City the best value consistent with the evaluation criteria set forth herein. The proposer offering the lowest overall price will not necessarily be awarded a contract.

**2. Sustainable Materials.** Consistent with Council Policy 100-14, the City encourages use of readily recyclable submittal materials that contain post-consumer recycled content.

#### **3. Evaluation Process.**

**3.1 Process for Award.** A City-designated evaluation committee (Evaluation Committee) will evaluate and score all responsive proposals. The Evaluation Committee may require proposer to provide additional written or oral information to clarify responses. Upon completion of the evaluation process, the Evaluation Committee will recommend to the Purchasing Agent that award be made to the proposer with the highest scoring proposal.

#### **3.2 Reserved.**

**3.3 Mandatory Interview/Oral Presentation.** The City will require proposers to interview and/or make an oral presentation if one or more proposals score within ten (10) points or less of the proposal with the highest score. Only the proposer with the highest scoring proposal and those proposers scoring within ten (10) points or less of the highest scoring proposal will be asked to interview and/or make an oral presentation. Interviews and/or oral presentations will be made to the Evaluation Committee in order to clarify the proposals and to answer any questions. The interviews and/or oral presentations will be scored as part of the selection process. The City will complete all reference checks prior to any oral interview. Additionally, the Evaluation Committee may require proposer's key personnel to interview. Interviews may be by telephone and/or in person. Multiple interviews may be required. Proposers are required to complete their oral presentation and/or interviews within seven (7) workdays after the City's request. Proposers should be prepared to discuss and substantiate any of the areas of the proposal submitted, as well as proposer's qualifications to furnish the subject goods and services. Proposer is responsible for any costs incurred for the oral presentation and interview of the key personnel.

**3.4 Discussions/Negotiations.** The City has the right to accept the proposal that serves the best interest of the City, as submitted, without discussion or negotiation.

Contractors should, therefore, not rely on having a chance to discuss, negotiate, and adjust their proposals. The City may negotiate the terms of a contract with the winning proposer based on the RFP and the proposer's proposal, or award the contract without further negotiation.

**3.5 Inspection.** The City reserves the right to inspect the proposer's equipment and facilities to determine if the proposer is capable of fulfilling this Contract. Inspection will include, but not limited to, survey of proposer's physical assets and financial capability. Proposer, by signing the proposal agrees to the City's right of access to physical assets and financial records for the sole purpose of determining proposer's capability to perform the Contract. Should the City conduct this inspection, the City reserves the right to disqualify a proposer who does not, in the City's judgment, exhibit the sufficient physical and financial resources to perform this Contract.

**3.6 Evaluation Criteria.** The following elements represent the evaluation criteria that will be considered during the evaluation process:

	MAXIMUM EVALUATION POINTS
<b>A. Responsiveness to the RFP.</b>	<b>10</b>
1. Requested information included and thoroughness of response	
2. Understanding of the project and ability to deliver as exhibited in the Executive Summary	
3. Proposer's creativity and comprehensiveness in approaching the proposed project	
<b>B. Responses to Specifications.</b>	<b>40</b>
1. Proposer's ability to meet the City's current and future parking meters and related service needs, as specified in this RFP	
2. Quality, reliability, and suitability of proposed solutions	
<b>C. Firm's Capability to provide the services and expertise and Past Performance.</b>	<b>30</b>
1. Relevant experience of the Firm and subcontractors	
2. Previous relationship of firm and subcontractors on similar projects	
3. Other pertinent experience	
4. Location in the general geographical area of the project and knowledge of the locality of the Project	
5. Past/Prior Performance	
6. Capacity/Capability to meet The City of San Diego needs in a timely manner	
7. Reference checks	
<b>D. Price.</b>	<b>10</b>
<b>E. Demonstration/Presentation.</b>	<b>10</b>
1. Equipment	
2. Software	
3. Support Model	
4. Real Time Operation	

MAXIMUM  
EVALUATION  
POINTS

5. Thoroughness and Clarity of Presentation

SUB TOTAL MAXIMUM EVALUATION POINTS:

100

**F. Participation by Small Local Business Enterprise (SLBE) or Emerging Local Business Enterprise (ELBE) Firms\***

12

FINAL MAXIMUM EVALUATION POINTS INCLUDING SLBE/ELBE:

112

\*The City shall apply a maximum of an additional 12 percentage points to the proposer's final score for SLBE OR ELBE participation. Refer to Equal Opportunity Contracting Form, Section V.

**D. ANNOUNCEMENT OF AWARD**

**1. Award of Contract.** The City will inform all proposers of its intent to award a Contract in writing.

**2. Obtaining Proposal Results.** No solicitation results can be obtained until the City announces the proposal or proposals best meeting the City's requirements. Proposal results may be obtained by: (1) e-mailing a request to the City Contact identified on the eBidding System or (2) visiting the P&C eBidding System to review the proposal results. To ensure an accurate response, requests should reference the Solicitation Number. Proposal results will not be released over the phone.

**3. Multiple Awards.** City may award more than one contract by awarding separate items or groups of items to various proposers. Awards will be made for items, or combinations of items, which result in the lowest aggregate price and/or best meet the City's requirements. The additional administrative costs associated with awarding more than one Contract will be considered in the determination.

**E. PROTESTS.** The City's protest procedures are codified in Chapter 2, Article 2, Division 30 of the San Diego Municipal Code (SDMC). These procedures provide unsuccessful proposers with the opportunity to challenge the City's determination on legal and factual grounds. The City will not consider or otherwise act upon an untimely protest.

**F. SUBMITTALS REQUIRED UPON NOTICE TO PROCEED.** The successful proposer is required to submit the following documents to P&C **within ten (10) business days** from the date on the Notice to Proceed letter:

**1. Insurance Documents.** Evidence of all required insurance, including all required endorsements, as specified in Article VII of the General Contract Terms and Provisions.

**2. Taxpayer Identification Number.** Internal Revenue Service (IRS) regulations require the City to have the correct name, address, and Taxpayer Identification Number (TIN) or Social Security Number (SSN) on file for businesses or persons who provide goods or services to the City. This information is necessary to complete Form 1099 at the end of each

tax year. To comply with IRS regulations, the City requires each Contractor to provide a Form W-9 prior to the award of a Contract.

**3. Business Tax Certificate.** Unless the City Treasurer determines a business is exempt, all businesses that contract with the City must have a current business tax certificate.

**4. Reserved.**

**5. Payment Card Industry Data Security Documents.** Evidence of all required documents, as described in Exhibit B.

The City may find the proposer to be non-responsive and award the Contract to the next highest scoring responsible and responsive proposer if the apparent successful proposer fails to timely provide the required information or documents.

## **EXHIBIT B – SCOPE OF WORK**

### **A. SPECIFICATIONS**

#### **Background**

The City of San Diego (City) has approximately 5,700 on-street metered parking spaces. Of those about 4,700 are serviced by Single Space Smart Parking Meters and the remaining 1,000 spaces are serviced by approximately 167 Multi Space Smart Parking Pay Stations. The City also has approximately 750 Vehicle Detection Sensors. Parking meter rates, length of stay limits and hours of operation are variable and are adjusted to encourage turnover and maximize utilization.

The Office of the City Treasurer, Parking Meter Operations (PMO) Program is responsible for the installation, repair, and maintenance of Parking Meters and Vehicle Detection Sensors, as well as coin collection and some enforcement. The San Diego Police Department is the lead enforcement agency. The Economic Development Department (EDD) administers the City's Community Parking Districts (CPDs).

There are six (6) CPDs within the City, three (3) of which contain parking meters: Downtown, Mid-City, and Uptown. Forty-five (45%) percent of the revenue generated by parking meters in each CPD is allocated, net of expenses, to that district annually primarily to be used to address parking supply and mobility issues. The remaining fifty-five (55%) percent is allocated to the City to be used for parking and traffic-related purposes specific to parking meter zones.

Currently, the City's Parking Meter Inventory consists of:

#### **1. Single Space Smart Parking Meters – IPS model M5™**

At all or most of its M5™ inventory, the City currently accepts coin, debit cards, credit cards, Mobile Pay through current partner Parkmobile, Near Field Communication (NFC) for Apple and Android Pay, and Prepaid Parking Cards.

#### **2. Multi Space Smart Parking Pay Stations – IPS model MS1™**

At all or most of its MS1™ inventory, the City currently accepts coin, debit cards, credit cards and Prepaid Parking Cards. Most are Pay-and-Display and some are Pay-by-Space.

#### **3. IPS Dome Mount Sensor**

These Vehicle Detection Sensors are fully integrated directly into the M5™ dome, are configurable to the parking space, can be relocated to another M5™, are wirelessly connected to the M5™ and whose data is available Real-time in the same integrated web-based site as the meter data.

The City's Parking Meter Inventory and Vehicle Detection Sensor Inventory are approximately five (5) years old or less. The entire Parking Meter Inventory and Vehicle Detection Sensor Inventory have a useful life of at least ten (10) more years, with proper maintenance. The City intends to maximize its investment in its current Parking Meter



and Vehicle Detection Sensor Inventories and therefore does not intend to replace the Parking Meter or Vehicle Detection Sensor Inventories with this Request for Proposal (RFP). Maintenance and support for existing Parking Meter and Vehicle Detection Sensor Inventories and related software is a requirement of this RFP. Proposers may engage subcontractor(s) to support existing equipment and software if all subcontractors are identified in Proposal responses with roles and responsibilities identified.

### **Scope of Work**

The City requires a comprehensive solution that provides:

1. The operation of the City's existing Parking Meter Inventory including:
  - a. Ensuring the Parking Meters are functional, wirelessly enabled and networked, and able to perform the following functions:
    - i. accept all forms of payment currently being offered by the City including but not limited to Mobile Pay, NFC, Coin, Debit and Credit Cards and City Prepaid Cards; and
    - ii. visually display the paid or unpaid status of the Parking Meter; and
  - b. Ensuring every Parking Meter transaction and every Parking Meter Event are updated in Real-Time on one fully integrated, web-based site or Back Office, accessible by designated City staff; and
  - c. Providing support, maintenance and repair parts for all the City's Parking Meters as needed, either as the prime contractor or through a subcontracted arrangement
2. The operation of the City's existing Vehicle Detection Sensor Inventory including:
  - a. Ensuring the Vehicle Detection Sensors are functional, wirelessly enabled and networked and able to perform the following functions:
    - i. detect the presence or absence of a vehicle in a specific parking space including entering and exiting the space; and
    - ii. add or remove time on the Parking Meter based on the entrance and exit of a vehicle; and
  - b. Ensuring every Vehicle Detection Sensor Event is updated in Real-Time to the **same** fully integrated, web-based site or Back Office, accessible by designated City staff; and
  - c. Providing support, maintenance and repair parts for all the City's Vehicle Detection Sensors either as a prime contractor or through a subcontracted arrangement.
3. The purchase and operation, as-needed by the City, of new Parking Meters including:
  - a. New Single Space Smart Parking Meters and/or new Multi Space Smart Parking Pay Stations (including Pay-and-Display, Pay-by-Plate and Pay-by-Space) **MUST**

be connected to the same network as the City's existing Parking Meter Inventory and whose Parking Meter Transactions and Parking Meter Events are updated in Real-Time on the same fully integrated, web-based site or Back Office as the existing Parking Meter Inventory; and

- b. The necessary support, maintenance and repair parts as needed.
4. The purchase and operation, as-needed by the City, of new Vehicle Detection Sensors including:
- a. New Vehicle Detection Sensors **MUST** be connected to the same network as the City's existing Vehicle Detection Sensor Inventory and whose Vehicle Detection Sensor Events are updated in Real-Time on the same fully integrated, web-based site or Back Office as the existing Vehicle Detection Sensor Inventory;
  - b. The necessary support, maintenance and repair parts as needed.
5. The unlimited use of a web-based site or Back Office accessible by designated City staff to see, use, analyze and download all available information about the entire inventory of Parking Meters and Vehicle Detection Sensors (existing and new) including but not limited to payment transaction data, faulty meter data, meter alert data, coin collection data, meter maintenance data, meter and sensor inventory data, meter and sensor Configurations, meter and sensor maps and various data analysis tools and reports. The web-based site or Back Office must be compatible with City standard web browsers and not conflict with or modify City standard desktop software when exporting data.
6. Optional related services such as a Mobile Payment Application, Credit Card Gateway and Processing services, and Prepaid Parking Card services.

### **Objective**

The objective of this RFP is to provide the best overall value to the City, operate the City's current Parking Meter Inventory, Vehicle Detection Sensor Inventory, and meet its future Parking Meter hardware and software and Vehicle Detection needs for the duration of the contract.

### **Operational Specifications**

1. Parking Meters - The City requires that the Contractor:
- a. Operate and maintain the City's existing Parking Meter Inventory with the same functions and features currently used by the City, and as offered by the original manufacturer, including but not limited to:
    - i. ensuring users can pay for the use of a parking space using the payment methods accepted by the City; and
    - ii. ensuring the proper time purchased is displayed on the Parking Meter; and

- iii. ensuring users can still pay with coin in the event the Parking Meter loses connectivity; and
- iv. ensuring users can still pay electronically if the Coin Slot is blocked or nonfunctioning; and
- v. providing default minimum payment, as designated by the City, for electronic payments; and
- vi. allowing users to add/subtract time up to maximum allowable per the Parking Meter's Configuration; and
- vii. allowing users to pre-pay prior to the start of operating hours; and
- viii. allowing users to cancel a transaction after initiating but prior to completion; and
- ix. ensuring the Single Space Smart Parking Meters have a visual indicator of the paid or unpaid status of the Parking Meters; and
- x. ensuring the Single Space Smart Parking Meters have a visual indicator to maintenance or enforcement staff of a potential issue; and
- xi. ensuring the Multi Space Smart Pay Stations can dispense a receipt, content of which is as determined by the City; and
- xii. providing wireless connectivity and integrated network for the entire fleet of Parking Meters with a two-way Real-Time communication between the Parking Meters and the web-based Back Office database; and
- xiii. allowing designated City staff to establish and change Parking Meter Configurations (dynamic pricing, time of operation etc.) remotely (via the Back Office) or on site; and
- xiv. providing RMAs as needed by the City; and
- xv. providing spare parts of repairs as needed by the City; and
- xvi. supporting the display of mobile payment on the meter via integration with the City's mobile payment provider.

b. Offer for sale, operate and maintain new Single Space Smart Parking Meters along with compatible Parking Meter Housing that:

- i. are new and unused; and
- ii. are water and weather resistant; and
- iii. have an anti-fog lens; and
- iv. have anti-theft/anti-skimming capabilities; and
- v. have RFID technology that automatically identifies the meter location and downloads the correct operating parameters when meters are replaced; and
- vi. are battery powered with solar charging and backup; and
- vii. have modular design such that components/parts can be exchanged or replaced; and
- viii. are ADA compliant; and
- ix. are fully integrated and networked with the existing Parking Meter Inventory; and
- x. are configurable to the City's designated rates and times with support for multiple rate structures that are configurable by length of stay, time of day and day of week; and
- xi. accept payments for use of a parking space using the payment methods accepted by the City; and

- xii. will display the time purchased and decrease as time passes; and
- xiii. continue to accept coin in the event the Parking Meter loses connectivity; and
- xiv. continue to accept electronic payments in the event the Coin Slot is blocked or nonfunctioning; and
- xv. have a digital screen that can display multiple messages that alternate and that are programmed remotely; and
- xvi. must default when credit card is swiped to minimum amount set by the City; and
- xvii. have a mechanism to increase time purchased to maximum allowed with Electronic Payments (plus/minus options); and
- xviii. allow users to cancel a transaction after initiating but prior to completion; and
- xix. have built-in diagnostics software that date- and time-stamps all Parking Meter Events; and
- xx. have a visual, color coded payment indicator such as an LED light that is red when unpaid; green when paid; and yellow attention is needed; and
- xxi. come with a free Warranty for at least one year from the date of installation; and
- xxii. alerts the City in Real-Time of malfunctions; and
- xxiii. are NFC enabled; and
- xxiv. can display negative time up to 30 minutes from the time the meter expired for aiding parking enforcement of the metered space
- xxv. are configurable to operate with dynamic pricing as designated by the City.

c. Offer for sale, operate and maintain new Multi Space Smart Parking Pay Stations that:

- i. are new and unused; and
- ii. have UV resistant domes; and
- iii. have an anti-fog lens; and
- iv. have anti-theft/anti-skimming capabilities; and
- v. have RFID technology that automatically identifies the meter location and downloads the correct operating parameters when meters are replaced; and
- vi. are battery powered with solar charging and backup; and
- vii. have modular design such that components/parts can be exchanged or replaced; and
- viii. are ADA compliant; and
- ix. are fully integrated and networked with the existing Parking Meter Inventory; and
- x. are configurable to the City's designated rates and times with support for multiple rate structures that are configurable by length of stay, time of day and day of week; and
- xi. accept payments for use of a parking space using the payment methods accepted by the City; and
- xii. have a digital screen that can display multiple messages that alternate and that are programmed remotely; and
- xiii. can print a receipt, contents of which determined by the City; and

- xiv. must default when credit card is swiped to minimum amount set by the City; and
  - xv. have a mechanism to increase time purchased to maximum allowed with Electronic Payments (plus/minus options); and
  - xvi. accept pre-payment prior to the start of operating hours; and
  - xvii. have built-in diagnostics software that date- and time-stamps all Parking Meter Events; and
  - xviii. come with a free Warranty for at least one year from the date of installation; and
  - xix. alerts the City in Real-Time of malfunctions; and
  - xx. are NFC enabled; and
  - xxi. are configurable to operate with dynamic pricing as designated by the City; and
  - xxii. may be integrated with the City's parking citation issuance/enforcement software and License Plate Recognition (LPR) provider (for pay-by-space pay stations).
- d. Offer optional, extended Warranty for any Parking Meters purchased new under this Contract; and
  - e. Provide instructional decals, as needed and as-required by the City, to be affixed on or near a Parking Meter to inform customers of various meter functions; and
  - f. Provide and maintain a completely Closed System of cash handling for the entire Parking Meter inventory, new and existing; and
  - g. Provide Technician's with identifying mechanism(s), such as a Meter Diagnostics and/or Coin Collection Card, to swipe into the Card Reader to record Parking Meter Events including but not limited to coin collection, performance of repair, and performance of preventative maintenance; and
  - h. Offer a seamless/integrated spare part that blocks a Coin Slot on a Parking Meter in the event the City elects to eliminate cash as a payment option.

2. Vehicle Detection Sensors - The City requires the Contractor:

- a. Operate and maintain the City's existing Vehicle Detection Sensor Inventory, as a prime contractor or through a subcontracted arrangement, with the same functions and features currently used by the City, and as offered by the original manufacturer, including but not limited to:
  - i. detecting the presence of a vehicle in a parking space, including entering and exiting the space; and
  - ii. adding or removing time on the Parking Meter including triggering the visual indicator; and
  - iii. providing wireless connectivity and integrated network for the entire fleet of Vehicle Detection Sensors with a two-way Real-Time communication between the Vehicle Detection Sensors and the web-based Back Office; and

- iv. sending every Vehicle Detection Sensor Event to the Back Office in Real-Time; and
    - v. providing spare parts as needed and performing repairs as needed.
  - b. Offer for sale new Vehicle Detection Sensors that will be fully integrated and networked with the existing Vehicle Detection Sensor Inventory and provide the following functions at a minimum:
    - i. detecting the presence of a vehicle in a parking space, including entering and exiting the space; and
    - ii. adding or removing time on the Parking Meter including triggering the visual indicator; and
    - iii. providing wireless connectivity and integrated network for the entire fleet of Vehicle Detection Sensors with a two-way Real-Time communication between the Vehicle Detection Sensors and the web-based Back Office; and
    - iv. sending every Vehicle Detection Sensor Event to the Back Office in Real-Time; and
    - v. providing spare parts as needed and performing repairs as needed.
3. Backoffice Database Management and Reporting Requirements –
- a. The City requires a fully-integrated web-based database, or Back Office, of all Parking Meter and Vehicle Detection Sensor data, Transactions and Events, updated in Real-Time, that:
    - i. Records the detail (date, time, method) of each Parking Meter Transaction; and
    - ii. Records the detail (date, time, description, reason, Technician) of all other, non-payment Parking Meter Events; and
    - iii. Records the detail (date, time, description) of all Vehicle Detection Sensor Events; and
    - iv. Requires a User Name and Password; and
    - v. Has varying degrees of access levels; and
    - vi. Can communicate via API to the City Parking Enforcement hand held devices to provide payment and/or occupancy status for guided enforcement.
  - b. and which is available to designated City staff always giving them the ability to:
    - i. Name each Parking Meter and Vehicle Detection Sensor with unique identifier; and
    - ii. Create, name and maintain geographic areas and subareas, grouping various Parking Meters together; and
    - iii. Create parking meter work orders of issues reported by the public; and
    - iv. Download data to Microsoft Excel and convert to Adobe Portable Document Format (PDF);
    - v. Create, update, remove, edit Parking Meter and Vehicle Detection Sensor Inventories and Configurations.

- c. and which offers standard and ad hoc reporting including but not limited to:
  - i. Maps of Parking Meter and Vehicle Detection Sensor locations; and
  - ii. Listings of Parking Meter and Vehicle Detection Sensor Inventories; and
  - iii. Listings of Parking Meter and Vehicle Detection Sensor Configurations; and
  - iv. Monthly Billing supporting documentation; and
  - v. Coin Collection by date range, area, subarea and Technician available in summary and detail versions; and
  - vi. Coin exceptions report; and
  - vii. Credit card settlement report; and
  - viii. Ability to refund credit card transactions; and
  - ix. Payments by meter, by date range and by payment method; and
  - x. All sensor data by date range, space, area and subarea; and
  - xi. Data analytics tools including but not limited to space utilization, percentage of payments by method/type, meter and sensor Uptime; and
  - xii. Current coin inside of meter for dynamic collection assignment; and
  - xiii. Real-time report of faulty meters that list fault descriptions and the date/time the fault was recorded; and
  - xiv. Technician activity report; and
  - xv. Publicly available map displaying meter locations, meter configurations, meter availability, and meter utilization.

4. Prepaid Parking Card –

- a. The City requires the Contractor offer a Prepaid Parking Card that can be loaded and reloaded with a monetary value, range determined by the City, and that work as a payment method at every City Parking Meter, existing and new.
  - b. The Prepaid Card must return the funds of unused time to the user. To pay for time and to get refund for unused time the user would swipe the card in the Card Reader.
  - c. Prepaid Card transactions must be included in payment reports and be its own unique source. In addition, the reports must show transaction, and refunded amounts.
  - d. The City highly desires a Prepaid Card that can be customized with a logo or other graphic or photo.
  - e. The City requires the Contractor provide all necessary equipment to load and reload monetary value onto the Prepaid Cards.
5. Revenue Processing – The City requires the Contractors Credit Card Gateway be compatible with and certified to the City's current credit card processor Bank of America/First Data Merchant Services.
6. Open Data Initiative – The City requires the Contractor provide, via an API, Parking Meter and Vehicle Detection Sensor data, of the City's choosing, to the City's Open

Data team for publication on the City's Open Data Portal. This data must be in a format and frequency determined by the City.

7. **Wireless Connectivity and Network** – The City requires the Contractor provide wireless connectivity of all Parking Meters and Vehicle Detection Sensors using a network and Wireless Service Provider (WSP) that remains functional, operational and compatible for the duration of the Contract and that is in compliance with all regulations.
8. **Software Updates** – Contractor is required to provide software updates and upgrades at no additional costs.
9. **Training and Support** –
  - a. The City requires the Contractor provide training on an as-needed, as-requested basis (in person or web based), on any elements of this RFP and Contract that are not already part of its Parking Meter Inventory and Vehicle Detection Sensor Inventory and related parts and services.
  - b. The City requires technical and customer support available in person, (on site, in the field/on the street) online, by phone and by email/messaging Monday – Friday, 6:00 a.m. – 6:00 p.m. local time.
10. **Service Level Agreement** –
  - a. The City requires the entire fleet of Parking Meters and Vehicle Detection Sensors average 99% Uptime.
  - b. The City requires that each Parking Meter record revenue at 99% accuracy. Contractor agrees to replace at no cost any meter that fails to perform at 99% accuracy.
  - c. The City requires that each Vehicle Detection Sensor record parking events at 99% accuracy.
  - d. The City requires availability of spare parts within 48 hours.
  - e. The City requires RMA targeted turnaround time of 10-15 business days.

#### 11. Optional Services

The following are considered optional but not required by the City. If the Proposer elects to offer one or more of these optional services, please respond to the following:

- a. **Buy Back** – The City highly desires the ability to return to the Contractor fully functioning but no longer needed Parking Meters and Vehicle Detection Sensors for a credit. One possible example is if a CPD within the City prefers to convert an area from Single Space Smart Parking Meters to Multi Space Smart Pay Stations thus eliminating the need for numerous, fully functioning Single Space Smart Parking Meters.



- b. Mobile Payment Application – The City highly desires the Contractor provide a Mobile Payment Application (“App”) that is fully integrated with the entire Parking Meter Inventory (existing and new) which allows users to pay for parking at any City Parking Meter using their smart phone or web browser. The App must push the time to the Parking Meter, so both the user and enforcement officer can see visual proof of payment and must be currently PCI Compliant.
- c. Bluetooth Connectivity – The City currently does not have Bluetooth Connectivity enabled on its Parking Meters although the existing Parking Meter Inventory can be Bluetooth enabled. The City desires the Contractor offer Bluetooth Connectivity for the City’s existing Parking Meter Inventory and any Parking Meter purchased under this Contract.
- d. Compass Card – It is highly desired the City’s Parking Meter Inventory (existing and new) accept the Compass Card.
- e. EMV Compliance – It is desired that the City’s Parking Meter Inventory (existing and new) be EMV compliant on credit card transactions.

## **Technical Specifications**

This entire section of Technical Specifications may or may not relate to this specific RFP and proposed Solution submitted by Proposer. This section is meant to inform Proposers of the City of San Diego’s information technology standards and requirements. Not every specification in this section will be relevant for the Parking Meter Solution. This section is also only representative of the City’s current information technology standards and requirements. These may change in the future and during the terms of this Contract. Proposer must include in Proposal any technical limitations with the City’s current standards and requirements.

### **1. Technical Environment**

**1.1 Standard Architecture.** The City’s standard operating architecture and business applications environment is described below. This description is provided for Proposer to better understand the environment that their solution may be expected to operate. The City requires that any successful solution will be substantially compatible with the ‘User Devices’ and ‘User Productivity’ software outlined below.

**1.2 Technical Solution.** The Solution must be clearly identified as being offered as a ‘Software as a Service’ (Cloud-Hosted) Solution to the City.

**1.3 Hosting.** Proposer must provide a Cloud-Hosted solution for the Parking Meter Back Office.

**1.4 RESERVED.**

**1.5 Cloud-Hosted.** The City has developed an approach to contracting with third parties to ensure an acceptable level of efficacy, security and probity is guaranteed with any third-party hosting solution.

## **2. Hardware Standards: User Devices**

**2.1 Desktop/Laptop Hardware.** Hewlett-Packard (HP) brand business-class.

**2.2 Tablets.** HP brand business-class. Windows tablets version 10.1.

## **3. Software Standards: User Productivity**

**3.1 Desktop Operating System.** Microsoft Windows version 7 and Windows 10 Enterprise, or the most current version of this Operating System to within an n-1 standard.

**3.2 Desktop Software.** The proposed Solution must not conflict with or modify standard desktop software. Other standard software includes: Eset Antivirus version 6.4.2014.0; Java Version 8, Update 92; Microsoft Silverlight version 5.1.50428.0, Adobe Acrobat Pro XI; SAPGUI V7.3.

**3.3 Office Productivity.** Microsoft Office Suite. Versions currently in use are Office 2007, Office 2013, Office 2016, Pro Plus, and Office 365. In addition: Microsoft Project, Standard and Professional, versions 2007, 2010, 2013; Microsoft Visio, Standard and Professional, versions 2007, 2010, 2013.

**3.4 Web Browsers.** Microsoft Internet Explorer IE11 and Mozilla Firefox version 47 or the current manufacturer's version to within an n-1 standard.

## **4. Additional City Technical Standards**

**4.1 Programming Language Standards.** HTML5 (Web Presentment); Python (ESRI ArcGIS Script); ASP.net (Dynamic Web Pages); PHP; PowerShell (Windows Automation Scripting); Microsoft SQL Server Reporting Services (SSRS); Transact T-SQL (Database Programming Language); Microsoft .Net Responsive design.

**4.2 Data Transport Protocol Standards.** XML (includes JXDM); JSON; SOAP / HTTP / RESTful (web services); EDI; ACH; ESRI - File GeoDatabase.

**4.3 Desktop Configuration.** Desktop components for any solution must be able to be pushed to the user via the City's Service Center Configuration Manager (SCCM) platform.

**4.4 Reporting Tool Integration Standards.** SAP Crystal Reports; Microsoft SQL Server Reporting Services.

**4.5 Web Content Management System.** Drupal

**4.6 Document Management Integration.** OpenText

**4.7 Geographic Information System and Integration Standards.** ESRI – ArcGIS Desktop version 10.3; RouteSmart / ArcGIS Network Analyst.

**4.8 City Converged Infrastructure.** If Solution is proposed as 'On Premise', it must support either:

**4.8.1** The Integrated Infrastructure Model or Converged Infrastructure: server, shared-storage, networking equipment, and software for infrastructure management. The City's standard Integrated Infrastructure Model is the VCE VBlock 300; or

**4.8.2** Standalone server – HP Proliant Generation 7 or higher.

**4.9 Server OS.** Solution must support Server Operating System – Microsoft Windows Server 2008R2 up to Windows Server 2012.

**4.10 Web Servers.** If proposed system is locally hosted, it must support web servers – Microsoft IIS (6.0 up to 7.5) and Apache (v.2.2.21).

**4.11 Virtual Servers.** Solution must support virtual server hosting – VMware ESX (5.0 or higher). The Network Operating System (NOS) standard requires that the NOS support cluster configurations with multiple physical and virtual servers with automatic failover should one server fail. Either active-active or active-passive configurations are acceptable. The NOS standard requires that support be maintained for the current Production release of the NOS and the major release immediately prior to the current Production release.

**4.12 Relational Database Management Systems.** If Solution is proposed as 'On Premise', it must support Relational Database Management Systems (RDBMS) – Microsoft SQL Server version 2008 – 2012 (2012 preferred).

**4.13 Cloud.** Microsoft Azure, Amazon Web Services (AWS), Infrastructure as a Service (IaaS) or Platform as a Service (PaaS). If purposed solution is IaaS or PaaS, it must reside within the borders of the United States and support either Microsoft Azure or AWS (Azure preferred).

## **5. Data Security**

**5.1 Encryption.** Solution must support secure industry standard methods for the encryption of sensitive data in transit to/from the host/server system, at rest within storage subsystem(s), and client computer(s), and must use most recent secure versions of encryption protocols such as SSL, TLS, or Secure FTP. All encryption methodologies must be current encryption algorithms implemented in accordance with industry best practices with no known flaws, unless approved by the City in writing.

**5.2 Secure Application Platform.** Application and Proposer must support deployment of host server and database security patches and service pack updates within one month of patch release. Application and Proposer must support new operating system versions and updates within ninety (90) days of new version

release. Application security vulnerabilities must be remediated via the development, testing, and timely release of security patches by the Proposer within one (1) month of vulnerability being identified, or sooner, as determined by severity of issue.

**5.3 Security Patching.** Proposers selected technology must be one that has been in use long enough that most of the initial faults and inherent problems have been removed with updates available for identified security vulnerabilities. These patches must be available for installation within thirty (30) days and for the City to download and install.

**5.4 System User Authentication.** The use of complex pass-phrases is preferred. If not supported, single passwords that meet the following requirements are acceptable. Passwords must require a minimum of eight (8) characters and must expire after ninety (90) days. Password complexity must require both letters and numbers and not allow the use of consecutive passwords.

**5.5 Secure Authentication.** All authentication activity occurring over the network must be encrypted using industry best practices to ensure that logins and passwords are not transmitted in clear text. This includes user and administrator authentication activity. If the Application is hosted, additional security measures such as limiting access by IP address is required. The City is aligned to the security controls that are being standardized for the industry by the Cloud Security Alliance (CSA). The CSA's latest security controls can be viewed at the following URL: <https://cloudsecurityalliance.org/group/cloud-controls-matrix>

**5.6 Sensitive Data.** Applications containing or hosting sensitive data, as defined by State or Federal law, must encrypt data at rest, data in motion over the network and all authentication activity. Encryption algorithm used to encrypt data and authorization activity must be NIST FIPS 140-2 compliant.

**5.7 Protection of Sensitive Information and Data.** Proposer, its agents, employees, Proposers and any other person or entity working on behalf of Proposer to provide services under this proposal must always comply with City of San Diego Administrative Regulation (A.R. 90.64) "Protection of Sensitive Information and Data." [https://www.sandiego.gov/sites/default/files/ar\\_9064.pdf](https://www.sandiego.gov/sites/default/files/ar_9064.pdf)

**5.8 Auditing and Logging.** Application must log all security related events including logon, logoff, data modification, data deletion, change in rights or permission levels, and the addition of data/information to the application. Logs must include user ID generating the transaction, time of the transaction and details regarding the activity (e.g. logon, logoff or data details). Solution must support interoperability with centralized logging and Security Information and Event Management (SIEM) technologies.

**5.9 Compliance with Organization's Security Policy, Standards and Procedures.** Application vendors working directly on City-owned applications or from City facilities are subject to and required to follow all City policies, standards and guidelines. Proposer must also follow FIPS 140-2 standards which can be viewed at <http://csrc.nist.gov/groups/STM/cmvp/standards.html> For FIPS-140-2 the City requires Level 2 compliance; the City requires at least role based authentication for access to this application.

**5.10 Data Security.** Proposer acknowledges responsibility for the security of cardholder data as defined within PCI DSS standards. Proposer shall undergo independent third party quarterly scans that audit for all known methods hackers use to access private information, in addition to vulnerabilities that would allow malicious software (i.e., viruses and worms) to gain access to or disrupt network devices. Upon request, Proposer will provide the City's Chief Information Security Officer with copies of the quarterly scans for verification. Proposer will provide reasonable care and efforts to detect fraudulent credit card activity in connection with credit card transactions processed during the performance of this Contract.

**5.11 Use of Data.** Proposer acknowledges and agrees that cardholder data may only be used as described in the Contract consistent with PCI DSS standards or applicable law. Proposer must maintain and protect in accordance with all applicable laws and PCI DSS standards the security of all cardholder data when performing the services of this RFP.

**5.12 Notification Requirements.** Proposer shall immediately notify the City's Chief Information Security Officer of any breach, intrusion, or unauthorized access to allow the City's proper breach notification process to commence. Proposer agrees to assume responsibility for informing all affected individuals in accordance with applicable law at no cost to the City. All notifications and required compliance documentation shall be sent to:

Chief Information Security Officer  
1010 2nd Avenue, Suite 500  
San Diego, CA 92101  
Cybersecurity@sandiego.gov  
619-533-4840

**5.13 Indemnity.** Proposer must indemnify and hold harmless the City, its officers, agents, and employees from and against any claims, loss, damages, or other harm related to a data security breach.

**5.14 Data Integrity.** Proposer must ensure the integrity of all the data collected, stored and processed. Interruptions in processing due to incidents such as aborted transactions, hardware failures, or network unavailability must not result in inaccurate or inconsistent data stored and/or processed in the Application. If data transfers occur, the Application must provide a method of audit validation to ensure that all data sent to it was received and processed correctly.

**5.15 Parameter Manipulation.** Parameter manipulation must not be designed to provide access to data or Application functionality that a user is not authorized to see or use. Proposer is expected to follow OWASP standards for security at a minimum.

**5.16 Input Validation.** Sanitize all user input fields to ensure that cross-site scripting, SQL injection and other input related vulnerabilities are closed through secure application coding. Input validation must be performed on the server/application and not on the client devices. Proposer is expected to follow OWASP standards for security at a minimum.

**5.17 Hidden Fields.** The use of "hidden fields" for Security is prohibited. Proposer is expected to follow OWASP standards for security at a minimum.

**5.18 Cookies.** Security settings must not rely on cookies. Cookies must not contain or be used to obtain sensitive information.

**5.19 Session Identifiers.** If session identifiers are utilized, they must be generated with unpredictable numbers and must contain enough key space to prevent unauthorized use or guessing of the session ID's. Proposer is expected to follow OWASP standards for security at a minimum.

**5.20 Error Messages.** Errors must be handled in an appropriate manner. Failed login attempts to the Application must not generate detailed information about the failed login attempt (e.g. incorrect password or unknown user account). Other security related errors (e.g. file not found, or permission denied) must generate generic error responses. Detailed error information must be written to secure logs so that developers and system administrators have access to error details required to address the error.

**5.21 System User Authentication.** The City standard for a single point of System User authentication is Microsoft Active Directory (AD), using the Lightweight Directory Access Protocol (LDAP). The City standard for authentication is to allow properly authorized System Users to login just once and be able to access all applications during that active session.

**5.22 Credit Card Transactions.** Proposer certifies that it will implement and always comply with the most current Payment Card Industry Data Security Storage (PCI DSS) standards regarding data security. Proposer will provide written annual confirmation of PCI DSS compliance from the credit card types used by the City (i.e., VISA, MasterCard, and American Express). Proposer will immediately notify the City if it undergoes, or has reason to believe that it will undergo, an adverse change resulting in the loss of compliance with the PCI DSS standards and/or other material payment card industry standards. In addition, Proposer shall provide payment card companies, acquiring financial institutions, and their respective designees required access to the Proposer's facilities and all pertinent records as deemed necessary by the City to verify Proposer's compliance with PCI DSS requirements.

**5.23 Ownership of Data.** All data collected on behalf of the City of San Diego is the property of the City. None of the data will be used for any other purpose. Upon termination or expiration of any contractual agreement, the Proposer will retain the City's data for a minimum of ninety (90) days and will transfer City data in its possession to the City at no cost by using a method that protects the confidentiality of the information being exchanged and as agreed upon by the City but, at a minimum, data records will be provided in ASCII comma, separated value (CSV) format, with binary images in TIFF, JPG, or PDF format. The City retains the right to test the data extraction process on an annual basis. Upon the expiration of the ninety (90) day period, Proposer and its hosted service provider shall have no obligation to maintain or provide any City data and shall thereafter, unless legally prohibited, delete in such a manner as prevents recovery through normal/laboratory means, all City data in its systems or otherwise in its possession or under its control.

**5.24 Personal Data.** Proposer agrees that it will comply with all applicable federal, state and local data protection laws and regulations in any relevant jurisdiction with respect to dealing with, disclosing and exchanging any Personal Data in connection with this Agreement. For this Agreement, "Personal Data" means any personal identifying information including, but not limited to, customer's name, address, telephone number, social security number, and financial account numbers (including credit or debit card numbers and any related security codes or passwords).

**5.25 Multi-tenancy.** If Proposer proposes a multi-tenancy solution allowing for one instance of an application serving multiple customers at the same time while sharing cloud resources, then Proposer must indicate the nature and extent of that shared environment e.g.:

5.25.1 Shared hardware (such as physical servers, network) and OS;

5.25.2 Shared processing (hardware and shared application platform);

5.25.3 Shared platform (shared processing and data facilities);

5.25.4 Shared application instance (shared platform and shared application);

5.25.5 Shared software code and architecture (shared infrastructure, architecture and code libraries); and / or

5.25.6 Security controls in place to ensure no data leakage of client information.

5.25.7 Requirements/Steps/Processes for client to verify these security controls are in place to meet client's internal audit/compliance mandates.

The use of shared resources is subject to all appropriate confidentiality and security related provisions, which ensures that none of the City's confidential information is shared with any third party, except as required to provide the services outlined in this RFP.

## **6. Hosting**

**6.1 City Data Access.** If Solution is hosted by a third party, data must be available to the City of San Diego upon request. User access and authorizations must be provided as directed by the City of San Diego.

**6.2 Sub-Proposers.** Proposer will disclose to the City the name(s) and location(s) of any third party sub-contracted to host, or who may host City data under any resulting Agreement.

**6.3 Third Party Requirements.** Proposer will cause any third party sub-Proposer to adhere to all data privacy and security requirements no less rigorous than those set forth in this RFP.



**6.4 Data Hosting Location.** No resources or facilities located outside of the fifty states comprising the United States of America (U.S.A.) or any other of the territories or possessions of the U.S.A. may be utilized, sub-contracted or otherwise to perform the services outlined in this Proposal

**6.5 Latency.** Any proposed Cloud-Hosted Solution must be in a Low Network Latency location.

## **7 Open Data**

**7.1 Open Data.** The City is committed to the principles of open, accessible, efficient and transparent government, and the use of technology to help put those principles into practice. The City needs to be able to get direct access to the data within the application through one of the following methods:

**7.1.1** Direct database connection;

**7.1.2** Automated structured file exports (such as CSV or SHP / GeoJSON / KML for geospatial data); or

**7.1.3** API endpoints in JSON or XML.

The City may then decide which fields may or may not be exposed as Open Data, and which fields will be used for internal analytics. This will be designed during the implementation phase.

The Proposer must provide documentation of the fields stored within the database / API / export in the form of a data dictionary.

## **8 Americans with Disabilities Act (ADA)**

**8.1 ADA Compliance for Technology Solutions.** Solution must meet the Web Content Accessibility Guidelines (WCAG) 2.0 Level AA and any successive WCAG guidelines most current at the time of Solution implementation. It is highly desirable that Proposer provide a Voluntary Product Accessibility Template (VPAT) with their response, to assist the City in making preliminary assessments regarding Section 508 accessibility of their products and services. The VPAT template is provided by the Information Technology Industry Council at <http://www.itic.org/public-policy/accessibility>.

## **9 Applications Standards and Delivery**

**9.1 Mobile Optimization.** The City's first preference is for HTML5 responsive web design to properly render and display regardless of the device hardware platform (desktop, laptop, tablet, or phone) or Operating System. The City's second preference would be for native iPhone and Android support through the iTunes store and Google Play store.



**9.2 Application Programming Interface (API).** Web APIs should encourage consistency, maintainability, and best practices across applications. APIs should aim to balance a truly RESTful API interface with a positive developer experience (DX). (A RESTful API is an application program interface (API) that uses HTTP requests to GET, PUT, POST and DELETE data. Representational state transfer (REST), which is used by browsers, can be thought of as the language of the Internet).

**9.3 Open API.** Solution must offer an open Application Programming Interface (API).

**9.4 API Standards.** Solution must ensure API uses standard, current development languages.

**9.5 Single Sign-on.** Solution should be Security Assertion Markup Language (SAML) aware and ready.

**9.6 City Business Systems Integration.** Solution must provide ability to integrate with current City applications.

**9.7 Active Directory.** Solution must offer integration with City's Active Directory to authenticate System Users.

**9.8 Multi-factor Authentication.** Solution must support various methods of multi-factor authentication for internal and external parties (within diverse authentication settings such as knowledge-based or credential-based) included but not limited to PIN code, third party authentication like OATH/SAML, phone number, email, etc.

**9.9 System Administration.** Solution must provide the ability for system administrators to maintain System Users and security groups without IT assistance.

**9.10 Solution Updates and Upgrades.** During each Maintenance Term, Proposer shall provide City with copies of all new versions, updates, and upgrades of Solution (collectively, "Upgrades"), without additional charge, promptly after commercial release. Upon delivery to City, Upgrades will become part of the Solution and will be subject to the provisions of this Agreement.

**9.11 Electronic Delivery and Alerts.** Solution must provide for the electronic delivery, distribution, notices and alerts for documents.

**9.12 Language Display.** Solution shall be able to display the official page content in English and Spanish, on both desktop, laptop and mobile pages. Google Translate should be available for translating page content to other languages supported by Google.

**9.13 Installation, Testing & Acceptance.** Solution should be capable of being tested outside of a production environment and offer the ability to provide automated integrated system tests as well as System User tests.

**9.14 Run Books & Documentation.** Proposer shall also deliver appropriate documentation as is reasonably necessary to operate and support Solution. Proposer

shall deliver such documentation to City in electronic format to provide reasonable support for the System Users of the Solution. In the event of changes to Solution, Proposer will shall revise the documentation as reasonably necessary without further charge to City. City may reproduce the documentation as reasonably necessary to support internal use.

**9.15 Support Knowledge Base.** Proposer must provide the City with relevant support information for Level 1 user technical support, for inclusion in the City's Knowledge Base and Support Wiki. The City requires that any such knowledge and associated documentation will be revised and updated through the course of any resulting Contract via the holistic practice of 'Continual Service Improvement'.

**9.16 Change Management.** The City requires minimal disruption to its IT services and has established an internal Change Advisory Board (CAB) and governance process for managing standard, normal and emergency changes to its enterprise environment.

The Proposer must provide clear communication about forthcoming outages and appropriate forewarning of Solution changes to the City in order that any risk to business operations may be adequately assessed and mitigated.

**9.17 Training.** Proposer must provide City staff with training in the operation and maintenance of the Solution including Application functions, hardware use, and any procedures that are unique to a job function.

A detailed training plan for selected City staff must be developed and implemented for the operation of all Application modules and processing functions. The plan must encompass a combination of classroom, small-group, and hands-on training in the use of the computer hardware and software and all related policies and procedures.

Detailed Application manuals and procedures manuals must be provided to the City in an electronic format. The manuals must be routinely updated as policies or programs are changed.

**9.18 Travel Expenses.** The City desires for the Proposer to include any travel or expenses in the cost of the product, or as a fixed price item within their Bid. For travel and expenses to be billed on a Time and Materials basis, Proposer must include all incidental expenses within the Pricing Sheet provided in this RFP. The City will reimburse Proposer for expenses for any necessary travel to San Diego for actual travel cost (coach air fare or car mileage) based on fairness, reasonableness, and expenses considered customary as travel expenses by the City. Customary travel related expenses include airfare, mileage, airport shuttles, car rental, hotel, and meals. Proposer shall base lodging, per-diem and travel expenses on the most recent General Services Administration (GSA) standards for reimbursement of lodging and per-diem rates for San Diego, California. GSA standards may be located at this website: <http://www.gsa.gov/portal/category/21287>

## **10. Licensing**

**10.1 Subscription-based Licensing Commencement.** Where subscription-based software is being licensed, the subscription term shall commence on the later

of (a) the date specified as the date on which access to the Solution is intended to start and (b) the actual date on which access to production licensing is accepted by the City.

**10.2 Maintenance Term Commencement.** Upon City acceptance of delivery of production licensing, Proposer shall maintain the software according to the standards outlined in its response to this RFP.

**10.3 License Transfer.** Licensing must be easily transferred by a City administrator, should the need occur e.g. member of staff leaves the organization.

**10.4 Licensing Volume Changes.** Solution must allow for the City to increase or decrease its licensing requirements through the duration of the Contract.

**10.5 Unused Licensing Volume.** Where applicable, Proposal must allow the City to 'roll-over' unused licensing should the City choose to exercise its right to extend the Contract term.

**10.6 Not-to-diminish Licensing Rights.** Any resulting Agreement between the City and Proposer will ensure that the functionalities purchased, irrespective of whether it has been purchased as a set of more than one software products supplied as a single price, will be retained for the duration of the Agreement, inclusive of any agreed extensions. Any resulting incremental unitary purchases of Software will be made against the same Software originally purchased under this Agreement.

**10.7 Third Party Use.** Proposer will grant City a non-exclusive license during the Contract Term to install and/or execute Solution on machines operated by or for City solely to facilitate City's authorized access to and use of the acquired Solution. City's primary third-party information technology service providers shall have access to and use of the Solution solely to provide support for City's internal business use.

## **11. Additional Insurance**

**11.1 Cyber Liability Insurance.** In addition to the requirements of the City of San Diego's General Contract Terms and Provisions Applicable to Goods, Services, and Consultant Contracts Article VII, Proposer shall provide, at its sole cost and expense, evidence of Cyber Liability insurance with limits of not less than \$1,000,000 for each occurrence and an annual aggregate of \$2,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. Such coverage is required only if any products and/or services related to information technology (including hardware and/or software) are provided to Insured and for claims involving any professional services for which Proposer (selected Proposer) is engaged with Insured for such length of time as necessary to cover any and all claims.

**11.2 Professional Liability.** Proposer shall obtain Professional Liability coverage with limits of at least \$1,000,000 per occurrence and \$2,000,000 aggregate, covering the risk of errors and omissions, negligent acts and costs of claims/litigation, including investigation and court costs. If the coverage is written on

a "claims-made" form, Proposer must ensure that the policy retroactive date is before the date of the contract is awarded, that coverage is maintained during the duration of performance of the contract or the contract period (whichever is longer) and the policy has a reporting period or run-off provision of at least three (3) years following completion or termination of the performance of professional services under this Contract.

## **Glossary of Terms**

Acceptance – Formal agreement that an information technology service, process, plan or other deliverable is complete, accurate, reliable and meets its specified requirements. Acceptance is usually preceded by change evaluation or testing and is often required before proceeding to the next stage of a project or process.

Agreement – The contract between selected Proposer and the City as a result of this RFP.

Application – Software that provides functions which are required by an IT service. Each application may be part of more than one IT service. An application runs on one or more servers or clients.

Application Programming Interface “API” – A set of programming instructions and standards for accessing a Web-based software application.

Architecture – The structure of a system or information technology service, including the relationships of components to each other and to the environment they are in. Architecture also includes the standards and guidelines that guide the design and evolution of the system.

Back Office – A term used to mean the web-based database of Parking Meter Transactions and Parking Meter Events that includes standard reports, ad hoc reports, and analytics.

Card Reader – The opening on a Parking Meter used to insert a debit or credit card to make a payment. It can also be used to swipe various Meter Cards.

Closed System – This term is meant to describe a system of coin transfer, from customer, to Parking Meter / Coin Cup, to Collection Canister, to bank deposit that is secure from tampering and secure from any physical, direct access to coin.

Cloud-Hosted – A web hosting infrastructure provided by an outside Bidder that consists of a network of external physical servers.

Coin Cup – A secured container for storage of coins, removable from the Single Space Smart Parking Meter or Multi Space Smart Parking Pay Station.

Coinless – A Parking Meter that only accepts Electronic Payments.

Coin Slot – The opening on a Parking Meter designed to accept Nickels, Dimes, Quarters, Half-Dollars and Dollar coins.

Collection Canister – A fully secured/locked rolling canister that accepts a Coin Cup.

Community Parking District – A parking-impacted geographic area designated by the City Council in accordance with Council Policy 100-18.

Compass Card – A transit card that can be purchased, loaded and reloaded for use on regional transportation such as public buses, trolley and trains. It is offered and

managed by the San Diego Association of Governments (SANDAG).  
<https://www.511sd.com/compass/compass>

Configuration – A set of variables such as time limits and rates that are set for a certain Parking Meter or group of Parking Meters.

Contractor – The Proposer whose Proposal is selected and who enters into a contract with the City in response to this RFP.

Credit Card Gateway – The infrastructure that allows a merchant to accept credit cards, connect with a processor or bank, and process credit card payments. Specifically, the gateway is a service that connects the location's credit card device/server to the credit card processor's system.

Credit Card Processing – The ability to take, validate, and authorize credit cards for payment.

Demand-Base Pricing – Pricing parking supply based on demand with the goal of reaching optimal utilization so that there is always an available space on any given block face.

Electronic Payment – A Parking Meter payment made using NFC, Bluetooth, Mobile Pay, Credit Card, Debit Card or Prepaid Card.

EMV Compliance – Equipment that complies with industry standards for point of sale machines for credit card transactions. EMV compliance machines do not require a credit card be swiped. Instead they allow a card to be 'dipped' when a chip is present.

Interface – The automated connection of two systems.

Meter Card – A card inserted in the Card Reader by a Technician to record an event at a Parking Meter including but not limited to coin collection and meter repair/maintenance, diagnostics, enforcement, and maintenance credit.

Mobile Payment – A Parking Meter payment method using a mobile/cellular telephone or web browser.

Multi Space Smart Parking Pay Station – A battery powered, solar charged, wireless enabled machine, servicing more than one parking space, that accepts payment and dispenses a receipt for use of a parking space within a prescribed area.

Near Field Communication (NFC) – A set of standards for smartphones and similar devices to establish radio communication between them by touching them together or bringing them into close proximity.

On-Street Parking – A parking space along the curb of a public street.

Parking Meter – A general term used to mean either a Single Space Smart Parking Meter or a Multi Space Smart Parking Pay Station.

Parking Meter Housing – The metal body in which the Parking Meter is secured/housed.

Parking Meter Inventory – The City of San Diego's current fleet of Parking Meters which includes IPS model M5™ and IPS model MS1™.

Parking Meter Event – Any and all instances of an incident, an error or contact other than a payment (defined below as a Parking Meter Transaction) at a Parking Meter including but not limited to Alerts, Faults, Maintenance Swipes, and Collection Swipes.

Parking Meter Transaction – A Parking Meter payment of any method accepted by the Parking Meter.

Parking Permit – A decal or placard affixed or inside a vehicle and associated with its license plate that is displayed to indicate the vehicle is allowed or permitted to park in a certain geographic area.

Pay-and-Display – A Multi Space Smart Parking Pay Station that dispenses a receipt that the customer displays inside the vehicle.

Pay-by-Plate – A Multi Space Smart Parking Pay Station that requires the customer enter their vehicle license plate number when making a payment.

Pay-by-Space – A Multi Space Smart Parking Pay Station that requires the customer enter a space number and that is used by an enforcement officer to determine which spaces are paid.

Payment Card Industry (PCI) – the technical and operational standards that businesses must follow to ensure that credit card data provided by cardholders is protected by the published requirements set forth by the PCI Security Standards Council.

Payment Card Industry Data Security Standards (PCI-DSS) – is an information security standard for organizations that handle branded credit cards from the major card schemes.

Payment Card Industry Payment Application Data Security Standards (PCI-PA-DSS) – is a set of security standards designed to ensure that ALL companies that accept, process, store or transmit credit card information maintain a secure environment.

Permit-less Parking – A virtual Parking Permit that is license plate based.

Prepaid Parking Card – A card that is of similar size and shape as a debit or credit card and that can be loaded with a monetary value for use at a City Parking Meter and that returns the funds of unused time back to the Prepaid Card.

Proposer – Vendor who submits a Proposal.

Proposal – A vendor's response to this RFP.

Quick Response Code (QR Code) – is the trademark for a type of matrix barcode (or two-dimensional barcode). A barcode is a machine-readable optical label that contains information about the item to which it is attached. In practice, QR codes often contain data for a locator, identifier, or tracker that points to a website or application.

Radio-frequency Identification (RFID) – uses electromagnetic fields to automatically identify and track tags attached to objects. The tags contain electronically stored information.

Real-Time – An Interface that updates instantly.

Return Merchandise Authorization (RMA) – The return and replacement of a defective Parking Meter or Parking Meter part.

Single Space Smart Parking Meter – A battery powered, solar charged, wireless enabled mechanical device used to collect payment for use of a parking space. It is connected to a Parking Meter Housing which is attached to a pole that is typically cemented into the sidewalk.

Solution – The products and services offered by the Proposer and accepted by the City.

Spare Parts – Can include any piece or part of a Parking Meter or Vehicle Detection Sensor including mechanical parts such as Card Reader and Coin Validator, as well as non-mechanical parts such as Coin Cups and Collection Canisters.

Technician – A City of San Diego employee working in Parking Meter Operations.

Turnover -- How often a Parking Space goes from occupied to unoccupied and vice versa.

Uptime – The time the Parking Meter or Vehicle Detection Sensor is functioning and operational, available for use by the public and the City.

Vehicle Detection Sensor – A piece of hardware that can detect the presence of a vehicle entering and exiting a Parking Space in Real-Time.

Vehicle Detection Sensor Event – Any and all instances of an incident, an error or contact associated with a Vehicle Detection Sensor including but not limited to a vehicle entering a space, a vehicle exiting a space, a non-reporting sensor.

Vehicle Detection Sensor Inventory – The City of San Diego's current fleet of Vehicle Detection Sensors are IPS in doom connected to and integrated with its M5™ fleet.

Warranty – A written guarantee to the City by the Contractor that new Parking Meters and Vehicle Detection Sensors purchased under this Contract will be fully operational and functional or repaired or replaced at no cost to the City.

Wireless Service Provider – A company that offers transmission services to users of wireless devices through radio frequency signals.



**B. DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION NUMBER.** Per Section II.A.9:

	Registration No.	Expiration Date	Name
DIR Registration No.			

**C. CONTRACT ADMINISTRATOR.** The Office of the City Treasurer (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:

Jonathan Carey, Parking Program Manager  
Plaza Hall, 202 C Street  
San Diego, CA 92101  
619-533-3610  
[jcarey@sandiego.gov](mailto:jcarey@sandiego.gov)

**D. PAYMENT CARD INDUSTRY DATA SECURITY DOCUMENTS**

1. **Contractor Certification.** Contractor certifies that it will implement and at all times comply with the most current Payment Card Industry Data Security Standards (PCI DSS) regarding data security. Contractor will provide written annual confirmation of PCI DSS compliance from the credit card types used by the City (i.e. VISA, MasterCard, Discover, and American Express). Contractor will immediately notify the City if it undergoes, or has reason to believe that it will undergo, an adverse change resulting in the loss of compliance with the PCI DSS standards and/or other material payment card industry standards. In addition, Contractor shall provide payment card companies, acquiring financial institutions, and their respective designees required access to the Contractor's facilities and all pertinent records as deemed necessary by the City to verify Contractor's compliance with the PCI DSS requirements.

2. **Data Security.** Contractor acknowledges responsibility for the security of cardholder data as defined within PCI DSS standards. Contractor shall undergo independent third party quarterly system scans that audit for all known methods hackers use to access private information, in addition to vulnerabilities that would allow malicious software (i.e., viruses and worms) to gain access to or disrupt network devices. Upon request, Contractor will provide the City's Chief Information Security Officer with copies of the quarterly scans for verification. Contractor will provide reasonable care and efforts to detect fraudulent credit card activity in connection with credit card transactions processed during the performance of this Contract.

3. **Use of Data.** Contractor acknowledges and agrees that Contractor may only use cardholder data for completing the work as described in the Contract Specifications consistent with PCI DSS standards or applicable law. Contractor shall maintain and protect in accordance with all applicable laws and PCI DSS standards the security of all cardholder data when performing the Services.

4. **Notification Requirements.** Contractor shall immediately notify the City's Chief Information Security Officer of any breach, intrusion, or unauthorized card access to allow the proper PCI DSS breach notification process to commence. Contractor agrees to assume responsibility for informing all affected individuals in accordance with applicable law. All notifications and required compliance documents regarding PCI DSS shall be sent to:

Chief Information Security Officer  
1010 2<sup>nd</sup> Avenue, Suite 500  
San Diego, CA 92101  
[Cybersecurity@sandiego.gov](mailto:Cybersecurity@sandiego.gov)  
619-533-4840

5. **Indemnity.** Contractor shall indemnify and hold harmless the City, its officers, and employees from and against any claims, loss, damages, or other harm related to a data security breach or Contractor's failure to maintain PCI DSS compliance standards.



**THE CITY OF SAN DIEGO**  
**GENERAL CONTRACT TERMS AND PROVISIONS**  
**APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS**

## **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.

**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 10<sup>th</sup> 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 (5<sup>th</sup>) 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 (5<sup>th</sup>) 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 obligation required by this Contract 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 Contract; 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 ten (10) calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

**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 immediately notify City in writing 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 to 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. 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 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 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.** To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any goods provided or performance of services under this Contract by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole 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 concerning product endorsement which requires that any advertisement referring to City as a user of a good or service will require the prior written approval of the Mayor.

**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 Equal Pay Ordinance throughout the duration of the Contract.

**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. Contractor shall require subcontractors performing work for contractor under their contract with the City to certify compliance with the Equal Pay Ordinance in their written subcontracts.

**9.1.11.2 Notice Requirement.** Contractor must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.

## **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.

**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.



**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.

**1.3. 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.