The City of SAN DIEGO

**Invitation to Bid (ITB) for**
**Sewer Leader Hose, Fittings, Accessories, and Repair (Rebid)**

| | |
|---|---|
| **Solicitation Number:** | 10089723-21-W |
| **Solicitation Issue Date:** | October 19, 2020 |
| **Questions and Comments Due:** | October 26, 2020 @ 12:00 p.m. |
| **Bid Due Date and Time ("Closing Date"):** | November 9, 2020 @ 3:00 p.m. |
| **Contract Term:** | Five (5) years beginning on the Effective Date as defined in Article I, Section 1.2 of the City's General Contract Terms and Provisions. |
| **City Contact:** | Michael Warner, Senior Procurement Contracting Officer<br>1200 Third Avenue, Suite 200<br>San Diego, CA 92101<br>MWarner@sandiego.gov<br>(619) 236-6154 |
| **Submissions:** | Respondent is required to provide one (1) original and one (1) electronic copy (e.g. thumb drive or CD) of their response as described herein.<br><br>**Completed and signed ITB signature page is required, with most recent addendum listed as acknowledgement of all addenda issued.**<br><br>**Note: Emailed submissions will not be accepted. Due to COVID-19, electronic copies submitted through PlanetBids will be accepted. Instructions for electronic submissions are provided as an attachment in PlanetBids.** |

**CONTRACT RESULTING FROM INVITATION TO BID NUMBER 10089723-21-W, Sewer Leader Hose, Fittings, Accessories, and Repairs (Rebid)**

This Contract (Contract) is entered into by and between the City of San Diego, a municipal corporation (City), and the successful bidder to Invitation to Bid (ITB) # 10089723-21-W, Sewer Leader Hose, Fittings, Accessories, and Repairs (Rebid) (Contractor).

**RECITALS**

On or about 10/19/2020, City issued an ITB to prospective bidders on goods and services to be provided to the City. The ITB and any addenda and exhibits thereto are collectively referred to as the "ITB." The ITB is attached hereto as Exhibit A.

City has determined that Contractor has the expertise, experience, and personnel necessary to provide the goods.

City wishes to retain Contractor to furnish the City of San Diego with Water and Sewer Couplings as further described in the Scope of Work, attached hereto as Exhibit B. (Goods and Services).

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 Goods and Services 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 Goods and Service.

**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 five (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 or identified in the Notice to Proceed, 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 delivery of Goods in accordance with this Contract in an amount not to exceed $3,000,000.

## ARTICLE IV
## WAGE REQUIREMENTS

**4.1** Reserved.

## 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 Notice to Proceed; and the City's written acceptance of exceptions or clarifications to the ITB, if any.

**5.2 Contract Interpretation.** The Contract Documents completely describe the goods and services to be provided. Contractor will provide any goods and services that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for or identified in the Contract Documents. Words or phrases which have a well-known technical or construction industry or trade meaning and are used to describe goods and services 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 document highest in the order of precedence controls. Inconsistent provisions in the Contract Documents that address the same subject, are consistent, and have different degrees of specificity, are not in conflict and the more specific language will control. The order of precedence from highest to lowest is as follows:

1st The Contract

2nd The ITB and the City's written acceptance of any exceptions or clarifications to the ITB, if any

3rd 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

HAAKER EQUIPMENT COMPANY

Bidder

2070 N WHITE AVE

Street Address

LA VERNE

City

909-598-2706

Telephone No.

ROB@HAAKER.COM

E-Mail

BY:

Signature of Bidder's Authorized Representative

ROBERT A NUNNALLY SR

Print Name

PARTS MANAGER

Title

11-06/2020

Date

CITY OF SAN DIEGO
A Municipal Corporation

BY:

Print Name: Claudia C. Abarca
Director Purchasing & Contracting Department

12/11/2020

Date Signed

Approved as to form this 17 day of December, 2020
MARA W. ELLIOTT, City Attorney

BY:
Deputy City Attorney

**EXHIBIT A**
**INSTRUCTIONS AND BID REQUIREMENTS**

## A. BID SUBMISSION

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

**1.1 Reserved.**

**1.2 Paper Bids.** The City will accept paper bids in lieu of eBids. Paper bids 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 bids will not be accepted.

**1.2.1** Due to COVID-19, electronic copies submitted through PlanetBids will be accepted. Instructions for electronic submissions are provided as an attachment in PlanetBids.

**1.3 Bid Due Date.** Bids must be submitted prior to the Closing Date indicated in the eBidding System. E-mailed and/or faxed bids will not be accepted.

**1.4 Pre-Bid Conference.** No pre-bid conference will be held for ITB.

**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 bidders who are on record as having received this ITB via its eBidding System. No oral communications can be relied upon for this ITB. Addenda will be issued addressing questions or comments that are determined by the City to cause a change to any part of this ITB.

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

**2. 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.

**2.2** Exceptions requested by bidder, if any. The bidder must present written factual or legal justification for any exception requested to the Scope of Work, Contract, or the Exhibits. 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 bidder's exceptions, reject bidder's exceptions and deem the bid non-responsive, or award the Contract without bidder's proposed exceptions.

**2.3** The Contractor Standards Pledge of Compliance Form. The City uses the criteria set forth in the Contractor Standards Ordinance to determine whether a Contractor has the capacity to fully perform the contract requirements and business integrity to justify the award of public funds. The City may reject a bid and deem the bidder non-responsible for unsatisfactory business integrity and/or performance history.

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

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

**2.6** Reserved.

**2.7** Manufacturer's Price List.

**2.8** Reserved.

**2.9** Reserved

**2.10** Reserved

**2.11** Reserved

**3.** **Bid Review.** Bidders are responsible for carefully examining the ITB, the Scope of Work, this Contract, and all documents incorporated into the Contract by reference before submitting a bid. If selected for award of contract, bidder shall be bound by same unless the City has accepted bidder's exceptions, if any, in writing.

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

**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 bidder 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.** Bidder shall state the applicable trade name, brand, catalog, manufacturer, and/or product number of the required good, if any, in the bid.

**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. Bidder 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 bidder offers an item of a manufacturer or vendor other than that specified, the bidder 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 bidder'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.** Bidder is responsible for verifying all prices and extensions before submitting a bid.

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

**7.2 Bid Modification or Withdrawal of Bid After Bid Opening.** Any bidder who seeks to modify or withdraw a bid because of the bidder's inadvertent computational error affecting the bid price shall notify the City Contact identified on the eBidding System no later than three working days following the Closing Date. The bidder 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 bidder to prove the inadvertent error. If, as a result of a bid modification, the bidder is no longer the apparent successful bidder, the City will award to the newly established apparent successful bidder. The City's decision is final.

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

**9. Public Records.** By submitting a bid, the bidder acknowledges that any information submitted in response to this ITB 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 bidder 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 bidder 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 bidder 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 bidder does not provide a specific and detailed legal basis for requesting the City to withhold bidder's confidential or proprietary information at the time of bid submittal, City will release the information as required by the CPRA and bidder will hold the City, its elected officials, officers, and employees harmless for release of this information. It will be the bidder's obligation to defend, at bidder'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 bidder's request. Furthermore, the bidder 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 bidder's request. Nothing in the Contract resulting from this bid creates any obligation on the part of the City to notify the bidder or obtain the bidder's approval or consent before releasing information subject to disclosure under the CPRA.

**10. Right to Audit.** The City Auditor may access bidder'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 ITB.

**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 bids.

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

**4. Unit Price.** Unless the bidder 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 bid, 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. BID OPENING.** All bids will be opened at, or immediately after, the time noticed for the bid opening in a location that is open to the public. No bidder or interested person will be excluded from the bid opening. Where no member of the public is in attendance, at least one City officer or employee, in addition to the City employee opening the bids, will be present. Bid results will be announced in the presence of those attending. The name of the project will be audibly announced to those present followed by the name of the bidder, the name of the surety, the amount of the bond, if required, and the total amounts or unit amounts bid.

Any person present shall have the right to ask the announcements be repeated or to ask that omitted data be supplied. Such requests will be honored to the extent they do not unreasonably delay or interfere with the bid opening procedure, as determined at the sole discretion of the City employee opening the bids.

**D. EVALUATION OF BIDS**

**1. Low Bid Award.** A contract will be awarded to the lowest responsible and responsive bidder.

**2. Additional Information.** The City may require bidder to provide additional written or oral information to clarify responses.

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

**4. Waiver of Defects and Technicalities.** The City may waive defects and technicalities in bids when to do so is in the City's best interests.

**5. Rejection of All Bids.** The City may reject any and all bids when to do so is in the City's best interests.

**E. ANNOUNCEMENT OF AWARD**

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

**2. Obtaining Bid Results**. Bid results may be obtained by: (1) attending the bid opening; (2) e-mailing a request to the City Contact identified on the eBidding System; or (3) visiting the P&C eBidding System to review the bid results. To ensure an accurate response, requests should reference the Solicitation Number. Bid 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 bidders. The additional administrative costs associated with awarding more than one Contract will be considered in the determination.

**F. 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 bidders 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.

**G. SUBMITTALS REQUIRED UPON NOTICE OF INTENT TO AWARD.** The successful bidder is required to submit the following documents to P&C **within ten (10) business days** from the date on the Notice of Intent to Award 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.** All businesses that contract with the City must have a current business tax certificate unless the City Treasurer determines the business is exempt.

4. **Reserved.**

5. **Reserved.**

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

**EXHIBIT B**
**SCOPE OF WORK**

## A. BID SPECIFICATIONS

Furnish the City of San Diego's Public Utilities Department with sewer leader hose, fittings, accessories, and repairs in accordance with these specifications.

## B. METHOD FOR ORDERING

The City will use electronic procurement (e-procurement) services from third-party provider such as SAP Ariba. Bidders shall state their ability to accept and process orders from e-commerce systems on their submittal.

## C. METHOD OF AWARD

Bidders shall provide a copy of their latest catalog and currently effective published price list with their bid, in order to be considered responsive. Catalog may be in the form of a hardcopy catalog and/or accessible link, and/or online subscription that is available to the City at all times. Bidders is required to provide the current catalog in any of the abovementioned formats throughout the contract term.

## D. BACKORDERS

Bidders shall ship items in the quantities shown on a Purchase Order. Backorders are unacceptable without prior City approval. The City reserves the right to evaluate the number of backorders to determine if backorders are negatively impacting the City's daily operations, which may be cause for termination of the contract.

## E. SUBSTITUTIONS AND SAMPLES

An equivalent ("or equal") brand/model may be offered by the bidder, subject to testing and evaluation at the option of the City prior to award of bid. The City reserves the sole right to reject a substituted brand/model that will not fulfill requirements. It shall be the sole responsibility of the bidder to provide at bidder's expense any product information, test data and other information, with the bid proposal, the City may require to fully evaluate the acceptability of the offered substitute.

Bidders may be required to provide to the City, at no cost, a sample of any product bid. Samples may be used for testing purposes in accordance with Exhibit B (Scope of Work), Section E (Substitutions). The City shall notify Bidders, in writing, if samples are required. Samples shall be delivered to the City within seven (7) calendar days of such notification. Failure to do so may result in the bid being rejected as non-responsive.

**F. INVENTORY REQUIREMENTS**

All reels shall be factory tested to 150% pounds per square inch (psi). Bidders shall maintain a back-up inventory of at least two (2) reels at all times. In the event the City has depleted Bidders' stock on hand (at least two (2) reels), Bidders shall have replacement stock in its shop within two (2) working days. Failure to meet this requirement may result in cancellation of contract and City obtaining reels from another source.

**G. DELIVERIES**

Orders shall be delivered within fourteen (14) business days after receipt of an order to the below City's location. The City reserves the right to add delivery locations throughout the Contract period at no additional cost to the City.

City of San Diego
Public Utilities Department
Wastewater Collection Division
9150 Topaz Way
San Diego, CA 92123

Delivery to any City location shall be free of charge (F.O.B. Destination, freight prepaid) and fuel surcharges shall not be imposed throughout the life of the contract.

Deliveries shall be made during receiving hours, 8:00 AM to 2:00 PM, Monday through Friday not including City holidays. Exceptions to this schedule shall be rare. If exceptions are required by the City, they will be scheduled in advance with the Bidder.

Bidder shall be responsible for setting up delivery schedules with City personnel prior to any deliveries.

If the City operational requirements necessitate the acquisition of parts sooner than the delivery times noted above and Bidder is unable to provide, the City reserves the right to purchase off-contract from any other supplier.

Should the City be subjected to fines or any other expenses as a result of Bidder's failure to deliver the product specified in the Contract, Bidder will be held liable to the City for reimbursement of the entire amount of expense imposed upon the City because of late or non-delivery.

A Contractor Customer Service Representative shall be available during the City business hours of 8:00 AM to 5:00 PM, Monday through Friday via toll free number and shall be able to handle all inquiries.

**H. EMERGENCY DELIVERIES**

Emergency deliveries, as determined by the City, will be required within twenty-four (24) hours after receipt of an order. If Bidder is unable to deliver within the specified time frame, the City reserves the right to purchase off-contract from any other supplier.

Bidder shall be responsible for setting up delivery schedules with City personnel prior to any deliveries.

**I. INVOICING**

All deliveries shall be accompanied by an invoice or a delivery receipt.

All invoices/delivery receipts shall be itemized and display list price, the discounted City price for each item, and shall reference applicable purchase order numbers.

A copy of an invoice or a delivery receipt shall be signed by an individual accepting delivery.

**J. DAMAGE OR DEFECTIVE PRODUCTS**

Bidder shall replace, at no cost to the City, damaged or defective products within seven (7) calendar days after notice. This shall also include freight charges or any other associated cost. In the event of Bidder failure to replace damaged or defective product within seven (7) days, the City reserves the right to procure from another supplier and the Bidder shall pay the City any difference between the bid price and the price paid to another supplier.

**K. WARRANTY**

Parts shall have the regular manufacturer's standard guarantee and warranty against defects in material and workmanship. In no case shall coverage be less than twelve (12) months after the parts are placed in service. Where a standard manufacturer warranty exceeds a period of one (1) year, this warranty shall also be provided to the City.

All repair work performed by the Contractor shall be covered by a one (1) year warranty against defects in material and workmanship. Any recurrence of maintenance problems due to defects in such material or workmanship within this time frame shall be repaired or replaced by the Contractor immediately at no additional cost to the City. Any material or labor furnished by Contractor to correct Contractor deficiencies shall likewise bear a one (1) year warranty from the date of furnishing or installation, notwithstanding the termination of the contract.

Warranty documentation shall be provided to the City at the time of replacement of defected parts.

In the event of a breakdown or failure of the parts during the warranty period and upon receipt of the notice from the City, Bidder shall take satisfactory action to effect repair or replacement of affected parts within forty-eight (48) hours, at no cost to the City. Should a conflict arise between the manufacturer's warranty and the Contract, the Contract shall prevail.

**L. REPAIR SERVICE REQUIREMENTS**

1. Misc. Repair of ENZ Bulldog Nozzles. Bidder must provide a qualified technician to perform a visual and manual inspection to identify if the ENZ Bulldog nozzle

equipment needs repairs or replacement. The technician will also perform testing to ensure that the ENZ Bulldog nozzle equipment is performing to industry standards.

2. Inspection and Repair of Nozzle Equipment. Bidder must provide a qualified technician to perform a visual and manual inspection to identify any ENZ nozzle equipment needing repairs or replacement. The technician will also perform testing to ensure that the ENZ nozzle equipment is performing to industry standards. A detailed report of the nozzle equipment repaired or replaced along with the current nozzle inventory for each crew will be provided.

**M. TECHNICAL REPRESENTATIVE**

The Technical Representative for this Contract is identified in the Notice to Proceed and is responsible for overseeing and monitoring this Contract.

## N. PRICING SCHEDULE

The estimated annual quantities provided by the City are not guaranteed. The quantities may vary depending on the demands of the City. Any variations for these estimated quantities shall not entitle the Bidder to an adjustment in the unit price or to any additional compensation and in no case shall exceed $3 million within the Contract term, or without City Council approval.

Bidders shall complete the pricing schedule in its entirety to be considered responsive. If cost is included, enter N/C ("No Cost"). Unit prices shall be based on the Unit of Measure (U/M) as specified on the Pricing Schedule. Any changes to the U/M made by the Bidder may be cause for the bid to be rejected as non-responsive. Any discount offered other than for prompt payment should be included in the net price quoted instead of shown as a separate item. Applicable taxes should not be included in pricing.

SECTION A: HOSES AND TIGERTAILS

| Item No. | Est. Qty. | U/M | Description | Manufacturer | Model No. | Unit Cost | Extension |
|---|---|---|---|---|---|---|---|
| 1. | 20 | EA | High-pressure sewer leader hose; Manufacturer: **Goodyear** (GR2SN) or Equivalent- ¾ " x 20' cpld ¾" Male Pipe (e) x ¾ " Female Pipe Swivel (e) 3120 WPSI Goodyear Part #GR2SN-12<br>Hose – Additional price/foot: $ 5.00 | CONTINENTAL | XR16SC-12 | $ 1.00 | $ 20.00 |
| 2. | 60 | EA | High-pressure sewer leader hose; Manufacturer: **Goodyear** (GR2SN) or Equivalent - 1" x 20' cpld 1" Male Pipe (e) x 1" Female Pipe Swivel (e) 2400 WPSI Goodyear Part # GR2SN-16<br>Hose – Additional price/foot: $ 10.00 | CONTINENTAL | XR16SC-16 | $ 140.00 | $ 8400.00 |
| 3. | 6 | EA | High-pressure flushing hose; Manufacturer: **Piranha** or Equivalent - ¾ " x 800' cpld ¾ " Male Pipe (ee) Part #HPBU-MM12X800<br>Hose – Additional price/foot: $ 2.50 | PIRAHNA | 48782H8 | $ 1146.00 | $ 6876.00 |

| Item No. | Est. Qty. | U/M | Description | Manufacturer | Model No. | Unit Cost | Extension |
|---|---|---|---|---|---|---|---|
| 4. | 60 | EA | High-pressure flushing hose; Manufacturer: **Piranha** or Equivalent - 1" x 600' cpld 1" Male Pipe (ee) Part #SP16-600<br>Hose – Additional price/foot: $ 2.75 | PIRAHNA | 48783S6 | $ 1305.00 | $ 78,300.00 |
| 5. | 100 | EA | Tigertails 3" x 36" **Kanaflex** HD or Equivalent - w/glued on cuffs, DVC Single bolt galvanized clamp, & 20' of polypro rope (orange/black)<br>Rope – Additional price/foot: $ .50 | KANAFLEX | 52846HD | $ 80.00 | $ 8,000.00 |
| | | | | | | **TOTAL SECTION A:** | $ 101,596.00 |

SECTION B: FITTINGS

| Item No. | Est. Qty. | U/M | Description | Unit Cost | Extension |
|---|---|---|---|---|---|
| 1. | 20 | EA | 3/4" Male Fitting **Piranha** #F12NPT12 or Equivalent | $ 1.00 | $ 20.00 |
| 2. | 20 | EA | 3/4" Female Fitting **Piranha** #F12FS12 or Equivalent | $ 1.00 | $ 20.00 |
| 3. | 20 | EA | 3/4" Mender **Piranha** #F12MEND or Equivalent | $ 1.00 | $ 20.00 |
| 4. | 80 | EA | 1" Male Fitting **Piranha** #FAR16NPT16 or Equivalent | $ 15.00 | $ 1200.00 |
| 5. | 80 | EA | 1" Female Fitting **Piranha** #FAR16FS16 or Equivalent | $ 35.00 | $ 2800.00 |
| 6. | 80 | EA | 1" Mender **Piranha** #F12MEND or Equivalent | $ 15.00 | $ 1200.00 |
| | | | | **TOTAL SECTION B:** | $ 5260.00 |

SECTION C: DIE SET, PUSH PLATES, AND HYDRAULIC HOSE REPAIR MACHINE

| Item No. | Est. Qty. | U/M | Description | Unit Cost | Extension |
|---|---|---|---|---|---|
| 1. | 2 | EA | SWAGE-HYDTH, Hydraulic Swage Hose Repair Machine **Piranha** or Equivalent | $ 801.59 | $ 1603.18 |
| 2. | 5 | EA | 3/4" Male Pusher Plate **Piranha** #DPT12 or Equivalent | $ 96.20 | $ 481.00 |
| 3. | 5 | EA | 3/4" Female Pusher Plate **Piranha** #DPT12FS or Equivalent | $ 5.00 | $ 25.00 |
| 4. | 5 | EA | 3/4" Die Set **Piranha** #DS12 or Equivalent | $ 134.03 | $ 670.15 |
| 5. | 5 | EA | 1" Male Pusher Plate **Piranha** #DPT16 or Equivalent | $ 96.20 | $ 481.00 |
| 6. | 5 | EA | 1" Female Pusher Plate **Piranha** #DPT16FS or Equivalent | $ 5.00 | $ 25.00 |
| 7. | 5 | EA | 1" Die Set **Piranha** #DS16 or Equivalent | $ 110.97 | $ 554.85 |
| | | | | **TOTAL SECTION C:** | $ 3840.18 |

SECTION D: ENZ CLEANING NOZZLES, INSERTS, AND PARTS

| Item No. | Est. Qty. | U/M | Description | Unit Cost | Extension |
|---|---|---|---|---|---|
| 1. | 10 | EA | E-30.100 Standard Cleaning Nozzle 1" | $ 336.05 | $ 3360.50 |
| 2. | 10 | EA | E-40.100a Grenade Bomb Nozzle 1" | $ 743.60 | $ 7436.00 |
| 3. | 10 | EA | E-60.100 Chisel Point 1", 4"-12" Pipe | $ 353.93 | $ 3539.30 |
| 4. | 10 | EA | E-02.060 HRH Rotojet 1" | $ 754.33 | $ 7543.30 |

| Item No. | Est. Qty. | U/M | Description | Unit Cost | Extension |
|---|---|---|---|---|---|
| 5. | 10 | EA | E-404.080hs100 Bulldog 80 Series W/4" Skid C | $ 2431.00 | $ 24310.00 |
| 6. | 10 | EA | E-404.080hs150 Bulldog 80 Series W/6" Skid C | $ 2431.00 | $ 24310.00 |
| 7. | 10 | EA | 22.08 Ceramic-Inserts M8 Jets for 30.100 | $ 17.16 | $ 171.60 |
| 8. | 10 | EA | 22.10 Ceramic-Inserts M10 Jets for 40.100A | $ 19.30 | $ 193.00 |
| 9. | 10 | EA | 22.06 Ceramic-Inserts M6 Jets for 60.100 | $ 14.52 | $ 145.20 |
| 10. | 10 | EA | 22.08 Ceramic-Inserts M8 Jets for 02.060 | $ 17.16 | $ 171.60 |
| 11. | 10 | EA | 22.10 Ceramic-Inserts M10 | $ 19.30 | $ 193.00 |
| 12. | 10 | EA | 22.08 Ceramic-Inserts M8 Jets for 404.080HS100 | $ 17.16 | $ 171.60 |
| 13. | 10 | EA | 100.0807 Skid (4") for 400.080 | $ 207.35 | $ 2073.50 |
| 14. | 10 | EA | 22.10 Ceramic-Inserts M10 | $ 19.31 | $ 193.60 |
| 15. | 10 | EA | 22.08 Ceramic-Inserts M8 Jets for 404.080HS150 | $ 17.16 | $ 171.60 |
| 16. | 10 | EA | 100.0808 Bulldog 6" Skid | $ 207.35 | $ 2073.50 |
| | | | | **TOTAL SECTION D:** | $ 76056.80 |

SECTION E: LABOR - PART 1

| Item No. | Est. Qty. | U/M | Description | Flat Rate | Extension |
|---|---|---|---|---|---|
| 1. | 10 | EA | Misc. Repair of ENZ Bulldog Nozzles | $ .01 | $ .10 |

SECTION E: LABOR – PART 2

| Item No. | Est. Qty. | U/M | Description | Hourly Rate | Extension |
|---|---|---|---|---|---|
| 2. | *1 | HR | Labor cost for inspection and repair of nozzle equipment | $ .01 | $ .01 |

*Note: Line item used to establish an hourly rate.*

**TOTAL SECTION E Parts 1 and 2:** $ .11

**Estimated Annual Total:**
**(Total Sections A – E)** $ 186753.09

**Estimated Total Contract Value:**
**(Est. Annual Bid Total x 5 Years Contract Term)** $ 933765.45

DISCOUNT OFF MANUFACTURER'S PRICE LIST

The City desires to purchase products listed as well as other products not specifically listed throughout the term of this contract. As new items become available in the designated product lines, they too will become a part of the contract and will be subject to the same discount offered. The most current Manufacturer's Price List will be used to determine pricing during the contract period. Bidder shall provide price updates and catalogs as new items become available, or at any time they are updated. Bidder shall indicate below the percentage discount off the Manufacturer's Prevailing Published Price List at time of order that will apply for items not specifically listed. This information will not be considered in the award evaluation.

| | | | |
|---|---|---|---|
| Brand: | SONETICS CORPORATION, KEG PRODUCTS, RKI INSTRUMENTS | Discount Off of List Price: | 5 % |
| Brand: | ENVIROSIGHT, VIVAX-METROTECH, HYDRA-FLEX | Discount Off of List Price: | 5 % |
| Brand: | AIR SPADE, HYDRO-TEK, RING-O-MATIC | Discount Off of List Price: | 5 % |
| Brand: | SOUTHLAND TOOL | Discount Off of List Price: | 15 % |
| Brand: | | Discount Off of List Price: | % |
| Brand: | | Discount Off of List Price: | % |

# 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 10th of the month following the month in which Contractor provided services. Invoices must include the address of the location where services were performed and the dates in which services were provided.

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

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

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

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

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

**3.2.6.2 Monthly Invoicing and Payments**. Contractor and Contractor's subcontractors and suppliers must submit Monthly Invoicing and Payment Reports by the fifth ($5^{th}$) 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 Contact, will be a material breach of the Contract subject to termination of the Contract.

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

## ARTICLE IX
## CITY-MANDATED CLAUSES AND REQUIREMENTS

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

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

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

**9.1.3 Non-Discrimination Requirements.**

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

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

in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

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

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

**9.1.5 Contractor Standards.** Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

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

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

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

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

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

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

**9.1.10 Business Tax Certificate.** Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before a Contract is executed.

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

**9.1.11.1 Contractor and Subcontract Requirement.** The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of a Contractor to the same extent as it would apply to that Contractor. Any Contractor subject to the Equal Pay Ordinance shall require all of its subcontractors to certify compliance with the Equal Pay Ordinance in its written subcontracts.

## ARTICLE X
## CONFLICT OF INTEREST AND VIOLATIONS OF LAW

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

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

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

**10.4 Certification of Non-Collusion.** Contractor certifies that: (1) Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or

solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

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

## ARTICLE XI
## DISPUTE RESOLUTION

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

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

**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.

**EXHIBIT D**
**WAGE REQUIREMENTS**

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

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

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

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

**2. Compensated Leave.** Pursuant to San Diego Municipal Code section 22.4220(c), Bidder and its subcontractors shall provide a minimum of eighty (80) hours per year of compensated leave. Part-time employees must accrue compensated leave at a rate proportional to full-time employees.

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

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

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

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

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

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

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