

**CONTRACT RESULTING FROM INVITATION TO BID NUMBER 10089360-19-L SWEEPING
AND POWER WASHING OF OCEAN BEACH PIER**

This Contract (Contract) is entered into by and between the City of San Diego, a municipal corporation (City), and the successful bidder to Invitation to Bid (ITB) # 10089360-19-L SWEEPING AND POWER WASHING OF OCEAN BEACH PIER (Contractor).

RECITALS

On or about 6/10/2019, City issued an ITB to prospective bidders on services to be provided to the City. The ITB and any addenda and exhibits thereto are collectively referred to as the "ITB." The ITB is attached hereto as Exhibit A.

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

City wishes to retain Contractor to provide as needed Sweeping and Power Washing of Ocean Beach Pier 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 Service.

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

**ARTICLE II
DURATION OF CONTRACT**

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

2.2 Effective Date. This Contract shall be effective on the date it is executed by the last Party to sign the Contract, 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 the amount submitted on the Pricing page(s) plus any City approved price increases over the term of this ITB.

**ARTICLE IV
WAGE REQUIREMENTS**

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

**ARTICLE V
CONTRACT DOCUMENTS**

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

5.2 Contract Interpretation. The Contract Documents completely describe the 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 document highest in the order of precedence controls. Inconsistent provisions in the Contract Documents that address the same subject, are consistent, and have different degrees of specificity, are not in conflict and the more specific language will control. The order of precedence from highest to lowest is as follows:

- 1st The Contract
- 2nd The ITB and the City's written acceptance of any exceptions or clarifications to the ITB, if any
- 3rd Contractor's Pricing

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

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

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

CONTRACTOR

CITY OF SAN DIEGO
A Municipal Corporation

San Diego Power Clean Inc

Bidder

P.O. Box. 151353

Street Address

San Diego


City

619-440-8177

Telephone No.

sdpowerclean@gmail.com

E-Mail

BY: 

Print Name: Kristina Peratta

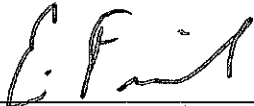
Director

Purchasing & Contracting Department

16 NOV 2019

Date Signed

BY:



Signature of Bidder's Authorized Representative

Eric Friend

Print Name

President

Title

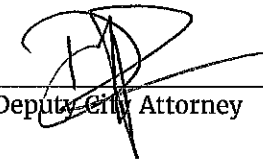
10/10/2019

Date

Approved as to form this 7 day of

November, 2019.

MARA W. ELLIOTT, City Attorney

BY: 

BY:

Deputy City Attorney

EXHIBIT A

**CITY OF SAN DIEGO
INVITATION TO BID (ITB) FOR
SWEEPING AND POWER WASHING AT OCEAN BEACH PIER**



Solicitation Number: 10089360-19-L

Closing Date and Time (“Closing Date”): 3:00 p.m. PT, June 28, 2019

Questions and Comments Due: 5:00 p.m. PT, June 17, 2019

City Contact: Lisa Hoffmann, CPPB
Senior Procurement Contracting Officer
Purchasing & Contracting Department
1200 Third Avenue, Suite 200
San Diego, California 92101
LHoffmann@sandiego.gov

Submissions: Respondent is required to provide two (2) originals*, one (1) copy and one (1) electronic copy (e.g. thumb drive or CD) of their response as described herein.

**Completed and wet signed RFP Contract Signature Pages are required with each original submittal. If addenda are issued, the most recent completed and wet signed RFP Addendum Contract Signature Pages are required.
Emailed submissions will not be accepted.*

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

CONTRACTOR

CITY OF SAN DIEGO
A Municipal Corporation

Bidder

BY:

Street Address

Print Name:
Director
Purchasing & Contracting Department

City

Date Signed

Telephone No.

E-Mail

BY:

Approved as to form this ____ day of

Signature of Bidder's Authorized
Representative

_____, 20____.
MARA W. ELLIOTT, City Attorney

Print Name

BY: _____
Deputy City Attorney

Title

Date

EXHIBIT A
INSTRUCTIONS AND BID REQUIREMENTS

A. BID SUBMISSION

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

1.1 Reserved.

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

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

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

1.4.1 Reserved.

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

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

2. Submission of Information and Forms.

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

2.2 Exceptions requested by bidder, if any. The bidder must present written factual or legal justification for any exception requested to the Scope of Work, Contract, or the Exhibits. Any exceptions to the Contract that have not been accepted by the City in writing are deemed rejected. The City, in its sole discretion, may accept some or all of

bidder's exceptions, reject bidder's exceptions and deem the bid non-responsive, or award the Contract without bidder's proposed exceptions.

2.3 The Contractor Standards Pledge of Compliance Form.

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

2.5 Living Wage Ordinance Certification of Compliance.

2.6 Reserved.

2.7 Reserved.

2.8 Additional Information as required in Exhibit B.

2.9 Reserved

2.10 Reserved

2.11 One copy of the safety data sheet (SDS) for each product bid. Only those products whose label and MSDS clearly state the contents, hazard potential, and protective measures required shall be considered for purchase.

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

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

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

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

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

6.2 **Brand Names.** Any reference to a specific brand name in a solicitation is illustrative only and describes a component best meeting the specific operational, design, performance, maintenance, quality, or reliability standards and requirements of the City.

Bidder may offer an equivalent or equal in response to a brand name referenced (Proposed Equivalent). The City may consider the Proposed Equivalent after it is subjected to testing and evaluation which must be completed prior to the award of contract. If the bidder offers an item of a manufacturer or vendor other than that specified, the bidder must identify the maker, brand, quality, manufacturer number, product number, catalog number, or other trade designation. The City has complete discretion in determining if a Proposed Equivalent will satisfy its requirements. It is the bidder's responsibility to provide, at their expense, any product information, test data, or other information or documents the City requests to properly evaluate or demonstrate the acceptability of the Proposed Equivalent, including independent testing, evaluation at qualified test facilities, or destructive testing.

7. Modifications, Withdrawals, or Mistakes. Bidder is responsible for verifying all prices and extensions before submitting a bid.

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

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

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

9. Public Records. By submitting a bid, the bidder acknowledges that any information submitted in response to this ITB is a public record subject to disclosure unless the City determines that a specific exemption in the California Public Records Act (CPRA) applies. If the bidder submits information clearly marked confidential or proprietary, the City may protect such information and treat it with confidentiality to the extent permitted by law. However, it will be the responsibility of the bidder to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the CPRA should the City choose to withhold such information. General references to sections of the CPRA will not suffice. Rather, the bidder must provide a specific and detailed legal basis, including applicable case law, that clearly establishes the requested information is exempt from the disclosure under the CPRA. If the bidder does not provide a specific and detailed legal basis for requesting the City to withhold bidder's confidential or proprietary information at the time of bid submittal, City will release the information as required by the CPRA and bidder will hold the City, its elected officials, officers, and employees harmless for release of this information. It will be the bidder's obligation to defend, at bidder's expense,

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

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

B. PRICING

1. Fixed Price. All prices shall be firm, fixed, fully burdened, and include any other costs required to provide the requirements as specified in this ITB.

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

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

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

C. BID OPENING. All bids will be opened at, or immediately after, the time noticed for the bid opening in a location that is open to the public. No bidder or interested person will be excluded from the bid opening. Where no member of the public is in attendance, at least one City officer or employee, in addition to the City employee opening the bids, will be present. Bid results will be announced in the presence of those attending. The name of the project will be audibly announced to those present followed by the name of the bidder, the name of the surety, the amount of the bond, if required, and the total amounts or unit amounts bid. Any person present shall have the right to ask the announcements be repeated or to ask that omitted data be supplied. Such requests will be honored to the extent they do not unreasonably delay or interfere with the bid opening procedure, as determined at the sole discretion of the City employee opening the bids.

D. EVALUATION OF BIDS

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

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

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

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

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

E. ANNOUNCEMENT OF AWARD

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

2. **Obtaining Bid Results.** Bid results may be obtained by: (1) attending the bid opening; (2) e-mailing a request to the City Contact identified on the eBidding System; or (3) visiting the P&C eBidding System to review the bid results. To ensure an accurate response, requests should reference the Solicitation Number. Bid results will not be released over the phone.

3. **Multiple Awards.** City may award more than one contract by awarding separate items or groups of items to various bidders. The additional administrative costs associated with awarding more than one Contract will be considered in the determination.

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

G. **SUBMITTALS REQUIRED UPON NOTICE OF INTENT TO AWARD.** The successful bidder is required to submit the following documents to P&C **within ten (10) business days** from the date on the Notice of Intent to Award letter:

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

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

3. Business Tax Certificate. All businesses that contract with the City must have a current business tax certificate unless the City Treasurer determines the business is exempt.

4. Reserved.

5. Reserved.

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

**EXHIBIT B
SCOPE OF WORK**

A. SCOPE OF CONTRACT. The Contract arising from the winning bidder’s bid for Sweeping and Power Washing at the Ocean Beach Pier (the “Pier”) shall be done in accordance with the specifications herein regardless of weather conditions, unless the Pier has been closed by the City of San Diego due to high surf conditions.

The Pier is located at 5000 Niagara Avenue, San Diego, California 92107; is open twenty-four (24) hours a day, seven (7) days a week; and is approximately 2,112 sq. ft. long and approximately 46,805 sq. ft. in total surface area. The Contractor will be required to clean certain portions of the Pier (the “Work Site(s)”), as further described in this **Exhibit B**. The Contractor shall provide all equipment, labor, and materials necessary for performing the services described in this **Exhibit B**. The Pier cleaning service must be completed before Friday of each week on a weekly basis, 52 weeks a year.

B. SITE INSPECTION. Bidders are strongly encouraged and responsible for inspecting the Work Site to verify the condition and size of Work Site to be serviced. Failure to inspect the Work Site will not relieve the Contractor of their responsibility to perform in accordance with the specifications of this Contract. No additional compensation or relief from any obligations of the Contract will be granted because of lack of knowledge of the Work Site. By submitting a bid, Bidder acknowledges that they are relying on their own examination of the Work Site and have the capability to fulfill the Contract requirements; and are knowledgeable of all other data and matters requisite to the fulfillment of the Contract.

The information provided by the City is not intended to be a substitute for, or a supplement to the independent verification by the bidder to the extent such independent investigation of the Work Site conditions is deemed necessary or desirable by the bidder. Bidder acknowledges that it has not solely relied upon City furnished information regarding Pier conditions in preparing and submitting a bid.

C. DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION NUMBER. A DIR Registration number must be provided below for the bidder and all subcontractors proposed to be used on the Contract.

	Registration No.	Expiration Date	Name
DIR Registration No. for Contractor			
DIR Registration No. for Subcontractor			
DIR Registration No. for Subcontractor			

D. IMPOSED DROUGHT EMERGENCY/WATER CONSERVATION. The Contractor must comply, at all times, with the current level of the Emergency Water Regulations (see

Attachment: San Diego Municipal Code section 67.38) and any adopted City policies or procedures with respect to water usage, as may be amended from time to time. The Contractor must obtain prior written approval from the Technical Representative or designee before exceeding any applicable water regulations. When excessive use or waste of irrigation water results from the Contractor's, or any subcontractors, performance under this Contract, the estimated cost of such water shall be deducted from the City's Contract payment to the Contractor. Contractor shall also pay any monetary fines or other damages assessed to the City for failure to follow water conservation regulations imposed by the State of California, the County Water Authority, or other legal entity arising out of performance of this Contract.

E. SERVICE REQUIREMENTS AND CLEANING SCHEDULE. Contractor shall be required to complete weekly service of the following Work Sites, to be performed in accordance with the Cleaning Standards listed in section H, below.

1. Contractor shall sweep, and power wash the entire concrete deck of the Pier (including the wooden railings) and clean all sinks and benches on Thursday of each week, between 10:00 p.m. and 6:00 a.m., (52) weeks a year, including City holidays. All fishing line, fishing hooks and other fishing debris shall be legally disposed of by the Contractor. The Contractor may place any kelp and sea grass back into the ocean. The sweeping of the Pier parking lot (located below the Ocean Beach Pier) is not included in this Contract.

2. The Contractor shall sweep the entire Pier deck using a self-contained motorized power sweeper as specified in section I, below. The Contractor is required to sweep, manually or with powered street sweeper, the concrete deck prior to power washing. The Contractor shall power wash the concrete deck to remove all stains and material embedded into the concrete surface. Each week approximately twenty-five percent (25%) of the Pier's concrete surface shall receive a detailed power washing (i.e. a pressure washer water trailer) to remove gum, stains, and other material embedded into the concrete, with the remaining seventy-five (75%) of the Pier receiving a general power washing to remove dirt, seaweed, fish remains, bird droppings, and other debris to maintain a clean appearance. Railings (top and sides) shall be power washed to remove all dirt, bird droppings, fish guts and fish blood, and any other accumulated matter. The Contractor shall power wash the trash container lids (i.e. blue sea gull lids). The Contractor shall not be required to empty the trash containers.

3. Any benches or trash receptacles moved while cleaning the deck or railings shall be replaced to their original position.

F. ADJUSTMENTS TO CLEANING SCHEDULE. Due to high tides, full moon, special events, and other unforeseen activities on the Pier, the City reserves the right to adjust the cleaning schedule by notifying the Contractor twenty-four (24) hours in advance of the scheduled cleaning.

The cleaning schedule shall not be adjusted unless authorized, in writing, by the Technical Representative or designee.

G. CLOSURE OF OCEAN BEACH PIER. Due to circumstances beyond the control of the City, the Pier may be closed. The Contractor shall be notified of such closure as soon as possible. When the entry gates are secured, the Contractor will not be allowed to access the Pier unless authorized by the Technical Representative or designee. If the Pier is closed

while the Contractor is on-site and has begun working, the Contractor shall be paid in full for that day.

H. CLEANING STANDARDS. The following standards are intended to indicate the minimum acceptable level of service required by Contractor when performing work under the Contract.

1. Sweep Concrete Deck. Remove all visible dirt, litter, and other debris to include areas under benches, fish cleaning tables, and other furniture on the Pier by sweeping with a power sweeper, as specified in section I, below.

Special attention shall be given to all surface areas to prevent the accumulation of dirt, seaweed, or other debris.

The Pier deck shall be swept prior to pressure washing. Hand sweeping shall be done, as required.

2. Power Wash Concrete Deck and Benches. Power wash all concrete surfaces and benches to remove all visible dirt, including areas under benches, fish cleaning tables and sinks, and around trash containers.

All spots, stains, and spills shall be removed as part of normal concrete surface cleaning.

3. Litter Removal. Contractor shall be responsible for picking up and disposing of all debris and litter in accordance with all applicable laws and regulations, including but not limited to broken glass, fishing line, wire, and other debris found on the surface which is not collected by sweeping. Except for kelp and sea grass, all debris and litter collected from the Pier shall be the responsibility of the Contractor to properly and legally dispose.

The Contractor may place kelp and sea grass back into the ocean.

4. Top and Side Railings. All railings shall be power washed and cleaned to remove dust, dirt, spots, stains, or bird droppings. Cleaning shall be performed in a manner consistent with standard cleaning practice and/or manufacturer recommendations of surface material to be cleaned.

5. Clean Sinks. All fish cleaning tables and sinks shall be cleaned and sanitized.

I. EQUIPMENT, MATERIAL, AND SUPPLIES. All equipment, materials, and supplies required for cleaning the Pier in accordance with these specifications shall be furnished by and at the expense of the Contractor. Equipment shall accommodate the weight restrictions of the Pier, **not to exceed 8,500 pounds including truck passengers and payload** and shall include a power sweeper with rotation brushes and a commercial high-pressure steam cleaning equipment with appropriate attachments which performs at 3,000 PSI.

J. CITY OBSERVED HOLIDAYS. Contractor shall not perform service under the Contract on the ten (10) City observed holidays, which are as follows:

1. New Year's Day,
2. Martin Luther King, Jr. Day,
3. Presidents' Day,

4. Cesar Chavez Day,
5. Memorial Day,
6. Independence Day,
7. Labor Day,
8. Veterans' Day,
9. Thanksgiving Day, and
10. Christmas Day.

K. EXTRA CLEANING SERVICES MUST BE PRE-AUTHORIZED. The Contractor may be called upon to provide extra cleaning service under this Contract.

No extra services shall be performed without specific written pre-authorization and instructions from the Technical Representative or designee. Extra cleaning services shall be in accordance with the Pricing Pages of this **Exhibit B** and listed separately on acceptable invoices to the City, with a copy of the written authorization attached. No travel time shall be charged.

L. PAYMENTS WITHHELD. It is agreed and understood that if the Contractor fails to perform the work as specified herein, the City will pay only for service received, as determined by the Technical Representative or designee, with an appropriate downward adjustment in price paid. Such adjustments may be in accordance with the Pricing Pages provided herein by the Contractor.

The City may inspect the Pier to ensure that maintenance and services are adequate and that all work complies with the requirements contained in this **Exhibit B**. Discrepancies and deficiencies will be documented by the Technical Representative or designee and shall be corrected by the Contractor within the time frame specified by the Technical Representative. If the Contractor fails to take corrective action within the noted time frame, the City may withhold payment, proceed with termination of the Contract, and/or pursue any and all other remedies available in law and equity. Billing adjustments for unsatisfactory service shall be a permanent retention of the estimated monthly cost for work that is incomplete or deficient as stated herein.

M. CONTRACT MODIFICATIONS. At any time during the Contract, the City reserves the right to increase or decrease Contractor's services performed under this Contract.

The Contract specifications and scope of work may only be modified by the Purchasing Agent and shall be confirmed in writing prior to implementation. Any Contract modifications which are not approved by the Purchasing Agent will be considered unauthorized and shall not obligate the City to pay for said services.

N. DEPARTMENT'S/CITY'S GENERAL ROLES AND RESPONSIBILITIES.

1. Water. The City shall bear the cost for water used in the maintenance of the Pier as specified in this ITB, except for negligent water waste, as determined by the Technical Representative in his/her sole discretion, which will be charged to the Contractor.

2. Quality of Work Inspections by City's Technical Representative or Designee.

Regular inspections shall be conducted by the Technical Representative or designee. Any performance deficiencies shall be noted and emailed to the Contractor. Deficiencies must be corrected the next business day unless otherwise directed by the Technical Representative or designee.

O. CONTRACTOR'S RESPONSIBILITY.

1. Staffing. The Contractor shall furnish adequate supervisory and working personnel capable of completing all work required under this Contract as scheduled and to the satisfaction of the Technical Representative or designee.

The Contractor shall also maintain enough trained staff to cover vacations, illness, and emergency leave for staff assigned to this Contract.

2. Uniforms. The Contractor's staff, including supervisors, shall work in neat and clean uniforms provided by the Contractor. All uniforms shall be cleaned and maintained by the Contractor. At a minimum, the Contractor will furnish their employees with a shirt, or some other type of upper body wear, in a common color bearing the company's identification. Uniform shall also consist of proper footwear that fully covers the foot. Sandals and flip-flops are unacceptable footwear. Long pants shall be worn by each of Contractor's employees when performing work under this Contract. Shorts and cut-offs are unacceptable. The Contractor's staff must look professional and have proper personal hygiene. Appropriate uniforms shall be worn at all times while on the Pier or while performing services pursuant to this Contract, including personnel who are being trained.

3. Communication Skills. While performing any work under the Contract Contractor shall ensure that at least one supervisor is present who can communicate in English both verbally and in writing.

4. Contractor's Staff Reporting Procedures. Each time services are performed under this Contract, the Contractor shall send an email log to the City of San Diego Grounds Maintenance Manager for Shoreline Parks, as designed by the Technical Representative. The email log shall include the work start time and completed time of work from the evening before, and pictures of the Work Site(s) that were cleaned and completed as designated by the Technical Representative or designee. The email log will be kept with City Grounds Maintenance Manager. The City has no obligation to pay for services if the email log is not properly completed.

5. Contractor Response Time. A representative of the Contractor, authorized to discuss matters related to this Contract, must be available during normal business hours, between 6:30 a.m. and 5:00 p.m., Monday through Friday. The Contractor's representative must be available via cell phone and/or email during these designated times and must be able to communicate in English both verbally and in writing.

5.1 Emergency Calls. Contractor shall have a supervisor or manager available to respond to emergency telephone calls within fifteen (15) minutes of the call being placed. All actions required to resolve the emergency shall be completed within four (4) hours. Emergency calls are defined as those where the Technical Representative or designee states an emergency exists and notifies the Contractor's designated representative

of such emergency. Failure to take appropriate corrective action for emergencies within the time frame may result in termination of the Contract.

5.2 Non-Emergency Calls. Contractor shall have a supervisor or manager available to respond to non-emergency calls, or e-mails within one (1) hour. All actions required to resolve the non-emergency issue(s) or deficiencies must be completed by the next business day unless otherwise directed by the Technical Representative or designee. Failure to respond and/or take appropriate corrective action within the time frame specified may result in termination of the Contract.

6. Safety Requirements. All work performed under this Contract will be performed in such a manner as to provide maximum safety to the public and City and Contractor's employees, and shall comply with all safety provisions and regulations. The Contractor is responsible for abiding by all CAL/OSHA requirements, including the labeling of containers. Contractors who have ten (10) or more employees shall have an injury/illness program as required by OSHA.

Wet floor warning signs shall be supplied by the Contractor and properly utilized whenever a potentially hazardous floor condition exists. It is the Contractor's responsibility to ensure that adequate warning signs are posted and all safety regulations are adhered to.

Personal Protective Equipment (PPE), including fall protection devices, as required, shall be supplied by the Contractor for their employees, and properly used at all times.

7. Site Inspection Upon Commencement and Turnover of Contract.

7.1 Within five (5) days upon commencement of this Contract, the Contractor will inspect the Pier with the Technical Representative or designee to determine if the Pier is in compliance with the specifications. If deficiencies are identified, the Technical Representative or designee may authorize, in writing, a mutually agreed upon one (1) time payment to the Contractor to correct the deficiencies. If work is authorized, the Contractor will bring the Pier into compliance with the scope of work and thereafter maintain the Pier at that level.

7.2 Prior to the end of the Contract term, the Technical Representative or designee will inspect the Contract Sites with the current Contractor to ensure that the Work Sites are turned over at the end of the Contract term in a condition that conforms to the Contract specifications. Any deficiencies found in the specified maintenance level will be noted and presented to the current Contractor in writing. All deficiencies noted will be corrected by the end of the Contract term. The City will be the sole judge as to what constitutes a deficiency.

7.3 If the current Contractor fails to correct the noted deficiencies and turns over the Contract Sites in an unacceptable condition, as determined by the Technical Representative or designee, the City will authorize work to bring the Pier into compliance with the specifications. All costs incurred by the City to correct deficiencies will be deducted from the current Contractor's final payment. The City will be the sole judge as to what constitutes a reasonable cost for work authorized.

P. QUALITY OF WORK/INSPECTIONS. The Contractor shall provide quality services for the Pier. All work shall be performed in accordance with the best Industry Standard and all

facilities shall be kept clean and maintained in accordance with the Cleaning Standards stated with section H, above.

1. Inspections by Contractor. The Contractor shall perform regular and comprehensive inspections of the Pier to ensure that all work is completed in accordance with the scope of work. At a minimum, these inspections shall be performed by a supervisor designated by Contractor on a weekly basis.

The Contractor shall schedule a monthly meeting with the Technical Representative or designee to evaluate services performed. The Contractor shall schedule a regular monthly meeting day and time with the Technical Representative or designee.

2. Inspections by City's Technical Representative. Regular inspections shall be conducted by the City's Technical Representative or designee. Any performance deficiencies shall be noted and emailed or faxed to the Contractor.

Deficiencies must be corrected the next business day unless otherwise directed by the Technical Representative or designee. Failure to correct deficiencies to comply with the specifications within the time specified may result in deductions and/or termination of the Contract.

Q. COOPERATION AND TRANSITION. The Contractor shall cooperate with the City and any incumbent contractor at the expiration of any previous contract for the services described in this ITB in order to accomplish a smooth phase-out and transition of responsibilities and services.

R. REPORTING PLUMBING PROBLEMS. The Contractor shall report any plumbing stoppages, leaking faucets, damage to electrical posts by calling the City's Station 38 Dispatch Center at (619) 527-7660, advising of the problem and location of the problem.

S. NON-INTERFERENCE WITH CITY OPERATIONS. Employees and agents of Contractor shall, while on the City-owned property, comply with all City rules and regulations. Contractor shall acquaint itself with conditions at the Work Site so as not to interfere with City operations. Contractor shall not stop, delay, or interfere with City work schedule(s) or operations without the prior approval of the Technical Representative or designee. Contractor shall be entirely responsible for working in harmony with all others on the Work Site (i.e. City staff and Contractor's staff) when Contractor is working on City premises.

T. REFERENCES.

1. Bidders shall provide three (3) references to demonstrate successful performance for work of similar size and scope, as specified in this Contract, during the past five (5) years. References shall be provided in the Contractor Standards Pledge of Compliance form, paragraph F, item 7 (form available for download on PlanetBids).

2. Bidders shall also demonstrate that they are properly equipped to perform the work as specified in this Contract, by providing a list, along with the bid, of all the equipment that Contractor proposes to utilize in furnishing services under the Contract.

3. The City shall rely on references as part of the evaluation process. The City reserves the right to take any or all the following actions: to contact any person or persons

associated with the reference and to reject a bid submittal as non-responsible based on an unsatisfactory reference pursuant to San Diego Municipal Code section 22.3004.

U. DAMAGES. Contractor's personnel will immediately report any damages, defects, leaks, power outages, or any other problems or irregularities to the Technical Representative or designee. All other non-emergency issues, such as supply shortages, can be reported the following day.

V. HAZARDOUS WASTE DISPOSAL PROCEDURE. In any area where the Contractor is performing work under this Contract, the Contractor and/or Contractor's subordinate staff, upon finding illegally dumped debris which might reasonably be considered hazardous to the health and/or safety of Contractor's staff, the public, the landscape environment and/or adjacent properties, shall adhere to the following procedures:

1. Cordon off the area where the material has been found, to the extent possible.
2. Immediately call 911 (Fire Department) and provide all relevant information possible:
 - 2.1 Finder's name and company;
 - 2.2 Specific location of material;
 - 2.3 Try to determine:
 - 2.3.1 Number, size, and types of containers,
 - 2.3.2 Description of labels,
 - 2.3.3 Spillage to soil, pavement, water,
 - 2.3.4 Description: solid, liquid, color, and
 - 2.3.5 Any danger to public;
3. Inform the Technical Representative or designee as soon as possible;
4. Remain at site until the Fire Department arrives; and
5. Do not move, touch, or sniff any of the material.

W. PAYMENT WITHHELD. The City may withhold payment under this Contract, or make deductions, for Contractors failure to provide required services under this Contract or for unsatisfactory or substandard work not corrected to the satisfaction of the Technical Representative or designee within the time specified. Such deductions shall not prevent the City from proceeding with termination of the Contract in accordance with **Exhibit C: General Contract Terms and Conditions**.

The City may also withhold payment to such extent as may be necessary to protect the City from loss due to:

1. Claims filed against the City for damage caused by the Contractor's acts or omissions, or reasonable evidence indicating probable filing of claims.
2. The City determines, in its sole discretion, that repairs are required as a result of Contractor's negligence to include labor, materials, and equipment.

X. CITY WORK RULES. Employees and agents of the Contractor shall, while on the premises of the City, comply with all City rules and regulations. Contractor shall acquaint

itself with conditions at the work site so as not to interfere with City operations. Contractor shall not stop, delay, or interfere with City work schedule without the prior approval of the Technical Representative or designee.

Y. TECHNICAL REPRESENTATIVE. The Technical Representative for this Contract is identified in the notice of award and is responsible for overseeing and monitoring this Contract. The Technical Representative or designee will provide daily oversight of this Contract to ensure compliance to the scope of work and/or performance to Contract specifications. The Technical Representative or designee is also responsible for oversight of all the invoice payments and billing questions for purchase orders issues 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.

Z. POST AWARD KICK-OFF MEETING.

1. The Contractor may be required to attend a post award kick-off meeting within ten (10) calendar days after award of Contract to be scheduled by the Technical Representative or designee.

1.1. The Technical Representative or designee shall communicate the date, time, location, and agenda for this meeting to proposer.

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AA. PRICING. Bidder's pricing shall be submitted as a flat rate for performance of all specifications in this ITB. Prices quoted shall include all costs required to perform and complete the service as specified in this Contract, to include but not be limited to labor in accordance with the City of San Diego’s Living Wage Ordinance, prevailing wage, cleaning materials (as required), travel, transportation, cleaning equipment, overhead and administrative cost, etc.

The City shall evaluate pricing for this ITB solely based upon bidders submitted flat rate, as specified in the below table. Bidders must submit their bid for pricing on the following Price Schedule. The Price Schedule shall be completed in full and shall be incorporated herein. Any deviations from the Price Schedule may be considered non-responsive and unacceptable.

BB. PRICING SCHEDULE.

Item No.	Estimated Annual Quantity	U/M	Description	One (1) Time Price	Estimated Annual Price*
1.	52	WK	Sweep and Power Wash Ocean Beach Pier Surface and Railings weekly on Thursdays, as specified.	/week	\$
2.	20	HR	Extra Cleaning Services, as specified.	/hour	\$
TOTAL ANNUAL PRICE:					\$

* “Estimated Annual Price” = “Estimated Annual Quantity” X “One (1) time Price”

Article 7: Water System

Division 38: Emergency Water Regulations

(“Emergency Water Regulations” added 10-19-1998 by O-18596 N.S.)

§67.3801 Declaration of Necessity and Intent

- (a) This Division establishes water management requirements necessary to conserve water, enable effective water supply planning, assure reasonable and beneficial use of water, prevent waste of water, prevent unreasonable use of water, prevent unreasonable method of use of water within the City of San Diego Water Department service area in order to assure adequate supplies of water to meet the needs of the public, and further the public health, safety, and welfare, recognizing that water is a scarce natural resource that requires careful management not only in times of drought, but at all times.
- (b) In addition to the general provisions of Section 67.3803, this Division establishes regulations to be implemented during times of declared water shortages, or declared water shortage emergencies. It establishes four levels of drought response actions to be implemented in times of shortage, with increasing restrictions on water use in response to worsening drought conditions and decreasing available water supplies.
- (c) Drought Response Level 1 measures are voluntary and will be reinforced through local and regional public education and awareness measures. Drought Response condition Levels 2 or higher become increasingly restrictive in order to attain escalating conservation goals.
- (d) During a Drought Response Level 2 condition or higher, the water conservation measures and water use restrictions established by this Division are mandatory and violations are subject to criminal, civil, and administrative penalties and remedies as provided in Chapter 1 of this Code.

(Renumbered from Sec. 67.38 and retitled to “Declaration of Emergency” on 10-19-1998 by O-18596 N.S.)

(Former Section 67.3801 repealed and added “Declaration of Necessity and Intent” 12-15-08 by O-19812 N.S.; effective 1-14-2009.)

§67.3802 Definitions

The following words and phrases whenever used in this Division will have the meaning defined in this section:

Cascading Fountain means a water feature with a flow which does not eject water up into the air.

Customer means any person, corporation, public or private entity, public or private association, public or private agency, government agency or institution, school district, college, university, or any other user of water provided by the City of San Diego.

Days are defined as calendar days, unless otherwise indicated.

Disaster means a catastrophic, naturally occurring or man-made event, including earthquake, flood, fire, riot, or storm, for which a state of emergency has been declared by the President of the United States, the Governor of California, or the executive officer or legislative body of the City or County of San Diego.

Drought means any shortage in water supply based upon expected demands that are caused by hydrological, environmental, legislative, judicial actions, or by infrastructure failure.

Grower means a *customer* engaged in the growing or raising, in conformity with recognized practices of husbandry, for the purpose of commerce, trade, or industry, or for use by public educational or correctional institutions, of agricultural, horticultural or floricultural products, and produced: (1) for human consumption or for the market, or (2) for the feeding of fowl or livestock produced for human consumption or for the market, or (3) for the feeding of fowl or livestock for the purpose of obtaining their products for human consumption or for the market. Grower does not refer to customers who purchase water subject to the Metropolitan Interim Agricultural Water Program or the San Diego County Water Authority Special Agricultural Rate Programs.

Measurable Rainfall means a period during and within 48 hours after rainfall of 1/8 of an inch or more recorded at the nearest reporting weather station for the *customer*.

Metropolitan means the Metropolitan Water District of Southern California.

Ornamental Fountain means a water feature with an external forced flow or stream of water against gravity that is not used for recreational purposes or to support aquatic life.

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Potted Plant means any plant or group of plants contained in a pot or other receptacle that can be moved, including plants on boards, bark, driftwood or airplants (epiphytes).

Recreational Fountain means any recreational structure, other than swimming pools or spa pools, which is open to the general public or which may be open to the general public, and uses re-circulated water in which people come into contact. This includes, but is not limited to, zero depth water features, interactive fountains, water slides, waterfalls, or combinations of such water features. Water features not intended for human contact, such as *ornamental fountains*, are not included.

Water Authority means the San Diego County Water Authority.

Water Conservation means the efficient management of water resources for beneficial uses, preventing waste, or accomplishing additional benefits with the same amount of water.

(Renumbered from Sec. 67.38.1 and retitled to "Comprehensive Water Conservation Plan" on 10-19-1998 by O-18596 N.S.)

(Former Section 67.3802 repealed and added "Definitions" 12-15-08 by O-19812 N.S.; effective 1-14-2009.)

(Amended 10-28-2009 by O-19904 N.S.; effective 11-27-2009.)

(Amended 6-29-2015 by O-20517 N.S.; effective 6-29-2015.)

(Amended 8-4-2016 by O-20699 N.S.; effective 9-3-2016.)

§67.3803 Water Waste Prohibitions

To prevent the waste and unreasonable use of water and to promote water conservation, each of the following actions is prohibited, except where necessary to address an immediate health and safety need or to comply with a term or condition in a permit issued by a state or federal agency:

- (a) The application of potable water to outdoor landscapes in a manner that causes runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures.
- (b) *Customers* shall repair or stop all water leaks upon discovery or within seventy-two hours of notification by the City of San Diego.

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- (c) A *customer* shall not wash down sidewalks, driveways, parking areas, tennis courts or other paved areas without using a power washer or a hose with a shutoff nozzle. Washing any paved areas is only allowed to alleviate immediate safety or sanitation hazards. Wash water shall be collected and prevented from leaving the property and entering the municipal separate storm sewer system pursuant to Chapter 4, Article 3, Division 3 of this Code.
- (d) A *customer* shall not overfill swimming pools and spas.
- (e) A *customer* shall not use non-recirculating *ornamental fountains* or *cascading fountains*.
- (f) Using a hose that dispenses potable water to wash a motor vehicle, except where the hose is fitted with a shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use.
- (g) Single pass-through cooling systems as part of water service connections shall be prohibited after the effective date of this section. Non-recirculating systems in all conveyer car wash and commercial laundry systems shall be prohibited after the effective date of this section.
- (h) Serving drinking water other than upon request in eating or drinking establishments, including but not limited to restaurants, hotels, cafes, cafeterias, bars, or other public places where food or drink are served or purchased.
- (i) Operating a hotel or motel without providing guests the option of choosing not to have towels and linens laundered daily, or operating a hotel or motel without prominently displaying notice of this option in each guestroom using clear and easily understood language.
- (j) A *customer* may only irrigate *potted plants*, non-commercial vegetable gardens and fruit trees, residential and commercial landscapes, including golf courses, parks, school grounds and recreation fields, before 10:00 a.m. and after 6:00 p.m. A *customer* may irrigate at any time the following:
 - (1) as required by a landscape permit;
 - (2) for erosion control;
 - (3) for establishment, repair, or renovation of public use fields for schools and parks;
 - (4) for landscape establishment following a *disaster*. Such irrigation is permitted for a period of up to two months, after which a hardship variance is required in accordance with Section 67.3810;

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- (5) for renovation or repair of an irrigation system with an operator present; or
- (6) for nursery and commercial *growers* using a hand-held hose equipped with a positive shut-off nozzle, a hand held container, or when a drip or micro-irrigation system or equipment is used. Irrigation of nursery propagation beds is permitted at any time.
- (k) The irrigation with potable water of ornamental turf on public street medians.
- (l) The irrigation with potable water of landscapes outside of newly constructed homes and buildings in a manner inconsistent with regulations or other requirements established by the California Building Standards Commission and the Department of Housing and Community Development.
- (m) The application of potable water to outdoor landscapes during and within 48 hours after measurable rainfall.

*(Renumbered from Sec. 67.38.2 and amended 10-19-1998 by O-18596 N.S.)
(Former Section 67.3803 repealed and added "Water Waste Prohibitions" 12-15-08 by O-19812 N.S.; effective 1-14-2009.)
(Amended 12-7-2010 by O-20008 N.S.; effective 1-6-2011.)
(Amended 10-3-2011 by O-20093 N.S.; effective 11-2-2011.)
(Amended 6-29-2015 by O-20517 N.S.; effective 6-29-2015.)
(Amended 8-4-2016 by O-20699 N.S.; effective 9-3-2016.)*

§67.3804 Application

- (a) This Division applies to any *customer* in the use of any water provided by the City of San Diego.
- (b) This Division is intended solely to further the conservation of water. It is not intended to implement or replace any provision of federal, state, or local statutes, ordinances, or regulations relating to protection of water quality or control of drainage or runoff.
- (c) Nothing in this Division is intended to affect or limit the ability of the City Manager to declare and respond to an unforeseeable *disaster* or water emergency such as an earthquake, *drought*, aqueduct break, or other major disruption in the water supply, pursuant to the City Charter or other provisions of this Code.
- (d) This Division does not apply to use of water from private wells or to reclaimed water, or the use of grey water systems.

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- (e) This Division does not apply to use of water that is subject to a special supply program, such as the *Metropolitan Interim Agricultural Water Program* or the *Water Authority Special Agricultural Rate Programs*. Violations of the conditions of special supply programs are subject to the penalties established under the applicable program. A *customer* using both water subject to a special supply program and other water provided by the City of San Diego is subject to this Division in the use of water provided by the City of San Diego.
- (f) The use of potable water for industrial manufacturing, processing, or research and development is exempt from the water use restrictions during Drought Response Levels 1 and 2, if all of the following conditions are met as certified by the City Manager: 1) the business is one of the types of businesses described in categories 2000 through 3999, 7390, and 8730 of the Standard Industrial Classification Code [Editor's note. A copy is on file with the Office of the City Clerk as Document No. 00-18596-1]; 2) the business is located in an area where reclaimed water is available; 3) the business uses reclaimed water on its premises to the fullest extent possible; and 4) the business participates in all applicable City water conservation programs that are considered Best Management Practices by the California Urban Water Conservation Council. [Editor's note. A list of the City's water conservation programs that are Best Management Practices is on file with the Office of the City Clerk as Document No. 00-18596-2.]
- (g) This Division does not apply to areas serviced by the Park and Recreation Department, including public rights-of-way, and street trees, or areas with significant public benefit requiring enhanced irrigation schedules, such as public parks. Irrigation of the areas serviced by the Park and Recreation Department shall be operated and maintained according to a schedule determined by the City Manager, consistent with section 67.3801.

(Renumbered from Sec. 67.38.3, retitled to "Authority to Implement Water Conservation Stages" and amended 10-19-1998 by O-18596 N.S.)
(Former Section 67.3804 repealed and added "Application" 12-15-08 by O-19812 N.S.; effective 1-14-2009.)
(Amended 6-29-2015 by O-20517 N.S.; effective 6-29-2015.)

§67.3805 Drought Response Level 1 – Drought Watch Condition

- (a) A Drought Response Level 1 condition is also referred to as a “Drought Watch” condition. The City Manager may recommend, and upon resolution of the City Council, declare a Drought Response Level 1 when there is a reasonable probability, due to *drought*, that there will be a supply shortage and that a consumer demand reduction of up to 10 percent is required in order to ensure that sufficient supplies will be available to meet anticipated demands. Upon such declaration, the City Manager shall take action to implement the voluntary Level 1 conservation practices identified in this Division.
- (b) During a Level 1 Drought Watch condition, City of San Diego will increase its public education and outreach efforts to increase public awareness of the need to implement the following *water conservation* practices.
- (1) Limit all landscape irrigation to no more than three assigned *days* per week on a schedule established and posted by the City Manager. This provision does not apply to commercial *growers* or nurseries, nor to the irrigation of golf course greens and tees.
 - (2) Use a hand-held hose equipped with a positive shut-off nozzle or hand held container or a garden hose sprinkler system on a timer to water landscaped areas, including trees and shrubs located on residential and commercial properties that are not irrigated by a landscape irrigation system.
 - (3) The washing of automobiles, trucks, trailers, airplanes and other types of mobile equipment is permitted only before 10:00 a.m. or after 6:00 p.m. with a hand-held container or a hand-held hose equipped with a positive shut-off nozzle for quick rinses. Boats and boat engines are permitted to be washed down after use. Washing is permitted at any time on the immediate premises of a commercial car wash. The use of water by all types of commercial car washes which do not use partially recirculated water will be reduced in volume by an amount determined by resolution of the City Council. Mobile equipment washings are exempt from these regulations where the health, safety and welfare of the public are contingent upon frequent vehicle cleanings, such as garbage trucks and vehicles to transport food products, livestock and perishables.

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- (4) Use recycled or non-potable water for construction purposes when available.
- (5) Use of water from fire hydrants will be limited to fire fighting, meter installation by the Water Department as part of its Fire Hydrant Meter Program, and related activities or other activities necessary to maintain the health, safety and welfare of the citizens of San Diego.
- (6) Construction operations receiving water from a fire hydrant meter or water truck will not use water beyond normal construction activities, consistent with Section 67.3803 and that required by regulatory agencies. Construction projects requiring watering for new landscaping materials shall adhere to the designated irrigation hours of only before 10:00 a.m. and after 6:00 p.m.

*(Renumbered from Sec. 67.38.4 and amended 10-19-1998 by O-18596 N.S.)
(Former Section 67.3805 repealed and added "Drought Response Level 1 – Drought Watch Condition" 12-15-08 by O-19812 N.S.; effective 1-14-2009.)
(Amended 10-28-2009 by O-19904 N.S.; effective 11-27-2009.)
(Amended 12-7-2010 by O-20008 N.S.; effective 1-6-2011.)
(Amended 10-3-2011 by O-20093 N.S.; effective 11-2-2011.)
(Amended 6-29-2015 by O-20517 N.S.; effective 6-29-2015.)
(Amended 8-4-2016 by O-20699 N.S.; effective 9-3-2016.)*

§67.3806 Drought Response Level 2 – Drought Alert Condition

- (a) A Drought Response Level 2 condition is also referred to as a "Drought Alert" condition. The City Manager may recommend and, upon resolution of the City Council, declare a Drought Response Level 2 when, due to *drought*, a consumer demand reduction of up to 20 percent is required in order to ensure that sufficient supplies will be available to meet anticipated demands. Upon declaration of Drought Response Level 2, the City Manager shall take action to implement the mandatory Level 2 conservation practices identified in this Division.
- (b) All City of San Diego water *customers* shall comply with all Level 1 Drought Watch *water conservation* practices during a Level 2 Drought Alert, and shall also comply with the following conservation measures:
 - (1) Limit all landscape irrigation using sprinklers to no more than five minutes per watering station during the two assigned *days* per week on a schedule established and posted by the City Manager. This provision does not apply to landscape irrigation systems using water efficient devices, including drip/micro-irrigation systems and stream rotor sprinklers.

- (2) Landscaped areas, including trees and shrubs not irrigated by a landscape irrigation system governed by Section 67.3806(b)(1) shall be watered no more than two assigned *days* per week by using a hand held container, hand-held hose with positive shut-off nozzle, or low volume non-spray irrigation (soaker hose.)
 - (3) Stop operating *ornamental fountains* except to the extent needed for maintenance.
 - (4) *Potted plants*, non-commercial vegetable gardens and fruit trees may be irrigated on any *day*, but must be irrigated only before 10:00 a.m. or after 6:00 p.m.
 - (5) Irrigation is permitted any *day* at any time, as follows:
 - (A) as required by a landscape permit;
 - (B) for erosion control;
 - (C) for establishment, repair or renovation of public use fields for schools and parks; or
 - (D) for landscape establishment following a *disaster*. Such irrigation is permitted for a period of up to two months, which a hardship variance is required in accordance with Section 67.3810.
- (c) The City Manager may recommend and, upon resolution of the City Council, implement a water allocation per *customer* account served by the City of San Diego, and a schedule of surcharges or penalties for exceeding the water allocation. If the City Council adopts or modifies water allocations, the City Manager will post notice of the water allocation prior to the effective date(s). Following the effective date(s) of the water allocation as established by the City Council, any *customer* that uses water in excess of the allocation will be subject to a surcharge or penalty for each billing unit of water in excess of the allocation. The surcharge or penalty for excess water usage will be in addition to any other remedy or penalty that may be imposed for violation of this Division. The *water conservation* measures required under Level 1 Drought Watch and Level 2 Drought Alert conditions, may be suspended by resolution of the City Council during the period a water allocation is in effect.

(Renumbered from Sec. 67.38.5 and amended 10-19-1998 by O-18596 N.S.)

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(Former Section 67.3806 repealed and added “Drought Response Level 2 – Drought Alert Condition” 12-15-08 by O-19812 N.S.; effective 1-14-2009.)
(Amended 10-28-2009 by O-19904 N.S.; effective 11-27-2009.)
(Amended 12-7-2010 by O-20008 N.S.; effective 1-6-2011.)
(Amended 10-3-2011 by O-20093 N.S.; effective 11-2-2011.)
(Amended 6-29-2015 by O-20517 N.S.; effective 6-29-2015.)

§67.3807 Drought Response Level 3 – Drought Critical Condition

- (a) A Drought Response Level 3 condition is also referred to as a “Drought Critical” condition. The City Manager may recommend and, upon resolution of the City Council, declare a Drought Response Level 3 when, due to *drought*, there will be a supply shortage and that a consumer demand reduction of up to 40 percent is required in order to ensure that sufficient supplies will be available to meet anticipated demands. Upon declaration of Drought Response Level 3, the City Manager shall take action to implement the mandatory Level 3 conservation practices identified in this Division.
- (b) All City of San Diego water *customers* shall comply with all Level 1 Drought Watch and Level 2 Drought Alert *water conservation* practices during a Level 3 Drought Critical condition and shall also comply with the following additional mandatory conservation measures:
 - (1) Limit all landscape irrigation to no more than five minutes per watering station during the two assigned *days* per week on a schedule established and posted by the City Manager. This provision will not apply to commercial *growers* or nurseries, nor to the irrigation of golf course greens. *Customers* with irrigation systems that use non-standard spray heads, such as impact rotors, rotating nozzles or micro-spray heads shall limit irrigation to no more than 18 minutes per *day* total on assigned watering *days*.
 - (2) Stop filling or re-filling ornamental lakes or ponds, except to the extent needed to sustain plants or animals that have been actively managed within the water feature prior to declaration of a *drought* response level under this Division.
 - (3) Stop washing vehicles except at commercial carwashes that recirculate water, or by high pressure/low volume wash systems.
 - (4) Stop operating *cascading fountains* and *recreational fountains* except to the extent needed for maintenance.

- (c) Upon the declaration of a Drought Response Level 3 condition requiring a 30 percent or greater demand reduction, new potable water services, temporary or permanent water meters, and statements of immediate ability to serve or provide potable water service (such as, will serve letters, certificates, or letters of availability) will be allowed only under the circumstances listed below. This provision does not preclude the resetting or turn-on of meters to provide continuation of water service or to restore service that has been interrupted.
- (1) A valid building permit has been issued for the project; or
 - (2) The project is necessary to protect the public's health, safety, and welfare; or
 - (3) The number of new fire hydrant meters will not exceed the existing number of currently authorized fire hydrant meters. A new fire hydrant meter will be issued only when an old meter is returned; or
 - (4) The applicant provides substantial evidence satisfactory to the City Manager of an enforceable commitment that the new water demands for the project will be offset prior to the provision of new water meter(s). Such offset shall be in the form of additional *water conservation* measures, the provision of recycled water use in place of existing potable water demands, or other such offsets developed and approved by the City Manager. These offsets shall be reflected in a reduced capacity fee from the project's initially calculated demand (for example, an offset of 75 equivalent dwelling units ("edu") is provided so that the project's 200 edu demand is reduced to 125 edus and fees are paid on 125 edus but the service and meter will be sized at 200 edus).

Development projects with approved tentative maps and related entitlements shall have their maps and related entitlement's expiration dates tolled for the period of time that the Drought Response Level 3 condition is in place but not to exceed 5 years, unless the development project applicant chooses to proceed with development under subsections (c)(1) through (c)(4) above.

- (d) Upon the declaration of a Drought Response Level 3 condition, the City Manager will suspend consideration of annexations to its service area.

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- (e) The City Manager may recommend and, upon resolution of the City Council, implement a water allocation per *customer* served by the City of San Diego, and a schedule of surcharges or penalties for exceeding the water allocation. If the City Council adopts or modifies a water allocation, the City Manager will post notice of the allocation prior to the effective date(s). Following the effective date(s) of the water allocation as established by the City Council, any *customer* that uses water in excess of the allocation will be subject to a surcharge or penalty for each billing unit of water in excess of the allocation. The surcharge or penalty for excess water usage will be in addition to any other remedy or penalty that may be imposed for violation of this Division. The *water conservation* measures required under Level 1 Drought Watch, Level 2 Drought Alert, and Level 3 Drought Critical conditions may be suspended by resolution of the City Council during the period a water allocation is in effect.

*(Renumbered from Sec. 67.38.6 and amended 10-19-1998 by O-18596 N.S.)
(Former Section 67.3807 repealed and added "Drought Response Level 3 – Drought Critical Condition" 12-15-08 by O-19812 N.S.; effective 1-14-2009.)
(Amended 10-3-2011 by O-20093 N.S.; effective 11-2-2011.)
(Amended 6-29-2015 by O-20517 N.S.; effective 6-29-2015.)*

§67.3808 Drought Response Level 4 – Drought Emergency

- (a) A Drought Response Level 4 condition is also referred to as a “Drought Emergency” condition. The City Manager may recommend and, upon resolution of the City Council, declare a water shortage emergency pursuant to California Water Code section 350 and declare a Drought Response Level 4 when there is a reasonable probability that there will be a supply shortage and that a consumer demand reduction of more than 40 percent is required in order to ensure that sufficient supplies will be available to meet anticipated demands. Upon declaration of a Drought Response Level 4, the City Manager shall take action to implement the mandatory Level 4 conservation practices identified in this Division and on the grounds provided in California Water Code section 350.
- (b) All City of San Diego water *customers* shall comply with all *water conservation* measures required during Level 1 Drought Watch, Level 2 Drought Alert, and Level 3 Drought Critical conditions and shall also comply with the following additional mandatory conservation measures:
- (1) Stop all landscape irrigation, except crops and landscape products of commercial *growers* and nurseries. This restriction does not apply to:

- (A) Maintenance of trees and shrubs that are watered no more than two assigned days per week on a schedule established and posted by the City Manager, and by using a hand held container, hand-held hose with an automatic shut-off nozzle, or low-volume non-spray irrigation;
 - (B) Maintenance of existing landscaping necessary for fire protection;
 - (C) Maintenance of existing landscaping for erosion control;
 - (D) Maintenance of plant materials identified to be rare, protected by City Council Policy or essential to the well being of rare animals;
 - (E) Maintenance of landscaping within active public parks and playing fields, day care centers, school grounds, cemeteries, and golf course greens, provided that such irrigation does not exceed two days per week according to the schedule established under Section 67.3807(b)(1);
 - (F) Watering of livestock; and
 - (G) Public works projects and actively irrigated environmental mitigation projects.
- (2) Stop filling or refilling residential pools and spas.
- (3) No new commitments or agreements will be entered into to provide water to *customers* or agencies located outside of the City of San Diego.

*(Renumbered from Sec. 67.38.7 and amended 10-19-1998 by O-18596 N.S.)
(Former Section 67.3808 repealed and added "Drought Response Level 4 –
Drought Emergency" 12-15-08 by O-19812 N.S.; effective 1-14-2009.)
(Amended 10-3-2011 by O-20093 N.S.; effective 11-2-2011.)*

§67.3809 Procedures for Determination and Notification of Drought Response Level

- (a) The existence of a Drought Response Level 1 condition may be declared upon recommendation by the City Manager and resolution of the City Council, upon a written determination of the existence of the facts and circumstances supporting the determination. A copy of the written determination will be filed with the City Clerk. The City Manager will publish a notice of the determination of existence of Drought Response Level 1 condition in the City's official newspaper. The City of San Diego may also post notice of the condition on its website.

The Water Department will monitor the projected supply and demand for water during periods of emergency or *drought* and will recommend to the City Manager the extent of the conservation required. The City Manager will recommend to the City Council the implementation or termination of the appropriate level of *water conservation* in accordance with this Division.

- (b) The existence of Drought Response Level 2 or Level 3 conditions may be declared upon recommendation by the City Manager and resolution of the City Council. The mandatory conservation measures applicable to Drought Response Level 2 or Level 3 conditions will take effect on the tenth day after the date the response level is declared. Within five days following the declaration of the response level, the City Manager will publish a notice giving the extent, terms and conditions respecting the use and consumption of water a minimum of one time for three consecutive days in the City's official newspaper. If the City Council adopts a water allocation, the City Manager will publish notice of this adoption in the City's official newspaper. Water allocation will be effective on the fifth day following the date of publication or at such later date as specified in the notice.
- (c) The existence of a Drought Response Level 4 condition may be declared upon recommendation by the City Manager and resolution of the City Council and in accordance with the procedures specified in California Water Code Sections 351 and 352. The mandatory conservation measures applicable to Drought Response Level 4 conditions will take effect on the tenth day after the date the response level is declared. Within five days following the declaration of the response level, the City Manager will publish a notice giving the extent, terms and conditions respecting the use and consumption of water in the City's official newspaper. If the City Council adopts a water allocation, the City Manager will publish notice of the allocation in the City's official newspaper. Water allocation will be effective on the fifth day following the date of publication or at such later date as specified in the notice.

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- (d) The City of San Diego may declare an end to Drought Response Levels 1, 2, 3 and 4 upon recommendation of the City Manager and resolution by the City Council at any regular or special meeting of the City Council.

(Renumbered from Sec. 67.38.8 and amended 10-19-1998 by O-18596 N.S.)

(Former Section 67.3809 repealed and added "Procedures for Determination and Notification of Drought Response Level" 12-15-08 by O-19812 N.S.; effective 1-14-2009.)

§67.3810 Hardship Variance

- (a) If, due to unique circumstances, a specific requirement of this Division would result in undue hardship to a *customer* using City of San Diego water or to property upon which City of San Diego water is used, that is disproportionate to the impacts to City of San Diego water users generally or to similar property or classes of water uses, then the *customer* may apply for a variance to the requirements as provided in this Section.
- (b) The variance may be granted or conditionally granted, only upon a written finding of the existence of facts demonstrating an undue hardship to a *customer* using City of San Diego water or to property upon which City of San Diego water is used, that is disproportionate to the impacts to City of San Diego water users generally or to similar property or classes of water user due to specific and unique circumstances of the user or the user's property.

- (1) Application.

Application for a variance will be in written form prescribed by the City Manager and will be accompanied by a non-refundable processing fee in an amount set by resolution of the City Council.

- (2) Supporting Documentation.

The written application will be accompanied by photographs, maps, drawings, or other pertinent information as applicable, including a written statement of the applicant.

(3) Approval Authority.

The City Manager will exercise approval authority and act upon any completed application after submittal and may approve, conditionally approve, or deny the variance. The applicant requesting the variance will be promptly notified in writing of any action taken. The decision of the City Manager is final. Unless specified otherwise at the time a variance is approved, the variance applies to the subject property during the term of the mandatory *drought* response.

(4) Required Findings for Variance.

(A) Except as set forth in Section 67.3810(B), an application for a variance will be denied unless the approving authority finds, based on the information provided in the application, supporting documents, or such additional information as may be requested, and on water use information for the property as shown by the records of the City of San Diego, all of the following:

- (i) that the variance does not constitute a grant of special privilege inconsistent with the limitations upon other City of San Diego *customers*; and
- (ii) that because of special circumstances applicable to the property or its use, the strict application of this Division would have a disproportionate impact on the property or use that exceeds the impacts to *customers* generally; and
- (iii) that the authorizing of such variance will not be of substantial detriment to adjacent properties, and will not materially affect the ability of the City of San Diego to effectuate the purpose of this Division and will not be detrimental to the public interest; and
- (iv) that the condition or situation of the subject property or the intended use of the property for which the variance is sought is not common, recurrent or general in nature.

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- (B) An application for a variance will be denied unless the approving authority finds, based on the information provided in the application, supporting documents, or such additional information as may be requested, and on water use information for the property as shown by the records of the City of San Diego, either of the following:
- (i) that the property has been adversely impacted by a *disaster*; or
 - (ii) that proposed alternative water use restrictions for the property would result in greater water savings than the existing water use restrictions.
- (5) No relief will be granted to any *customer* for any reason in the absence of a showing by the *customer* that the *customer* has achieved the maximum practical reduction in water consumption in the *customer's* residential, commercial, industrial, institutional, agricultural or governmental water consumption.

*(Renumbered from Sec. 67.38.9 on 10-19-1998 by O-18596 N.S.)
(Former Section 67.3810 repealed and added "Hardship Variance" 12-15-08 by O-19812 N.S; effective 1-14-2009.)
(Amended 10-28-2009 by O-19904 N.S; effective 11-27-2009.)*

§67.3811 Violations and Penalties

It is unlawful for any *customer* to violate the mandatory provisions of this Division. Violations are subject to criminal, civil, and administrative penalties and remedies as provided in Chapter 1 of this Code. In addition, service of water may be discontinued or appropriately limited through the installation of flow-restricting devices to any *customer* who willfully uses water in violation of this Division.

*(Renumbered from Sec. 67.39 and retitled to "Publication of Terms of Water Use" on 10-19-1998 by O-18596 N.S.)
(Former Section 67.3811 repealed and added "Violations and Penalties" 12-15-08 by O-19812 N.S; effective 1-14-2009.)*

Exhibit C



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

ARTICLE I
SCOPE AND TERM OF CONTRACT

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

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

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

ARTICLE II
CONTRACT ADMINISTRATOR

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

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

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

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

ARTICLE III COMPENSATION

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

3.2 Invoices.

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

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

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

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

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

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

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

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

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

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

ARTICLE IV SUSPENSION AND TERMINATION

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

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

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

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

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

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

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

4.5 Contractor's Right to Payment Following Contract Termination.

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

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

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

ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE VI INTELLECTUAL PROPERTY RIGHTS

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

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

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

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

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

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

proprietary rights of any third party (Third Party Claim of Infringement). If a Third Party Claim of Infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

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

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

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

ARTICLE VII INDEMNIFICATION AND INSURANCE

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

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

Contractor shall provide, at a minimum, the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

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

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

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

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

ARTICLE VIII BONDS

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

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

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

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

8.1.4 Non-Renewal or Cancellation. The Bond must provide that City and Contractor shall be provided with sixty (60) days' advance written notice in the event of non-renewal, cancellation, or material change to its terms. In the event of non-renewal, cancellation, or

material change to the Bond terms, Contractor shall provide City with evidence of the new source of surety within twenty-one (21) calendar days after the date of the notice of non-renewal, cancellation, or material change. Failure to maintain the Bond, as required herein, in full force and effect as required under this Contract, will be a material breach of the Contract subject to termination of the Contract.

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

ARTICLE IX CITY-MANDATED CLAUSES AND REQUIREMENTS

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

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

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

9.1.3 Non-Discrimination Requirements.

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

9.1.3.2 Non-Discrimination Ordinance. Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of

subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

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

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

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

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

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

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

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

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

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

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

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

9.1.11.1 Contractor and Subcontract Requirement. The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of a Contractor to the same extent as it would apply to that Contractor. Contractor shall require subcontractors performing work for contractor under their contract with the City to certify compliance with the Equal Pay Ordinance in their written subcontracts.

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

ARTICLE X CONFLICT OF INTEREST AND VIOLATIONS OF LAW

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

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

10.3 Contractor's Financial or Organizational Interests. In connection with any task, Contractor shall not recommend or specify any product, supplier, or contractor with whom

Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

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

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

ARTICLE XI DISPUTE RESOLUTION

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

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

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

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

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

**ARTICLE XII
MANDATORY ASSISTANCE**

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

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

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

**ARTICLE XIII
MISCELLANEOUS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT D

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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