



CITY OF SAN DIEGO
REAL ESTATE ASSETS DEPARTMENT
1200 Third Avenue, Suite 1700
San Diego, CA 92101-4195

REQUEST FOR PROPOSALS (RFP) COVER SHEET

Solicitation Type: Development and Operation of Concession Facilities at various City-Owned Reservoirs

Solicitation Number: RFP No. 13500

Solicitation Issue Date: October 3, 2016

Proposal Due Date and Time (Closing Date): 4:00 p.m. Pacific Time on November 10, 2016

City Contact: Carla Gresham, cgresham@sanidiego.gov, phone (619) 236-6729; fax (619) 236-7606

Recommended Site Inspection: Pre-Proposal Inspections will be held as listed below. Contact City Contact by October 07, 2016, at cgresham@sanidiego.gov, phone (619) 236-6729 or fax (619) 236-7606, if you are planning to attend. Pre-Proposal Inspections will be held as listed below.

| Date | Time | Location |
|------------------|--------------------------|--------------|
| October 10, 2016 | 9:00 a.m. to 10:00 a.m. | Lower Otay |
| October 10, 2016 | 11:00 a.m. to 12:00 p.m. | Lake Murray |
| October 10, 2016 | 1:00 p.m. to 2:00 p.m. | Lake Miramar |
| October 10, 2016 | 3:00 p.m. to 4:00 p.m. | Lake Hodges |
| October 11, 2016 | 9:00 a.m. to 10:00 a.m. | Sutherland |
| October 11, 2016 | 11:00 a.m. to 12:00 p.m. | San Vicente |
| October 11, 2016 | 1:00 p.m. to 2:00 p.m. | El Capitan |

Questions and Comments Due: No later than October 27, 2016 at 4:00 p.m. P.S.T.

Duration of Offer: By submitting a proposal, the proposer guarantees that the offer is firm for ninety (90) calendar days commencing the day following the Closing Date. Proposer agrees to accept a resulting contract subject to the terms and conditions stated herein. If a tentative award is not made during that period, proposer's offer shall automatically extend for another ninety (90) calendar days unless the proposer indicates otherwise in writing thirty (30) calendar days prior to the end of the first ninety (90) calendar day period to the City Contact.

Proposer _____

Street Address _____

City _____

Telephone No. _____

E-Mail _____

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PROPOSER'S AUTHORIZED REPRESENTATIVE. Proposer is required to sign this document and return three (3) originals and five (5) copies of their proposal in sealed envelopes or cartons to the City Contact. Proposer shall also include an electronic copy of their proposal. Proposer agrees to develop, operate and maintain the concession facilities as set forth or otherwise identified above subject to the terms and conditions specified herein. An original signature below is required. By signing below, the signer declares under penalty of perjury that she/he is authorized to submit and sign this proposal.

Signature of Proposer's Authorized Representative

Print Name

Title

Signature

Date

The City of San Diego (City) is requesting proposals from qualified firms or individuals, hereafter referred to as Proposers, to develop, operate and maintain the concession facilities, and other related activities, located at all of the Reservoirs, as defined in Section A, below. The City is seeking proposals that reflect the City's desire to have an operator who provides a high level of service to the local and regional community, while it operates the facilities and related activities in a fiscally responsible manner. Development, operation and maintenance of the Reservoirs shall be in accordance with the terms and conditions contained in this RFP, and, if awarded, pursuant to an agreement (Agreement) to be negotiated with the City and subject to approval by the San Diego City Council.

A. BACKGROUND

The City's Real Estate Assets Department, in cooperation with the City's Public Utilities Department, manages the following reservoirs (hereinafter referred to individually as a "Reservoir" or by its name below, and collectively as the "Reservoirs"), as further depicted on **Exhibits A-1 through A-7**:

El Capitan Reservoir is located at 16852 El Monte Road, Lakeside, CA, 92040, approximately 30 miles northeast of downtown San Diego, on the San Diego River. The Reservoir was created in 1935 with the completion of the El Capitan Dam. That same year the reservoir was connected to the City's water system via the El Capitan Pipeline. El Capitan has the second largest capacity in the City reservoir system. When full, the reservoir has 1,562 surface acres, a maximum water depth of 197 feet, and 22 miles of shoreline. El Capitan Reservoir has a water storage capacity of 112,806.9-acre feet. Fishing and water craft activities are allowed at this Reservoir and boat rentals are available. The dock facility, located near the southern end of the reservoir, has 10 slips which can accommodate up to 20 vessels. The concession facilities include a 12-foot by 60-foot trailer which was built in 1992. The trailer has a heating and air cooling system, as well as a restroom. Additionally, the concession facilities has one RV pad with utility hook ups.

Hodges Reservoir is located at 20175 Lake Drive, Escondido, CA 92029. Hodges Reservoir was created with the building of Hodges Dam on San Dieguito Creek in 1918. The City purchased the dam and reservoir in 1925. Operated and maintained by the City's Public Utilities Department, the reservoir currently serves the San Dieguito Water District and Santa Fe Irrigation District as well as the City. When full, the reservoir has 1,234 surface acres, a maximum water depth of 115 feet and 27 shoreline miles. Hodges Reservoir has a water storage capacity of 30,251-acre feet. Fishing and water craft activities are allowed at this Reservoir and boat rentals are available. The dock facility, located near the northeastern section of the reservoir, has 20 slips which can accommodate up to 38 vessels. The concession facilities include a 23-foot by 49-foot single story building, which was built in 1992. The building has a heating and air cooling system. However, the building does not have a restroom. Additionally, the concession facilities has one RV pad with utility hook ups.

Miramar Reservoir is located at 10710 Scripps Lake Drive, San Diego, CA 92131, in the Scripps Ranch community. Miramar Reservoir is operated and maintained by the City. The dam and reservoir were completed in 1960 as part of the second San Diego Aqueduct project. Water flowing south to the reservoir originates from both the Colorado River Aqueduct and the California Aqueduct. The reservoir is adjacent to the City's Miramar Water Treatment Plant, which serves the northern part of the City. When full, the reservoir has 162 surface acres, a maximum water depth of 114 feet and four shoreline miles. Miramar Reservoir has a water storage capacity of 6,682.4-acre feet. This Reservoir is very popular for bicycling, jogging, walking, rollerblading and picnicking. A paved service road encircles the Reservoir and runs 4.92 miles. Fishing and water craft activities are allowed at this Reservoir and boat rentals are available. The dock facility, located near the southwestern section of the reservoir, has 20 slips, which can accommodate up to 40 vessels. The concession facilities include a 21-foot by 37-foot single story building, which was built prior to 1980. The building has a heating and air cooling system. However, the building does not have a restroom. Additionally, the concession facilities does not have a RV pad.

Murray Reservoir is located at 5540 Kiowa Drive, La Mesa, CA 91942. The City assumed operation of the Murray Reservoir in 1950 from the Helix Irrigation District (Helix). The City purchased the reservoir from Helix 10 years later. Murray Reservoir is located within the boundary of the City's Mission Trails Regional Park. When full, the reservoir has 171.1 surface acres, a maximum water depth of 95 feet and 3.2 shoreline miles. Murray Reservoir has a water storage capacity of 4,684.2-acre feet. Water levels are monitored weekly. Fishing and water craft activities are allowed at this Reservoir and boat rentals are available. The dock facility, located near the southeastern section of the reservoir, has 26 slips, which can accommodate up to 51 vessels. The concession facilities include a 21-foot by 36-foot single story building, which was built prior to 1980. The building has a heating and air cooling system. However, the building does not have a restroom. Additionally, the concession facilities does not have a RV pad.

(Lower) Otay Reservoir is located at 2165 Wueste Road, Chula Vista, CA 91915. In 1897, the first Lower Otay Dam was completed by the Southern California Mountain Water Company. The Lower Otay Reservoir was connected to the City's water system in 1906 via the Bonita Pipeline. Following heavy rains, the dam burst in 1916 and the Otay Valley was flooded. The dam was rebuilt in 1918 and renamed Savage Dam. When full, Lower Otay Reservoir has 1,100 surface acres, a maximum water depth of 137.5 feet, and 25 shoreline miles. Lower Otay Reservoir has a water storage capacity of 49,848.9-acre feet. Water levels are monitored weekly. The Reservoir is the home of the United States Olympic Training Center for rowing sports. Fishing and water craft activities are allowed at this Reservoir and boat rentals are available. The dock facility, located near the southwestern section of the reservoir, has four slips, which can accommodate up to 32 vessels. The concession facilities include a 12-foot by 60-foot trailer, which was built in 1995. The trailer has a heating and air cooling system, as well as a restroom. Additionally, the concession facilities has one RV pad with utility hook ups.

San Vicente Reservoir is located at 2391 Moreno Avenue, Lakeside, CA 92040, approximately 25 miles northeast of San Diego. San Vicente Reservoir is a deep, steep-sided impounding reservoir on San Vicente Creek. The original dam was completed in 1943. The new construction of the San Vicente Dam Raise Project, which began in early 2009, was completed in 2016. San Vicente now has the largest storage capacity in the City reservoir system. When full, the reservoir has 1,667 surface acres, a maximum water depth of 306 feet, and has a water storage capacity of 246,994-acre feet. Water levels are monitored weekly. Fishing and water craft activities are allowed at this Reservoir and boat rentals are available. The dock facility, located near the southwestern section of the reservoir, has four slips, which can accommodate up to 40 vessels. The concession facilities include a 30-foot by 30-foot building, which was built in 2016. The building has a heating and air cooling system, as well as a restroom. Additionally, the concession facilities has one RV pad with utility hook ups.

Sutherland Reservoir is located at 22850 Sutherland Dam Road, Ramona, CA 92065, approximately 45 miles northeast of San Diego. Construction on Sutherland Dam began in 1927, but it was not completed until 1954. When full, the reservoir has 556.8 surface acres, a maximum water depth of 145 feet, and 5.25 shoreline miles. Sutherland Reservoir has a water storage capacity of 29,508-acre feet. Seasonal turkey and waterfowl hunting is allowed at this Reservoir. Fishing and water craft activities are allowed at this Reservoir and boat rentals are available. However, as of the date of issuing this RFP the launch ramp is closed due to low water levels. The dock facility, located near the southwestern section of the reservoir, has 20 slips, which can accommodate up to 38 vessels. The concession facilities include a 20-foot by 30-foot single story building which was built prior to 1980. The building has a heating and air cooling system. However, the building does not have a restroom. The concessions facilities has one RV pad with utility hook ups.

TYPE OF PROPOSALS SOUGHT

The City is seeking proposals to develop, operate and maintain the concession facilities, and other related activities, at the Reservoirs (collectively referred to as the “Concession Facilities”). Proposers are encouraged to propose other uses, services, activities, and/or facilities that would improve services and benefits to the public, which are consistent with the City’s need to preserve and protect its water resources, and which would result in additional income to the Proposer and the City.

Each proposal should reflect the City's desire to have an Agreement in which the selected Proposer serves the public, maintains the facilities, and develops, manages and operates concessions and related activities in a fiscally responsible manner that produces the most revenue to the City. **Proposers must submit proposals to operate the Concession Facilities and concessions at all of the Reservoirs.**

B. DEVELOPMENT/OPERATING PLAN

Proposals must include a conceptual plan for the Concession Facilities, along with any proposed changes or additions to the existing facilities. Proposals should identify the services to be provided at the Concession Facilities. Proposals shall include, at a minimum, detailed responses for the following requirements (Development/Operating Plan):

1. A preliminary site and floor plan showing the general location of all of the existing and any proposed capital improvements and/or major equipment in the Concession Facilities, including a schedule, a description of any demolition proposed, and a projection of construction costs. Drawings do not need to be detailed construction drawings but should be drawings to a consistent scale in sufficient detail to clearly show the types, dimensions and locations of all proposed improvements and facilities.
2. The necessary trade fixtures and equipment to be provided by the Proposer needed to provide the level of service to be required under the Agreement. The selected Proposer must be prepared to provide all necessary trade fixtures, equipment and/or outboard motors at each Reservoir as required for that Reservoir's operation. Larger watercraft and outboard motors may be appropriate for El Capitan Reservoir, Hodges Reservoir, Lower Otay Reservoir, San Vicente Reservoir and Sutherland Reservoir because the speed limit at each of these Reservoirs is 35 MPH. Title to those fixtures and equipment would remain vested in the selected Proposer unless negotiated otherwise.
3. A program plan providing a description of the programs, activities and services for each of the Concession Facilities at each Reservoir, including hours of operation, proposed fees and charges and benefit to the community.
4. A proposed term of the Agreement and a statement justifying the proposed term, which shall include a statement of annual gross revenue projections from all operations for the proposed term of the Agreement.
5. A proposed financing plan.

All aspects of the Development/Operating Plan, including proposed uses, fees, demolition and improvements, are subject to approval by the City.

Proposals shall consider all applicable laws and available industry guidelines as they apply to liability, public health standards, recreational operations, Americans with Disabilities Act (ADA) access, and the highest standards of maintenance of all facilities and equipment. Proposals must address any required off-site improvements, including but not limited to, curbs, gutters, sidewalks, utilities, landscaping, and ADA compliance for the Concession Facilities.

C. AGREEMENT TERMS

The City anticipates entering into an Agreement with the selected Proposer, to memorialize in detail the elements of the selected proposal. The following terms and conditions shall be incorporated into the Agreement to be negotiated and executed between the selected Proposer and the City, subject to modification, deletion, and additional terms and conditions as determined by the City in the City's sole discretion:

1. Overall Management Services and Uses.

The Proposer's primary use of the Concession Facilities shall be limited to the operation and maintenance of a concession facility, which shall include, but not be limited to, the following: operate snack bars; sell fishing tackle, bait, State of California fishing licenses, license stamps, and daily recreational use permits; rent motorboats, rowboats, kayaks, paddleboats, and bicycles; host fishing tournaments; maintain an on-site RV and RV pad for the selected Proposer's manager housing at the Reservoirs specifically chosen by the Proposer, as further set forth in attached **Exhibit A and this RFP**; and provide information and administer reservations relative to the recreational use of each Reservoir. El Capitan, Hodges, San Vicente, Sutherland and Lower Otay have RV pads. RV pads can be installed at Lake Miramar and Lake Murray at the selected Proposer's cost. City staff may also be involved with the selling of permits; the coordination of each party's selling of permits will be between City staff and the selected Proposer and will be memorialized in the Agreement.

2. Term.

The proposed term of the Agreement must be justified by the Proposer on the basis of improvements, equipment, facilities and in promoting the Concession Facilities and services thereon to the general public. The Agreement term shall be for a minimum of ten (10) years, not to exceed a maximum term of twenty (20) years.

3. Rent.

- a. Minimum Rent. The Proposer should offer a base rent as a guaranteed annual minimum rent (Minimum Rent) each Agreement year. If the Minimum Rent is greater than the Percentage Rent, on a calendar month basis, then 1/12 of the Minimum Rent is required to be paid for that month. Minimum Rent is to be paid in monthly installments on or before the first day of each calendar month.
- b. Minimum Rent Adjustment. Effective at the beginning of the first day of each Agreement year, the Minimum Rent shall be adjusted to eighty percent (80%) of the annual average of actual rent paid in the immediately preceding Agreement year, but in no event less than the Minimum Rent of the immediately preceding Agreement year.

- c. Percentage Rent. The Proposer should offer the annual percentage rent as the sum of the Proposer's proposed percentage of the Gross Income (as defined below) resulting at each of the Concession Facilities of each Reservoir and will be calculated on a calendar month basis (Percentage Rent). Percentage Rent should not be less than eight percent (8%) of Gross Income (as defined below).
- d. Unauthorized Use Charge. The selected Proposer shall pay the City one-hundred percent (100%) of the gross receipts for any service or use that is not permitted by the Agreement.
- e. Gross Income. Gross income (Gross Income) shall include all income, except as stated in Section 34 (b) (l), below, resulting from the Concession Facilities from whatever source derived whether received or to become due; provided, however, that Gross Income shall not include federal, state or municipal taxes collected from the consumer (regardless of whether the amount is stated to the consumer as a separate charge) and paid over periodically by the selected Proposer to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by the selected Proposer in computing Gross Income. Gross Income shall not include refund of deposits.
- f. Closures. Occasionally, and for various reasons, City's Public Utilities Department may find it necessary, in its sole discretion, to close a Reservoir because of storms, low water levels, scheduled and unscheduled maintenance, improvements, and for other reasons that may arise during the term of the Agreement. In most cases, advanced notice of such closure will be provided to the selected Proposer. However, the City cannot guarantee that any individual Reservoir will be open for fishing or other activities at all times. If any such closure should become necessary, the City may, at the City's sole discretion, reduce the agreed-upon rent in proportion to the length of any closure.
- g. Delinquent Rent. If the selected Proposer fails to pay all or any part of the rent or ANY other rent when due, the selected Proposer shall pay, in addition to the unpaid amount, five percent (5%) of the unpaid amount. If the rent is still unpaid at the end of fifteen (15) days, the selected Proposer shall pay an additional five percent (5%) of the unpaid amount [for a total of ten percent (10%)], which is hereby mutually agreed by the parties to be appropriate to compensate the City for loss resulting from the delinquency, including lost interest, lost opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than Twenty-Five Dollars (\$25) each time. In no event shall any penalties or default interest rates charged to the selected Proposer exceed the amount permitted under applicable law. After thirty (30) days past due, unpaid amounts due the City under the Agreement may be referred to the City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from

time to time. The selected Proposer shall pay to the City any collection-referral fee and all other fees and charges plus interest as may then be charged by the City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by the City shall neither constitute a waiver of the selected Proposer's breach or default with respect to the late payment nor prevent the City from exercising any other rights and remedies available at law or in equity. As required by law, the selected Proposer is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due the City are not paid when due.

4. Time and Place of Payment. Payments are due on or before the last day of the calendar month following the calendar month in which the Gross Income subject to Percentage Rent was earned. All payments to be paid by the selected Proposer under the Agreement shall be made payable to the City Treasurer and be mailed to:

San Diego City Treasurer
P.O. Box 129030
San Diego, California 92112-9030

Or hand delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

5. The City may change the place of payment at any time upon thirty (30) days written notice to the selected Proposer. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt. CONCESSIONAIRE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.
6. Records and Reports. The selected Proposer shall keep complete and accurate accounting records, which shall be subject to City review at reasonable times to determine the nature and amounts of income from the activities on the Concession Facilities. Records shall be kept for at least five (5) years following the expiration or earlier termination of the Agreement. The records may be periodically audited by the City.

The selected Proposer will be required to maintain accurate inventory records of permit sales and submit an inventory report of permits sold and unsold on a weekly basis. In return for sale of the aforementioned permits, the selected Proposer shall receive as commission, an amount equal to no more than five percent (5%) of the

permit sales. **Proposed percentage of the permit sales to calculate the commission shall be offered in proposals submitted to this RFP.**

7. Audit Cost. The full cost of the City's audit will be borne by the City unless one or both of the following conditions exists, in which case the selected Proposer agrees to pay the City's cost of audits:
 - a. The audit(s) reveal an underpayment of more than five percent (5%) or more than Ten Thousand Dollars (\$10,000), whichever is less, between the rent due as reported and the rent paid by the selected Proposer.
 - b. The selected Proposer has failed to maintain complete and true books, records, accounts and supporting documents in strict accordance with the conditions of the Agreement.
8. Right to Assign and Sublet. The selected Proposer may not assign the Agreement or any interest therein and may not sublet any portion thereof without prior written approval from the City. The City's approval may be conditioned upon the proposed assignee or sublessee agreeing to revisions to the Agreement, to reflect market conditions or the City requirements that are then in effect. Also, no assignee will be approved who is not at least comparable to the original selected Proposer in financial and professional capabilities to operate the Concession Facilities, as determined by the City.
9. Compliance with Laws. The selected Proposer shall secure and maintain full compliance with all applicable municipal, county, state, and federal laws and regulations at its own cost, regarding all aspects of the Agreement and activities at the Concession Facilities.
10. Encumbrance of Agreement. The selected Proposer shall not encumber the Agreement, its interest in the Agreement, or any improvements on the Concession Facilities by deed of trust, mortgage, chattel mortgage, or other security instrument without the City's prior written consent.
11. Utilities. The selected Proposer agrees to order, obtain and pay for all utilities and service and installation charges in connection with the operation of the Concession Facilities, of which will be provided and installed by the City. All utilities shall be installed underground.
12. Restriction on Plastic Food Containers. The selected Proposer shall not provide to its customers any prepared, takeout, or supplied/resale food in polystyrene foam packaging, nor shall the selected Proposer obtain or keep any such customer food packaging at or on the Concession Facilities. The selected Proposer's food packaging for all foods shall be recyclable plastic or recyclable paper, and the selected Proposer shall deliver to the City, upon request, evidence of such in the form of paid invoices

for the purchase of recyclable plastic or recyclable paper containers in amounts sufficient to indicate compliance with this section. Post-consumer recycled plastic or recycled paper is preferred for all customer food packing related to the use and operation of the Concession Facilities. No biodegradable or compostable packaging is to be used by the selected Proposer in lieu of recyclable plastic or recyclable paper unless with the prior written approval of the City's Environmental Services Department. "Prepared food" means all food or beverage prepared on the Reservoirs for immediate consumption at the Reservoirs or elsewhere on the Reservoirs. "Takeout food" means all food or beverage to be consumed off of the Reservoirs or elsewhere in the Reservoirs. "Supplied/Resale food" means foods or beverages which are supplied by a third party to the selected Proposer for either preparing food or beverages onsite or direct sell. "Food packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws and lids which are not intended for reuse, and on or in which any prepared food or takeout food is provided on or from the Reservoirs. The selected Proposer should also limit its distribution of plastic bags to its customers.

13. Hazardous Substances. The selected Proposer shall not allow the illegal installation, storage, utilization, generation, sale or release of a Hazardous Substance or otherwise regulated substance in, on, under or from the Reservoirs. The selected Proposer and the selected Proposer's agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance on the Reservoirs without City's prior written consent. The selected Proposer shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.
 - a. Release. A "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a hazardous substance.
 - b. Hazardous Substance. "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
 - c. Remediation. If the selected Proposer's occupancy, use, development, maintenance or restoration of the Reservoirs results in a release of a Hazardous Substance, the selected Proposer shall pay all costs of remediation and removal to the City's satisfaction for unrestricted reuse of the Reservoirs, and in

accordance with all applicable laws, rules and regulations of governmental authorities.

- d. Removal. If the selected Proposer or the selected Proposer's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances or hazardous wastes to the Reservoirs, the selected Proposer and/or the selected Proposer's contractors or agents shall remove all Hazardous Substances and hazardous wastes in any type of container, equipment or device from the Reservoirs immediately upon or prior to the expiration or earlier termination of the Lease. Upon City's request, the selected Proposer shall deliver to City true copies of documentation demonstrating the legal removal and/or disposal of the Hazardous Substances and/or hazardous wastes, containers, equipment or devices from the Reservoirs. The selected Proposer shall be responsible for any and all costs incurred by City to remove any container, equipment or device requiring disposal or removal as required by this provision.
 - e. Indemnity. The selected Proposer shall protect, defend, indemnify, and hold City harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from the selected Proposer's occupancy, use, development, maintenance, or restoration of the Reservoirs, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary City response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, the selected Proposer's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
 - f. Notice of Release. If the selected Proposer knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the Premises, the selected Proposer shall immediately notify City and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. The selected Proposer shall deliver a written report thereof to City within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If the selected Proposer knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, the selected Proposer shall take all actions necessary to alleviate the danger. The selected Proposer shall immediately notify City in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Reservoirs.
14. Nondiscrimination. The selected Proposer shall not discriminate in any manner against any person by reason of race, color, religion, gender, gender expression,

gender identity, sexual orientation, medical status, national origin, age, marital status, or disability in the use of the Concession Facilities. The selected Proposer shall comply with the City's programs for equal employment opportunities. This program includes requiring the selected Proposer to submit a Work Force Report (see attached **Exhibit "B"**), and in some cases an Equal Opportunity Plan. The selected Proposer shall comply with the San Diego Municipal Code sections 22.4301-22.4308, which requires such contractors of City-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. By entering into the Agreement, the selected Proposer shall certify that it will maintain such equal benefits throughout the term of the Agreement.

15. Insurance. The selected Proposer shall be required to carry the following, with all liability limits to be per site and not a cumulative limit:
 - a. General Commercial Liability. Commercial general liability and property damage insurance, naming the City as an additional insured, in the amount of not less than One Million Dollars (\$1,000,000) per occurrence and subject to an annual aggregate of Two Million Dollars (\$2,000,000). The selected Proposer is required to carry a policy of fire, extended and special form insurance with replacement cost coverage on all permanent property of an insurable nature located upon the Concession Facilities and Reservoirs in an amount equal to the full replacement of all improvements.
 - b. Watercraft Liability. The selected Proposer shall, at its sole cost and expense, maintain watercraft liability and property damage insurance covering both boat and kayak rentals with liability limits of no less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate. It is further understood that the selected Proposer will name the City as an Additional Insured with Waiver of Subrogation in favor of the City.
 - c. Cyber Liability Insurance. The selected Proposer shall provide, at its sole cost and expense, evidence of Cyber Liability insurance with limits of not less than \$1,000,000 for each occurrence and an annual aggregate of \$2,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. Such coverage is required only if any products and/or services related to information technology (including hardware and/or software) are provided to the selected Proposer and for claims involving any professional services for which the selected Proposer's contractor is engaged with the selected Proposer for such length of time as necessary to cover any and all claims.
 - d. Crime Insurance. The selected Proposer shall keep in full force and effect a crime insurance policy which shall include employee dishonesty/fidelity coverage for a minimum of twenty-five thousand dollars (\$25,000.00) per employee or one hundred thousand dollars (\$100,000.00) blanket limit. This coverage shall protect

against loss by the theft or mysterious disappearance of property by any of selected Proposer's employees or third parties while the Concession Facilities are in the care, custody, or control of selected Proposer resulting directly or indirectly from the performance or execution of the Agreement, and a contract or subcontract thereunder.

16. Indemnity. The selected Proposer shall agree to indemnify, defend, and hold the City harmless from liability in connection with any and all construction, operations and activities on the Concession Facilities and Reservoirs.
17. Taxes. The selected Proposer must pay any and all taxes and assessments, including possessory interest taxes levied by reason of its possession, or use of the Concession Facilities.
18. Default. The City will reserve the right to terminate the Agreement in the event of selected Proposer's failure to pay any rent, fees or other amounts within five (5) days of notice thereof, or to cure any curable default or breach within thirty (30) days of notice thereof.
19. Permits and Licenses. The selected Proposer will be required to obtain all necessary permits and licenses for the operations and activities on the Concession Facilities and Reservoirs, at the selected Proposer's sole cost and expense. By selecting a proposal or executing the Agreement, neither the City nor the San Diego City Council is obligating itself to the selected Proposer or to any governmental agent, board, commission or agency with regard to any other discretionary action relating to any occupancy, use, maintenance or restoration of the Concession Facilities. "Discretionary action" includes without limitation re-zonings, variances, environmental clearances and all other required governmental approvals. The selected Proposer must maintain an "A Card" rating issued by the County Department of Environmental Health.
20. Payment Card Industry Data Security Standards. If selected Proposer chooses to accept credit cards, Proposer agrees to pay for all associated fees and to install a dedicated phone line for the acceptance of credit card payments.
 - a. Selected Proposer's Certification. The selected Proposer shall certify that it will implement and at all times comply with the most current Payment Card Industry Data Security Standards (PCI DSS) regarding data security. The selected Proposer will provide written annual confirmation of PCI DSS compliance from the credit card types used by the City (i.e. VISA, MasterCard, Discover, and American Express). The selected Proposer will immediately notify the City if it undergoes, or has reason to believe that it will undergo, an adverse change resulting in the loss of compliance with the PCI DSS standards and/or other material payment card industry standards. In addition, the selected Proposer shall provide payment card companies, acquiring financial institutions, and their

respective designees required access to the selected Proposer's facilities and all pertinent records as deemed necessary by the City to verify the selected Proposer's compliance with the PCI DSS requirements.

- b. Data Security. The selected Proposer shall acknowledge responsibility for the security of cardholder data as defined within PCI DSS standards. The selected Proposer shall undergo independent third party quarterly system scans that audit for all known methods hackers use to access private information, in addition to vulnerabilities that would allow malicious software (i.e., viruses and worms) to gain access to or disrupt network devices. Upon request, the selected Proposer will provide the City's Chief Information Security Officer with copies of the quarterly scans for verification. The selected Proposer will provide reasonable care and efforts to detect fraudulent credit card activity in connection with credit card transactions processed during the performance of the Lease.
- c. Use of Data. The selected Proposer shall acknowledge and agree that it may only use cardholder data for completing the work as described in the Lease consistent with PCI DSS standards or applicable law. The selected Proposer shall maintain and protect in accordance with all applicable laws and PCI DSS standards the security of all cardholder data when performing the services.
- d. Indemnity. The selected Proposer shall indemnify and hold harmless the City, its officers, and employees from and against any claims, loss, damages, or other harm related to a data security breach or the selected Proposer's failure to maintain PCI DSS compliance standards.
- e. Notification Requirements. The selected Proposer shall immediately notify the City's Chief Information Security Officer of any breach, intrusion, or unauthorized card access to allow the proper PCI DSS breach notification process to commence. The selected Proposer shall agree to assume responsibility for informing all affected individuals in accordance with applicable law. All notifications and required compliance documents regarding PCI DSS shall be sent to:

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

21. Non-responsibility. The City hereby disclaims any responsibility, liability or obligation to issue any permits or licenses or to waive any legal requirement by reason of selecting a Proposer or executing the Agreement with the selected Proposer.
22. Improvements and Alterations. If any proposal includes any improvements and alterations, all improvements, demolition, or alterations to the Concession Facilities shall be in accordance with plans and specifications approved in writing by the City in advance and shall be at the sole cost and expense of the selected Proposer.
23. Construction Requirements. The selected Proposer shall construct all improvements in accordance with all federal, state and local laws, rules and regulations, including, but not limited to the California Environmental Quality Act, ADA and the Agreement.
24. Prevailing Wage and Living Wage. By signing the Agreement, the selected Proposer certifies that he or she is aware of the wage provisions described herein and shall comply with such provisions before commencing work or services.
 - a. Prevailing Wage. If the Proposer's proposal seeks the payment of money or the equivalent of money from the City directly to or on behalf of the Proposer; transfer from the City of an asset of value for less than fair market price; fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the Lease, that are paid, reduced, charged at less than fair market value, waived, or forgiven by the City; money loaned by the City that is to be repaid on a contingent basis; or credits that are applied by the City against repayment obligations to the City, then pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Lease is subject to State prevailing wage laws. For construction work performed under the Lease cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under the Lease cumulatively exceeding \$15,000, the selected Proposer and its contractors and subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.
 - (i) Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, the selected Proposer and its contractors and subcontractors shall ensure that all workers who perform work under the Lease are paid not less than the prevailing rate of

per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

- (a) Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. The selected Proposer and its contractors and subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.
- (b) The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of the Lease. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to the Lease in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of the Lease, each successive predetermined wage rate shall apply to the Lease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of the Lease, such wage rate shall apply to the balance of the Lease.
- (ii) Penalties for Violations. The selected Proposer and its contractors and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 - 1861.
- (iii) Payroll Records. The selected Proposer and its contractors and subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. The selected Proposer shall require its contractors and subcontractors to also comply with section 1776. The selected Proposer and its contractors and subcontractors shall submit weekly certified payroll records online via the

City's web-based Labor Compliance Program. The selected Proposer is responsible for ensuring its contractors and subcontractors submit certified payroll records to the City. The selected Proposer, its contractors and subcontractor shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

- (iv) Apprentices. The selected Proposer and its contractors and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. The selected Proposer shall be held responsible for their compliance as well as the compliance of their contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.
- (v) Working Hours. The selected Proposer and its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.
- (vi) Required Provisions for Subcontracts. The selected Proposer shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
- (vii) Labor Code Section 1861 Certification. The selected Proposer in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing the Lease, the selected Proposer will certify that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Lease."
- (viii) Labor Compliance Program. The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please

contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.

- (ix) Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Labor Code section 1725.5. In accordance with Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 2103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."
 - (a) A contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.
 - (b) A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of section 1725.5 of this section.
 - (c) By submitting a bid or proposal to the City, Contractor is certifying that he or she has verified that all subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of subcontractor registration to the City upon request.
- b. Living Wages. The Agreement is subject to the City's Living Wage Ordinance ("LWO"), codified at SDMC sections 22.4201 through 22.4245. The LWO requires payment of minimum hourly wage rates and other benefits unless an exemption applies. SDMC section 22.4225 requires each bidder to fill out and file a living wage certification with the City Manager within thirty (30) days of Award of the contract. LWO wage and health benefit rates are adjusted annually

in accordance with SDMC 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. In addition, the selected Proposer agrees to require all of its contractors, subcontractors, sublessees, and concessionaires subject to the LWO to comply with the LWO and all applicable regulations and rules.

(i) Exemption from Living Wage Ordinance. Pursuant to SDMC section 22.4215, this Agreement may be exempt from the LWO. For a determination on this exemption, CONCESSIONAIRE must complete the Living Wage Ordinance Application for Exemption.

c. Highest Wage Rate Applies. The selected Proposer is required to pay the highest applicable wage rate where more than one wage rate applies.

25. Performance and Payment Bond. The selected Proposer shall provide to City, prior to commencement of any construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated design and construction costs of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to City. The bond shall insure that the construction to be commenced by the selected Proposer shall be completed in accordance with the plans approved by City or, at the option of City that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to City. The bond or cash shall be held in trust by City for the purpose specified above, or at City's option may be placed in an escrow approved by City. This requirement is not intended to be duplicative of a construction bond otherwise required of the selected Proposer.

a. Prior to the commencement of any work on the Concession Facilities, Proposer shall deliver to City a payment bond (materials and labor bond) in an amount not less than one hundred percent (100%) of the total amount payable under the contract(s) for construction on the Concession Facilities to satisfy claims of material suppliers and of mechanics and laborers employed on the contract(s) for construction on the Concession Facilities. The bond shall be provided in compliance with California Civil Code sections 9550-9566. The bond shall be executed by an admitted surety, consistent with California Code of Civil Procedure section 995.670, that is authorized by the State of California Department of Insurance to transact surety insurance in the State. Proposer shall maintain the bond in full force and effect until all improvements for the construction on the Concession Facilities are accepted by City and until all claims for materials and labor are paid, and must otherwise comply with the Government Code. Should the bond become insufficient, Proposer shall renew, or cause the renewal of, the bond within ten (10) calendar days after receiving notice from City.

26. Ownership of Improvements. All structures and improvements existing on the Reservoirs at the commencement of the Agreement are owned by the City. Any and all improvements, except trade fixtures and equipment, installed on the Concession Facilities and Reservoirs during the term of the Agreement shall be owned by the selected Proposer during the term of the Agreement and shall become the property of the City, at the City's option, upon termination or expiration of the Agreement. If the City elects, all improvements shall be removed from the Concession Facilities and Reservoirs at the termination or expiration of the Agreement, at the selected Proposer's sole cost and expense. The selected Proposer must remove all trade fixtures and personal property upon termination or expiration without cost to the City or damage to the Concession Facilities and Reservoirs, unless otherwise negotiated.
27. Maintenance. The Concession Facilities are offered in "as is" condition and all maintenance and repairs shall be the responsibility of the selected Proposer throughout the entire term of the Agreement without expense to the City. The selected Proposer shall maintain the Concession Facilities and all improvements thereon in a clean, safe and well-maintained condition throughout the term of the Agreement, to the satisfaction of the City and in compliance with all applicable laws. The City will maintain the structural supports and exterior walls, roof and floor of the buildings of the Concessions Facilities in good order and repair. The City will provide adequate trash receptacles and shall dispose of all garbage, trash and rubbish.
28. Equipment. The selected Proposer shall furnish all equipment necessary for the operation of the Concession Facilities and the Reservoirs in conformity with this RFP and the Agreement, and agrees to properly maintain such equipment.
29. Storage. The selected Proposer may provide storage lockers, Conex boxes, or the like for storage of rental items with prior written City approval.
30. Hours of Operation. A regular schedule of days and hours of operation shall be established by the selected Proposer to best serve the public. The schedule shall be subject to prior written approval by the City.
31. Rate of Charges. All prices of merchandise, equipment, and services shall be comparable with the prices of like merchandise, equipment, and services offered in the San Diego County area. All prices charged must be approved in writing by the City; provided, however, that the selected Proposer shall not be required to sell any merchandise or offer any services at a loss.
32. Encumbrance of Concession. The selected Proposer shall not encumber the Agreement, its interest in the Agreement, or any improvements on the Reservoirs by deed of trust, mortgage, chattel mortgage, or other security instrument without the City's prior written consent.

33. Criminal Background Screenings. The City may require background investigations on all employees of the selected Proposer assigned to the Agreement, including when information becomes available that indicates a potential breach in safety or security.
34. Special Provisions.
- a. Supervision. The selected Proposer shall have qualified on-site personnel to conduct and operate activities at the Concession Facilities at all times when each Reservoir is open to the public. The selected Proposer and the selected Proposer's employees shall at all times conduct themselves in a professional, creditable and polite manner in the operations at the Concession Facilities.
 - (i) The City may request that the selected Proposer immediately remove from assignment to the City any employee, including the on-site managers living at certain Reservoirs, found unfit to perform duties at the discretion of the City and the selected Proposer shall comply with all such requests
 - b. Public Service. The selected Proposer shall perform the following public services in connection with concession operations at the Concession Facilities at all times that each Reservoir is open for public use:
 - (i) Answer public requests for information and reservations relative to recreational use of the Reservoirs.
 - (ii) Selected Proposer has the sole and exclusive right to sell recreational daily use permits at the Reservoirs, except that the City reserves the right to sell and/or assign the sale of the recreational daily use permits at any of the Reservoirs or other City-owned reservoirs.
 - (iii) Selected Proposer has the option to sell boating tickets and such other tickets and permits issued by the City.
 - (iv) Keep detailed records and are responsible for the handling of the City ticket sales to the satisfaction of the City including:
 - (a) The number of tickets issued to the selected Proposer. Any missing or stolen tickets shall be reported to the City immediately. The selected Proposer shall not reimburse the City for any loss of tickets as a result of a theft provided a police report is filed. In such instance, the selected Proposer shall provide the City with a copy of the police report and a statement giving an account of missing or stolen tickets within 30 days of occurrence. However, the selected Proposer shall reimburse the City for any tickets which are missing or stolen as a result of the selected Proposer or its employees' negligence or theft.

- (b) Tickets will be issued for a particular Reservoir and may not be used for another Reservoir without prior written City approval.
- (c) Tickets shall not be used for other than their designated purpose without prior written City approval.
- (d) Tickets are to be stored in a secure area.
- (e) Ticket sales are to be accounted for separately from other operations at the Reservoir.
- (f) The selected Proposer will be required to track all City Permit sales. All revenue collected on behalf of the City shall be deposited daily with the City Treasurer or the City's banking institution as instructed by the City Treasurer. Revenue shall be recorded in accordance with the City Treasurer's depositing requirements. The selected Proposer will be required to maintain reconciliation and depositing procedures that will be reviewed and approved by City's Public Utilities Department and reviewed by City's Treasurer Department.
- (g) The selected Proposer shall have an anti-theft safe in which to secure City monies, placed in a secure location in the Concession Facilities.
- (h) The selected Proposer shall provide daily reconciliation documentation, such as deposit slips and summary of items sold at each Reservoir, to the City's Public Utilities Department. **Proposer shall submit with their proposal a sample of the reconciliation documentation.**
- (i) Selected Proposer shall submit summary of previous cash handling training. If the selected Proposer does not have proper training, the selected Proposer will be required to attend cash handling training sessions provided by the City of San Diego.
- (j) The City shall not pay the selected Proposer a greater amount in commission than it receives in rent from the selected Proposer.
- (k) At the close of business, each Sunday of the week, a complete ticket inventory shall be taken at each Reservoir. The inventory and ticket reconciliation shall be faxed or emailed to City's Public Utilities Department the following workday by noon. **Proposer shall submit with their proposal a sample of the reconciliation documentation.**
- (l) Gross Income shall not include income produced by the sale of State of California fishing licenses, license stamps and permits and any income produced therefrom.

(m) The City requires that all deposit inquiries are responded to within one (1) business day. Selected Proposer assign and dedicate a resource individual to respond to any deposit exception inquiries.

c. The Concession Facilities shall be available to the City for civic events and special programs, free of charge, except where the selected Proposer has a previously scheduled event. The selected Proposer shall have the first right of refusal to provide concession services during City use of any Concession Facilities.

35. Water Quality - Best Management Practices. City and the selected Proposer are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the Reservoirs in a manner which aids in the protection of City's precious water resources. It is the selected proposer's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).

Therefore, the selected Proposer shall, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a).

It is ultimately the selected Proposer's responsibility to prevent pollutant discharges to the storm drain system. Therefore, the selected Proposer will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

36. General Contract Terms and Provisions. The General Contract Terms and Provisions Applicable to Goods, Services, and Consultant Contracts ("GCTP"), attached hereto as **Exhibit F**, are incorporated in to the Agreement as if fully set forth in the Agreement. For purposes of the Agreement, the following terms used in the GCTP shall have the following meanings: (1) "Contractor" shall mean the selected Proposer; (2) "Purchasing Agent" shall mean the Director of City's Real Estate Assets Department; and (3) "Contract" shall mean the Agreement. If the Agreement conflicts with the GCTP, the Agreement shall control. Varying degrees of stringency among the Agreement, its exhibits and the GCTP are not deemed conflicts, and the most stringent requirement shall control.

E. RESPONSIBILITY OF PROPOSERS

1. Proposers are responsible for carefully examining this RFP and all documents incorporated into this RFP by reference before submitting a proposal. If selected for

award of contract, proposer shall be bound by same unless the City has accepted proposer's exceptions, if any, in writing.

2. Each Proposer is responsible for making all investigations and examinations necessary for formulating proposals and developing and operating the Concession Facilities. Submission of a Proposal will be considered evidence that Proposers have familiarized themselves with the nature and extent of the requirements and has made such investigations and examinations.
3. The selected Proposer shall be responsible for obtaining all necessary approvals and permits to the satisfaction of the City.
4. Proposers may withdraw their proposals at any time prior to the selection of a Proposer, upon written notice to the City Contact.

F. PROPOSAL CONTENTS

All proposals must include at a minimum the information specified below. Failure to include the information shall be cause to deem a proposal non-responsive and result in its complete rejection. The inclusion of additional information that will assist the City in the evaluation is encouraged. The adequacy, depth and clarity of the proposal will influence, to a considerable degree, its evaluation, as further stated in Section K herein. The proposal submitted must be complete, and evaluation and selection of proposals shall be strictly based on the material contained in the proposals alone. Proposers are advised to submit thorough, complete proposals, since there will be no auction or competitive negotiation, and the City reserves the right to make a selection based solely on the information contained in submitted proposals.

Each proposal **MUST** include the following items:

1. Cover Sheet. Proposer shall submit with its proposal the signed Request for Proposal (RFP) Cover Sheet.
2. Experience. A resume or summary of the Proposer's experience and qualifications for this type of enterprise. Proposer must have a minimum of 3 years' experience in the past 5 years operating similar operations. If the Proposer is not going to be involved in the day-to-day operations of the Concession Facilities, then the Proposer must include qualifications and verification that all persons to be employed in management capacity at the Concession Facilities are qualified sufficiently to satisfy the requirements of this RFP.
3. Financial Statements. Proposer must submit either: (a) financial statements for the preceding three years that were audited or prepared by a certified public accountant; or (b) tax returns for the preceding three years. Each Proposer shall submit a full and detailed statement of their true financial condition as of January 1, 2016, or as recent

as possible if that date is not available. The statement shall include the Proposer's assets, liabilities and net worth, including the availability of operation capital and its source. If the Proposer plans to use borrowed capital, then the amount of borrowed capital proposed for the improvements and operation, and its source and terms of repayment, must be included in the financial statement.

4. Proposed Term. Proposed term of the Agreement and the justification therefor in terms of the amount of investment.
5. Rental Offer. Proposed guaranteed minimum annual rent and annual percentage rent to the City through the term of the Agreement.
6. Development/Operating Plan. Proposer must submit a Development/Operating Plan as set forth in Section C, above.
7. Work Force Report. Proposer must submit with its proposal a completed Work Force Report, attached as **Exhibit B**.
8. Lessee Questionnaire. Proposer must submit with its proposal a completed Lessee Questionnaire, attached as **Exhibit C**.
9. Credit Information Request. Proposer must submit a completed Credit Information Request, attached as **Exhibit D**.
10. Certification. By submission of a proposal, the Proposer certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal, State or Local departments or agencies. Proposer shall submit with its proposal a completed City of San Diego Contractor Standards Pledge of Compliance, attached as **Exhibit E**.
11. Business Tax Certificate. Proposer shall submit with its proposal a copy of its business tax certificate, or a copy of its application receipt. For more information visit the City of San Diego website at www.sandiego.gov/treasurer/ or call (619) 615-1500.
12. Miscellaneous Submittals. Required submittals as further set forth in Section D, above.

G. NONCONFORMING PROPOSALS

Proposers requesting deviations from the provisions of this RFP should specifically identify the requirements being deviated from and address the requested deviation(s) in their proposals. The City is not obligated to accept any proposal, whether conforming or nonconforming.

H. PRE-PROPOSAL INSPECTION

To give Proposers an opportunity to view the Reservoirs, Concession Facilities and conditions thereon, pre-proposal inspections of the Reservoirs and Concession Facilities have been scheduled as set forth in Request for Proposals (RFP) Cover Sheet. It is strongly suggested that all Proposers attend the pre-proposal inspections. Attendance is not mandatory. Failure to attend does not relieve proposer of the responsibility to fulfill RFP requirements and relieve proposer from performing. It is the sole responsibility of the Proposer to become familiar with the scope of the City's requirements prior to submitting a proposal.

I. QUESTIONS AND COMMENTS

Written questions and comments must be electronically mailed (e-mailed) to the City Contact no later than the date specified on the Request for Proposals (RFP) Cover Sheet. Only written communications relative to the RFP shall be considered. E-mail is the only acceptable method for submission of questions. It is incumbent upon Proposers to verify that the City has received their questions and/or comments. All responses to questions will be posted on the City's website at (<https://www.sandiego.gov/real-estate-assets/>). No oral communications can be relied upon for this RFP. Addenda will be issued addressing questions or comments that are determined by the City to cause a change to any part of this RFP.

J. PROPOSAL SUBMISSION

1. Due Date

Proposals must be received at the address listed below no later than 4:00 p.m. on the date set forth in the Request for Proposals (RFP) Cover Sheet.

Proposals received after that time will not be considered.

2. Place of Delivery

All proposals should be delivered to:
City of San Diego
Real Estate Assets Department
1200 Third Avenue, Suite 1700
San Diego, CA 92101
Attn: Carla Gresham

3. Faithful Performance Deposits

All proposals **MUST** include a cashier's check or certified check in the amount of Five Thousand Dollars (\$5,000), payable to City Treasurer, as a faithful performance

deposit to assure that, if the proposal is selected by the City, that the Proposer will enter in good faith into an Agreement containing substantially the same terms and conditions as set out in this RFP and in the selected proposal. No personal checks will be accepted and no interest will be paid on deposits.

4. Number of Copies

Proposers are required to submit their proposals as set forth in the Request for Proposals (RFP) Cover Sheet. All materials submitted by Proposers become the property of the City and may not be returned.

K. PROPOSAL EVALUATION AND SELECTION.

The City reserves the right to select the proposal that will provide the best value to the City given the requirements of this RFP. The City reserves the right, based upon its deliberations and in its opinion, to accept or reject any or all proposals at any time, including any proposals that have been scored or been the subject of oral presentations and/or interviews. The City also reserves the right to waive minor irregularities or variations to the specifications stated herein and in the solicitation process, provided that such a waiver does not provide an unfair competitive advantage to the selected Proposer.

The City has the right to accept the proposal that serves the best interest of the City, as submitted, without discussion or negotiation. Proposers should, therefore, not rely on having a chance to discuss, negotiate, and adjust their proposals. The City may negotiate the terms of an Agreement with the selected Proposer based on the RFP and the Proposer's proposal, or award the Agreement without further negotiation.

The City reserves the right to inspect the Proposer's equipment and facilities to determine if the Proposer is capable of fulfilling the Agreement. Inspection will include, but not limited to, survey of Proposer's physical assets and financial capability. Proposer, by signing the Request for Proposals (RFP) Cover Sheet and submitting a proposal agrees to the City's right of access to physical assets and financial records for the sole purpose of determining the Proposer's capability to perform pursuant to an Agreement. Should the City conduct this inspection, the City reserves the right to disqualify a Proposer who does not, in the City's judgment, exhibit the sufficient physical and financial resources to perform pursuant to an Agreement.

Proposals shall be evaluated in a two-step process by an evaluation committee of qualified City staff, and if necessary other persons selected by the City.

In Step One, the committee will evaluate all responsive proposals based upon the information and references contained in the proposals as submitted. The committee will then score and rank all responsive proposals based on the evaluation criteria indicated below.

If the score of the highest scoring proposal resulting from Step One is more than ten (10) points greater than the scores of the other proposals, and the committee is satisfied that the highest scoring proposal is sufficient for recommendation, the highest scoring proposal will be recommended to the City Council for award. The recommended Proposer may be required to appear before the City Council and any of its committees to answer questions and for award of the Agreement.

If one or more proposals score within ten (10) points of the highest scoring proposal, the process will proceed to Step Two. Only the Proposer with the highest scoring proposal and those Proposers scoring within ten (10) points or less of the highest scoring proposal (collectively the “finalists”) will be asked to participate in Step Two. In Step Two, the finalists will be required to provide an oral presentation and/or participate in an interview of key personnel by appearing before the evaluation committee or by conference telephone call. The purpose of the oral presentation/interview is to provide the committee with an opportunity to further evaluate the finalists’ proposals, which may include requesting clarification to the finalists’ proposals and developing rapport. The finalists are required to make the oral presentation/interview within seven (7) workdays after request by the City. The committee may also inspect the finalists’ facilities and perform other due diligence as it may determine. The committee may then, at the committee’s sole discretion, add up to eleven (11) additional points to the score of any finalist.

If the committee is satisfied that the first-ranked proposal resulting from Step Two is sufficient for recommendation, it will be recommended to the City Council for award. The recommended Proposer may be required to appear before the City Council and any of its committees to answer questions and for award of the Agreement.

Selection of the proposal to be recommended to the City Council for award of the Agreement will be based on the evaluation criteria listed below:

1. **Responsiveness (Maximum 25 points):**

The extent to which a proposal clearly addresses the elements of this RFP, including: quality, attractiveness, and thoroughness of the proposal; responsiveness to the requirements described in the RFP; quality and extent of concession operations and understanding the needs, goals and objectives of the City while providing the highest and best use of the Concession Facilities.

2. **Rental Offer and Financial Projections (Maximum 20 points):**

City will consider the amount of rent offered by the Proposer and the overall financial benefit of the proposal to the City. The proposal should provide a detailed description of the Proposer’s break even analysis, setting forth the point at which the business will generate enough income to cover its expenses and begin generating an income. The proposal will be evaluated on the attractiveness of, and demonstrated ability to achieve, the revenue project enterprise

3. **Qualifications (Maximum 20 points):**

The extent to which a proposal demonstrates, among other things, the following: the Proposer's experience and qualifications in successfully managing an operation of the type of enterprise proposed for the Concession Facilities; experience with concession operations; and ability to implement the components of the proposal. The Proposer should include verification that his/her employees are well qualified to conduct the business. The Proposer should have at a minimum three (3) years of experience in the past five (5) years in conducting similar operations.

4. **Financial Capability (Maximum 25 points):**

The extent to which a Proposer demonstrates, among other things, the following: the necessary financial capability and strength to successfully develop and operate the Concession Facilities in accordance with the proposal and the Agreement, including the possibility of obtaining bonding; ability to adequately staff the proposed operation on the Concession Facilities; and possession of, or ability to obtain, additional financing to address unexpected or emergency circumstances in the Concession Facilities.

5. **Community/Public Service (Maximum 10 points):**

The Proposal will be evaluated based on the Proposer's overall ability to best serve the needs of the public by providing the most benefits which are accessible to all community members and the general public.

Total Points: 100

6. **Oral Presentation/Interview (Maximum 11 points):**

L. ANNOUNCEMENT OF AWARD

1. **Intent to Award of Agreement.** The City will inform all proposers in writing of its intent to award an Agreement, subject to approval by City Council.
2. **Obtaining Proposal Results.** No proposal results can be obtained until the City announces the proposal best meeting the City's requirements. Proposal results may be obtained by: (1) e-mailing a request to the City Contact identified on the Request for Proposals (RFP) Cover Sheet or (2) visiting the READ e-procurement system to review the proposal results. To ensure an accurate response, requests should reference the Solicitation Number set forth in the Request for Proposals (RFP) Cover Sheet. Proposal results will not be released over the phone.

M. ADDITIONAL INFORMATION FROM PROPOSERS

The City reserves the right to request information from Proposers to clarify information pursuant to this RFP.

N. INCURRED COSTS

Each Proposer is solely and fully responsible for any and all costs associated with submitting a response to this RFP. The City will not be responsible for any costs, expense or burden incurred by Proposers in the preparation and submission of proposals.

O. CONTACT WITH CITY STAFF

Unless otherwise authorized herein, Proposers who are considering submitting a proposal in response to this RFP, or who submit a proposal in response to this RFP, are prohibited from communicating with City staff or evaluation committee members about this RFP from the date this RFP is issued until the date of final passage of City Council approval of the Agreement to the selected Proposer.

P. ADDENDA

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

Q. PUBLIC RECORDS

All proposals and all contents thereof received shall be considered confidential until the City's Real Estate Assets Department recommends a proposal to the City Council. By signing this RFP and submitting a proposal, the Proposer acknowledges that any information submitted in response to this RFP is a public record subject to disclosure unless the City determines that a specific exemption in the California Public Records Act (CPRA) applies. If the Proposer submits information clearly marked confidential or proprietary, the City may protect such information and treat it with confidentiality to the extent permitted by law. However, it will be the responsibility of the Proposer to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the CPRA should the City choose to withhold such information. General references to sections of the CPRA will not suffice. Rather, the Proposer must provide a specific and detailed legal basis, including applicable case law that clearly establishes the requested information is exempt from the disclosure under the CPRA. If the Proposer does not provide a specific and detailed legal basis for requesting the City to withhold Proposer's confidential or proprietary information at the time of proposal submittal, City will release

the information as required by the CPRA and Proposer will hold the City, its elected officials, officers, and employees harmless for release of this information. It will be the Proposer's obligation to defend, at Proposer's expense, any legal actions or challenges seeking to obtain from the City any information requested under the CPRA withheld by the City at the Proposer's request. Furthermore, the Proposer shall indemnify and hold harmless the City, its elected officials, officers, and employees from and against any claim or liability, and defend any action brought against the City, resulting from the City's refusal to release Agreement information requested under the CPRA which was withheld at Proposer's request. Nothing in the Agreement resulting from the proposal creates any obligation on the part of the City to notify the Proposer or obtain the Proposer's approval or consent before releasing information subject to disclosure under the CPRA.

R. CITY RIGHT TO REJECT ALL PROPOSALS

Notwithstanding any other provision of this RFP, the City reserves the right to reject all offers and proposals regarding this RFP and the Concession Facilities, including those submitted by the Proposers who have any outstanding debt with the City. The City reserves the right to determine which proposal it deems in the best interest of the City to accept. The City also reserves the right to waive any informality not material to cost or performance in any proposal provided that any such waiver is deemed to be inconsequential and does not provide an unfair competitive advantage to any Proposer.

S. QUALIFICATION OF PROPOSAL

This is not a bid solicitation and the City is not obligated to accept any proposal or to negotiate with any proposer. The City Council reserves the right to reject any or all proposals without cause or liability. All transactions discussed, referenced, or implied herein are subject to final approval by the City Council.

T. NON-DISCRIMINATION NOTICE

It is the policy of the City not to discriminate against the disabled in employment or provision of services. The information contained in this RFP will be made available in alternative formats to disabled persons upon request. It is the policy of the City to encourage equal opportunity in its contracts and agreements. The City endeavors to do business with firms sharing the City's commitment to equal opportunity and will not do business with any firm that discriminates on the basis of race, religion, color, ancestry, age, gender, gender expression, gender identity, sexual orientation, disability, medical condition or place of birth.

U. COMPLIANCE WITH CITY'S EQUAL OPPORTUNITY CONTRACTING PROGRAM

Proposer understands that failure to comply with the following requirements and/or submitting false information in response to these requirements may result in rejection of

the proposal by the City and debarment of the Proposer from participating in City contracts for a period of not less than one (1) year:

1. Equal Opportunity Contracting. Proposer acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. Proposer and all of its subcontractors are individually responsible to abide by its contents.
2. Civil Rights Act. Proposer shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. Proposer will not discriminate against any employee or applicant for employment on any basis prohibited by law.
3. Equal Employment Opportunity. Proposer shall submit a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan, as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that Proposer will take to achieve the City's commitment to equal employment opportunities. A copy of the Work Force Report is attached as **Exhibit B**.

Proposer shall insert the foregoing provisions in all contracts and subcontracts for any work covered by the proposal so that such provisions will be binding upon each contractor and subcontractor. Proposer agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by the City's Equal Opportunity Contracting Program staff.

4. Equal Benefits. Proposer shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require lessees/concessionaires of City-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. Proposer shall certify that it will maintain such equal benefits throughout the term of the Agreement.
5. Local Business and Employment. Proposer acknowledges that the City seeks to promote employment and business opportunities for local residents and firms in all City contracts. Proposer shall, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with the proposal from local residents and firms as opportunities occur. Proposer shall hire qualified local residents and firms whenever feasible.

V. RETURN OF FAITHFUL PERFORMANCE DEPOSIT

All good faith deposits will be returned to unsuccessful Proposer(s) within thirty (30) days of final passage of City Council approval of the Agreement to the selected Proposer. For the selected Proposer, the deposit will be applied to the Agreement deposit upon completion of negotiations and execution of the Agreement between the selected Proposer and the City. Should the selected Proposer unilaterally withdraw from Agreement negotiations, the deposit shall be forfeited to the City.

W. PROTESTS

The City's protest procedures are codified in Chapter 2, Article 2, Division 30 of the San Diego Municipal Code and San Diego Council Policy 000-29, as amended from time to time. These procedures shall apply to this RFP and provide unsuccessful Proposers with the opportunity to challenge the City's determination on legal and factual grounds. The City will not consider or otherwise act upon an untimely protest.

X. ASBESTOS DISCLOSURE

Portions of certain structures on the Reservoirs may contain asbestos. By virtue of its submission of a proposal, Proposer acknowledges having received notice from City of the presence of such asbestos in accordance with Health and Safety Code Section 25915. Proposer shall indemnify and hold City harmless from any loss or claim which may result from existence of asbestos on the Reservoirs.

Y. REAL ESTATE BROKER'S COMMISSION

The City will not pay a brokerage commission in this RFP.

Z. SCHEDULE OF EXHIBITS

1. Exhibits A: Reservoir Location Map
2. Exhibit A1- A7: Reservoir Site Maps
 - A1: El Capitan**
 - A2: Hodges**
 - A3: Lake Miramar**
 - A4: Lake Murray**
 - A5: Sutherland**
 - A6: San Vincente**
 - A7: Lower Otay**
3. Exhibit B: Work Force Report
4. Exhibit C: Lessee Questionnaire
5. Exhibit D: Credit Information Request

6. Exhibit E: City of San Diego Contractor Standards Pledge of Compliance
7. Exhibit F: General Contract Terms and Provisions Applicable to Goods,
Services, and Consultant Contracts

The foregoing forms listed as Exhibit “B” through Exhibit “E” are required to be completed and submitted with the proposal. Failure to submit any of the forms listed as Exhibit “B” through Exhibit “E” will result in the City deeming the proposal incomplete and non-responsive.

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EXHIBIT "A"
RESERVOIR SITE MAPS



Exhibit A-1

El Capitan Reservoir Recreation Area Footprint



Prepared by Watershed and Resource Protection, July 2016



Legend

Concession Facilities

★

RV PAD

▲

Exhibit A-2


Hodges Reservoir Recreation Area Footprint



Prepared by Watershed and Resource Protection, July 2016



Legend

Concession Facilities 


RV PAD 

Exhibit A-3

Miramar Reservoir Recreation Area Footprint



Prepared by Watershed and Resource Protection, July 2016



Legend

Concession Facilities



Exhibit A-4

Murray Reservoir Recreation Area Footprint



Prepared by Watershed and Resource Protection, July 2016



Legend

Concession Facilities



Exhibit A-5


Lower Otay Reservoir Recreation Area Footprint



Prepared by Watershed and Resource Protection, July 2016



Legend

Concession Facilities 

RV PAD 

Exhibit A-6

San Vicente Reservoir Recreation Area Footprint



Prepared by Watershed and Resource Protection, July 2016



Legend

Concession Facilities 

RV PAD 

Exhibit A-7

Sutherland Reservoir Recreation Area Footprint




Prepared by Watershed and Resource Protection, July 2016



Legend

Concession Facilities



RV PAD




EXHIBIT "B"
WORK FORCE REPORT



City of San Diego
EQUAL OPPORTUNITY CONTRACTING (EOC)
1200 Third Avenue • Suite 200 • San Diego, CA 92101
Phone: (619) 236-6000 • Fax: (619) 236-5904
BB. WORK FORCE REPORT

The objective of the *Equal Employment Opportunity Outreach Program*, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report (WFR)*.

NO OTHER FORMS WILL BE ACCEPTED
CONTRACTOR IDENTIFICATION

Type of Contractor: ☐ Construction ☐ Vendor/Supplier ☐ Financial Institution ☐ Lessee/Lessor
☐ Consultant ☐ Grant Recipient ☐ Insurance Company ☐ Other

Name of Company: _____

ADA/DBA: _____

Address (Corporate Headquarters, where applicable): _____

City: _____ County: _____ State: _____ Zip: _____

Telephone Number: () _____ Fax Number: () _____

Name of Company CEO: _____

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: _____

City: _____ County: _____ State: _____ Zip: _____

Telephone Number: () _____ Fax Number: () _____ Email: _____

Type of Business: _____ Type of License: _____

The Company has appointed: _____

As its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: _____

Telephone Number: () _____ Fax Number: () _____ Email: _____

☐ One San Diego County (or Most Local County) Work Force - Mandatory

☐ Branch Work Force * ☐ Managing Office Work Force

Check the box above that applies to this WFR.

**Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

I, the undersigned representative of _____

(Firm Name)

_____, _____ hereby certify that information provided

(County)

(State)

herein is true and correct. This document was executed on this _____ day of _____, 20____

(Authorized Signature)

(Print Authorized Signature Name)

Equal Opportunity Contracting
Goods, Services, & Consultant RFP
Revised 1/1/2016
OCA Document No. 1208380

NAME OF FIRM: _____ DATE: _____

OFFICE(S) or BRANCH(ES): _____ COUNTY: _____

I. INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- | | |
|--|--|
| (1) Black, African-American | (5) Filipino, Asian Pacific Islander |
| (2) Hispanic, Latino, Mexican-American, Puerto Rican | (6) White, Caucasian |
| (3) Asian | (7) Other ethnicity; not falling into other groups |
| (4) American Indian, Eskimo | |

| ADMINISTRATION OCCUPATIONAL CATEGORY | (1) African-American | | (2) Hispanic or Latino | | (3) Asian | | (4) American Indian | | (5) Asian Pacific Islander | | (6) Caucasian | | (7) Other Ethnicity | |
|---|-------------------------|-----|---------------------------|-----|--------------|-----|------------------------|-----|-------------------------------|-----|------------------|-----|------------------------|-----|
| | (M) | (F) | (M) | (F) | (M) | (F) | (M) | (F) | (M) | (F) | (M) | (F) | (M) | (F) |
| Management & Financial | | | | | | | | | | | | | | |
| Professional | | | | | | | | | | | | | | |
| A&E, Science, Computer | | | | | | | | | | | | | | |
| Technical | | | | | | | | | | | | | | |
| Sales | | | | | | | | | | | | | | |
| Administrative Support | | | | | | | | | | | | | | |
| Services | | | | | | | | | | | | | | |
| Crafts | | | | | | | | | | | | | | |
| Operative Workers | | | | | | | | | | | | | | |
| Transportation | | | | | | | | | | | | | | |
| Laborers* | | | | | | | | | | | | | | |

*Construction laborers and other field employees are not to be included on this page

| | | | | | | | | | | | | | | |
|--------------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| Totals Each Column | | | | | | | | | | | | | | |
|--------------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|

Grand Total All Employees

Indicate by Gender and Ethnicity the Number of Above Employees Who Are Disabled:

| | | | | | | | | | | | | | | |
|----------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| Disabled | | | | | | | | | | | | | | |
|----------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|

Non-Profit Organizations Only:

| | | | | | | | | | | | | | | |
|--------------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| Board of Directors | | | | | | | | | | | | | | |
| Volunteers | | | | | | | | | | | | | | |
| Artists | | | | | | | | | | | | | | |

Equal Opportunity Contracting
Goods, Services, & Consultant RFP
Revised 1/1/2016
OCA Document No. 1208380

NAME OF FIRM: _____ DATE: _____
 OFFICE(S) or BRANCH(ES): _____ COUNTY: _____

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- | | |
|--|--|
| (1) Black, African-American | (5) Filipino, Asian Pacific Islander |
| (2) Hispanic, Latino, Mexican-American, Puerto Rican | (6) White, Caucasian |
| (3) Asian | (7) Other ethnicity; not falling into other groups |
| (4) American Indian, Eskimo | |

| TRADE OCCUPATIONAL CATEGORY | (1) African- American | | (2) Hispanic or Latino | | (3) Asian | | (4) American Indian | | (5) Asian Pacific Islander | | (6) Caucasian | | (7) Other Ethnicity | |
|--|-----------------------------|-----|------------------------------|-----|--------------|-----|---------------------------|-----|----------------------------------|-----|------------------|-----|---------------------------|-----|
| | (M) | (F) | (M) | (F) | (M) | (F) | (M) | (F) | (M) | (F) | (M) | (F) | (M) | (F) |
| Brick, Block or Stone Masons | | | | | | | | | | | | | | |
| Carpenters | | | | | | | | | | | | | | |
| Carpet, Floor & Tile Installers Finishers | | | | | | | | | | | | | | |
| Cement Masons, Concrete Finishers | | | | | | | | | | | | | | |
| Construction Laborers | | | | | | | | | | | | | | |
| Drywall Installers, Ceiling Tile Inst | | | | | | | | | | | | | | |
| Electricians | | | | | | | | | | | | | | |
| Elevator Installers | | | | | | | | | | | | | | |
| First-Line Supervisors/Managers | | | | | | | | | | | | | | |
| Glaziers | | | | | | | | | | | | | | |
| Helpers; Construction Trade | | | | | | | | | | | | | | |
| Millwrights | | | | | | | | | | | | | | |
| Misc. Const. Equipment Operators | | | | | | | | | | | | | | |
| Painters, Const. & Maintenance | | | | | | | | | | | | | | |
| Pipelayers, Plumbers, Pipe & Steam Fitters | | | | | | | | | | | | | | |
| Plasterers & Stucco Masons | | | | | | | | | | | | | | |
| Roofers | | | | | | | | | | | | | | |
| Security Guards & Surveillance Officers | | | | | | | | | | | | | | |
| Sheet Metal Workers | | | | | | | | | | | | | | |
| Structural Metal Fabricators & Fitters | | | | | | | | | | | | | | |
| Welding, Soldering & Brazing Workers | | | | | | | | | | | | | | |
| Workers, Extractive Crafts, Miners | | | | | | | | | | | | | | |
| Totals Each Column | | | | | | | | | | | | | | |
| Grand Total All Employees | | | | | | | | | | | | | | |
| Indicate By Gender and Ethnicity the Number of Above Employees Who Are Disabled: | | | | | | | | | | | | | | |



CITY OF SAN DIEGO WORK FORCE REPORT

HISTORY

The Work Force Report (WFR) is the document that allows the City of San Diego to analyze the work forces of all firms wishing to do business with the City. We are able to compare the firm's work force data to County Labor Force Availability (CLFA) data derived from the United States Census. CLFA data is a compilation of lists of occupations and includes the percentage of each ethnicity we track (African-American, Hispanic or Latino, Asian, American Indian, Asian Pacific Islander, Caucasian, and Other Ethnicities) for each occupation. Currently, our CLFA data is taken from the 2010 Census. In order to compare one contractor to another, it is important that the data we receive from the Contractor firm is accurate and organized in the manner that allows for this fair comparison.

WORK FORCE & BRANCH WORK FORCE REPORTS

When submitting a WFR, especially if the WFR is for a specific project or activity, we would like to have information about the firm's work force that is actually participating in the project or activity. That is, if the project is in San Diego and the work force is from San Diego, we want a San Diego County WFR.¹ By the same token, if the project is in San Diego, but the work force is from another county, such as Orange or Riverside County, we want a WFR from that county.² If participation in a San Diego project is by work forces from San Diego

County and, for example, from Los Angeles County and from Sacramento County, we ask for separate WFRs representing your firm from each of the three counties.

MANAGING OFFICE WORK FORCE

Equal Opportunity Contracting may occasionally ask for a Managing Office Work Force (MOWF) Report. This may occur in an instance where the firm involved is a large national or international firm but the San Diego or other local work force is very small. In this case, we may ask for both a local and a MOWF Report.^{1,3} In another case, when work is done only by the Managing Office, only the MOWF Report may be necessary.³

TYPES OF WORK FORCE REPORTS:

Please note, throughout the preceding text of this page, the superscript numbers one ¹, two ² & three ³. These numbers coincide with the types of work force report required in the example. See below:

- ¹ San Diego County (or Most Local County)
Work Force – Mandatory in most cases
- ² Branch Work Force *
- ³ Managing Office Work Force

**Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

Exhibit A: Work Force Report Job categories-Administration

Refer to this table when completing your firm's Work Force Report form(s).

Management & Financial

| |
|--|
| Advertising, Marketing, Promotions, Public Relations, and Sales Managers |
| Business Operations Specialists |
| Financial Specialists |
| Operations Specialties Managers |
| Other Management Occupations |
| Top Executives |

Professional

| |
|--|
| Art and Design Workers |
| Counselors, Social Workers, and Other Community and Social Service Specialists |
| Entertainers and Performers, Sports and Related Workers |
| Health Diagnosing and Treating Practitioners |
| Lawyers, Judges, and Related Workers |
| Librarians, Curators, and Archivists |
| Life Scientists |

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| |
|---|
| Media and Communication Workers |
| Other Teachers and Instructors |
| Postsecondary Teachers |
| Primary, Secondary, and Special Education School Teachers |
| Religious Workers |
| Social Scientists and Related Workers |

Architecture & Engineering, Science, Computer

| |
|--|
| Architects, Surveyors, and Cartographers |
| Computer Specialists |
| Engineers |
| Mathematical Science Occupations |
| Physical Scientists |

Technical

| |
|--|
| Drafters, Engineering, and Mapping Technicians |
| Health Technologists and Technicians |
| Life, Physical, and Social Science Technicians |
| Media and Communication Equipment Workers |

Sales

| |
|--|
| Other Sales and Related Workers |
| Retail Sales Workers |
| Sales Representatives, Services |
| Sales Representatives, Wholesale and Manufacturing |
| Supervisors, Sales Workers |

Administrative Support

| |
|---|
| Financial Clerks |
| Information and Record Clerks |
| Legal Support Workers |
| Material Recording, Scheduling, Dispatching, and Distributing Workers |
| Other Education, Training, and Library Occupations |
| Other Office and Administrative Support Workers |
| Secretaries and Administrative Assistants |
| Supervisors, Office and Administrative Support Workers |

Services

| |
|---|
| Building Cleaning and Pest Control Workers |
| Cooks and Food Preparation Workers |
| Entertainment Attendants and Related Workers |
| Fire Fighting and Prevention Workers |
| First-Line Supervisors/Managers, Protective Service Workers |
| Food and Beverage Serving Workers |
| Funeral Service Workers |
| Law Enforcement Workers |
| Nursing, Psychiatric, and Home Health Aides |
| Occupational and Physical Therapist Assistants and Aides |

Equal Opportunity Contracting
 Goods, Services, & Consultant RFP
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| |
|--|
| Other Food Preparation and Serving Related Workers |
| Other Healthcare Support Occupations |
| Other Personal Care and Service Workers |
| Other Protective Service Workers |
| Personal Appearance Workers |
| Supervisors, Food Preparation and Serving Workers |
| Supervisors, Personal Care and Service Workers |
| Transportation, Tourism, and Lodging Attendants |

Crafts

| |
|--|
| Construction Trades Workers |
| Electrical and Electronic Equipment Mechanics, Installers, and Repairers |
| Extraction Workers |
| Material Moving Workers |
| Other Construction and Related Workers |
| Other Installation, Maintenance, and Repair Occupations |
| Plant and System Operators |
| Supervisors of Installation, Maintenance, and Repair Workers |
| Supervisors, Construction and Extraction Workers |
| Vehicle and Mobile Equipment Mechanics, Installers, and Repairers |
| Woodworkers |

Operative Workers

| |
|---|
| Assemblers and Fabricators |
| Communications Equipment Operators |
| Food Processing Workers |
| Metal Workers and Plastic Workers |
| Motor Vehicle Operators |
| Other Production Occupations |
| Printing Workers |
| Supervisors, Production Workers |
| Textile, Apparel, and Furnishings Workers |

Transportation

| |
|---|
| Air Transportation Workers |
| Other Transportation Workers |
| Rail Transportation Workers |
| Supervisors, Transportation and Material Moving Workers |
| Water Transportation Workers |

Laborers

| |
|---|
| Agricultural Workers |
| Animal Care and Service Workers |
| Fishing and Hunting Workers |
| Forest, Conservation, and Logging Workers |
| Grounds Maintenance Workers |
| Helpers, Construction Trades |

| |
|--|
| Supervisors, Building and Grounds Cleaning and Maintenance Workers |
| Supervisors, Farming, Fishing, and Forestry Workers |

Exhibit B: Work Force Report Job categories-Trade

Brick, Block or Stone Masons

| |
|-----------------------------|
| Brickmasons and Blockmasons |
| Stonemasons |

Carpenters

Carpet, floor and Tile Installers and Finishers

| |
|--|
| Carpet Installers |
| Floor Layers, except Carpet, Wood and Hard Tiles |
| Floor Sanders and Finishers |
| Tile and Marble Setters |

Cement Masons, Concrete Finishers

| |
|--------------------------------------|
| Cement Masons and Concrete Finishers |
| Terrazzo Workers and Finishers |

Construction Laborers

Drywall Installers, Ceiling Tile Inst

| |
|-------------------------------------|
| Drywall and Ceiling Tile Installers |
| Tapers |

Electricians

Elevator Installers and Repairers

First-Line Supervisors/Managers

| |
|---|
| First-line Supervisors/Managers of Construction Trades and Extraction Workers |
|---|

Glaziers

Helpers, Construction Trade

| |
|---|
| Brickmasons, Blockmasons, and Tile and Marble Setters |
| Carpenters |
| Electricians |
| Painters, Paperhangers, Plasterers and Stucco |
| Pipelayers, Plumbers, Pipefitters and Steamfitters |
| Roofers |
| All other Construction Trades |

Millwrights

| |
|--|
| Heating, Air Conditioning and Refrigeration Mechanics and Installers |
| Mechanical Door Repairers |
| Control and Valve Installers and Repairers |

Other Installation, Maintenance and Repair Occupations

Misc. Const. Equipment Operators

| |
|--|
| Paving, Surfacing and Tamping Equipment Operators |
| Pile-Driver Operators |
| Operating Engineers and Other Construction Equipment Operators |

Painters, Const. Maintenance

| |
|--|
| Painters, Construction and Maintenance |
| Paperhangers |

Pipelayers and Plumbers

| |
|--|
| Pipelayers |
| Plumbers, Pipefitters and Steamfitters |

Plasterers and Stucco Masons

Roofers

Security Guards & Surveillance Officers

Sheet Metal Workers

Structural Iron and Steel Workers

Welding, Soldering and Brazing Workers

| |
|--|
| Welders, Cutter, Solderers and Brazers |
| Welding, Soldering and Brazing Machine Setter, Operators and Tenders |

Equal Opportunity Contracting
 Goods, Services, & Consultant RFP
 Revised 1/1/2016
 OCA Document No. 1208380

EXHIBIT "C"
LESSEE QUESTIONNAIRE

**LESSEE'S AND SUBLESSEE'S QUESTIONNAIRE
FOR ALL LEASES, ASSIGNMENTS AND SUBLEASES OF MORE THAN FIVE YEARS**

Before the City of San Diego will process requests to (Sub)Lease, all information requested in this Questionnaire must be completed by the proposed (Sub)Lessee. Even though a proposed Sublessee may complete the Questionnaire, the Questionnaire must be delivered or mailed to the City with a cover letter signed by the City Lessee or proposed Lessee. **THE CITY WILL NOT ACCEPT THE QUESTIONNAIRE, DOCUMENTS, OR OTHER INFORMATION DIRECTLY FROM A SUBLESSEE.**

All information furnished in this Questionnaire must be complete and accurate. Omissions, inaccuracies, or misstatements may cause the rejection and/or subsequent revocation of the City's Lease, consent to Sublease, or consent to Assignment of (Sub)Lease.

In submitting this Questionnaire, the proposed (Sub)Lessee completing the Questionnaire authorizes the City to make any inquiry or investigation it believes necessary to substantiate or supplement the information furnished in the Questionnaire, and authorizes others to release such information to the City.

Exact name of existing Lessee (always complete):

Exact name of proposed Lessee (complete only if applicable):

Exact name of existing Sublessee (complete only if applicable):

Exact name of proposed Sublessee (complete only if applicable):

Date this Questionnaire completed: _____, _____.

I declare under the penalty of perjury that the information furnished in and with this Questionnaire is true, complete, and correct.

Signature: _____

Title: _____

Thank you for taking the time to complete the Questionnaire. Lessees may contact Real Estate if they have any questions. Please return the completed Questionnaire, with any additional information or documents to:

REAL ESTATE ASSETS DEPARTMENT
1200 THIRD AVENUE STE. 1700
SAN DIEGO, CA 92101
TEL.: (619) 236-6020 FAX: (619) 236-6706

This Questionnaire contains 15 pages.

Questionnaire Page 1

PROPOSED (SUB)LESSEE

1. Name of proposed (Sub)Lessee exactly as it will appear on the actual tenancy document:

2. Mailing Address of proposed (Sub)Lessee for purposes of notice or other communication relating to the proposed tenancy:

Telephone No.: _____ Fax. No.: _____
E-mail Address: _____

3. Billing Address (*only if different from Mailing Address*):

Telephone No.: _____ Fax. No.: _____

4. Proposed (Sub)Lessee intends to operate as a:

Sole Proprietorship (); Partnership (); Corporation ();
Limited Liability Company (); Other _____

Explain if necessary:

5. Effective date of assignment (complete only if applicable): _____

PARTNERSHIP STATEMENT

If proposed (Sub)Lessee is a partnership, please answer the following:

1. Date of Organization: _____
2. General Partnership ()
Limited Partnership ()
Other () Explain _____

3. Statement of Partnership recorded: Yes () No ()

| | | | |
|------|------|------|--------|
| Date | Book | Page | County |
|------|------|------|--------|
4. Has the partnership conducted business in San Diego County?
Yes () No () If so, when? _____
If so, where? _____
5. Name, address, and partnership share of each general and limited partner. If a general partner is another partnership, a corporation, or a limited liability company (LLC), please complete separate pages 3; or 4 and 5; or 6, as appropriate for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page for identification purposes). If a limited partner holding a 10% or greater interest is another partnership, a corporation, or an LLC, pages 3; or 4 and 5; or 6 must also be completed for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page).

| General/Limited | Name | Address | Share % |
|-----------------|------|---------|---------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

6. Attach a complete copy of the Partnership Agreement. If a Partnership Agreement has been previously submitted, a new Partnership Agreement need be submitted only if the Partnership Agreement on file with the City is no longer current.

CORPORATION STATEMENT

If proposed (Sub)Lessee is a corporation, please answer the following:

1. Type of corporation: C () Subchapter S ()
2. When incorporated? _____
3. Where incorporated? _____
4. Is the corporation authorized to do business in California? Yes () No ()
If so, as of what date? _____
5. The corporation is held:
a. Publicly () Privately ()
b. If publicly held, how and where is the stock traded?

6. Please list the following:

| | <u>Authorized</u> | <u>Issued</u> | <u>Outstanding</u> |
|-------------------------------------|-------------------|---------------|--------------------|
| a. Number of voting shares: | _____ | _____ | _____ |
| b. Number of nonvoting shares: | _____ | _____ | _____ |
| c. Number of shareholders: | | | _____ |
| d. Value per share of Common Stock: | | Par | \$ _____ |
| | | Book | \$ _____ |
| | | Market | \$ _____ |
7. Please furnish the name, title, address, and the number of voting and nonvoting shares of stock owned by each officer and, in addition, the same information for each stockholder owning more than 10% of any class of stock.

Name: _____
Title: _____
Address: _____

No. of Shares: _____

| | |
|----------------|-------|
| Name: | _____ |
| Title: | _____ |
| Address: | _____ |
| | _____ |
| No. of Shares: | _____ |
| Name: | _____ |
| Title: | _____ |
| Address: | _____ |
| | _____ |
| No. of Shares: | _____ |
| Name: | _____ |
| Title: | _____ |
| Address: | _____ |
| | _____ |
| No. of Shares: | _____ |
| Name: | _____ |
| Title: | _____ |
| Address: | _____ |
| | _____ |
| No. of Shares: | _____ |

(Additional page(s) may be added if needed to complete list of stockholders [type proposed (Sub)Lessee name (from page 2) on the top of each page].)

Any partnership, corporation, or LLC owning more than a 10% ownership interest must also complete separate pages 3; or 4 and 5; or 6, as appropriate for each entity (type proposed [Sub]Lessee name [from page 2] on the top of each page for identification purposes). Also, furnish the financial data for such partnership, corporation, or LLC, as required on page 7. If there is an ownership chain of additional partnerships, corporations, or LLCs, the above requirements extend to each such entity having either: (1) a 10% or greater direct, indirect, beneficial ownership, or membership interest in the proposed (Sub)Lessee; or (2) effective control of the proposed (Sub)Lessee, regardless of the percentage of ownership or membership interest.

LIMITED LIABILITY COMPANY STATEMENT

If the proposed (Sub)Lessee is an LLC, please answer the following:

1. Date of Organization: _____
2. Where Organized: _____
3. Is the Company authorized to do business in California?
 - a. Yes () No ()
 - b. If so, as of what date? _____
4. Has the Company conducted business in San Diego County?
 - a. Yes () No ()
 - b. If so, when? _____
 - c. If so, where? _____
5. Please furnish the name, address, and membership share held by each manager and officer, and each member owning more than a 10% membership interest. If a member is a partnership, corporation, or another LLC, please complete separate pages 3; or 4 and 5; or 6, as appropriate for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page).

| Manager/Officer/ Member | Name | Address | Share % |
|----------------------------|------|---------|------------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

6. Attach a complete copy of the Operating Agreement. If an Operating Agreement has been previously submitted, a new Operating Agreement need be submitted only if the Operating Agreement on file with the City is no longer current.

FINANCIAL AND OTHER BACKGROUND INFORMATION

FINANCIAL STATEMENT

(Sub)Lessee, general partners of (Sub)Lessee, owner-corporations of (Sub)Lessee, members of (Sub)Lessee owning more than a 10% membership interest, and any person or business entity guaranteeing the performance of (Sub)Lessee **must** attach a complete report, prepared in accordance with good accounting practice, reflecting current financial condition. The report **must** include a balance sheet **and** annual income statement. The person or entity covered by the report must be prepared to substantiate all information provided.

OTHER INFORMATION

Each (Sub)Lessee, each general partner of (Sub)Lessee, each owner-corporation of (Sub)Lessee, each member of (Sub)Lessee owning more than a 10% membership interest, any person or business entity guaranteeing the performance of (Sub)Lessee, any person or entity owning more than a 10% interest of (Sub)Lessee, and any guarantor of (Sub)Lessee must answer the following questions:

1. **Surety Information** - Has a surety or bonding company ever been required to perform on the default of any of the individuals or entities?
 - a. Yes () No ()
 - b. If yes, please attach a statement naming the surety or bonding company, date, amount of bond, and the circumstances surrounding said default and performance.
2. **Bankruptcy Information** - Have any of the individuals or entities ever been adjudicated bankrupt or are any presently a debtor in a pending bankruptcy action?
 - a. Yes () No ()
 - b. If yes, please give dates, court jurisdiction, and amount of liabilities and assets.
3. **Pending Litigation** - Are any of the individuals or entities presently a party to ANY pending litigation?
 - a. Yes () No ()
 - b. If yes, please provide detailed information for each action.
4. **Claims, Liens, or Judgments** - Are any of the individuals or entities now subject to any outstanding claims, liens, or judgments?
 - a. Yes () No ()
 - b. If yes, please provide detailed information for each claim, lien, or judgment.

REFERENCES FOR PROPOSED (SUB)LESSEE

Please list four persons or firms with whom you have conducted business transactions during the past three years. Two of the references must have knowledge of your debt payment history, with at least one being a financial institution. Two of the references must have knowledge of your business experience.

REFERENCE NO. 1

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business, association, etc.:

REFERENCE NO. 2

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business, association, etc.:

REFERENCE NO. 3

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business, association, etc.:

REFERENCE NO. 4

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business, association, etc.:

CITY OF SAN DIEGO PERSONAL DESCRIPTION AND RELEASE

PLEASE NOTE: All partners, both general and limited; all stockholders owning more than 10% of any class of stock of corporations; all members of a limited liability company; and sole proprietors requesting to (sub)lease, must each complete this page before the tenancy request can be processed. (You may reproduce and use copies of this page, if necessary.)

The following personal information is required to initiate a credit investigation. The business and personal reputation of principals, partners, and members will be considered in qualifying Lessees or in consenting to Sublessees.

| | |
|-------------------------------|-------|
| First, Middle, & Last Name | _____ |
| Date of Birth | _____ |
| Place of Birth | _____ |
| Social Security Number | _____ |
| Driver's License Number/State | _____ |
| Home Address | _____ |
| | _____ |
| Previous Address | _____ |
| | _____ |
| Home Telephone No. | _____ |
| Employer | _____ |
| Occupation | _____ |
| Business Address | _____ |
| Business Telephone No. | _____ |
| Business Fax No. | _____ |

The City is hereby authorized to request a credit report and other information covering my financial and business history.

Date _____ Signed _____

Print or type exact name of proposed (Sub)Lessee from page 2 of Questionnaire:

METHOD OF OPERATION

Please describe your proposed business operation on the property to be (Sub)Leased. Discuss any optional services and uses which you propose to provide.

PROPOSED METHOD OF FINANCING
DEVELOPMENT OR LEASEHOLD PURCHASE

Describe the method of financing for the Leasehold purchase or any new or additional development on the Leasehold. Include a schedule of approximate dates when construction of each significant improvement is expected to be commenced and completed.

ESTIMATE OF GROSS RECEIPTS

If this Questionnaire is being completed by a prospective Lessee, please show the best estimate of the average annual gross sales for each significant use or service, and for each significant optional use or service which the Lessee and its Sublessees (if any) plan to conduct on or from the property. (If the Questionnaire is being completed by a Sublessee, only the estimate of the Sublessee's gross sales is required.) This data will be used by the City to analyze the proposed Lease or Sublease Consent application. The time periods shown should not be assumed to necessarily represent the term of a (Sub)Lease that may be granted or consented to by the City.

Average annual gross sales for each proposed significant use during each of the first five operating years:

| Year of Operation | Uses (Identify Each Use) | | | | |
|----------------------|--------------------------|----|----|----|----|
| | | | | | |
| 1 | \$ | \$ | \$ | \$ | \$ |
| 2 | | | | | |
| 3 | | | | | |
| 4 | | | | | |
| 5 | | | | | |

EXPERIENCE STATEMENT

Please describe in detail the duration and extent of your business experience, with special emphasis upon experience with the type of business which you propose to conduct on City property. Also state in detail the pertinent experience of the persons who will be directly involved in development and management of the business.

**TERMS AND CONDITIONS OF PURCHASE, SALE,
OR TRANSFER OF (SUB)LEASEHOLD INTEREST**

(NOTE: Complete this page only if the transaction involves a Lease transfer, or the transfer of a Sublease having a remaining term of more than five years.)

Please summarize the terms and conditions of the purchase, sale, or transfer of (Sub)Leasehold interest(s) which requires City consent, as specified in the Assignment-Sublease provisions of the City Lease. Please attach copies of the applicable sales agreement(s), escrow instructions, assignment agreement(s), or other documents in conjunction with the sale, purchase, or transfer of the (Sub)Leasehold interest(s).

EXHIBIT "D"
CREDIT INFORMATION REQUEST

I/We hereby request and authorize you to release to the City of San Diego for verification purposes, personal and business credit reports and information concerning the company/corporation/partnership and/or the officers and individuals listed below. That information may include but is not limited to:

- 1) Employment history dates, titles, income, hours worked.
- 2) Banking (checking and savings) accounts of record.
- 3) Mortgage loan rating (open date, high credit, payment amount, loan balance, and payment).
- 4) Any information deemed necessary concerning a consumer credit report for my loan application.
- 5) This information is for the confidential use in compiling a credit report.
- 6) A facsimile, photographic or carbon copy of this authorization (being a facsimile, photographic or carbon copy of the signature(s) of the undersigned), may be deemed to be equivalent of the original and may be used as a duplicate original.

| |
|--|
| 1. Name of Applicant (Please print or type): |
| |
| Name of Business: |
| (If different from "applicant") |
| |
| Telephone: |
| |
| Name of Affiliated Business: |
| Telephone: |
| |
| 2. Name of Officer/Owner: |
| |
| Address for the last two years: |
| |
| Social Security Number: |
| |
| Signature: |
| |
| 3. Name of Officer/Owner: |
| |
| Address for the last two years: |
| |
| Social Security Number: |
| Signature: |

EXHIBIT "E"
City of San Diego Contractor Standards Pledge of Compliance

City of San Diego
CONTRACTOR STANDARDS
Pledge of Compliance

The City of San Diego has adopted a Contractor Standards Ordinance (CSO) codified in section 22.3004 of the San Diego Municipal Code (SDMC). The City of San Diego uses the criteria set forth in the CSO to determine whether a bidder or proposer has the capacity to fully perform the contract requirements and the business integrity to justify the award of public funds. This completed Pledge of Compliance signed under penalty of perjury must be submitted with each bid and proposal. If an informal solicitation process is used, the bidder must submit this completed Pledge of Compliance to the City prior to execution of the contract. All responses must be typewritten or printed in ink. If an explanation is requested or additional space is required, Respondents must provide responses on Attachment A to the Pledge of Compliance and sign each page. Failure to submit a signed and completed Pledge of Compliance may render the bid or proposal non-responsive. In the case of an informal solicitation, the contract will not be awarded unless a signed and completed Pledge of Compliance is submitted. A submitted Pledge of Compliance is a public record and information contained within will be available for public review except to the extent that such information is exempt from disclosure pursuant to applicable law.

A. BID/PROPOSAL/SOLICITATION TITLE:

B. BIDDER/PROPOSER INFORMATION:

| | | | |
|-----------------------|-------|-------|-----|
| Legal Name | | DBA | |
| Street Address | City | State | Zip |
| Contact Person, Title | Phone | Fax | |

C. OWNERSHIP AND NAME CHANGES:

1. In the past five (5) years, has your firm changed its name?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to list all prior legal and DBA names, addresses, and dates each firm name was used. Explain the specific reasons for each name change.

2. In the past five (5) years, has a firm owner, partner, or officer operated a similar business?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to list names and addresses of all businesses and the person who operated the business. Include information about a similar business only if an owner, partner, or officer of your firm holds or has held a similar position in another firm.

D. BUSINESS ORGANIZATION/STRUCTURE:

Indicate the organizational structure of your firm. Fill in only one section on this page. Use Attachment "A" if more space is required.

Corporation Date incorporated: ____ / ____ / ____ State of incorporation: _____

List corporation's current officers: President: _____
Vice Pres: _____
Secretary: _____
Treasurer: _____

Is your firm a publicly traded corporation? **Yes** **No**

If **Yes**, name those who own ten percent (10 %) or more of the corporation's stocks:

Limited Liability Company Date formed: ____/____/____ State of formation: _____

List names of members who own ten percent (10%) or more of the company:

Partnership Date formed: ____/____/____ State of formation: _____

List names of all firm partners:

Sole Proprietorship Date started: ____/____/____

List all firms you have been an owner, partner or officer with during the past five (5) years. Do not include ownership of stock in a publicly traded company:

Joint Venture Date formed: ____/____/____

List each firm in the joint venture and its percentage of ownership:

Note: To be responsive, each member of a Joint Venture must complete a separate *Pledge of Compliance*.

E. FINANCIAL RESOURCES AND RESPONSIBILITY:

1. Is your firm preparing to be sold, in the process of being sold, or in negotiations to be sold?

☐ **Yes** ☐ **No**

If **Yes**, use Attachment "A" to explain the circumstances, including the buyer's name and principal contact information.

2. In the past five (5) years, has your firm been denied bonding?

☐ **Yes** ☐ **No**

If **Yes**, use Attachment "A" to explain specific circumstances; include bonding company name.

3. In the past five (5) years, has a bonding company made any payments to satisfy claims made against a bond issued on your firm's behalf or a firm where you were the principal?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to explain specific circumstances.

4. In the past five (5) years, has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to explain specific circumstances.

5. Within the last five years, has your firm filed a voluntary petition in bankruptcy, been adjudicated bankrupt, or made a general assignment for the benefit of creditors?

6. Please provide the name of your principal financial institution for financial reference. By submitting a response to this Solicitation Contractor authorizes a release of credit information for verification of financial responsibility.

Name of Bank: _____

Point of Contact: _____

Address: _____

Phone Number: _____

7. By submitting a response to a City solicitation, Contractor certifies that he or she has sufficient operating capital and/or financial reserves to properly fund the requirements identified in the solicitation. At City's request, Contractor will promptly provide to City a copy of Contractor's most recent balance sheet and/or other necessary financial statements to substantiate financial ability to perform.

F. PERFORMANCE HISTORY:

1. In the past five (5) years, has your firm been found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for defaulting or breaching a contract with a government agency?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to explain specific circumstances.

2. In the past five (5) years, has a public entity terminated your firm's contract for cause prior to contract completion?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to explain specific circumstances and provide principal contact information.

3. In the past five (5) years, has your firm entered into any settlement agreement for any lawsuit that alleged contract default, breach of contract, or fraud with or against a public entity?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to explain specific circumstances.

4. Is your firm currently involved in any lawsuit with a government agency in which it is alleged that your firm has defaulted on a contract, breached a contract, or committed fraud?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to explain specific circumstances.

5. In the past five (5) years, has your firm, or any firm with which any of your firm's owners, partners, or officers is or was associated, been debarred, disqualified, removed, or otherwise prevented from bidding on or completing any government or public agency contract for any reason?

☐ Yes ☐ No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances.

6. In the past five (5) years, has your firm received a notice to cure or a notice of default on a contract with any public agency?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to explain specific circumstances and how the matter resolved.

7. Performance References:

Please provide a minimum of three (3) references familiar with work performed by your firm which was of a similar size and nature to the subject solicitation within the last five (5) years.

Company Name: _____

Contact Name and Phone Number: _____

Contact Email: _____

Address: _____

Contract Date: _____

Contract Amount: _____

Requirements of Contract: _____

Company Name: _____

Contact Name and Phone Number: _____

Contact Email: _____

Address: _____

Contract Date: _____

Contract Amount: _____

Requirements of Contract: _____

Company Name: _____

Contact Name and Phone Number: _____

Contact Email: _____

Address: _____

Contract Date: _____

Contract Amount: _____

Requirements of Contract: _____

G. COMPLIANCE:

1. In the past five (5) years, has your firm or any firm owner, partner, officer, executive, or manager been criminally penalized or found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for violating any federal, state, or local law in performance of a contract, including but not limited to, laws regarding health and safety, labor and employment, permitting, and licensing laws?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to explain specific circumstances surrounding each instance. Include the name of the entity involved, the specific infraction(s) or violation(s), dates of instances, and outcome with current status.

2. In the past five (5) years, has your firm been determined to be non-responsible by a public entity?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to explain specific circumstances of each instance. Include the name of the entity involved, the specific infraction, dates, and outcome.

H. BUSINESS INTEGRITY:

1. In the past five (5) years, has your firm been convicted of or found liable in a civil suit for making a false claim or material misrepresentation to a private or public entity?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to explain specific circumstances of each instance. Include the entity involved, specific violation(s), dates, outcome and current status.

2. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a crime, including misdemeanors, or been found liable in a civil suit involving the bidding, awarding, or performance of a government contract?

☐ Yes ☐ No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances of each instance; include the entity involved, specific infraction(s), dates, outcome and current status.

3. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a federal, state, or local crime of fraud, theft, or any other act of dishonesty?

☐ Yes ☐ No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances of each instance; include the entity involved, specific infraction(s), dates, outcome and current status.

I. WAGE COMPLIANCE:

In the past five (5) years, has your firm been required to pay back wages or penalties for failure to comply with the federal, state or local prevailing, minimum, or living wage laws? Yes ☐ No ☐ If **Yes**, use Attachment "A" to explain the specific circumstances of each instance. Include the entity involved, the specific infraction(s), dates, outcome, and current status.

J. STATEMENT OF SUBCONTRACTORS:

Please provide the names and information for all subcontractors used in the performance of the proposed contract, and what portion of work will be assigned to each subcontractor. Subcontractors may not be substituted without the written consent of the City. Use Attachment "A" if additional pages are necessary. If no subcontractors will be used, please write "Not Applicable."

Company Name: _____

Contact Name and Phone Number: _____

Contact Email: _____

Address: _____

Contract Date: _____

Sub-Contract Dollar Amount: _____

Requirements of Contract: _____

What portion of work will be assigned to this subcontractor: _____

Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE? (Circle One) YES ☐ NO ☐

If YES, Contractor must provide valid proof of certification with the response to the bid or proposal.

Company Name: _____

Contact Name and Phone Number: _____

Contact Email: _____

Address: _____

Contract Date: _____

Sub-Contract Dollar Amount: _____

Requirements of Contract: _____

What portion of work will be assigned to this subcontractor: _____

Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE? (Circle One) YES ☐ NO ☐

If YES, Contractor must provide valid proof of certification with the response to the bid or proposal.

K. STATEMENT OF AVAILABLE EQUIPMENT:

List all necessary equipment to complete the work specified. Use *Pledge of Compliance Attachment "A"* if additional pages are necessary. In instances where the required equipment is not owned by the Contractor, Contractor shall explain how the equipment will be made available before the commencement of work. The City of San Diego reserves the right to reject any response when, in its opinion, the Contractor has not demonstrated he or she will be properly equipped to perform the work in an efficient, effective manner for the duration of the contract period.

If no equipment is necessary to complete the work specified, please write "Not Applicable."

Equipment Description: _____

Owned ☐ Rented ☐ Other ☐ (explain below)

If Owned, Quantity Available: _____

Year, Make & Model: _____

Explanation: _____

Equipment Description: _____

Owned ☐ Rented ☐ Other ☐ (explain below)

If Owned, Quantity Available: _____

Year, Make & Model: _____

Explanation: _____

Equipment Description: _____

Owned ☐ Rented ☐ Other ☐ (explain below)

If Owned, Quantity Available: _____

Year, Make & Model: _____

Explanation: _____

L. TYPE OF SUBMISSION: This document is submitted as:

Initial submission of *Contractor Standards Pledge of Compliance*.

Update of prior *Contractor Standards Pledge of Compliance* dated ____/____/____

Complete all questions and sign below.

Under penalty of perjury under the laws of the State of California, I certify that I have read and understand the questions contained in this Pledge of Compliance, that I am responsible for completeness and accuracy of the responses contained herein, and that all information provided is true to the best of my knowledge and belief. I agree to provide written notice to the Purchasing Agent within five (5) business days if, at any time, I learn that any portion of this Pledge of Compliance is inaccurate. Failure to timely provide the Purchasing Agent with written notice is grounds for Contract termination.

I, on behalf of the firm, further certify that I and my firm will comply with the following provisions of SDMC section 22.3004:

- (a) I and my firm will comply with all applicable local, State and Federal laws, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.
- (b) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of receiving notice that a government agency has begun an investigation of me or my firm that may result in a finding that I or my firm is or was not in compliance with laws stated in paragraph (a).
- (c) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of a finding by a government agency or court of competent jurisdiction of a violation by the Contractor of laws stated in paragraph (a).
- (d) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of becoming aware of an investigation or finding by a government agency or court of competent jurisdiction of a violation by a subcontractor of laws stated in paragraph (a).
- (e) I and my firm will cooperate fully with the City during any investigation and to respond to a request for information within ten (10) working days.

Failure to sign and submit this form with the bid/proposal shall make the bid/proposal non-responsive. In the case of an informal solicitation, the contract will not be awarded unless a signed and completed *Pledge of Compliance* is submitted.

Name and Title

Signature

Date

**City of San Diego
CONTRACTOR STANDARDS
Pledge of Compliance Attachment "A"**

Provide additional information in space below. Use additional Attachment "A" pages as needed. Each page must be signed.
Print in ink or type responses and indicate question being answered.

I have read the matters and statements made in this Contractor Standards Pledge of Compliance and attachments thereto and I know the same to be true of my own knowledge, except as to those matters stated upon information or belief and as to such matters, I believe the same to be true. I certify under penalty of perjury that the foregoing is true and correct.

Print Name, Title

Signature

Date

EXHIBIT “F”
GENERAL CONTRACT TERMS AND PROVISIONS
APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS



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

General Contract Terms and Conditions
Revised: October 1, 2015
OCA Document No. 845794_4

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 conditions 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 (5th) day of the subsequent month.

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

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

ARTICLE IV SUSPENSION AND TERMINATION

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

resume performance in compliance with the terms and conditions 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 4.2. 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 Material 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 Material Safety Data Sheet 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 not begin any performance under this Contract until it has (1) provided City insurance certificates and endorsements reflecting evidence of all insurance and endorsements required and described herein and in the Specifications; (2) obtained City approval of each insurance company or companies; and (3) confirmed that all policies contain the special provisions required herein and the Specifications. Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under this Contract, shall not be deemed limited in any way to the insurance coverage required herein or in the Specifications. Maintenance of specified insurance coverage is a material element of this Contract, and Contractor's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Contract may be treated by City as a material breach of contract. City reserves the right to require Contractor to submit copies of any policy upon reasonable request by City. The requirements of this section do not apply to contracts for goods, unless otherwise required in the Contract Specifications.

All policies shall include, and the insurance certificates shall reflect, a 30-day non-cancellation clause that provides thirty (30) days written notice by certified mail to City prior to any material change or cancellation of any of said policies.

Contractor shall not modify any policy or endorsement thereto which increases City's exposure to loss for the duration of this Contract.

Contractor shall maintain insurance coverage at its own expense as follows:

7.2.1 Commercial General Liability. Commercial General Liability (CGL) insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all bodily injury, personal injury, advertising injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate of \$2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

7.2.2 Commercial Automobile Liability. For all of Contractor's automobiles including owned, hired and non-owned automobiles, Contractor shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. The insurance certificate shall reflect coverage for any automobile (any auto).

7.2.3 Workers' Compensation. For all of Contractor's employees who are subject to this Contract and to the extent required by the applicable state or federal law, Contractor shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employer's liability coverage, and Contractor shall provide an endorsement that the insurer waives the right of subrogation against City and its respective elected officials, officers, employees, agents, and representatives.

7.2.4 Professional Liability. For consultant contracts, Contractor shall obtain Professional Liability coverage with limits of at least \$1 million per occurrence and \$2 million aggregate, covering the risk of errors and omissions, negligent acts and costs of claims/litigation, including investigation and court costs. If the coverage is written on a "claims-made" form, Contractor must ensure that the policy retroactive date is before the date of the contract is awarded, that coverage is maintained during the duration of performance of the contract or the contract period (whichever is longer) and the policy has a reporting period or run-off provision of at least three (3) years following completion or termination of the performance of professional services under this Contract.

7.3 Deductibles. All deductibles or retentions on any policy shall be the sole responsibility of Contractor and shall be disclosed to City at the time the evidence of insurance is provided.

7.4 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Contract, shall only be carried by insurance companies with a current rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by 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 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to City before any performance is initiated under this Contract.

7.5.1 Commercial General Liability Insurance Endorsements.

Additional Insured. To the fullest extent allowed by law, including but not limited to California Insurance Code section 11580.04, the policy or policies must be endorsed to include as an insured City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

Primary and Non-contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of City, its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by City, its elected officials, officers, employees, agents and representatives shall be in excess of Contractor's insurance and shall not contribute to it.

Severability of Interest. The policy or policies must be endorsed to provide that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

7.5.2 Automobile Liability Insurance Endorsements

Additional Insured. To the fullest extent allowed by law, including but not limited to California Insurance Code section 11580.04, the policy or policies must be endorsed to include as an Insured City and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Contractor.

Primary and Non-contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the Automobile Liability policy or policies is primary to any insurance or self-insurance of City, its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by City, its elected officials, officers, employees, agents and representatives shall be in excess of Contractor's insurance and shall not contribute to it.

Severability of Interest. The policy or policies must be endorsed to provide that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

7.5.3 Worker's Compensation Insurance Endorsements.

Waiver of Subrogation. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against City, its elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for City.

7.6 Reservation of Rights. City reserves the right, from time to time, to review Contractor's insurance coverage, limits, deductible, and self-insured retentions to determine if they are acceptable to City. City will reimburse Contractor for the cost of the additional premium for any coverage requested by City in excess of that required by this Contract, without overhead, profit, or any other markup.

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.

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 conditions of the Contract.

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

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

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

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

ARTICLE IX CITY-MANDATED CLAUSES AND REQUIREMENTS

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

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

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

9.1.3 Non-Discrimination Requirements.

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

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

9.1.3.3 Compliance Investigations. Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid

by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

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

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

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

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

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

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

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

9.1.9 Product Endorsement. Contractor shall comply with Council Policy 000-41 concerning product endorsement which requires that any advertisement referring to City as a user of a good or service will require the prior written approval of the Mayor.

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

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.