

DUPLICATE

**CONTRACT RESULTING FROM REQUEST FOR PROPOSAL NUMBER 10089860-22-S, Total Compensation Surveys**

This Contract (Contract) is entered into by and between the City of San Diego, a municipal corporation (City), and the successful proposer to Request for Proposal (RFP) # 10089860-22-S, Total Compensation Surveys (Contractor).

**RECITALS**

On or about 1/5/2022, City issued an RFP to prospective proposers on services to be provided to the City. The RFP and any addenda and exhibits thereto are collectively referred to as the "RFP." The RFP is attached hereto as Exhibit A.

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

City wishes to retain a Contractor to complete Total Compensation Surveys in advance of the Fiscal Year (FY) 2024 Memorandum of Understanding (MOU) negotiations and for any successor MOU negotiations with the City's recognized employee organizations. The Contractor will prepare Total Compensation Surveys for the represented and unrepresented classifications, as well as updated Total Compensation Surveys and as-needed related supplemental reports, as further described in the Scope of Work, attached hereto as Exhibit B. (Services).

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

**ARTICLE I  
CONTRACTOR SERVICES**

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

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

**ARTICLE II  
DURATION OF CONTRACT**

**2.1 Term.** This Contract shall be for a period of two (2) years, with three (3), one (1) year options to extend the term of Contract, beginning on the Effective Date. The term of this Contract shall not exceed five (5) years unless approved by the City Council by ordinance.

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

**ARTICLE III  
COMPENSATION**

**3.1 Amount of Compensation.** City shall pay Contractor for performance of all Services rendered in accordance with this Contract in an amount not to exceed \$550,000.00 for the Total Compensation Surveys, as well as any requested revisions/updates to the Total Compensation Surveys for purposes of successor MOU negotiations, and as-needed related supplemental reports as described in the Scope of Work attached in Exhibit B.

**ARTICLE IV  
WAGE REQUIREMENTS**

4.1 Reserved.

**ARTICLE V  
CONTRACT DOCUMENTS**

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

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

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

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

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

**5.5 Public Agencies.** Other public agencies, as defined by California Government Code section 6500, may choose to use the terms of this Contract, subject to Contractor's

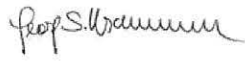
acceptance. The City is not liable or responsible for any obligations related to a subsequent Contract between Contractor and another public agency.

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

CONTRACTOR


Koff & Associates, a Gallagher company  
\_\_\_\_\_  
Proposer  
2835 Seventh Street  
\_\_\_\_\_  
Street Address  
Berkeley, CA 94710  
\_\_\_\_\_  
City  
510-658-5633  
\_\_\_\_\_  
Telephone No.  
gkrammer@koffassociates.com  
\_\_\_\_\_  
E-Mail

BY:

  
\_\_\_\_\_  
Signature of Proposer's  
Authorized Representative  
Georg S. Krammer  
\_\_\_\_\_  
Print Name  
Managing Director  
\_\_\_\_\_  
Title  
02/22/22  
\_\_\_\_\_  
Date

CITY OF SAN DIEGO  
A Municipal Corporation

BY:

  
\_\_\_\_\_  
Print Name:  
Claudia C. Garcia  
\_\_\_\_\_  
Director, Purchasing & Contracting Department  
October 11, 2022  
\_\_\_\_\_  
Date Signed

Approved as to form this 12<sup>th</sup> day of  
October, 20 22.  
MARA W. ELLIOTT, City Attorney

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

**EXHIBIT A  
PROPOSAL SUBMISSION AND REQUIREMENTS**

**A. PROPOSAL SUBMISSION**

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

**1.1 Reserved.**

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

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

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

**1.4.1 Reserved.**

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

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

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

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

**2.1 Exceptions requested by proposer, if any.** The proposer must present written factual or legal justification for any exception requested to the Scope of Work, the Contract, or the Exhibits thereto. Any exceptions to the Contract that have not been accepted by the City in writing are deemed rejected. The City, in its sole discretion, may accept some or all of proposer's exceptions, reject proposer's exceptions, and deem the proposal non-

responsive, or award the Contract without proposer's proposed exceptions. The City will not consider exceptions addressed elsewhere in the proposal.

2.2 The Contractor Standards Pledge of Compliance Form.

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

2.4 Reserved.

2.5 Reserved.

2.6 Reserved.

2.7 Reserved.

2.8 Reserved.

2.9 Reserved.

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

2.10 A title page.

2.11 A table of contents.

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

2.13 Proposer's response to the RFP.

**Tab C – Cost/Price Proposal (if applicable).** Proposers shall submit a cost proposal in the form and format described herein. Failure to provide cost(s) in the form and format requested may result in proposal being declared non-responsive and rejected.

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

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

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

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

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

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

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

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

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

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

**9. Public Records.** By submitting a proposal, the proposer acknowledges that any information submitted in response to this RFP is a public record subject to disclosure unless the City determines that a specific exemption in the California Public Records Act (CPRA) applies. If the proposer submits information clearly marked confidential or proprietary, the City may protect such information and treat it with confidentiality to the extent permitted by law. However, it will be the responsibility of the proposer to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the CPRA should the City choose to withhold such information. General references to sections of

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

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

## **B. PRICING**

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

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

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

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

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

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

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

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

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

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

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

#### **3.2 Reserved.**

**3.3 Mandatory Interview/Oral Presentation.** The City will require proposers to interview and/or make an oral presentation if one or more proposals score within five (5) points or less of the proposal with the highest score. Only the proposer with the highest scoring proposal and those proposers scoring within five (5) points or less of the highest scoring proposal will be asked to interview and/or make an oral presentation. Interviews and/or oral presentations will be made to the Evaluation Committee in order to clarify the proposals and to answer any questions. The interviews and/or oral presentations will be scored as part of the selection process. The City will complete all reference checks prior to any oral interview. Additionally, the Evaluation Committee may require proposer's key personnel to interview. Interviews may be by telephone and/or virtually. Multiple interviews may be required. Proposers are required to complete their oral presentation and/or interviews within seven (7) workdays after the City's request. Proposers should be prepared to discuss and substantiate any of the areas of the proposal submitted, as well as proposer's qualifications to furnish the subject goods and services. Proposer is responsible for any costs incurred for the oral presentation and interview of the key personnel.

**3.4 Discussions/Negotiations.** The City has the right to accept the proposal that serves the best interest of the City, as submitted, without discussion or negotiation. Contractors should, therefore, not rely on having a chance to discuss, negotiate, and adjust their proposals. The City may negotiate the terms of a contract with the winning proposer based on the RFP and the proposer's proposal, or award the contract without further negotiation.

**3.5 Inspection.** The City reserves the right to inspect the proposer's equipment and facilities to determine if the proposer is capable of fulfilling this Contract. Inspection



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

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

	MAXIMUM EVALUATION POINTS
<b>A. Responsiveness to the RFP.</b>	<u>15</u>
<ol style="list-style-type: none"> <li>1. Requested information included and thoroughness of response.</li> <li>2. Understanding of the Core Requirements and Deliverables.</li> <li>3. Clarity and brevity of the response.</li> <li>4. Provide clear description of survey methodology and how follow-up with the survey agencies will occur.</li> <li>5. Provide clear explanation of recommendations for addition or deletion of survey agencies and benchmark classifications to properly benchmark classifications.</li> <li>6. Conformance to the specified RFP format.</li> </ol>	
<b>B. Staffing Plan.</b>	25
<ol style="list-style-type: none"> <li>1. Provisions for the required disciplines/Background of the Firm.</li> <li>2. Qualifications of personnel adequate for requirement, to include Bios of staff that identify which of the past projects they worked on, including their respective roles.</li> <li>3. Provisions for participation by firm's key personnel.</li> <li>4. Availability/Geographical location of personnel for required tasks.</li> </ol>	
<b>C. Firm's Capability to provide the services and expertise and Past Performance.</b>	50
<ol style="list-style-type: none"> <li>1. Proven expertise and competence to deliver services.</li> <li>2. Specialized experience and technical competence of the firm considering the type of services required, the complexity of the project, and strength and commitment of personnel assigned to the project.</li> <li>3. Demonstrated well-defined and reliable data collection process.</li> <li>4. Demonstrated experience with completing similar projects on time and within budget.</li> <li>5. Demonstrated experience in successfully completing total compensation surveys in the public sector, specifically for organizations subject to the Meyers-Millas-Brown Act.</li> <li>6. Demonstrated performance in providing excellent consultation to Client regarding best practices for leading and managing the compensation survey and best practices for attaining bottom-line results.</li> <li>7. Specific experience with government agencies and understanding of its organizational structure.</li> <li>8. Extensive experience working in public sector with elected officials, City staff and a broad range of agencies and labor organizations.</li> </ol>	

MAXIMUM  
EVALUATION  
POINTS

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- 9. Past record of performance, including factors such as cost control, quality of work, ability to meet deadlines, cooperation, responsiveness and other pertinent managerial decisions.
- 10. High quality written and presentation samples.
- 11. Location in the general geographical area of the project and knowledge of the locality of the Project
- 12. Capacity/Capability to meet the City of San Diego needs in a timely manner
- 13. References are outstanding.

**D. Price.** **10**

**E. Mandatory Interview/Oral Presentation (if held pursuant to Section 3.3 above).** **5**

SUB TOTAL MAXIMUM EVALUATION POINTS: **100**

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**F. Participation by Small Local Business Enterprise (SLBE) or Emerging Local Business Enterprise (ELBE) Firms\*** **12**

FINAL MAXIMUM EVALUATION POINTS INCLUDING SLBE/ELBE: **112**

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

**D. ANNOUNCEMENT OF AWARD**

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

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

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

**E. PROTESTS.** The City's protest procedures are codified in Chapter 2, Article 2, Division 30 of the San Diego Municipal Code (SDMC). These procedures provide unsuccessful proposers

with the opportunity to challenge the City's determination on legal and factual grounds. The City will not consider or otherwise act upon an untimely protest.

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

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

**2. Taxpayer Identification Number.** Internal Revenue Service (IRS) regulations require the City to have the correct name, address, and Taxpayer Identification Number (TIN) or Social Security Number (SSN) on file for businesses or persons who provide goods or services to the City. This information is necessary to complete Form 1099 at the end of each tax year. To comply with IRS regulations, the City requires each Contractor to provide a Form W-9 prior to the award of a Contract.

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

**4. Reserved.**

**5. Reserved.**

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

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

- A. BACKGROUND.** The City of San Diego (City) is seeking Request for Proposals (RFP) from Contractors qualified to perform consultant services related to Total Compensation Surveys, as well as revisions, upon request during the term of the Contract, to the Total Compensation Surveys and related supplemental reports, for represented and unrepresented classifications. Contractors are invited to submit a proposal outlining their experience and qualifications in performing work directly related to the services required.
- B. OBJECTIVE.** The objective of this RFP is to make an award to a qualified Contractor, which represents the best overall value to the City while at the same time meeting the specifications and requirements of this RFP. The selected Contractor will prepare Fiscal Year (FY) 2023 Total Compensation Surveys to be used for the FY 2024 Memorandum of Understanding (MOU) negotiations, update Total Compensation Surveys for purposes of successor MOU negotiations, and provide as-needed related supplemental reports related to negotiations with the American Federation of State, County, and Municipal Employees Local 127 (AFSCME Local 127), San Diego Municipal Employees Association (MEA), and San Diego Deputy City Attorneys Association (DCAA), as well as the unrepresented classifications. Depending on the outcome of the FY 2023 MOU negotiations, the Contractor will prepare Total Compensation Surveys, as well as updated Total Compensation Surveys for purposes of successor MOU negotiations, and as-needed related supplemental reports related to negotiations with the California Teamsters Local 911 (Local 911), San Diego Police Officers Association (POA), and San Diego City Firefighters IAFF Local 145 (IAFF Local 145).
- C. CORE REQUIREMENTS AND DELIVERABLES.** The Contractor will be required to meet with the Human Resources Director, Human Resources Assistant Director, the City's Lead Negotiator, City Management, and representatives of the six recognized employee organizations (REO), namely AFSCME Local 127, MEA, Local 911, POA, DCAA, and IAFF Local 145. The City further expects open communications between designated City representatives and the Contractor over the course of the survey.
1. Proposer shall be responsible for all of the following for each job classification, specified in Attachment 1:
    - 1.1 Develop and follow work plan and communications plan for the project with deliverables and milestones.
    - 1.2 Provide for initial meetings with the Human Resources Director, Human Resources Assistant Director, the City's Lead Negotiator, and City Management to discuss the current compensation plan and to fully discuss the purpose, goals, and objectives of the survey. Meetings may take place onsite, through a virtual platform (e.g., MS Teams, Zoom), or via telephone conference call at the discretion of the City.
    - 1.3 Provide for a minimum of four meetings with the Human Resources Department Director, Human Resources Assistant Director, the City's Lead Negotiator, and City Management in addition to the initial meetings described above. The additional meetings will be used to provide briefings and to discuss upcoming activities. The briefing shall outline the progress to date and answer any questions. Meetings may take place onsite, through a virtual platform (e.g., MS Teams, Zoom), or via telephone conference call at the discretion of the City.
    - 1.4 Provide written status reports updating the City on a bi-weekly basis.

- 1.5 Conduct a Total Compensation Survey of the survey agencies identified for each REO, as noted in Attachment 1.
- 1.6 Recommend any additions or deletions from the list of survey agencies, per Attachment 1, and provide an explanation of why those market comparators should be added or deleted to the survey agencies.
- 1.7 Actual salaries (or average salaries) shall be collected for all employees in each classification listed in Attachment 1.
- 1.8 To determine appropriate benchmark classifications, proposer shall recommend any additions or deletions from Attachment 1, and provide an explanation of why those classifications should be added or deleted. Specifically, provide recommendations related to those classifications that may be standard across the agencies identified in sections 1.5 and 1.6 above.
- 1.9 Analyze the City of San Diego's job description for each of the classifications listed in Attachment 1 before considering another agency's classification as a benchmark classification. Contractor shall provide a description of its survey methodology.
- 1.10 Review the City's current compensation plan including the classifications' pay ranges and other planned compensation increases.
- 1.11 Collect information from agencies on all current compensation including add-on/specialty pays, and other compensation, and conduct a market analysis of that compensation, to include but is not limited to the following common add-on/specialty pays within the City of San Diego. This list will be updated upon final determination of the City's benchmark classifications to cover the add-on/specialty pays and other compensation specific those classifications:
  - a. Administrative and Special Assignment Pay
  - b. Bilingual Pay
  - c. Call-Back Pay
  - d. Certification and Professional License Pay
  - e. Class A or B License Pay
  - f. Confined Space Entry Pay
  - g. Court Pay
  - h. Education Incentive Pay
  - i. Longevity Pay
  - j. Mileage Reimbursement
  - k. Night Shift Pay
  - l. On-call and/or Standby Pay
  - m. Out of Class Assignment Pay
  - n. Overtime Compensation
  - o. Parking Subsidy
  - p. Performance/Merit based increases
  - q. Recruiting Incentive Pay
  - r. Reductions in Compensation
  - s. Retiree Health Benefits
  - t. Shift Differential Pay
  - u. Split Shift Pay
  - v. Standby Pay
  - w. Tuition Reimbursement
  - x. Transportation Alternatives
  - y. Uniform and Equipment Allowance/Pay

- 1.12 Conduct a market analysis of the City's benefits and other compensation which include:
  - a. Flexible Benefits and/or other related benefits, such as medical, dental, vision, life and disability insurances, and flexible and dependent care spending accounts (both employer and employee cost).
  - b. Retirement benefits including retirement factors, formulas, and employer and employee rates.
  - c. Agency provided paid leaves such as holiday, sick, vacation, discretionary, parental, and management leaves.
  - d. Allowances such as automobile, uniform, tool and technology allowances.
  - e. Add-on pays associated with certain classifications such as registration, infrastructure, voluntary certification, and incentive pays.
- 1.13 Submit final reports. Each report will include the City's Total Compensation and Benefits, as of the beginning of the fiscal year (July 1) in which the Total Compensation Surveys were conducted. Final reports will include an executive summary and all supplemental materials, as well as the delivery of executive briefings as designated. All back-up and supporting data, reports, and tables must be provided to the City in a downloadable format. The presentation of data for the final reports should include, but is not limited to: base pay of each classification, minimums and maximums for the total compensation and benefits of each classification, the ranking number for where the City's classification fell within the survey agencies, and where the City fell in terms of average and/or median total compensation and benefits within the survey agencies.
- 1.14 As requested by the City, update the Total Compensation Surveys with current fiscal year data for purposes of the successor MOU negotiations.
- 1.15 Provide as-needed supplemental reports and answer questions related to the Total Compensation Surveys.
2. **CITY PROVIDED INFORMATION.** The City will provide the following information in support to the successful Proposer:
  - 2.1 Copies of all job classifications descriptions to be included in the survey.
  - 2.2 Copy of Citywide personnel policies.
  - 2.3 Copy of the current Memoranda of Understanding for the six recognized employee organizations (DCAA, AFSCME Local 127, IAFF Local 145, MEA, POA, and Local 911).
  - 2.4 Copy of the Salary Table.
  - 2.5 Copy of the Salary Ordinance, Administrative Regulations, Flexible Benefits Plan, and other correspondences related to employee compensation.
3. **CITY CONTACT AFTER AWARD OF CONTRACT.** With respect to the services performed under this Contract, the Contractor will report to the Human Resources Director or designee.
4. **COMPENSATION SCHEDULE.** The basis for monthly billing is hourly. The Contractor will submit monthly invoices to the City by the 5<sup>th</sup> of each month for services rendered the previous month. Invoices shall include a distinct identification number. Both the amount invoiced for the billing period and the total amount then owed (the balance forward) shall be set forth. The Contractor shall provide detailed

billing information including, but not limited to, a detailed description of the service rendered, date of service, time devoted to service, name, billing rate, and total amount billed for each service. Invoices will also include a breakdown of all disbursements by category of expense. A receipt for each category of expense must accompany the invoice to qualify for reimbursement by the City.

**The Contractor is required to monitor the amount of service rendered and provide notice to the HR Director, HR Assistant Director and/or designee when 80% of the fixed, aggregate contract amount has been exhausted.**

Compensation for the Contractor's work on the FY 2023 Total Compensation Surveys for the applicable REOs, including the unrepresented classifications, will commence on July 1, 2022.

- D. QUALIFICATIONS AND EXPERIENCE.** The following experience, qualifications, and skills are required to successfully complete the requirements of this RFP.
1. The Proposer shall describe experience in completing similar contracts and consulting efforts and present each team member's qualifications. The term "team member" refers to each individual on the team.
  2. For each team member that would be involved in the project, described in detail three successfully completed similar projects. For each completed project, provide the name of the jurisdiction and Project Manager the Contractor team performed work for, address, telephone number, type of work performed, and dollar value of the contracts. A similar project currently being performed may be submitted.
  3. For at least five years prior to RFP, regular and continuous compensation survey services to California public sector organizations, specifically cities/municipalities, or other entities subject to the Meyers-Milias-Brown Act (MMBA). Proposer shall provide a list of public sector organizations.
  4. The Proposer shall have demonstrated the ability to prepare materials, representative of similar projects, samples shall be provided.
  5. The Proposer shall have strong research and technical writing skills, strong observation skills, attention to detail, the ability to work independently, the ability to be responsive and flexible to input and direction from City staff, and produce high-quality written materials within specified timelines.
  6. The Proposer shall be comfortable with and articulate in public speaking situations, and demonstrate professional behaviors and protocols, which shall be demonstrated at the oral presentation, interview and establishment of rapport with key personnel.
  7. The Proposer shall submit resumes for key personnel to include each principal, project manager, and staff who will be involved in the project. The Contractor team shall provide contact information, including email address, for the Principal in Charge and project managers.

8. The Proposer shall submit a minimum of two writing samples, to include sample survey questionnaires and reports, done in the last five years relevant to the scope of work as specified in this RFP.
9. The key personnel shall be dedicated to the City's account. The Contractor shall not change the key personnel dedicated to the City's project without written permission.



10. The Proposer shall be accessible, at the minimum, by email, virtual platform, and telephone, Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., Pacific Time, excluding City holidays.
11. The Proposer shall submit a list, which indicates all primary contracts and/or amendments awarded to the Contractor team from the City for the last 10 years.
12. Proposer shall provide a company/corporate organizational chart and staffing profile.
13. The Proposer shall be competent in the use of standard computerized technology. The format for all draft and final documents shall be in Microsoft Word or Microsoft Excel.

**E. REFERENCES.**

1. Proposers shall provide a minimum of five references to demonstrate successful performance for work of similar size and scope as specified in this contract during the past five years. References shall be provided in the Contractor Standard Pledge of Compliance form (additional pages will need to be attached to the form, as that form is only set up for three references).
2. Proposers shall also demonstrate that they are properly equipped to perform the work as specified in this RFP. The City reserves the right to contact references not provided by the Contractor team. References that do not respond within five calendar days will be considered an unsatisfactory reference. References shall be provided in accordance with the attached form.
3. The City shall rely on references as part of the evaluation process. The City reserves the right to take any or all of the following actions: to reject a proposal based on an unsatisfactory reference, to contact any person or persons associated with the reference, to request additional references, to contact organizations known to have used in the past or currently using the services supplied by the Proposer, or the Proposer's Subcontractors (as listed in the EOCP form of this RFP), and to contact independent consulting firms for additional information about the Proposer or the Proposer's Subcontractors.

**F. POST AWARD KICK-OFF MEETING.** Proposer receiving award under this solicitation shall be required to attend a post-award kick-off meeting within five calendar days after award of contract to be scheduled by the Contract Administrator or designee. The Contract Administrator or designee will communicate the date, time, location, and agenda for this meeting to Proposer.

**G. REPORT REQUIREMENTS.** Proposer shall provide reports as requested detailing progress and outstanding issues. Reports shall be submitted to the City's Contract Administrator or designee electronically via email attachment in MS Word or Excel format. In some cases, as designated by the City's Contract Administrator or designee, report submittal in PDF format will be acceptable.

- H. PAYMENT WITHHELD.** The City may withhold payment to such extent as may be necessary to protect the City from loss due to:
- A. Work required in the specifications which are defective, incomplete, or not performed.
  - B. Claims filed against the City for damage caused by the Contractor’s acts or omissions, or reasonable evidence indicating probable filing of such claims.
  - C. Failure of the Contractor to make payments properly to Subcontractors for materials or labor.
  - D. A reasonable doubt that the contract can be completed for the balance then unpaid.
- I. MILESTONES SCHEDULE.** The City requires the following Milestones be met by the successful Proposer upon award of the contract. The City requests the Proposer to recommend a tentative Milestone Schedule for each survey listed below based on the requested Milestones identified below, which will be finalized upon approval by the City, taking into consideration the contract start date and City operational requirements.

Meetings may take place onsite, through a virtual platform (e.g., MS Teams, Zoom), or via telephone conference call at the discretion of the City.

Fiscal Year 2023	Milestones
Week TBD	Kick Off Meeting: Review requirements and introduction to City key staff.
Weeks TBD	Contractor submits interim monthly report on progress to date. Meeting with City key staff to discuss and ensure alignment of goals and progress, if required.
September 30, 2022	Contractor submits draft survey to the Human Resources Director and Human Resources Assistant Director for initial review.
Week TBD	Contractor provides draft survey to City staff on findings. Discussion held between City and Contractor regarding findings and progress, noting required changes.
Week TBD	Contractor to provide modified survey report incorporating any required changes based on Week TBD meeting.
December 31, 2022	Contractor provides final report.

**J. IMPLEMENTATION PLAN.**

Proposers shall submit an implementation plan relative to the anticipated “Milestone Schedule”, proposing procedural, operational steps, technical approach and timeline of

how the Proposer intends to provide the work plan for the specified requirements noted in Sections C and I of Exhibit B.

**K. MEETING REQUIREMENTS.**

The City may require Contractor to attend meetings to provide information to elected officials regarding the findings of the review and analysis, as needed. The duration of a City Council and Council Committee meeting is not anticipated to exceed two hours.

**L. OPTIONAL SERVICES.**

The City may require that the Contractor provide, at the discretion of the City, optional consulting services beyond those described in the Scope of Services [Optional Services], such as related surveys and data gathering for purposes of evaluating employee compensation. Prior to the Contractor's performance of Optional Services, the City and the Contractor must agree in writing upon a fee for the Optional Services. Optional consulting services may be required on an as-needed basis throughout the term of the contract.

**M. TECHNICAL REPRESENTATIVE.**

The Technical Representative for this Contract is the City's Human Resources Department, the designee specified in the notice of award issued under this Contract. The Technical Representative will provide daily oversight of this Contract to ensure compliance with the scope of work and/or performance to Contract specifications. The Technical Representative, or designee, is also responsible for oversight of all invoice payments and billing questions for purchase orders issued under this Contract.

The Purchasing Agent shall be responsible for all contractual matters and is the only individual authorized to make changes of any kind to the Contract. The Contractor shall not rely upon any oral change from anyone or a written request for change from someone other than the Purchasing Agent. All changes must be in writing, signed by the Purchasing Agent.

**N. PRICING.**

**1. PRICE SCHEDULE INSTRUCTIONS.**

Proposer's pricing shall be submitted as a flat rate for the performance of all specifications in this RFP. The City shall evaluate pricing for this RFP solely based upon Proposer's submitted flat rate price, as specified in the below table.

Proposers shall submit their proposal for pricing on the following City's Price Schedule. Using the enclosed Price Schedule will help ensure consistency in the price evaluation process.

The Price Schedule is to be completed in full and shall be incorporated herein. Only the City's Price Schedule will be accepted. Any deviations from the Price Schedule may be considered non-responsive and unacceptable. Blanks on the Price Schedule will be interpreted as zero (0) and no price will be allowed.

All prices, rates, and notations must be written in ink or typed. Responses must be free of erasures. Corrections must be initialed in ink by the person signing the Proposal.

**2. PRICE SCHEDULE.**

Proposers must provide a breakdown of hourly-based rate(s), an estimate of labor hours, and dollar amount to complete the scope of services, and any other rationale used in determining their pricing for all of the specified requirements.

Hourly rate shall be inclusive of all fees and costs of operations to provide the contract services, including but not limited to photocopying, support services, travel (at the GSA rate), lodging and any other expenses incurred in the course of representing the City. Pricing must be submitted a flat rate for the performance of all core requirements, deliverables and tasks as specified in the RFP. Any variations of the hourly needs during the contract period shall not entitle the proposer an adjustment in hourly rates noted or to any additional compensation.

Description	Total
Flat Rate for Total Compensation Surveys (as specified in RFP)	\$

**3. MANNER OF PAYMENT.**

Notwithstanding any provisions in this Contract to the contrary, including General Contract Terms and Provisions, Article III, section 3.1, the City will not begin payments to Contractor before July 1, 2022. Contractor will be paid monthly, in arrears, for any services provided after July 1, 2022, in accordance with the terms and conditions specified in this Contract and to the satisfaction of the City.



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

**ARTICLE I**  
**SCOPE AND TERM OF CONTRACT**

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

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

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

**ARTICLE II**  
**CONTRACT ADMINISTRATOR**

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

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

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

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

### ARTICLE III COMPENSATION

**3.1 Manner of Payment.** Contractor will be paid monthly, in arrears, for goods and/or services provided in accordance with the terms and provisions specified in the Contract.

**3.2 Invoices.**

**3.2.1 Invoice Detail.** Contractor's invoice must be on Contractor's stationary with Contractor's name, address, and remittance address if different. Contractor's invoice must have a date, an invoice number, a purchase order number, a description of the goods or services provided, and an amount due.

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

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

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

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

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

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

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

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

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

#### **ARTICLE IV SUSPENSION AND TERMINATION**

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

**4.2 City's Right to Terminate for Convenience.** City may, at its sole option and for its convenience, terminate all or any portion of this Contract by giving thirty (30) days' written notice of such termination to Contractor. The termination of the Contract shall be effective upon receipt of the notice by Contractor. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs otherwise); and (2) complete any and all additional work necessary for the orderly filing of



documents and closing of Contractor's affected performance under the Contract. After filing of documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or received by Contractor in performing this Contract, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Contract with regard to the affected performance.

**4.3 City's Right to Terminate for Default.** Contractor's failure to satisfactorily perform any obligation required by this Contract constitutes a default. Examples of default include a determination by City that Contractor has: (1) failed to deliver goods and/or perform the services of the required quality or within the time specified; (2) failed to perform any of the obligations of this Contract; and (3) failed to make sufficient progress in performance which may jeopardize full performance.

**4.3.1** If Contractor fails to satisfactorily cure a default within ten (10) calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

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

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

**4.5 Contractor's Right to Payment Following Contract Termination.**

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

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

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

## **ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS**

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

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

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

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

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

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

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

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

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

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

**5.9.1** Contractor shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE VI INTELLECTUAL PROPERTY RIGHTS**

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

**6.2 Intellectual Property Rights Assignment.** For no additional compensation, Contractor hereby assigns to City all of Contractor's rights, title, and interest in and to the content of the Deliverable Materials created by Contractor or its employees, agents, or subcontractors, including copyrights, in connection with the services performed under this Contract. Contractor

shall promptly execute and deliver, and shall cause its employees, agents, and subcontractors to promptly execute and deliver, upon request by the City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials. Contractor also shall cooperate and assist in the prosecution of any action or opposition proceeding involving such intellectual property rights and any adjudication of those rights.

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

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

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

of Infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

**6.6 Software Licensing.** Contractor represents and warrants that the software, if any, as delivered to City, does not contain any program code, virus, worm, trap door, back door, time or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of licensor-selected conditions or manually on command. Contractor further represents and warrants that all third party software, delivered to City or used by Contractor in the performance of the Contract, is fully licensed by the appropriate licensor.

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

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

## **ARTICLE VII INDEMNIFICATION AND INSURANCE**

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

**7.2 Insurance.** Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or

in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors.

Contractor shall provide, at a minimum, the following:

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE VIII BONDS**

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

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

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

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

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

and effect as required under this Contract, will be a material breach of the Contract subject to termination of the Contract.

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

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

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

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

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

### **9.1.3 Non-Discrimination Requirements.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE X CONFLICT OF INTEREST AND VIOLATIONS OF LAW

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

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

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

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

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

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

## **ARTICLE XI DISPUTE RESOLUTION**

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

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

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

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

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

## **ARTICLE XII MANDATORY ASSISTANCE**

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

attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

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

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

### **ARTICLE XIII MISCELLANEOUS**

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

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

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

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

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

**13.6 Compliance with Controlling Law.** Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract

termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

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

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

**13.9 Successors in Interest.** This Contract and all rights and obligations created by this Contract shall be in force and effect whether or not any parties to the Contract have been succeeded by another entity, and all rights and obligations created by this Contract shall be vested and binding on any party's successor in interest.

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

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

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

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

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



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

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

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

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

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

## Attachment 1

### LIST OF BENCHMARK CLASSIFICATIONS AND SURVEY AGENCIES

American Federation of State, County and Municipal Employees, Local 127 (Local 127)	
Classifications	Agencies
<ol style="list-style-type: none"> <li>1. Airport Operations Assistant</li> <li>2. Building Service Technician</li> <li>3. Carpenter</li> <li>4. Cement Finisher</li> <li>5. Communications Technician</li> <li>6. Custodian II</li> <li>7. Electrician</li> <li>8. Equipment Operator II</li> <li>9. Equipment Technician II</li> <li>10. Fleet Technician</li> <li>11. Grounds Maintenance Worker II</li> <li>12. Heavy Truck Driver II</li> <li>13. HVACR Technician</li> <li>14. Laborer</li> <li>15. <b>Landfill Equipment Operator</b></li> <li>16. Painter</li> <li>17. Plant Process Control Electrician</li> <li>18. Plant Technician II</li> <li>19. Plumber</li> <li>20. Power Plant Operator</li> <li>21. Pump Station Operator</li> <li>22. Roofer</li> <li>23. Sanitation Driver II</li> <li>24. Traffic Signal Technician II</li> <li>25. Utility Worker I</li> <li>26. Wastewater Plant Operator</li> <li>27. Water Distribution Operator</li> <li>28. Water Plant Operator</li> <li>29. Water Systems Technician III</li> </ol>	<ol style="list-style-type: none"> <li>1. City of Anaheim</li> <li>2. City of Bakersfield</li> <li>3. City of Fresno</li> <li>4. City of Long Beach</li> <li>5. City of Los Angeles</li> <li>6. City of Oakland</li> <li>7. City of Riverside</li> <li>8. City of Sacramento</li> <li>9. City and County of San Francisco</li> <li>10. City of San Jose</li> <li>11. City of Santa Ana</li> <li>12. City of Carlsbad</li> <li>13. City of Chula Vista</li> <li>14. City of El Cajon</li> <li>15. City of Escondido</li> <li>16. City of Imperial Beach</li> <li>17. City of National City</li> <li>18. City of Oceanside</li> <li>19. City of Poway</li> <li>20. City of San Marcos</li> <li>21. City of Vista</li> <li>22. County of San Diego</li> </ol>

San Diego Municipal Employees Association (MEA)	
Classifications	Agencies
<ol style="list-style-type: none"> <li>1. <b>Account Audit Clerk</b></li> <li>2. Account Clerk</li> <li>3. Accountant II</li> <li>4. Airport Manager</li> <li>5. Area Manager II</li> <li>6. Assistant Chemist</li> <li>7. Associate Communications Engineer</li> <li>8. Associate Engineer - Civil</li> <li>9. Associate Management Analyst</li> <li>10. Associate Planner</li> <li>11. Associate Procurement Contracting Officer</li> <li>12. Associate Property Agent</li> <li>13. Biologist II</li> <li>14. Building Maintenance Supervisor</li> <li>15. <b>Claims Representative II</b></li> <li>16. Clerical Assistant II</li> <li>17. <b>City Attorney Investigator</b></li> </ol>	<ol style="list-style-type: none"> <li>1. City of Anaheim</li> <li>2. City of Bakersfield</li> <li>3. City of Fresno</li> <li>4. City of Long Beach</li> <li>5. City of Los Angeles</li> <li>6. City of Oakland</li> <li>7. City of Riverside</li> <li>8. City of Sacramento</li> <li>9. City and County of San Francisco</li> <li>10. City of San Jose</li> <li>11. City of Santa Ana</li> <li>12. City of Carlsbad</li> <li>13. City of Chula Vista</li> <li>14. City of El Cajon</li> <li>15. City of Escondido</li> <li>16. City of Imperial Beach</li> <li>17. City of National City</li> </ol>

18. Code Compliance Officer  
19. Combination Inspector II  
20. Crime Scene Specialist  
21. Criminalist II  
22. Customer Services Representative  
23. **Development Project Manager II**  
24. Dispatcher II  
25. District Manager  
26. **Environmental Biologist II**  
27. **Environmental Health Inspector II**  
28. Executive Assistant  
29. Field Representative  
30. Fire Dispatcher  
31. Fleet Repair Supervisor  
32. **Golf Operations Assistant**  
33. Grounds Maintenance Supervisor  
34. Hazardous Materials Inspector II  
35. **Horticulturist**  
36. Instrumentation and Control Supervisor  
37. Junior Engineer - Civil  
38. Laboratory Technician  
39. Land Surveying Associate  
40. Latent Print Examiner II  
41. Legal Secretary II  
42. Legislative Recorder II  
43. Librarian II  
44. Librarian IV  
45. Library Assistant III  
46. **Marine Biologist II**  
47. Motor Sweeper Supervisor  
48. Paralegal  
49. **Park Designer**  
50. Park Ranger  
51. Parking Enforcement Officer I  
52. **Payroll Audit Specialist II**  
53. Payroll Specialist II  
54. Plan Review Specialist III  
55. Plant Technician Supervisor  
56. Police Dispatch Supervisor  
57. Police Dispatcher  
58. Police Property and Evidence Specialist  
59. Police Service Officer II  
60. **Pool Guard I**  
61. **Project Officer I**  
62. Property Agent  
63. Public Information Officer  
64. Public Works Supervisor  
65. **Recreation Aide**  
66. Recreation Center Director III  
67. **Recreation Leader I**  
68. Recreation Specialist  
69. Recycling Specialist II  
70. Safety Officer

18. City of Oceanside  
19. City of Poway  
20. City of San Marcos  
21. City of Vista  
22. County of San Diego

<ul style="list-style-type: none"> <li>71. <b>Senior Backflow and Cross Connection Specialist</b></li> <li>72. Senior Engineer - Fire Protection</li> <li>73. Senior Planner</li> <li>74. <b>Senior Utility Supervisor</b></li> <li>75. Senior Water Distribution Operations Supervisor</li> <li>76. <b>Senior Water Utility Supervisor</b></li> <li>77. <b>Storekeeper II</b></li> <li>78. <b>Storm Water Environmental Specialist II</b></li> <li>79. <b>Storm Water Inspector II</b></li> <li>80. <b>Supervising Claims Representative</b></li> <li>81. <b>Supervising Development Project Manager</b></li> <li>82. Supervising Procurement Contracting Officer</li> <li>83. Supervising Wastewater Pretreatment Inspector</li> <li>84. Supervising Worker's Compensation Claims Representative</li> <li>85. <b>Swimming Pool Manager II</b></li> <li>86. <b>Therapeutic Recreation Leader</b></li> <li>87. <b>Victim Services Coordinator</b></li> <li>88. Wastewater Operations Supervisor</li> <li>89. Wastewater Pretreatment Inspector II</li> <li>90. Water Operations Supervisor</li> <li>91. Water Production Superintendent</li> <li>92. Workers' Compensation Claims Representative II</li> <li>93. <b>Zoning Investigator II</b></li> </ul>	
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<b>San Diego City Firefighters, I.A.F.F. Local 145 (Local 145)</b>	
<b>Classifications</b>	<b>Agencies</b>
<ul style="list-style-type: none"> <li>1. Air Operations Chief</li> <li>2. Assistant Fire Marshal</li> <li>3. Fire Battalion Chief</li> <li>4. Fire Captain</li> <li>5. Fire Engineer</li> <li>6. Fire Fighter II</li> <li>7. Fire Helicopter Pilot</li> <li>8. Fire Prevention Inspector II</li> <li>9. Fire Prevention Supervisor</li> <li>10. Fire Recruit</li> </ul>	<ul style="list-style-type: none"> <li>1. City and County of San Francisco</li> <li>2. City of Anaheim</li> <li>3. City of Bakersfield</li> <li>4. City of Carlsbad</li> <li>5. City of Chula Vista</li> <li>6. City of Encinitas</li> <li>7. City of Escondido</li> <li>8. City of Fremont</li> <li>9. City of Fresno</li> <li>10. City of Long Beach</li> <li>11. City of Los Angeles</li> <li>12. City of National City</li> <li>13. City of Oakland</li> <li>14. City of Oceanside</li> <li>15. City of Poway</li> <li>16. City of Riverside</li> <li>17. City of Sacramento</li> <li>18. City of San Jose</li> <li>19. City of San Marcos</li> <li>20. City of Stockton</li> <li>21. City of Vista</li> </ul>

<b>California Teamsters Local 911 (Local 911)</b>	
<b>Classifications</b>	<b>Agencies</b>
<ul style="list-style-type: none"> <li>1. Lifeguard II</li> <li>2. Lifeguard Sergeant</li> </ul>	<ul style="list-style-type: none"> <li>1. City of Huntington Beach</li> <li>2. City of Imperial Beach</li> </ul>

3. Marine Safety Lieutenant	3. City of Laguna Beach 4. City of Long Beach 5. City of Los Angeles 6. City of Newport 7. County of Los Angeles
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<b>Deputy City Attorneys Association of San Diego (DCAA)</b>	
<b>Classifications</b>	<b>Agencies</b>
1. Deputy City Attorney II 2. Deputy City Attorney III	1. City of Anaheim 2. City of Bakersfield 3. City of Fresno 4. City of Long Beach 5. City of Los Angeles 6. City of Oakland 7. City of Oxnard 8. City of Riverside 9. City of Sacramento 10. City and County of San Francisco 11. City of San Bernardino 12. City of San Jose 13. City of Santa Ana 14. City of Santa Barbara 15. City of Stockton 16. City of Carlsbad 17. City of Chula Vista 18. City of Escondido 19. City of National City 20. City of Oceanside 21. County of San Diego

<b>San Diego Police Officers Association (POA)</b>	
<b>Classifications</b>	<b>Agencies</b>
1. Police Captain 2. Police Detective 3. Police Lieutenant 4. Police Officer II 5. Police Recruit 6. Police Sergeant	1. City of Anaheim 2. City of Bakersfield 3. City of Fresno 4. City of Long Beach 5. City of Los Angeles 6. City of Oakland 7. City of Riverside 8. City of Sacramento 9. City and County of San Francisco 10. City of San Jose 11. City of Santa Ana 12. City of Carlsbad 13. City of Chula Vista 14. City of El Cajon 15. City of Escondido 16. City of National City 17. City of Oceanside 18. County of San Diego

**Unrepresented**

<b>Classifications</b>	<b>Agencies</b>
1. Administrative Services Program Manager	1. City of Anaheim
2. Assistant City Attorney	2. City of Bakersfield
3. Associate Department Human Resources Analyst	3. City of Fresno
4. Budget/Legislative Analyst II	4. City of Long Beach
5. Central Stores Program Manager	5. City of Los Angeles
6. Chief Financial Officer	6. City of Oakland
7. Chief Operating Officer	7. City of Riverside
8. City Auditor	8. City of Sacramento
9. City Clerk	9. City and County of San Francisco
10. City Treasurer	10. City of San Jose
11. Confidential Secretary to the Police Chief	11. City of Santa Ana
12. Crime Laboratory Manager	
13. Deputy Fire Chief	12. City of Carlsbad
14. Development Services Director	13. City of Chula Vista
15. Engineering Program Manager	14. City of El Cajon
16. Environmental Services Director	15. City of Escondido
17. Equal Employment Investigations Manager	16. City of Imperial Beach
18. Executive Assistant Chief of Police	17. City of National City
19. Executive Director, ADA Compliance and Accessibility	18. City of Oceanside
20. Executive Director, Citizen's Review Board on Police Practices	19. City of Poway
21. Executive Director, Human Relations Commission	20. City of San Marcos
22. Executive Director, Office of Homeland Security	21. City of Vista
23. Finance Director	22. County of San Diego
24. Financial Operations Manager	
25. Fire Chief	
26. Governmental Relations Director	
27. Grants and Donations Program Manager	
28. Human Resources Director	
29. Information Systems Analyst II	
30. Investment Officer	
31. Library Director	
32. Lifeguard Chief	
33. Parks and Recreation Director	
34. Performance Auditor	
35. Personnel Director	
36. Planning Director	
37. Police Administrative Services Manager	
38. Police Chief	
39. Principal Accountant	
40. Principal Planner	
41. Public Utilities Director	
42. Public Works Director	
43. Purchasing and Contracting Director	
44. Real Estate Assets Director	
45. Recycled Water Division Program Manager	
46. Retirement Administrator	
47. Risk Management Director	
48. Senior Human Resources Officer	
49. Storm Water Director	

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| <ul style="list-style-type: none"><li>50. Storm Water Program Manager</li><li>51. Streets Program Manager</li><li>52. Supervising Department Human Resources Analyst</li><li><b>53. Transportation Director</b></li><li><b>54. Transportation Program Manager</b></li><li>55. Waste Reduction Division Program Manager</li><li>56. Youth Workforce Development Officer</li></ul> |  |
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Purchasing & Contracting Department

June 22, 2022

VIA EMAIL TO: [gkrammer@koffassociates.com](mailto:gkrammer@koffassociates.com)

Georg S. Krammer, Managing Director  
Koff & Associates, A Gallagher Company  
2835 Seventh Street  
Berkeley, CA 94710

Subject: Request for Proposal (RFP) No. 10089860-22-S, Total Compensation Surveys

Dear Mr. Krammer:

On February 9, 2022, the City of San Diego received your list of exceptions to the terms of the Contract relating to the above-referenced solicitation (attached). On June 2, 2022, the City of San Diego received your request to include the previously agreed upon modifications to the terms from Sole Source 4288.

Exhibit A, item A.2.2 of the subject RFP, states, in pertinent part: "Any exceptions to the Contract that have not been accepted by the City in writing are deemed rejected. The City, in its sole discretion, may accept some or all of proposer's exceptions, reject proposer's exceptions and deem the proposal non-responsive, or award the Contract without proposer's proposed exceptions."

This letter confirms our agreement to modify the following terms of the Contract relating to the above-referenced solicitation:

1. Exhibit B, Section D Qualifications and Experience, subsection 9 shall be **modified** to the following:

"The key personnel shall be dedicated to the City's account. The Contractor may change the key personnel dedicated to the City's project but must provide written notice and will use good faith efforts to ensure that the City is satisfied with any replacement personnel assigned."

2. Exhibit C, Section 5.9 Records Retention and Examination of the City's General Contract Terms and Provisions, request to modify provision has been **rejected**:

This requirement is standard of all City contracts.



3. Exhibit C, Section 5.13 Project Personnel of the City's General Contract Terms and Provisions, shall be **modified** to the following:

"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 Contractor will use good faith efforts to ensure that the City is satisfied with any replacement personnel assigned."

4. Exhibit C, Section 5.13.1 of the City's General Contract Terms and Provisions, request to modify provision has been **rejected**:

This requirement is standard of all City contracts.

5. Exhibit C, Section 7.1 Indemnification of the City's General Contract Terms and Provisions, request to modify provision has been **rejected**:

This requirement is standard of all City contracts.

6. Exhibit C, Section 7.2.5.2 Primary Coverage of the City's General Contract Terms and Provisions, shall be **modified** to the following:

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

7. Exhibit C, Section 7.2.5.3 Notice of Cancellation of the City's General Contract Terms and Provisions, shall be **modified** to the following:

"Any cancelled or non-renewed policy will be replaced with no coverage gap and a current Certificate of Insurance will be provided to the City, with notice to the City."

8. Exhibit C, Section 7.2.5.5 Claims Made Policies (applicable only to professional liability) of the City's General Contract Terms and Provisions, shall be **modified** to the following:

"The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of three (3) years after completion of work."

9. Exhibit C, Section 7.3 Self Insured Retentions of the City's General Contract Terms and Provisions, request to modify provision has been **rejected**.

10. Exhibit C, Section 10.5 Hiring City Employees of the City's General Contract Terms and Provisions, request to delete or modify the following provision has been rejected:

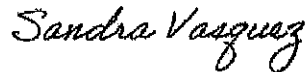
This provision is consistent with Council Policy 300-11.

11. Exhibit C, Section 12.1 Mandatory Assistance of the City's Contract Terms and Provisions, shall be modified to the following:

"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 to provide testimony relevant to the services being provided to the City, or any event related to the dispute resolution and/or litigation."

Please indicate your agreement with the above by signing the bottom of this letter. Thank you for your assistance.

Sincerely,

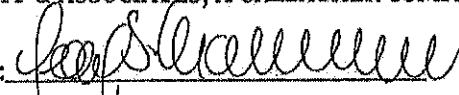



Sandra M. Vasquez  
Supervising Procurement Contracting Officer, Purchasing & Contracting

This Letter is executed by the City and Contractor acting by and through their authorized representatives.

KOFF & ASSOCIATES, A GALLAGHER COMPANY

THE CITY OF SAN DIEGO

By:   
Name: George S. Krammer

By:   
Name: Claudis C. Barca

Title: Managing Director

Title: Director, Purchasing & Contracting

Date: June 21, 2022

Date: June 23, 2022

Attachments:

1. February 9, 2022 from Koff with list of exceptions.
2. June 2, 2022 email from Koff requesting additional modifications to the Contract.