

City of San Diego

CONTRACTOR'S NAME: _____

ADDRESS: _____

TELEPHONE NO.: _____ FAX NO.: _____

CITY CONTACT: Brittany Friedenreich, Senior Contract Specialist, Email: BFriedenreic@sandiego.gov

Phone No. (619) 533-3104

M. Calleran / E. Wildberger / M. L. Wenceslao

REQUEST FOR QUALIFICATIONS DOCUMENTS (Step 1 of 2)

**MULTIPLE AWARD DESIGN-BUILD CONTRACTS (MACC)
FOR GOLF COURSE IMPROVEMENT PROJECTS**



RFQ NO.: _____ **K-20-1852-MAC-3-C**

SAP NO. (WBS/IO/CC): _____ **B-17063**

CLIENT DEPARTMENT: _____ **1714**

COUNCIL DISTRICT: _____ **1**

PROJECT TYPE: _____ **EA**

THIS PROJECT IS SUBJECT TO THE FOLLOWING:

➤ PREVAILING WAGE RATES: STATE FEDERAL

STATEMENTS OF QUALIFICATIONS (SOQs) DUE:

12:00 NOON


OCTOBER 2, 2019

CITY OF SAN DIEGO'S ELECTRONIC BIDDING SITE, PLANETBIDS

<http://www.sandiego.gov/cip/bidopps/index.shtml>

DEPUTY CITY ENGINEER

The engineering Specifications and Special Provisions contained herein have been prepared by or under the direction of the following Registered Engineer:



For City Engineer

08/26/2019
Date

Seal:



REQUEST FOR QUALIFICATIONS

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1. INTRODUCTION

- 1.1 PURPOSE:** The City of San Diego (City) is requesting Statements of Qualifications (SOQ) for Multiple Award Design-Build Contracts, also known as Multiple Award Construction Contracts (MACC), pursuant to §22.3310 of the San Diego Municipal Code. This is a solicitation for **Multiple Award Design-Build Contracts for Golf Course Improvement Projects** by means of indefinite delivery indefinite quantity (IDIQ) multiple award construction contract.
- 1.2 NUMBER OF CONTRACTS TO BE AWARDED:** This Request for Qualifications (RFQ) is the first step in the procurement process for the award of multiple Design-Build projects. Upon completion of the RFQ phase, the City in its sole discretion may award no less than 2 and no more than 4 contracts to the firms deemed most highly qualified based upon the RFQ Criteria.
- 1.3** The City will not reimburse Design-Builders for costs incurred in the preparation, submittal and participation in the RFQ process.
- 1.4** This RFQ does not commit the City to award a contract, or to procure or contract for work.
- 1.5 SUMMARY OF WORK:** The City is seeking to acquire Design-Build services for Design-Build projects to include **design and construction, alteration, and repair to the City's golf courses**. Work and Services required of the Design-Builder will include design, construction, and startup of the Project. The Design-Builder shall provide all management, supervision, labor, services, temporary facility, equipment, tools, supplies, and any other item needed to complete the design and construction, as described in Attachment A.
- 1.6 PERFORMANCE PERIOD:** The performance period for each contract awarded will include an initial base period of 1 year with two additional 1 year option periods for a total performance period of three (3) years. Contracts will automatically renew unless cancelled by the City.
- 1.7 FORMAT RECEIPT AND OPENING OF SOQs:** SOQs will be received in electronic format (eBids) EXCLUSIVELY at the City of San Diego's electronic bidding (eBidding) site, at: <http://www.sandiego.gov/cip/bidopps/index.shtml> and are due by the date, and time shown on the cover of this solicitation.
- 1.8 SUBMITTERS MUST BE PRE-REGISTERED** with the City's bidding system and possess a system-assigned Digital ID in order to submit and electronic proposal.
- 1.9** The City's bidding system will automatically track information submitted to the site including IP addresses, browsers being used and the URLs from which information was submitted. In addition, the City's bidding system will keep a history of every login instance including the time of login, and other information about the user's computer configuration such as the operating system, browser type, version, and more. Because of these security features, Contractors who disable their browsers' cookies will not be able to log in and use the City's bidding system.

- 1.10** Upon entry of their SOQ, the system will ensure that all required fields are entered. **The system will not accept an SOQ for which any required information is missing.** This includes all necessary pricing, subcontractor listing(s) and any other essential documentation and supporting materials and forms requested or contained in these solicitation documents.
- 1.11 SOQs REMAIN SEALED UNTIL DUE DATE AND TIME.** Electronic submissions are transmitted into the City's bidding system via hypertext transfer protocol secure (https) mechanism using SSL 128-256 bit security certificates issued from Verisign/Thawte which encrypts data being transferred from client to server. SOQs submitted prior to the Due Date and Time are not available for review by anyone other than the submitter, who will have until the Due Date and Time to change, rescind or retrieve its proposal should they desire to do so.
- 1.12 SOQs MUST BE SUBMITTED BY DUE DATE AND TIME.** Once the deadline is reached, no further submissions are accepted into the system. Once the Due Date and Time has passed, bidders, proposers, the general public, and City staff are able to immediately see the results on line. City staff may then begin reviewing the submissions for responsiveness, Equal Opportunity Contracting Program (EOCP) compliance and other issues.
- 1.13 RECAPITULATION OF THE WORK.** SOQs shall not contain any recapitulation of the Work. Conditional SOQs may be rejected as being non-responsive. Alternative SOQs will not be considered unless called for.
- 1.14 SOQs MAY BE WITHDRAWN** by the Submitter prior to, but not after, the time set as Due Date and Time.
- 1.14.1 Important Note:** Submission of the electronic SOQ into the system may not be instantaneous. Due to the speed and capabilities of the user's internet service provider (ISP), bandwidth, computer hardware and other variables, it may take time for the proposer's submission to upload and be received by the City's eBidding system. It is the proposer's sole responsibility to ensure their SOQs are received on time by the City's eBidding system. The City of San Diego is not responsible for SOQs that do not arrive by the required date and time.
- 1.15 ACCESSIBILITY AND AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE:** To request a copy of this solicitation in an alternative format, contact the Public Works Contract Specialist listed on the cover of this solicitation at least five (5) working days prior to the due date to ensure availability.
- 1.16 ELECTRONIC SUBMISSIONS CARRY FULL FORCE AND EFFECT**
- 1.16.1** The submitter, by submitting its electronic SOQ, acknowledges that doing so carries the same force and full legal effect as a paper submission with a longhand (wet) signature.

1.16.2 The submitter, by submitting their electronic SOQ, agrees to and certifies under penalty of perjury under the laws of the State of California, that the certification, forms and affidavits submitted as part of this SOQ are true and correct.

1.17 CONTRACTOR REGISTRATION AND ELECTRONIC REPORTING SYSTEM:

1.17.1 **Prior** to the Award of a Contract or Task Order, you and your Subcontractors and Suppliers must register with the City's web-based vendor registration and bid management system. For additional information go to:

<http://www.sandiego.gov/purchasing/bids-contracts/vendorreg.shtml>

1.17.2 The City may not award a contract until registration of all subcontractors and suppliers is complete. In the event this requirement is not met within the time frame specified in the Notice of Intent to Award letter, the City reserves the right to rescind the Notice of Award / Intent to Award and to make the award to the next responsive and responsible bidder

1.18 SOQs ARE PUBLIC RECORD: Upon receipt by the City, SOQs shall become public records subject to public disclosure. It is the responsibility of the respondent to clearly identify any confidential, proprietary, trade secret or otherwise legally privileged information contained within the SOQ. General references to sections of the California Public Records Act (PRA) will not suffice. If the Design-Builder does not provide supply applicable case law that clearly establishes that the requested information is exempt from the disclosure requirements of the PRA, the City shall be free to release the information when required in accordance with the PRA, pursuant to any other applicable law, or by order of any court or government agency, and the Design-Builder will hold the City harmless for release of this information.

1.19 PUBLIC DISCLOSURE: Selection announcements, contract awards, and all data provided by the City shall be protected from public disclosure. Design-Builder's desiring to release information to the public, shall receive prior written approval from the City.

1.20 CONFLICT OF INTEREST: Any architectural firms, engineering firms, specialty consultants, or individuals previously retained by the City to assist in drafting the Project's preliminary design, General Development Plan or Drawings shall not be eligible to participate in the competition with any Design-Build Entity without the prior written consent of City. Any architectural firms, engineering firms, specialty consultants, or individuals retained by the City to assist in drafting any Reference Documents or other document that was not prepared specifically for this contract, are considered to be eligible to participate.

2. EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP) PROVISIONS

2.1 The City is dedicated to the principles of equal opportunity in the workplace and in subcontracting. It is the City's expectation that firms doing business with the City have and are able to demonstrate the same level of commitment.

2.2 The Design-Builders are encouraged to take positive steps to diversify and expand their Subcontractor solicitation base and to offer subcontracting opportunities to all eligible Subcontractors. The Design-Builder shall comply with requirements of San Diego Municipal Code §§ 22.2701 through 22.2708, Equal Employment Opportunity Outreach Program (EEO Program).

2.3 CONTRACTOR REGISTRATION AND ELECTRONIC REPORTING SYSTEM

2.3.1 Prior to the award of the Contract, the Design-Builder, Subcontractors, and Suppliers must register with the City's web-based vendor registration and bid management system, BidsOnline™ hosted by PlanetBids System. For additional information go to:

<http://www.sandiego.gov/purchasing/bids-contracts/vendorreg.shtml>.

2.3.2 Following the award of the Contract, the Design-Builder will be required to use the City's web-based contract compliance application for EOCP reporting purposes e.g., Weekly Certified Payroll, Monthly Employment Utilization, and Monthly Payments. Online tutorials are available at:

<http://stage.prismcompliance.com/etc/vendortutorials.htm>

2.3.3 The City may retain progress payments if:

2.3.3.1 The non-registered Design-Builder, Subcontractors, or Suppliers fail to register,

2.3.3.2 EOCP reporting is delinquent or inadequate, or

2.3.3.3 Underpayment has occurred.

2.4 For additional Equal Opportunity Contracting Program requirements see Attachment D.

3. **ESTIMATED PROJECT COST:** The cumulative value of all contracts awarded through this solicitation will not exceed **\$15,000,000** for the total performance period (i.e., base period plus all options).

3.1 The minimum Task Order guaranteed is \$5,000 per Contract over the full term of the Contract, including any options. To receive the minimum guarantee, the Design-Builder must have submitted responsive Proposals to all RFPs in the first year of this contract, and not have been awarded any Task Order. Typical projects will have an estimated construction cost between **\$250,000 and \$2,500,000**

4. **PROJECT DESCRIPTION:** See Attachment A.

5. **PROJECT SCHEDULE**

5.1 The following milestones are provided for reference only. All dates are tentative and are subject to change.

5.1.1	Mandatory Pre-submittal Meeting	September 12, 2019
5.1.2	SOQ due date	October 2, 2019
5.1.3	Shortlist Finalists	November 6, 2019
5.1.4	Interviews	December 5, 2019
5.1.5	Selection and Notification	TBD
5.1.6	Receipt of Bonds and Insurance Certifications	TBD
5.1.7	Notice to Proceed	TBD
5.1.8	Mandatory Outreach Meeting	TBD

6. **STATEMENT OF QUALIFICATIONS REQUIREMENTS**

6.1 **GENERAL**

6.1.1 Design-Builders interested in participating on this MACC as a Prime Contractor shall be pre-qualified.

6.1.1.1 All Design-Builder applicants must submit a complete prequalification application online to the Public Works Contracts, Prequalification Program **no later than 2 weeks prior to the SOQ due date and time**. Complete information and links to the online prequalification application are available at:

<http://www.sandiego.gov/cip/bidopps/prequalification.shtml>

6.1.1.2 All Design-Builders must be prequalified under the City's Pre-Qualification Program for a minimum of \$15,000,000. Prequalification status for all Design-Builders must be maintained for the term of the MACC.

6.1.1.3 Due to the City's responsibility to protect the confidentiality of the contractors' information, City staff will not be able to provide information regarding contractors' prequalification status over the telephone. Contractors may access real-time information about their prequalification status via their vendor profile on [PlanetBids™](#).

- 6.1.2** The City desires to receive SOQs only from qualified and experienced Design-Builders who demonstrate significant knowledge of Design-Build construction projects, extensive experience and successful performance on public works infrastructure projects of comparable size and scope.

7. PROCUREMENT PROCESS

- 7.1** All properly licensed and pre-qualified Design-Builders will be evaluated and ranked based on past performance, experience and technical qualifications in accordance with Attachment B. The City will, at its sole discretion, interview any or all design-builders who submit an SOQ for the purposes of gaining further information regarding the design-builders' qualifications. Between 2 and 4 of the highest ranked Design-Builders will be selected and awarded a contract.
- 7.2** For future Design-Build Projects during the term of this MACC, the City will solicit Proposals from all the Design-Builders who receive contracts resulting from this RFQ.
- 7.3** The MACC awardees shall submit a responsive Proposal for each Task Order issued. Failure to do so may result in the City, at its sole discretion, terminating the base contract. MACC awardees that fail to submit proposals twice in a twelve month period may have their contract terminated and be ineligible to submit future proposals.
- 7.4** Architectural firms, engineering firms, consultants, or individuals retained by the City to assist in drafting any portion of the Public Utilities Department's Master Plan, and any other document that was not prepared specifically for this Contract are eligible to participate in the competition with any Design-Builders bidding for the Project.
- 7.5** Architectural firms, engineering firms, consultants, or individuals retained by the City to assist in drafting the RFQ, RFP, or the Project's preliminary design are not eligible to participate in the competition with any Contractor bidding for the Project.
- 7.6** The following steps are included in the City's MACC procurement process:
 - 7.6.1** RFQ is issued by the City.
 - 7.6.2** Design-Builders submit SOQs.
 - 7.6.3** The City selects the 2-4 firms determined to be most qualified for a MACC award under this solicitation, and submits the list to the Mayor and City Council for approval.
 - 7.6.4** RFPs for any future MACC tasks shall be issued to the selected Design Builders by the City as needed.

8. PRE-SUBMITTAL ACTIVITIES

8.1 SUBMISSION OF QUESTIONS:

8.1.1 The Director (or Designee) of Public Works Department is the officer responsible for responding to questions and opening, examining, and evaluating the SOQs submitted to the City for the acquisition, construction, and completion of any public improvement except when otherwise set forth in these documents. All questions related to this solicitation shall be submitted to:

Public Works Contracts
525 B Street, Suite 750, MS 908A
San Diego, California, 92101
Attention: Brittany Friedenreich

Or: BFriedenreich@sandiego.gov

8.1.2 Questions received less than 14 Days prior to the Statement of Qualifications due date may not be considered.

8.1.3 Clarifications or clarifications deemed by the City to be material shall be answered via issuance of an addendum and posted to the City's online bidding service.

8.1.4 Only questions answered by formal written addenda shall be binding. Oral and other interpretations or clarifications shall be without legal effect. It is the Design-Builder's responsibility to be informed of any Addenda that have been issued.

8.2 PRE-SUBMITTAL MEETING

8.2.1 Pre-Submittal Meeting: Design-Builders wishing to submit an SOQ are **required** to attend the Pre-Submittal Meeting. The purpose of the meeting is to discuss the scope of the Project, submittal requirements, the pre-qualification process and any Equal Opportunity Contracting Program requirements and reporting procedures. To request a sign language or oral interpreter for this visit, call Public Works Contracts at (619) 533-3450 at least 5 Working Days prior to the meeting to ensure availability. The Pre-Submittal meeting is scheduled as follows:

Date: September 12, 2019

Time: 10:00 AM

Location: Wada Room, 525 B Street, Suite 750, San Diego, CA 92101

Attendance at the Pre-Submittal Meeting will be evidenced by the Design-Builder's representative's signature on the attendance roster. It is the responsibility of the Design-Builder's representative to complete and sign the attendance roster.

8.2.2 To request a copy of the agenda in an alternative format, or to request a sign language or oral interpreter for this meeting, call the Public Works Contracts at (619) 533-3450 at least 5 Working Days prior to the Pre-Submittal Meeting to ensure availability.

8.3 REVISIONS TO THE RFQ: Any changes to the Contract Documents through addendum are made effective as though originally issued with the solicitation. The Design-Builders shall acknowledge the receipt of any Addenda at the time of SOQ submission.

9. ADDITIONAL TERMS AND CONDITIONS

9.1 CITY'S RIGHT TO CANCEL: City reserves the right to cancel, in part or in its entirety, this RFQ including but not limited to: selection schedule, submittal date, and submittal requirements. If the City cancels or revises the RFQ, all potential Design-Builders will be notified in writing by the City.

9.2 INTERVIEWS: The City reserves the right to interview and request additional information and clarifications from any responders to RFQ.

9.3 ALLOCATION OF RISK:

9.3.1 The selected Design-Builder shall indemnify and hold harmless the City for claims, suits, losses or damages arising out of the negligent acts, errors, or omissions of the Design-Builder, Subcontractors, or Subcontractors attributable to the design effort.

9.3.2 This RFQ contains a preliminary risk matrix for the project, which summarizes the anticipated allocation of risk between the City and the selected firm. This preliminary risk matrix is not intended to describe all anticipated risk for the Project. As Project activities progress, the risk allocation may be expanded and revised as necessary to ensure the most efficient allocation of risk between the City and the Design-Builder.

9.4 PRE-DESIGN AND DESIGN REPORTS: The Design Builder's proposal shall ultimately serve as the Pre-Design Report. If there is a change in design from what was originally submitted as the Design Builder's Proposal, a Design Report shall be required.

9.5 PREVAILING WAGE RATES: Prevailing wage rates will apply to this contract.

ATTACHMENTS

ATTACHMENT A

PROJECT DESCRIPTION, REQUIRED WORK AND SERVICES, PROJECT LOCATIONS

PROJECT DESCRIPTION, REQUIRED WORK AND SERVICES, PROJECT LOCATIONS

1. PROJECT DESCRIPTION:

A Design-Build MACC for design and construction, alteration, and repair to the City's golf course facilities in the City. Work and Services required of the Design-Builder will include design, construction, and startup of the Project. The Design-Builder shall provide all management, supervision, labor, services, temporary facilities, equipment, tools, supplies, and any other item of every kind and description required for the complete design, construction, and start-up of the Project.

2. SAMPLE SCOPE OF WORK:

2.1 Golf Course Improvements, B17063

New irrigation system, drainage improvements including re-contouring of grades for surface flow and installation of drainage sumps with underground piping, rehabilitation of existing bunkers, addition of new bunkers, cart path replacement/addition, addition of new tees, and leveling of existing tees.

3. CONTRACTOR LICENSE: Class A

4. PROJECT LOCATIONS: Torrey Pines Golf Course, Mission Bay Golf Course, and Balboa Park Golf Course

ATTACHMENT B

SUBMITTAL REQUIREMENTS AND EVALUATION CRITERIA

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SUBMITTAL REQUIREMENTS AND EVALUATION CRITERIA

1. SUBMITTAL REQUIREMENTS

- 1.1.** The SOQ shall be concise, well organized, and demonstrate the Design-Builder's qualifications and experience applicable to the Project. The SOQ shall be limited to 25 one-sided pages (8 1/2 x 11) - exclusive of resumes, graphics, forms, pictures, photographs, dividers and front/back cover - that address the RFQ requirements. Font Type shall be Times New Roman in a minimum 12 point font size, with a minimum 1" margin for text pages. A cover letter may be submitted but shall not contain any information that is a required element of the RFQ as per Attachment B, Submittal Requirements and Evaluation Criteria. Any SOQ that does not comply with these formatting standards may not be considered.
- 1.2.** Documentation required by Attachment B, Subsection 2.10.4, Subcontractor Documentation, shall be in addition to the page limit stated above.
- 1.3.** SOQs shall be signed by an individual or individuals authorized to execute legal
- 1.4.** SOQs shall be received no later than the time and place specified on the cover of this RFQ. SOQs and related materials received after the date and time specified above may not be considered.
- 1.5.** Failure to comply with the requirements of this RFQ may result in disqualification.
- 1.6.** SOQs submitted in response to this RFQ shall be in the following order and shall include:
 - 1.6.1.** Acknowledgment of Addenda to this RFQ.
 - 1.6.2.** Identification of the Design-Builder.
 - 1.6.3.** Exceptions to this RFQ.
 - 1.6.4.** Executive Summary.
 - 1.6.5.** Experience and Technical Competence.
 - 1.6.6.** Proposed Method to Accomplish the Work.
 - 1.6.7.** Knowledge and Understanding of Local Environment.
 - 1.6.8.** Project Organization and Key Personnel
 - 1.6.9.** Equal Employment and Contracting Information.
 - 1.6.10.** Financial Information and Arrangements.

1.6.11. Change Order and Litigation History.

SOQs that do not contain the aforementioned components may not be considered.

2. EVALUATION CRITERIA

2.1. Addenda to this RFQ: The Design-Builder is to confirm in its SOQ the receipt of all addenda issued to this RFQ. Failure to acknowledge all addenda issued may result in the SOQ being considered non-responsive and ineligible for further consideration.

2.1.1. The Design-Builder is not required to include copies of the actual addenda in its SOQ.

2.2. Identification of the Design-Builder: Failure to provide the Identification of the Design-Builder may result in the SOQ being considered non-responsive and ineligible for further consideration.

2.2.1. Legal name and address of company.

2.2.2. Legal form of company (partnership, corporation, joint venture, etc.). If joint venture identify the members of the joint venture and provide all information required under this section for each member.

2.2.3. Year of establishment of entity.

2.2.4. If company is subsidiary of a parent company, identify the parent company.

2.2.5. Address of main office.

2.2.6. Address of San Diego satellite office if applicable.

2.2.7. Contact information for firm, including name, title, email address and telephone number.

2.2.8. Number of employees in San Diego County.

2.2.9. Applicable License (s):

2.2.9.1. City of San Diego Business License Number, including expiration date.

2.2.9.2. State Contractor's License Number, including expiration date and all classifications.

2.2.9.3. Professional Engineering/Architect License Number, including expiration date.

2.2.11. Name, title, address and telephone number of person to contact concerning the SOQ.

2.3. Exceptions to this RFQ: The Design-Builder shall certify that it takes no exceptions to this RFQ and its attachments by signing and submitting with its SOQ, the Certification of Exceptions to the Request for Qualifications. If the Design-Builder does take exception to any portion of the RFQ, the specific portion of the RFQ to which exception is taken shall be submitted to the City in writing prior to the Pre-submittal Meeting. Although the "Exceptions to the RFQ" is an evaluation criterion, an exception may be determined by the City to be of such a material nature that such exception may cause the SOQ to be considered non-responsive.

2.4. Executive Summary (**2 Points Max.**): Include a one- to two-page overview of the entire SOQ describing the highlights of the SOQ. Failure to provide the executive summary may result in the SOQ being considered non-responsive and ineligible for further consideration.

2.5. Experience and Technical Competence (**25 Points Max.**):

2.5.1. Describe Design-Builder's experience in completing Golf Course Design-Build projects that include core golf course elements such as:

1. Greens construction/reconstruction
2. Tee Construction/ restoration
3. Bunker construction/restoration
4. Drainage/Sump construction
5. Central Toro irrigation construction/remodel/extension

List three (3) successfully completed projects within the last three (3) years where the project team has completed core golf course construction on high end golf courses hosting professional golf tournaments. Provide the name of Owner's Project Manager, phone numbers, project type, total value of completed construction. Projects currently in process may be submitted for consideration. Include in your client references projects and clients where the team has worked together.

2.6. Proposed Method to Accomplish the Work (**12 Points Max.**):

Most of the tasks proposed under this contract will require minimal impact to play. All proposed work will need to be completed without disruption to the ongoing daily play as all the golf courses will remain open during completion of tasks. Describe in narrative form the Design-Builder's technical and management approach to the design, construction, and start-up of the facilities. Discuss lines of communications necessary to maintain design schedule and construction schedules. This should not be a design concept, but rather a general discussion of how the team will execute the project.

2.8. Knowledge and Understanding of Local “Environment” (5 Points Max.):

Describe experience working in the local “environment” and proposed local presence for interfacing with the City’s project management staff. The “environment” includes but is not limited to: City and other local agencies regulations and policies; local environmental documentation requirements; geotechnical conditions in project area; local building codes; and other local design criteria and community issues.

2.9. Project Organization and Key Personnel (25 Points Max.):

Describe proposed project organization and provide an organizational chart, including identification and responsibilities of key personnel. Indicate role and responsibilities of the Design-Builder. Indicate how local firms are being utilized to ensure a strong understanding of local laws, ordinances, regulations, policies, requirements, permitting, etc. Indicate extent of commitment of key personnel for duration of project and furnish resumes of key personnel. Provide indication of staffing level for the project. The City’s evaluation of the Design-Builder will consider the entire team, therefore no changes in team composition will be allowed without prior written approval of the City. Describe Design-Builder’s capacity to perform the work within the time limitations, considering and identifying Design-Builder’s current and planned workload and Design-Builder’s workforce. If applicable, describe how construction and technical personnel, as well as subcontractors, comply with the requirements of the Mitigated Negative Declaration (MND). At a minimum, the proposed plan/qualifications shall include the following:

2.9.1. Golf Course Contractor (10 Points Max.)

2.9.1.1. Shall have relevant, current experience in golf course renovation and construction on USGA projects of similar size and complexity on courses hosting PGA Tour Events.

2.9.1.2. Shall have worked as a Prime Contractor on a minimum of two (2) golf course construction projects of a similar size and complexity within the last 48 months.

2.9.1.3. Shall have a proven track record of completing and managing golf course renovation construction projects of similar size and complexity, on time and on budget, where design and construction occur concurrently. Provide detailed information.

2.9.1.4. Golf Course Shaper and Construction Specialist

2.9.1.4.1. Shall have relevant, current experience in golf course shaping and construction for courses hosting USGA Tour events.

2.8.1.5. Shall have worked as a lead shaper and construction specialist on a minimum of two (2) golf course projects of a similar size and complexity within the last 48 months.

2.9.2. Golf Course Designer (5 Points Max.)

2.9.2.1. Shall have relevant, current experience in golf course renovation and design for courses hosting USGA and PGA Tour events.

2.9.2.2. Shall have worked as the lead designer on a minimum of two (2) golf course design projects of a similar size and complexity within the last 48 months.

2.9.2.3. Shall have a proven track record of completing golf course renovation design projects of similar size and complexity on time and on budget. Provide detailed information.

2.9.2.4. Shall have a proven track record of completing design build projects of similar size and complexity, including plan preparation, plan review and approval, construction administration, and concurrent design and construction tasks.

2.9.3. Golf Course Irrigation Designer (3 Points Max.)

2.9.3.1. Shall have relevant, current experience in golf course irrigation design for courses hosting USGA Tour events.

2.9.3.2. Shall have worked as the lead irrigation designer on a minimum of two (2) complete golf course irrigation projects of similar size and complexity utilizing HDPE piping within the last 48 months.

2.9.4. Registered Civil Engineer (1 Point Max.)

2.9.4.1. Shall have relevant, current experience with grading and drainage design, including City of San Diego storm water requirements.

2.9.5. Construction General Permit Qualified Storm Water Pollution Prevention Plan (SWPPP) Practitioner (QSP) and Qualified SWPPP Developer (QSD) (1 Point Max.)

2.9.5.1 Proof of QSP and QSD shall be provided.

2.9.6. Environmental Consultants. (5 Points Max.) All sub-consultants must be approved by the City and carry the following minimum qualifications, with proof provided to the City as noted below.

2.9.6.2. Biologist (1 Point Max.)

- 2.9.6.2.1.** Shall have a minimum of three (3) years' experience with biological monitoring for projects of a similar size and scope.
- 2.9.6.2.2.** Shall possess a valid Endangered Species Act Section 10(a)(1)(a) recovery permit.
- 2.9.6.2.3.** Shall be qualified Biologist as defined in the City of San Diego Biology Guidelines.
- 2.9.6.2.4.** All personnel involved in biological monitoring shall meet the qualifications as established in the City's Biology Guidelines.

2.9.6.3. Acoustician (1 Point Max.)

- 2.9.6.3.1.** Shall have a minimum of three (3) years' experience with noise level monitoring for projects of a similar size and scope
- 2.9.6.3.2.** Shall possess a current noise engineer license or registration with noise level monitoring experience with listed animal species.

2.9.6.4. Archaeologist (1 Point Max.)

- 2.9.6.4.1.** Shall have a minimum of three (3) years' experience in archaeological monitoring for projects of a similar size and scope.
- 2.9.6.4.2.** Shall have completed the 40-hour HAZWOPER training with certification documentation.
- 2.9.6.4.3.** Shall meet all City qualifications as defined in the City of San Diego Historical Resources Guidelines (HRG).
- 2.9.6.4.4.** All personnel involved in archaeological monitoring shall meet the minimum qualifications as established in the HRG.

2.9.6.5. Native American Monitor (1 Point Max.)

- 2.9.6.5.1.** Shall have a minimum of three (3) years' experience in Native American monitoring for projects of a similar size and scope.

2.9.6.6. Paleontologist (1 Point Max.)

2.9.6.6.1. Shall have a minimum of three (3) years' experience in paleontological monitoring for projects of a similar size and scope.

2.9.6.6.2. All personnel involved in paleontological monitoring shall meet the City's minimum qualifications

2.10. Equal Employment and Contracting Opportunity (25 Points Max.)

2.10.1. Work Force Report

2.10.2. The Design-Builder shall include in its SOQ either: (1) a completed Work Force Report (see Attachment D) for its employees located within San Diego County only; or (2) an Equal Employment Opportunity Plan (see Attachment B), which shall comply with the EEO Plan Requirements which is included in Section 2.0. The selected firm may be required to submit workforce data for a regional office prior to contract award.

2.10.3. Equal Opportunity Assurances. The Design-Builder shall include in its SOQs the following:

2.10.3.1. Specific actions consistently taken to ensure equal opportunity in their employment and subcontracting practices, including past performance and actions to be taken on this project.

2.10.3.2. Listing of Proposer's strategies to recruit, hire, train and promote a diverse workforce. These efforts will be considered in conjunction with Design-Builder's Workforce Report as compared to the County's Labor Force Availability.

2.10.3.3. Listing of Design-Builder's current community activities such as membership and participation in local organizations, associations, scholarship programs, mentoring, apprenticeships, internships, community projects, charitable contributions and similar endeavors.

2.10.4. Subcontractor Documentation. Documentation submitted in accordance with this section shall be included in an attachment, which shall be titled "Subcontractor Documentation" to the SOQ.

2.10.4.1. Past Participation Levels - Listing of Design-Builder's Subcontractor (including constructors and design professionals) and Supplier past participation levels on each project listed in response to Section 2.5, Experience & Technical Competence of this RFQ. The Design-Builder shall use the Subcontractor Past Participation List (Constructors, Design Professionals, or

Suppliers/Vendors) Form AA50, for this purpose (refer to Attachment D). Include the name of project, type of project, value of project, Subcontractor, Designer, or Supplier/Vendor firm name, percentage of participation, and identification of the firm's ownership as a certified Minority Enterprise (MBE), Women Business Enterprise (WBE), Disadvantaged Business Enterprise (DBE), Disabled Veteran Business Enterprise (DVBE), or Other Business Enterprise (OBE) or Emerging Local Business Enterprise (ELBE) or Small Local Business Enterprise (SLBE). Design-Builder should demonstrate a consistent pattern of including certified MBE, WBE, DBE, DVBE, and OBE or ELBE and SLBE.

2.10.5. Non-Discrimination in Contracting. Upon the City's request, Design-Builder agrees to provide to the City, within 60 days, a truthful and complete list of the names of all Subcontractors and Suppliers that Design-Builder has used in the past 5 years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the Design-Builder for each subcontract or supply contract. The Design-Builder further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance (Municipal Code Sections 22.3401 - 22.3417). The Design-Builder understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in remedies being ordered against the Design-Builder up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. The Design-Builder further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

2.10.6. Disclosure of Discrimination Complaints. A list of complaints filed or pending against Design-Builder or a written statement from the Design-Builder in accordance with the Section 2.10.5, "Nondiscrimination Ordinance."

2.10.7. Failure of Submission. Failure to submit the required EOCP information will result in SOQ being determined as **non-responsive**.

2.11. Financial Information and Arrangements (3 Points Max.)

2.11.1. If the Design-Builder is a Joint Venture, the Design-Builder shall address the proposed financial arrangements between the Joint Venture members as they relate to liability to the City for work to be performed under this Project.

2.12. Change Order and Litigation History (3 Points Max.)

2.12.1. Change Order History: Provide a spreadsheet that outlines the projects the Design-Builder has completed over the last 3 years; the original contract value of the list projects; the quantity of change orders for each project; and, the percentage of total change order dollar amounts to original contract value for

each project. Provide non-owner initiated change order activity as a percentage of the total change order activity. Provide any explanation of change order activity by project that Design-Builder deems appropriate.

2.12.2. Litigation History: Provide a sealed letter that lists all litigations (since your last pre-qualification clearance from the City) your firm or firms, if organized as a joint venture, was a party.

Total Points 100

SOQs that do not contain the aforementioned components may not be considered.

ATTACHMENT C

CERTIFICATION OF EXCEPTIONS TO THE REQUEST FOR QUALIFICATIONS

ATTACHMENT C

CERTIFICATION OF EXCEPTIONS TO THE REQUEST FOR QUALIFICATIONS

GOLF COURSE IMPROVEMENT PROJECTS

The undersigned, a duly authorized representative of _____
(Company Name)

hereby stipulates that _____ takes no exceptions to this
(Company Name)

Request for Qualifications and its attachments as referenced in this RFQ.

Authorized Representative

Date

Authorized Representative's Title

Company

OR

The undersigned, a duly authorized representative of _____
(Company Name)

hereby stipulates that _____ takes the following exceptions
(Company Name)

to this Request for Qualifications and its attachments as referenced in this RFQ.

Authorized Representative

Date

Authorized Representative's Title

Company

ATTACHMENT D

FORMS

DESIGN-BUILD SUBCONTRACTORS AND SUPPLIERS PAST PARTICIPATION LIST

The Design-Builder shall complete this form for each project listed in response to the RFQ.

NAME OF PROJECT: _____

TYPE OF PROJECT: _____ DOLLAR VALUE OF PROJECT: _____

Subcontractors' License Number must be filled in. Failure to provide the information specified may deem the bidder **non-responsive**.

NAME, ADDRESS AND TELEPHONE NUMBER OF SUBCONTRACTOR	DIR Registration Number	CONTRACTOR, DESIGNER, SUPPLIER, OR VENDOR	SUBCONTRACTOR LICENSE NUMBER	TYPE OF WORK PERFORMED, MATERIALS OR SUPPLIES	DOLLAR AMOUNT OF SUBCONTRACTOR PARTICIPATION, MATERIALS OR SUPPLIES	MBE, WBE, DBE, DVBE, OBE, ELBE, SLBE, SDB, WoSB, HUBZone, OR SDVOSB®	WHERE CERTIFIED®
Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Phone: _____ Email: _____							
Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Phone: _____ Email: _____							

① As appropriate, Design-Builder shall identify Subcontractors or Suppliers as one of the following and shall include a valid proof of certification (except for OBE, SLBE and ELBE):

- | | | | |
|---|--------|--|---------|
| Certified Minority Business Enterprise | MBE | Certified Woman Business Enterprise | WBE |
| Certified Disadvantaged Business Enterprise | DBE | Certified Disabled Veteran Business Enterprise | DVBE |
| Other Business Enterprise | OBE | Certified Emerging Local Business Enterprise | ELBE |
| Certified Small Local Business Enterprise | SLBE | Small Disadvantaged Business | SDB |
| Woman-Owned Small Business | WoSB | HUBZone Business | HUBZone |
| Service-Disabled Veteran Owned Small Business | SDVOSB | | |

② As appropriate, Design-Builder shall indicate if Subcontractor or Subcontractor is certified by:

- | | | | |
|--|--------|--|----------|
| City of San Diego | CITY | State of California Department of Transportation | CALTRANS |
| California Public Utilities Commission | CPUC | San Diego Regional Minority Supplier Diversity Council | SRMSDC |
| State of California's Department of General Services | CADoGS | City of Los Angeles | LA |
| State of California | CA | U.S. Small Business Administration | SBA |

The Design-Builder will not receive any points for past subcontracting participation percentages if the Design-Builder fails to submit the required proof of certification.

EQUAL OPPORTUNITY CONTRACTING (EOC)

1200 Third Avenue, Suite 200 • San Diego, CA 92101
Phone: (619) 236-6000 • Fax: (619) 236-5904

WORK FORCE REPORT

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report (WFR)*.

NO OTHER FORMS WILL BE ACCEPTED

CONTRACTOR IDENTIFICATION

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

Name of Company: _____

ADA/DBA: _____

Address (Corporate Headquarters, where applicable): _____

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

Telephone Number: _____ Fax Number: _____

Name of Company CEO: _____

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

Address: _____

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

Telephone Number: _____ Fax Number: _____ Email: _____

Type of Business: _____ Type of License: _____

The Company has appointed: _____

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

Address: _____

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

- One San Diego County (or Most Local County) Work Force - Mandatory
 - Branch Work Force *
 - Managing Office Work Force
- Check the box above that applies to this WFR.*

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

I, the undersigned representative of _____
(Firm Name)

_____, _____ hereby certify that information provided
(County) (State)

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

 (Authorized Signature)

 (Print Authorized Signature Name)

WORK FORCE REPORT - Page 2

NAME OF FIRM: _____ DATE: _____

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

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

- (1) Black or African-American
- (2) Hispanic or Latino
- (3) Asian
- (4) American Indian or Alaska Native
- (5) Native Hawaiian or Pacific Islander
- (6) White
- (7) Other race/ethnicity; not falling into other groups

Definitions of the race and ethnicity categories can be found on Page 4

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

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

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

Grand Total All Employees

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

Disabled														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

WORK FORCE REPORT – Page 3

NAME OF FIRM: _____ DATE: _____

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

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

- | | |
|--------------------------------------|---|
| (1) Black or African-American | (5) Native Hawaiian or Pacific Islander |
| (2) Hispanic or Latino | (6) White |
| (3) Asian | (7) Other race/ethnicity; not falling into other groups |
| (4) American Indian or Alaska Native | |

Definitions of the race and ethnicity categories can be found on Page 4

TRADE OCCUPATIONAL CATEGORY	(1) Black or African American		(2) Hispanic or Latino		(3) Asian		(4) American Indian/ Nat. Alaskan		(5) Pacific Islander		(6) White		(7) Other Race/ Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Brick, Block or Stone Masons														
Carpenters														
Carpet, Floor & Tile Installers Finishers														
Cement Masons, Concrete Finishers														
Construction Laborers														
Drywall Installers, Ceiling Tile Inst														
Electricians														
Elevator Installers														
First-Line Supervisors/Managers														
Glaziers														
Helpers; Construction Trade														
Millwrights														
Misc. Const. Equipment Operators														
Painters, Const. & Maintenance														
Pipelayers, Plumbers, Pipe & Steam Fitters														
Plasterers & Stucco Masons														
Roofers														
Security Guards & Surveillance Officers														
Sheet Metal Workers														
Structural Metal Fabricators & Fitters														
Welding, Soldering & Brazing Workers														
Workers, Extractive Crafts, Miners														

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

Grand Total All Employees

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

Disabled														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Work Force Report

HISTORY

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

WORK FORCE & BRANCH WORK FORCE REPORTS

When submitting a WFR, especially if the WFR is for a specific project or activity, we would like to have information about the firm's work force that is actually participating in the project or activity. That is, if the project is in San Diego and the work force is from San Diego, we want a San Diego County Work Force Report¹. By the same token, if the project is in San Diego, but the work force is from another county, such as Orange or Riverside County, we want a Work Force Report from that county². If participation in a San Diego project is by work forces from San Diego County and, for example, from Los Angeles County and from Sacramento County, we ask for separate Work Force Reports representing your firm from each of the three counties.

MANAGING OFFICE WORK FORCE

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

TYPES OF WORK FORCE REPORTS:

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

¹ One San Diego County (or Most Local County) Work Force – Mandatory in most cases

² Branch Work Force *

³ Managing Office Work Force

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

RACE/ETHNICITY CATEGORIES

American Indian or Alaska Native – A person having origins in any of the peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.

Asian – A person having origins in any of the peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for

example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

Black or African American – A person having origins in any of the Black racial groups of Africa.

Native Hawaiian or Pacific Islander – A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

White – A person having origins in any of the peoples of Europe, the Middle East, or North Africa.

Hispanic or Latino – A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin.

Exhibit A: Work Force Report Job Categories – Administration

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

Management & Financial

Advertising, Marketing, Promotions, Public Relations, and Sales Managers

Business Operations Specialists

Financial Specialists

Operations Specialties Managers

Other Management Occupations

Top Executives

Professional

Art and Design Workers

Counselors, Social Workers, and Other Community and Social Service Specialists

Entertainers and Performers, Sports and Related Workers

Health Diagnosing and Treating Practitioners

Lawyers, Judges, and Related Workers

Librarians, Curators, and Archivists

Life Scientists

Media and Communication Workers

Other Teachers and Instructors

Postsecondary Teachers

Primary, Secondary, and Special Education School Teachers

Religious Workers

Social Scientists and Related Workers

Architecture & Engineering, Science, Computer

Architects, Surveyors, and Cartographers

Computer Specialists

Engineers

Mathematical Science Occupations

Physical Scientists

Technical

Drafters, Engineering, and Mapping Technicians

Health Technologists and Technicians

Life, Physical, and Social Science Technicians

Media and Communication Equipment Workers

Sales

Other Sales and Related Workers

Retail Sales Workers

Sales Representatives, Services

Sales Representatives, Wholesale and Manufacturing

Supervisors, Sales Workers

Administrative Support

Financial Clerks

Information and Record Clerks

Legal Support Workers

Material Recording, Scheduling, Dispatching, and Distributing Workers

Other Education, Training, and Library Occupations

Other Office and Administrative Support Workers

Secretaries and Administrative Assistants

Supervisors, Office and Administrative Support Workers

Services

Building Cleaning and Pest Control Workers

Cooks and Food Preparation Workers

Entertainment Attendants and Related Workers

Fire Fighting and Prevention Workers

First-Line Supervisors/Managers, Protective Service Workers

Food and Beverage Serving Workers

Funeral Service Workers

Law Enforcement Workers

Nursing, Psychiatric, and Home Health Aides

Occupational and Physical Therapist Assistants and Aides

Other Food Preparation and Serving Related Workers

Other Healthcare Support Occupations

Other Personal Care and Service Workers

Other Protective Service Workers

Personal Appearance Workers

Supervisors, Food Preparation and Serving Workers

Supervisors, Personal Care and Service Workers

Transportation, Tourism, and Lodging Attendants

Crafts

Construction Trades Workers

Electrical and Electronic Equipment Mechanics, Installers, and Repairers

Extraction Workers

Material Moving Workers

Other Construction and Related Workers

Other Installation, Maintenance, and Repair Occupations

Plant and System Operators

Supervisors of Installation, Maintenance, and Repair Workers

Supervisors, Construction and Extraction Workers

Vehicle and Mobile Equipment Mechanics, Installers, and Repairers

Woodworkers

Operative Workers

Assemblers and Fabricators

Communications Equipment Operators

Food Processing Workers

Metal Workers and Plastic Workers

Motor Vehicle Operators

Other Production Occupations

Printing Workers

Supervisors, Production Workers

Textile, Apparel, and Furnishings Workers

Transportation

Air Transportation Workers

Other Transportation Workers

Rail Transportation Workers

Supervisors, Transportation and Material Moving Workers

Water Transportation Workers

Laborers

Agricultural Workers

Animal Care and Service Workers

Fishing and Hunting Workers

Forest, Conservation, and Logging Workers

Grounds Maintenance Workers

Helpers, Construction Trades

Supervisors, Building and Grounds Cleaning and Maintenance Workers

Supervisors, Farming, Fishing, and Forestry Workers

Exhibit B: Work Force Report Job Categories-Trade

Brick, Block or Stone Masons

Brickmasons and Blockmasons

Stonemasons

Carpenters

Carpet, floor and Tile Installers and Finishers

Carpet Installers

Floor Layers, except Carpet, Wood and Hard Tiles

Floor Sanders and Finishers

Tile and Marble Setters

Cement Masons, Concrete Finishers

Cement Masons and Concrete Finishers

Terrazzo Workers and Finishers

Construction Laborers

Drywall Installers, Ceiling Tile Inst

Drywall and Ceiling Tile Installers

Tapers

Electricians

Elevator Installers and Repairers

First-Line Supervisors/Managers

First-line Supervisors/Managers of Construction

Trades and Extraction Workers

Glaziers

Helpers, Construction Trade

Brickmasons, Blockmasons, and Tile and Marble Setters

Carpenters

Electricians

Painters, Paperhangers, Plasterers and Stucco

Pipelayers, Plumbers, Pipefitters and Steamfitters

Roofers

All other Construction Trades

Millwrights

Heating, Air Conditioning and Refrigeration Mechanics and Installers

Mechanical Door Repairers

Control and Valve Installers and Repairers

Other Installation, Maintenance and Repair Occupations

Misc. Const. Equipment Operators

Paving, Surfacing and Tamping Equipment Operators

Pile-Driver Operators

Operating Engineers and Other Construction

Equipment Operators

Painters, Const. Maintenance

Painters, Construction and Maintenance

Paperhangers

Pipelayers and Plumbers

Pipelayers

Plumbers, Pipefitters and Steamfitters

Plasterers and Stucco Masons

Roofers

Security Guards & Surveillance Officers

Sheet Metal Workers

Structural Iron and Steel Workers

Welding, Soldering and Brazing Workers

Welders, Cutter, Solderers and Brazers

Welding, Soldering and Brazing Machine Setter, Operators and Tenders

Workers, Extractive Crafts, Miners

ELECTRONICALLY SUBMITTED FORMS

THE FOLLOWING FORMS MUST BE SUBMITTED IN PDF FORMAT WITH BID SUBMISSION

The following forms are to be completed by the bidder and submitted (uploaded) electronically with the bid in PlanetBids.

A. CONTRACTOR'S CERTIFICATION OF PENDING ACTIONS

B. MANDATORY DISCLOSURE OF BUSINESS INTERESTS FORM

Bids will not be accepted until ALL the above-named forms are submitted as part of the bid submittal

CONTRACTORS CERTIFICATION OF PENDING ACTIONS

As part of its bid or proposal (Non-Price Proposal in the case of Design-Build contracts), the Bidder shall provide to the City a list of all instances within the past 10 years where a complaint was filed or pending against the Bidder in a legal or administrative proceeding alleging that Bidder discriminated against its employees, subcontractors, vendors or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

CHECK ONE BOX ONLY.

- The undersigned certifies that within the past 10 years the Bidder has NOT been the subject of a complaint or pending action in a legal administrative proceeding alleging that Bidder discriminated against its employees, subcontractors, vendors or suppliers.

- The undersigned certifies that within the past 10 years the Bidder has been the subject of a complaint or pending action in a legal administrative proceeding alleging that Bidder discriminated against its employees, subcontractors, vendors or suppliers. A description of the status or resolution of that complaint, including any remedial action taken and the applicable dates is as follows:

DATE OF CLAIM	LOCATION	DESCRIPTION OF CLAIM	LITIGATION (Y/N)	STATUS	RESOLUTION/REMEDIAL ACTION TAKEN

Contractor Name: _____

Certified By _____ Title _____
Name
 _____ Date _____
Signature

USE ADDITIONAL FORMS AS NECESSARY

Mandatory Disclosure of Business Interests Form

BIDDER/PROPOSER INFORMATION

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

Provide the name, identity, and precise nature of the interest* of all persons who are directly or indirectly involved** in this proposed transaction (SDMC § 21.0103).

* The precise nature of the interest includes:

- the percentage ownership interest in a party to the transaction,
- the percentage ownership interest in any firm, corporation, or partnership that will receive funds from the transaction,
- the value of any financial interest in the transaction,
- any contingent interest in the transaction and the value of such interest should the contingency be satisfied, and
- any philanthropic, scientific, artistic, or property interest in the transaction.

** Directly or indirectly involved means pursuing the transaction by:

- communicating or negotiating with City officers or employees,
- submitting or preparing applications, bids, proposals or other documents for purposes of contracting with the City, or
- directing or supervising the actions of persons engaged in the above activity.

Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

* Use Additional Pages if Necessary *

Under penalty of perjury under the laws of the State of California, I certify that I am responsible for the completeness and accuracy of the responses contained herein, and that all information provided is true, full and complete to the best of my knowledge and belief. I agree to provide written notice to the Mayor or Designee within five (5) business days if, at any time, I learn that any portion of this Mandatory Disclosure of Business Interests Form requires an updated response. Failure to timely provide the Mayor or Designee with written notice is grounds for Contract termination.

Print Name, Title

Signature

Date

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

ORIGINAL

City of San Diego

CONTRACTOR'S NAME: Duininck Inc.

ADDRESS: 408 6th Street, Prinsburg, MN 56281

TELEPHONE NO.: 320-978-6011

CITY CONTACT: Brittany Friedenreich, Senior Contract Specialist

Email: BFriedenreic@sandiego.gov Phone No. (619) 533-3104

CONTRACT DOCUMENTS



FOR

MULTIPLE AWARD DESIGN-BUILD CONTRACT FOR GOLF COURSE IMPROVEMENT PROJECTS

RFQ NO.: 1852

DOCUMENT NO. RR-312862-1
FILED FEB 24 2020
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

**MULTIPLE AWARD DESIGN-BUILD CONTRACT
FOR GOLF COURSE IMPROVEMENT PROJECTS**

This multiple award Design-Build contract (Contract) is made and entered into by and between the City of San Diego (City), a municipal corporation, and **Duininck Inc.** (Design-Builder), for the purpose of designing and constructing, alteration, and repair to the City's golf courses, (Projects). The City and Design-Builder may be referred to individually as "Party" and collectively as the "Parties."

RECITALS

- A. The City needs to design and construct Projects located in the City of San Diego, California.
- B. The City issued Request for Qualifications No. 1852 (RFQ) for multiple award Design-Build contracts, to which the Design-Builder responded and was approved by the Mayor and City Council (Resolution No. R- ~~312862~~) as one of the four firms eligible to submit future proposals to design and construct Projects through this program.
- C. The City will hire one firm to design and construct each Project, to be described in Request for Proposals (RFPs) issued pursuant to section 22.3310 of the San Diego Municipal Code (SDMC).
- D. The Design-Builder is prepared to enter into this Contract and to submit, in accordance with each RFP, a Proposal for each Project.
- E. The Design-Builder is ready, willing, and able to design and construct Projects in accordance with the terms and conditions of this Contract.

In consideration of the above recitals and the mutual covenants and conditions set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

ARTICLE 1 – PROJECT AWARD

- 1.1 Request for Proposals.** From time to time during the term of this Contract, the City will issue a RFP to the Design-Builder for the design and construction of a Project. The RFP will describe the specific requirements and scope of work for the Project. There is no minimum or maximum number of RFPs to be issued under this Contract. Issuing a RFP does not obligate the City to award a task order for the Project, and a RFP may be canceled by the City at any time prior to award of a task order. The City may issue addenda to a RFP or extend the deadline for submitting proposals, in the City's discretion.

- 1.1.1 Project Descriptions.** Projects may be non-complex performance oriented tasks requiring minimal design, may be complex construction requiring substantial design development, or a combination thereof. Projects will be varying in size and complexity. The RFP may or may not have preliminary plans and specifications but may include sketches, and requests for catalog cuts, and other submittals.
- 1.2 Proposals.** The Design-Builder's proposal must be complete and satisfy all the requirements of the RFP, consistent with industry standards and proposals submitted by competent design-build firms performing similar work in California. Proposals submitted by the Design-Builder shall constitute a firm offer, which may be accepted by the City within the time specified in the RFP. Subcontractors shall be identified in the proposals pursuant to SDMC section 22.3309. Preparing and submitting proposals shall be at the Design-Builder's sole cost and expense. The Design-Builder shall submit a proposal to the City responding to each RFP, by the deadline specified in the RFP, unless an exception applies:
- 1.2.1 Response Effort.** The Design-Builder does not have to submit a proposal in response to an RFP if the deadline to submit a proposal is less than thirty (30) days from the date the RFP is issued, or if the City has issued more than two RFPs in the thirty (30) days immediately preceding the date of issuance of the current RFP.
- 1.3 Evaluation.** The City will evaluate the proposals in accordance with SDMC section 22.3308 and the criteria set forth in the RFP. The City may negotiate and clarify the final components of the winning proposal with the Design-Builder pursuant to SDMC section 22.3008(b). The winning proposal will be recommended for award to the Mayor or his/her designee, who must approve all task orders. If at least two proposals are not received in response to a RFP, the City will not issue a task order for the Project and instead procure the Project through another process. The City may accept the winning proposal, reject proposals that do not meet all the requirements of the RFP or this Contract, waive any defects and technicalities in a proposal, or reject all proposals, all in its sole discretion.
- 1.4 Task Orders.** If the City accepts the Design-Builder's proposal, the award of the Project will be acknowledged by the issuance of a task order. The award of a task order is contingent upon the Design-Builder's compliance with all conditions precedent to award described in the RFP. The task order becomes effective upon the Design-Builder's receipt of the task order signed by the Mayor or his designee. Task orders will be issued with a specific completion date or performance period and a firm fixed price for design and construction. The Design-Builder is responsible for designing and constructing each Project for the fixed price contract value. Failure to do so is at the Design-Builder's risk.
- 1.5 Contract Documents.** Upon the award of a task order, the RFP, the Design-Builder's proposal, and the task order (which may include modifications to the proposal negotiated pursuant to section 1.3) shall be considered as incorporated into this Contract, but only for the particular Project for which they are issued or submitted. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the order of precedence shall be as set forth below in descending order of precedence (the document in section 1.5.1 having the highest precedence). Provisions

of the Contract Documents addressing the same subject which are consistent but have different degrees of specificity shall not be considered to be in conflict, and the more specific language shall control.

- 1.5.1 This Contract.
- 1.5.2 The task order.
- 1.5.3 The RFP and all documents referenced therein.
- 1.5.4 The 2018 City Supplements (The WHITEBOOK).
- 1.5.5 The 2018 Standard Specifications for Public Works Construction (The GREENBOOK).
- 1.5.6 The Design-Builder's proposal (Proposal).
- 1.5.7 RFQ No. 1852 and all addenda thereto.
- 1.5.8 The Design-Builder's Statement of Qualifications (SOQ).

- 1.6 Eligibility to Submit Proposals.** Pursuant to SDMC section 22.3310(h) (3), if the Design-Builder is awarded a task order and fails to achieve the mandatory minimum participation levels established in the RFP for that Project for Small Local Business Enterprises, Emerging Local Business Enterprises, or Disabled Veteran Business Enterprises, the Design-Builder shall be ineligible to submit proposals for any further task orders under this Contract.

ARTICLE 2 – SCOPE OF WORK

- 2.1 Scope of Work.** Upon the award of a task order, the Design-Builder shall furnish any and all labor, materials, equipment, transportation, utilities, services and temporary facilities required to complete each Project as described in the task order, the RFP and the Design-Builder's proposal. All work shall be performed in a good and workmanlike manner and within the care and skill of a qualified design firm and licensed contractor in California. The work shall be performed pursuant to and in conformity with the RFP, the Project's plans and specifications, and all other Contract Documents and subject to the approval of the City, whose approval shall not be unreasonably withheld.
- 2.2 Design-Builder's Representative.** The Design-Builder shall designate a local representative, who shall be reasonably available to City and shall have the necessary expertise and experience required to supervise the Projects. The Design-Builder's representative shall communicate regularly with City, but no less than once a week if the Design-Builder is working on a task order, and shall be vested with the authority to act on behalf of the Design-Builder. The Design-Builder's representative may be replaced only with the written consent of City.
- 2.3 Changes to Key Personnel and Substitution of Subcontractors.** The Design-Builder shall not change or substitute any individual that is identified as "key personnel" in its statement of qualifications or any proposal without the written consent of the City, which will not be unreasonably withheld. The Design-Builder shall not change or substitute any material, supplier, or subcontractor identified in its statement of qualifications or proposal without written consent of the City.
- 2.4 Contract Terms and Conditions.** This Contract incorporates by reference, as if fully set forth herein, the 2018 Edition of The GREENBOOK as modified by the 2018 Edition of The WHITEBOOK, except as otherwise specified in this Contract, a RFP or a task order.

- 2.5 **Subcontractors and Suppliers.** The Design-Builder shall be responsible for the work done by subcontractors and suppliers, and any discrepancy or gaps in their scope of works. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between the City and any subcontractor or supplier of any tier.
- 2.6 **Equal Opportunity Contracting.** The Design-Builder shall comply with the City's "Equal Opportunity Contracting Program" Requirements found in Part 0 of The WHITEBOOK, hereby incorporated into this Contract by reference. At the pre-construction conference (if any), the Design-Builder shall provide a statement of proposed SLBE, ELBE, and DVBE utilization identifying the certified entities that will be utilized on the Project to meet the mandatory minimum participation levels in the RFP. The Design-Builder shall also provide copies of all purchase orders and/or contracts with SLBE, ELBE, and DVBE subcontractors used to meet the mandatory minimum participation levels in the RFP.
- 2.7 **Coordination of the Work.** The Design-Builder shall coordinate all design and construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. The Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of design and construction. The Design-Builder shall coordinate scheduling of bid packages, submittals, and all RFI's, and the construction of the Project to ensure the efficient and orderly sequence of the construction of the Project. The Design-Builder shall monitor and report monthly to the City on actual performance compared to the Project schedule. If City performs other work on the Project or at the site itself or with separate contractors under City's control, the Design-Builder and the City both agree to reasonably cooperate and coordinate respective activities with the other so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- 2.8 **Superintendent.** The Design-Builder's superintendent shall be present at the site at all times that construction activities are taking place. All elements of the construction work shall be under the direct supervision of the Design-Builder's superintendent or his designated representative on the site who shall have the authority to take actions required to properly perform that particular element of the Project. The City may require the Design-Builder to stop or suspend the construction work if the City reasonably believes supervision at the site is inadequate.

ARTICLE 3 – CONTRACT TERM


- 3.1 **Contract Effective.** This Contract shall become effective on the date it is fully executed. The performance period will include an initial base period of one (1) year with two additional one (1) year option periods, for a total performance period of three (3) years. Contracts will automatically renew unless cancelled by the City.
- 3.2. **Termination.** This Contract, or task orders issued under this Contract, may be terminated by the City for default or for convenience in accordance with Part 1 of The GREENBOOK and The WHITEBOOK.
- 3.3 **Force Majeure.** In the event the performance of either Party is delayed due to causes which are outside their control, and could not be avoided by the exercise of due care, which may include, but is not limited to, war, terrorist attack, act of God, government regulations, labor disputes, strikes, fires, floods, adverse weather or elements necessitating cessation of the work, inability to obtain materials, labor or equipment, or litigation or legal proceedings challenging one or more of the project approvals, then the time for performance shall be extended by an amount equivalent to the length of delay. Neither Party shall receive compensation from the other party for a force majeure event.

ARTICLE 4 – COMPENSATION

- 4.1 **Compensation.** The total cumulative compensation to all design-build firms eligible to submit proposals pursuant to RFQ No. 1852 shall not exceed \$15 million. The guaranteed minimum compensation to the Design-Builder is \$5,000. The total compensation for each Project will be set forth in each task order, which shall be a firm fixed price for successful completion of the Project.
- 4.2 **Progress Payments.** The City will make periodic payments to the Design-Builder in accordance with the payment provisions in The GREENBOOK, The WHITEBOOK, the RFP and the task order.

ARTICLE 5 - INDEMNITY

- 5.1 **General Indemnity.** The Design-Builder agrees to defend, indemnify, protect and hold harmless the City, its elected officials, officers and employees, from and against all third-party claims or judgments asserted, or third-party liability established for damages or injuries to any person or property arising directly or indirectly out of the construction of each Project, or the Design-Builder's obligations under this Contract, which are caused or claimed to be caused by the negligent acts or omissions or willful misconduct of the Design-Builder, its officers, agents, or employees. The Design-Builder's obligation to indemnify the City shall not include any claims or liability arising from the established active or sole negligence, or willful misconduct of the City, its elected officials, officers or employees. The City may elect to conduct its own defense, in its sole discretion, without invalidating this section.
- 5.2 **Indemnity for Design Services.** With respect to the design of the Project, except as otherwise provided by California Civil Code section 2782.8, the Design-Builder shall indemnify and hold harmless the City, its elected officials, officers and employees, from all claims, demands or liability that arise out of, pertain to or relate to the


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11/25/2019

negligence, recklessness, or willful misconduct of the Design-Builder, its design professionals, officers, agents or employees.

- 5.3 **Survival.** Notwithstanding Article 3, the indemnity provisions in this Article shall survive expiration and termination of this Contract and continue so long as a viable claim exists.

ARTICLE 6 – BONDS AND INSURANCE

- 6.1 **Bonds and Insurance.** The Design-Builder shall furnish evidence of bonds and insurance required by the RFP within fourteen (14) days after written notification from the City that the Design-Builder has submitted the winning proposal, unless an extension of time is granted by the City in writing. If the Design-Builder takes longer than fourteen (14) days to provide evidence of bonds and insurance, then the additional time taken shall be added to the time the Design-Builder must guarantee the price of its proposal prior to the issuance of a task order. The City may reject the proposal if the Design-Builder fails to provide evidence of bonds and insurance within fourteen (14) days or the extension of time granted by the City.

ARTICLE 7 – GENERAL PROVISIONS

- 7.1 **Compliance with Laws.** The Design-Builder shall comply with all applicable local, state and federal laws, statutes, ordinances, and regulations in the performance of its obligations under this Contract. Local ordinances and regulations requiring written certifications or information from the Design-Builder include the Equal Benefits Ordinance (SDMC sections 22.4301 *et. seq.*), Non-Discrimination Ordinance (SDMC sections 22.3501 *et. seq.*), Drug-Free Workplace Policy (Council Policy 100-17), Americans with Disabilities Act Policy (Council Policy 100-04), and Contractor Standards Ordinance (SDMC section 22.3004).
- 7.2 **Contract Interpretation.** This Contract, its exhibits, and the documents listed in section 1.5 are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction industry standards. This Contract is entered into and shall be construed and interpreted in accordance with the laws of the State of California without regard to the conflicts or choice of law provisions thereof.
- 7.3 **Mandatory Mediation.** If a dispute arises out of or relates to this Contract that cannot be resolved through normal contract negotiations, the Design-Builder and the City must first endeavor to settle the dispute in an amicable manner, using mandatory non-binding mediation under the rules of JAMS, AAA or any other neutral organization agreed upon by the parties before having recourse in a court of law.
- 7.3.1 **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, and chosen from lists furnished by JAMS, AAA or any other agreed upon mediator.
- 7.3.2 **Mediation Expenses.** The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All joint 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.

- 7.3.3 Conduct of Mediation.** Mediation hearings will be conducted in an informal manner. Discovery shall not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 - 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 the 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.
- 7.3.4 Mediation Results.** Any resultant agreements from mediation shall be documented 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.
- 7.4 Time is of the Essence.** The City and the Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in Contract Documents.
- 7.5 Mutual Obligations.** The City and the Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each Party to realize the benefits afforded under this Contract.
- 7.6 Successors-In-Interest.** This Contract and all rights and obligations contained herein shall be in effect whether or not any or all Parties to this Contract have been succeeded by another entity, and all rights and obligations of the parties' signatory to this Contract shall be vested and binding on their successors in interest.
- 7.7 Third Party Beneficiaries.** Nothing in this Contract shall grant rights or benefits to anyone other than the City and the Design-Builder, and any alleged third-party beneficiaries are hereby expressly disclaimed. The Parties understand and agree, however, that to the extent permitted by law, the City is an intended third-party beneficiary of the Design-Builder's agreements with its consultants, designers, contractors and construction managers performing work on the Project.
- 7.8 Severability.** Should any provision of this Contract be held invalid or illegal by a court or administrative agency of competent jurisdiction, such invalidity or illegality shall not invalidate the whole of this Contract, but, rather, the Contract shall be construed as if it did not contain the invalid or illegal provision, and the rights and obligations of the Parties shall be construed and enforced accordingly, except to the extent that enforcement of this Contract without the invalidated provision would materially and adversely frustrate either or both Parties' essential objectives set forth in this Contract.

- 7.9 Independent Contractor.** The Design-BUILDER is and shall be an independent contractor. Any provisions in this Contract that may appear to give the City the right to direct the Design-BUILDER as to the details of accomplishing the work or to exercise a measure of control over the work means that the Design-BUILDER shall follow the wishes of the City as to the results of the work only.
- 7.10 Waivers.** The failure of either Party to enforce any of the provisions of this Contract or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions unless the waiver is in writing. Prior waivers shall not preclude the right of either Party to thereafter enforce each and every provision of this Contract.
- 7.11 Limitation on Powers.** Nothing in this Contract shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.
- 7.12 Conflict of Interest.** The Design-BUILDER shall establish and make known to its members, consultants, designers, contractors and construction managers, appropriate safeguards to prohibit employees from using their positions for a purpose that is, or gives the appearance of being, motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships. Design-BUILDER members shall not accept gratuities or any other favors from potential consultants, designers, contractors or construction managers who may or are working on the Project.
- 7.13 Notices.** Notices shall be mailed in accordance with section 5-2, "SPECIAL NOTICES" in The GREENBOOK to:
- Public Works Director
City of San Diego
202 C Street, 9th Floor
San Diego, CA 92101
- 7.14 Assignment.** The Design-BUILDER shall not assign its rights or obligations under this Contract without the City's prior written approval, which shall not be unreasonably withheld. Any attempted assignment in violation of this section shall be void and incapable of creating any contractual relationship between the City and a putative assignee.
- 7.15 Survival.** Any obligation that accrues under this Contract prior to its expiration or termination shall survive such expiration or termination.
- 7.16 Incorporation of Exhibits.** All exhibits referenced in this Contract and the documents referenced in section 1.5 are hereby incorporated into and made a part of this Contract by reference.

- 7.17 **Integration Clause.** The City and the Design-Builder represent, warrant and agree that no oral promise or agreement not expressed herein has been made to them, that this Contract contains the entire agreement between the Parties, that this Contract supersedes any and all prior oral agreements or understandings between the Parties unless otherwise provided herein, and that in executing this Contract, neither Party is relying on any statement or representation made by the other Party concerning the subject matter, basis or effect of this Contract other than as set forth herein, and that each Party is relying solely on its own judgment and knowledge. This Contract may not be amended except by an instrument in writing signed by both Parties.
- 7.18 **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.

ARTICLE 8 – Prevailing Wages

- 8.1 **Worked Performed.** 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, the Contractor and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below
- 8.2 **Compliance with Prevailing Wage Requirements.** Pursuant to sections 1720 through 1861 of the California Labor Code, the Contractor 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.
- 8.2.1 Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Contractor 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.
- 8.2.2 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.

- 8.3 Penalties for Violations.** Contractor 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.
- 8.4 Payroll Records.** Contractor 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. Contractor shall require its subcontractors to also comply with section 1776. Contractor and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Contractor is responsible for ensuring its subcontractors submit certified payroll records to the City.
- 8.4.1** For contracts entered into on or after April 1, 2015, Contractor and their subcontractors shall furnish records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required by Labor Code section 1771.4.
- 8.5 Apprentices.** Contractor and its subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Contractor is held responsible for the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.
- 8.6 Working Hours.** Contractor and their 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.
- 8.7 Required Provisions for Subcontracts.** Contractor 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.
- 8.8 Labor Code Section 1861 Certification.** Contractor in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Contract, Contractor 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."
- 8.9 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.

8.10 Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. As of March 1, 2015, no contractor or subcontractor may be listed on a bid or proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5. As of April 1, 2015, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or enter into any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. By submitting a bid or proposal to the City, Contractor is certifying that he or she has verified that all subcontractors used on this public work project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration to the City upon request.

8.10.1 A Contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in 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 subcontractor pursuant to Public Contract Code section 4107.

IN WITNESS WHEREOF, this Contract is executed by the City of San Diego pursuant to Resolution No. R- 312062 authorizing such execution, and the Design-Builder acting by and through its authorized officers.

Duininck Inc.

By: 

Name: Judd Duinick


Date: 11/18/2019

THE CITY OF SAN DIEGO

By: 
James Nagelvoort
Director
Department of Public Works

Date: 3/2/2020

I HEREBY APPROVE the form of the foregoing agreement this 5th day of March, 2020.

Mara W. Elliott, City Attorney
By: 
Deputy City Attorney

Stem / 10
2/24/20
(R-2020-311)

RESOLUTION NUMBER R- 312862

DATE OF FINAL PASSAGE FEB 26 2020

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING FOUR MULTIPLE AWARD DESIGN-BUILD CONTRACTS K-20-1852-MAC-3-C FOR GOLF COURSE IMPROVEMENT PROJECTS; AND TAKING RELATED ACTIONS.

WHEREAS, the Public Works Department requests City Council to approve the award of four (4) Multiple Award Design-Build Contracts for a cumulative value of \$15,000,000 for the purpose of providing design and construction services for golf course Capital Improvement Program (CIP) projects (Agreements); and

WHEREAS, the selected firms receive a \$5,000 guarantee and will compete for task orders that have an estimated construction cost between \$250,000 and \$2,500,000, for a cumulative value of up to \$15,000,000. These projects will be exclusively for the golf course Capital Improvement Program throughout the City. This action only authorizes an agreement with the selected firms to compete for task orders and does not authorize any design or construction activities; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That the Mayor, or his designee, is authorized to execute, for and on behalf of the City, four Multiple Award Construction Contracts (MACC) simultaneously, with the first being Duininck Inc, under the terms and conditions set forth in the Agreement, on file in the Office of the City Clerk as Document No. RR- 312862-1

2. That the Mayor, or his designee, is authorized to execute, for and on behalf of the City, four Multiple Award Construction Contracts (MACC) simultaneously, with the second

being Landscapes Unlimited, LLC, under the terms and conditions set forth in the Agreement, on file in the Office of the City Clerk as Document No. RR- 312862-2

3. That the Mayor, or his designee, is authorized to execute, for and on behalf of the City, four Multiple Award Construction Contracts (MACC) simultaneously, with the third being Lexicon, Inc., under the terms and conditions set forth in the Agreement, on file in the Office of the City Clerk as Document No. RR- 312862-3

4. That the Mayor, or his designee, is authorized to execute, for and on behalf of the City, four Multiple Award Construction Contracts (MACC) simultaneously, with the fourth being Wadsworth Golf Construction Company, under the terms and conditions set forth in the Agreement, on file in the Office of the City Clerk as Document No. RR- 312862-4

5. That the Chief Financial Officer is authorized to expend an amount not to exceed \$15,000,000 over five years for the purpose of funding the MACC contracts (K-20-1852-MAC-3-C) with the listed firms upon the adoption of the Annual Appropriation Ordinance for the applicable fiscal year, and contingent upon the Chief Financial Officer first furnishing one or more certificates certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

6. That the Chief Financial Officer is authorized to expend an amount not to exceed \$5,000 with Duininck Inc. from annual A-EA.00001, Torrey Pines Golf Course, Fund 700045, Torrey Pines Golf Course CIP, for the purpose of executing this agreement and meet the minimum financial requirements.

7. That the Chief Financial Officer is authorized to expend an amount not to exceed \$5,000 with Landscapes Unlimited, LLC from annual A-EA.00001, Torrey Pines Golf Course,

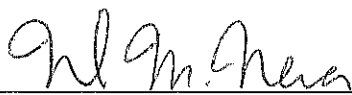
Fund 700045, Torrey Pines Golf Course CIP, for the purpose of executing this agreement and meet the minimum financial requirements.

8. That the Chief Financial Officer is authorized to expend an amount not to exceed \$5,000 with Lexicon, Inc. from annual A-EA.00001, Torrey Pines Golf Course, Fund 700045, Torrey Pines Golf Course CIP, for the purpose of executing this agreement and meet the minimum financial requirements.

9. That the Chief Financial Officer is authorized to expend an amount not to exceed \$5,000 with Wadsworth Golf Construction Company from annual A-EA.00001, Torrey Pines Golf Course, Fund 700045, Torrey Pines Golf Course CIP, for the purpose of executing this agreement and meet the minimum financial requirements.

10. That the Chief Financial Officer is authorized, upon advice from the administering department, to transfer excess budgeted funds, if any, to the appropriate reserves.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Mark M. Mercer
Deputy City Attorney

MMM:cw
01/30/20
Or.Dept: Public Works Department
CC No.: 3000012826
Doc. No.: 2291828

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego,
at its meeting of Feb. 24, 2020.

ELIZABETH S. MALAND
City Clerk

By Conni Peterson
Deputy City Clerk

Approved: 2/26/2020
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on FEB 24 2020, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage FEB 26 2020

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

(Seal)

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 312862

Passed by the Council of The City of San Diego on February 24, 2020, by the following vote:

YEAS: **BRY, CAMPBELL, WARD, MONTGOMERY, KERSEY, CATE, SHERMAN,
MORENO, & GÓMEZ.**

NAYS: **NONE.**

NOT PRESENT: **NONE.**

RECUSED: **NONE.**

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: **Connie Patterson**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of
RESOLUTION NO. **R-312862**, approved on **February 24, 2020**. The date of final
passage is **February 26, 2020**.

ELIZABETH S. MALAND

City Clerk of the City of San Diego, California

(Seal)

By: *Connie Patterson*, Deputy

ORIGINAL

City of San Diego

CONTRACTOR'S NAME: Landscapes Unlimited, LLC

ADDRESS: 1201 Aries Drive, Lincoln, NE 68512

TELEPHONE NO.: 402-423-6653

CITY CONTACT: Brittany Friedenreich, Senior Contract Specialist

Email: BFriedenreic@sandiego.gov Phone No. (619) 533-3104

CONTRACT DOCUMENTS



FOR

MULTIPLE AWARD DESIGN-BUILD CONTRACT FOR GOLF COURSE IMPROVEMENT PROJECTS

RFQ NO.: 1852

DOCUMENT NO. RR-312862-2
FILED FEB 24 2020
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

**MULTIPLE AWARD DESIGN-BUILD CONTRACT
FOR GOLF COURSE IMPROVEMENT PROJECTS**

This multiple award Design-Build contract (Contract) is made and entered into by and between the City of San Diego (City), a municipal corporation, and **Landscapes Unlimited, LLC** (Design-Builder), for the purpose of designing and constructing, alteration, and repair to the City's golf courses, (Projects). The City and Design-Builder may be referred to individually as "Party" and collectively as the "Parties."

RECITALS

- A. The City needs to design and construct Projects located in the City of San Diego, California.
- B. The City issued Request for Qualifications No. 1852 (RFQ) for multiple award Design-Build contracts, to which the Design-Builder responded and was approved by the Mayor and City Council (Resolution No. R- 312862) as one of the four firms eligible to submit future proposals to design and construct Projects through this program.
- C. The City will hire one firm to design and construct each Project, to be described in Request for Proposals (RFPs) issued pursuant to section 22.3310 of the San Diego Municipal Code (SDMC).
- D. The Design-Builder is prepared to enter into this Contract and to submit, in accordance with each RFP, a Proposal for each Project.
- E. The Design-Builder is ready, willing, and able to design and construct Projects in accordance with the terms and conditions of this Contract.

In consideration of the above recitals and the mutual covenants and conditions set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

ARTICLE 1 – PROJECT AWARD

- 1.1 Request for Proposals.** From time to time during the term of this Contract, the City will issue a RFP to the Design-Builder for the design and construction of a Project. The RFP will describe the specific requirements and scope of work for the Project. There is no minimum or maximum number of RFPs to be issued under this Contract. Issuing a RFP does not obligate the City to award a task order for the Project, and a RFP may be canceled by the City at any time prior to award of a task order. The City may issue addenda to a RFP or extend the deadline for submitting proposals, in the City's discretion.

- 1.1.1 Project Descriptions.** Projects may be non-complex performance oriented tasks requiring minimal design, may be complex construction requiring substantial design development, or a combination thereof. Projects will be varying in size and complexity. The RFP may or may not have preliminary plans and specifications but may include sketches, and requests for catalog cuts, and other submittals.
- 1.2 Proposals.** The Design-Builder's proposal must be complete and satisfy all the requirements of the RFP, consistent with industry standards and proposals submitted by competent design-build firms performing similar work in California. Proposals submitted by the Design-Builder shall constitute a firm offer, which may be accepted by the City within the time specified in the RFP. Subcontractors shall be identified in the proposals pursuant to SDMC section 22.3309. Preparing and submitting proposals shall be at the Design-Builder's sole cost and expense. The Design-Builder shall submit a proposal to the City responding to each RFP, by the deadline specified in the RFP, unless an exception applies:
- 1.2.1 Response Effort.** The Design-Builder does not have to submit a proposal in response to an RFP if the deadline to submit a proposal is less than thirty (30) days from the date the RFP is issued, or if the City has issued more than two RFPs in the thirty (30) days immediately preceding the date of issuance of the current RFP.
- 1.3 Evaluation.** The City will evaluate the proposals in accordance with SDMC section 22.3308 and the criteria set forth in the RFP. The City may negotiate and clarify the final components of the winning proposal with the Design-Builder pursuant to SDMC section 22.3008(b). The winning proposal will be recommended for award to the Mayor or his/her designee, who must approve all task orders. If at least two proposals are not received in response to a RFP, the City will not issue a task order for the Project and instead procure the Project through another process. The City may accept the winning proposal, reject proposals that do not meet all the requirements of the RFP or this Contract, waive any defects and technicalities in a proposal, or reject all proposals, all in its sole discretion.
- 1.4 Task Orders.** If the City accepts the Design-Builder's proposal, the award of the Project will be acknowledged by the issuance of a task order. The award of a task order is contingent upon the Design-Builder's compliance with all conditions precedent to award described in the RFP. The task order becomes effective upon the Design-Builder's receipt of the task order signed by the Mayor or his designee. Task orders will be issued with a specific completion date or performance period and a firm fixed price for design and construction. The Design-Builder is responsible for designing and constructing each Project for the fixed price contract value. Failure to do so is at the Design-Builder's risk.
- 1.5 Contract Documents.** Upon the award of a task order, the RFP, the Design-Builder's proposal, and the task order (which may include modifications to the proposal negotiated pursuant to section 1.3) shall be considered as incorporated into this Contract, but only for the particular Project for which they are issued or submitted. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the order of precedence shall be as set forth below in descending order of precedence (the document in section 1.5.1 having the highest precedence). Provisions

of the Contract Documents addressing the same subject which are consistent but have different degrees of specificity shall not be considered to be in conflict, and the more specific language shall control.

- 1.5.1 This Contract.
- 1.5.2 The task order.
- 1.5.3 The RFP and all documents referenced therein.
- 1.5.4 The 2018 City Supplements (The WHITEBOOK).
- 1.5.5 The 2018 Standard Specifications for Public Works Construction (The GREENBOOK).
- 1.5.6 The Design-Builder's proposal (Proposal).
- 1.5.7 RFQ No. 1852 and all addenda thereto.
- 1.5.8 The Design-Builder's Statement of Qualifications (SOQ).

- 1.6 Eligibility to Submit Proposals.** Pursuant to SDMC section 22.3310(h) (3), if the Design-Builder is awarded a task order and fails to achieve the mandatory minimum participation levels established in the RFP for that Project for Small Local Business Enterprises, Emerging Local Business Enterprises, or Disabled Veteran Business Enterprises, the Design-Builder shall be ineligible to submit proposals for any further task orders under this Contract.

ARTICLE 2 – SCOPE OF WORK

- 2.1 Scope of Work.** Upon the award of a task order, the Design-Builder shall furnish any and all labor, materials, equipment, transportation, utilities, services and temporary facilities required to complete each Project as described in the task order, the RFP and the Design-Builder's proposal. All work shall be performed in a good and workmanlike manner and within the care and skill of a qualified design firm and licensed contractor in California. The work shall be performed pursuant to and in conformity with the RFP, the Project's plans and specifications, and all other Contract Documents and subject to the approval of the City, whose approval shall not be unreasonably withheld.
- 2.2 Design-Builder's Representative.** The Design-Builder shall designate a local representative, who shall be reasonably available to City and shall have the necessary expertise and experience required to supervise the Projects. The Design-Builder's representative shall communicate regularly with City, but no less than once a week if the Design-Builder is working on a task order, and shall be vested with the authority to act on behalf of the Design-Builder. The Design-Builder's representative may be replaced only with the written consent of City.
- 2.3 Changes to Key Personnel and Substitution of Subcontractors.** The Design-Builder shall not change or substitute any individual that is identified as "key personnel" in its statement of qualifications or any proposal without the written consent of the City, which will not be unreasonably withheld. The Design-Builder shall not change or substitute any material, supplier, or subcontractor identified in its statement of qualifications or proposal without written consent of the City.
- 2.4 Contract Terms and Conditions.** This Contract incorporates by reference, as if fully set forth herein, the 2018 Edition of The GREENBOOK as modified by the 2018 Edition of The WHITEBOOK, except as otherwise specified in this Contract, a RFP or a task order.

- 2.5 Subcontractors and Suppliers.** The Design-Builder shall be responsible for the work done by subcontractors and suppliers, and any discrepancy or gaps in their scope of works. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between the City and any subcontractor or supplier of any tier.
- 2.6 Equal Opportunity Contracting.** The Design-Builder shall comply with the City's "Equal Opportunity Contracting Program" Requirements found in Part 0 of The WHITEBOOK, hereby incorporated into this Contract by reference. At the pre-construction conference (if any), the Design-Builder shall provide a statement of proposed SLBE, ELBE, and DVBE utilization identifying the certified entities that will be utilized on the Project to meet the mandatory minimum participation levels in the RFP. The Design-Builder shall also provide copies of all purchase orders and/or contracts with SLBE, ELBE, and DVBE subcontractors used to meet the mandatory minimum participation levels in the RFP.
- 2.7 Coordination of the Work.** The Design-Builder shall coordinate all design and construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. The Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of design and construction. The Design-Builder shall coordinate scheduling of bid packages, submittals, and all RFI's, and the construction of the Project to ensure the efficient and orderly sequence of the construction of the Project. The Design-Builder shall monitor and report monthly to the City on actual performance compared to the Project schedule. If City performs other work on the Project or at the site itself or with separate contractors under City's control, the Design-Builder and the City both agree to reasonably cooperate and coordinate respective activities with the other so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- 2.8 Superintendent.** The Design-Builder's superintendent shall be present at the site at all times that construction activities are taking place. All elements of the construction work shall be under the direct supervision of the Design-Builder's superintendent or his designated representative on the site who shall have the authority to take actions required to properly perform that particular element of the Project. The City may require the Design-Builder to stop or suspend the construction work if the City reasonably believes supervision at the site is inadequate.

ARTICLE 3 – CONTRACT TERM

- RW
- 3.1 **Contract Effective.** This Contract shall become effective on the date it is fully executed. The performance period will include an initial base period of one (1) year with two additional one (1) year option periods, for a total performance period of three (3) years. Contracts will automatically renew unless cancelled by the City.
- 3.2. **Termination.** This Contract, or task orders issued under this Contract, may be terminated by the City for default or for convenience in accordance with Part 1 of The GREENBOOK and The WHITEBOOK.
- 3.3 **Force Majeure.** In the event the performance of either Party is delayed due to causes which are outside their control, and could not be avoided by the exercise of due care, which may include, but is not limited to, war, terrorist attack, act of God, government regulations, labor disputes, strikes, fires, floods, adverse weather or elements necessitating cessation of the work, inability to obtain materials, labor or equipment, or litigation or legal proceedings challenging one or more of the project approvals, then the time for performance shall be extended by an amount equivalent to the length of delay. Neither Party shall receive compensation from the other party for a force majeure event.

ARTICLE 4 – COMPENSATION

- 4.1 **Compensation.** The total cumulative compensation to all design-build firms eligible to submit proposals pursuant to RFQ No. 1852 shall not exceed \$15 million. The guaranteed minimum compensation to the Design-Builder is \$5,000. The total compensation for each Project will be set forth in each task order, which shall be a firm fixed price for successful completion of the Project.
- 4.2 **Progress Payments.** The City will make periodic payments to the Design-Builder in accordance with the payment provisions in The GREENBOOK, The WHITEBOOK, the RFP and the task order.

ARTICLE 5 - INDEMNITY

- 5.1 **General Indemnity.** The Design-Builder agrees to defend, indemnify, protect and hold harmless the City, its elected officials, officers and employees, from and against all third-party claims or judgments asserted, or third-party liability established for damages or injuries to any person or property arising directly or indirectly out of the construction of each Project, or the Design-Builder's obligations under this Contract, which are caused or claimed to be caused by the negligent acts or omissions or willful misconduct of the Design-Builder, its officers, agents, or employees. The Design-Builder's obligation to indemnify the City shall not include any claims or liability arising from the established active or sole negligence, or willful misconduct of the City, its elected officials, officers or employees. The City may elect to conduct its own defense, in its sole discretion, without invalidating this section.
- 5.2 **Indemnity for Design Services.** With respect to the design of the Project, except as otherwise provided by California Civil Code section 2782.8, the Design-Builder shall indemnify and hold harmless the City, its elected officials, officers and employees, from all claims, demands or liability that arise out of, pertain to or relate to the

negligence, recklessness, or willful misconduct of the Design-Builder, its design professionals, officers, agents or employees.

- 5.3 **Survival.** Notwithstanding Article 3, the indemnity provisions in this Article shall survive expiration and termination of this Contract and continue so long as a viable claim exists.

ARTICLE 6 – BONDS AND INSURANCE

- 6.1 **Bonds and Insurance.** The Design-Builder shall furnish evidence of bonds and insurance required by the RFP within fourteen (14) days after written notification from the City that the Design-Builder has submitted the winning proposal, unless an extension of time is granted by the City in writing. If the Design-Builder takes longer than fourteen (14) days to provide evidence of bonds and insurance, then the additional time taken shall be added to the time the Design-Builder must guarantee the price of its proposal prior to the issuance of a task order. The City may reject the proposal if the Design-Builder fails to provide evidence of bonds and insurance within fourteen (14) days or the extension of time granted by the City.

ARTICLE 7 – GENERAL PROVISIONS

- 7.1 **Compliance with Laws.** The Design-Builder shall comply with all applicable local, state and federal laws, statutes, ordinances, and regulations in the performance of its obligations under this Contract. Local ordinances and regulations requiring written certifications or information from the Design-Builder include the Equal Benefits Ordinance (SDMC sections 22.4301 *et. seq.*), Non-Discrimination Ordinance (SDMC sections 22.3501 *et. seq.*), Drug-Free Workplace Policy (Council Policy 100-17), Americans with Disabilities Act Policy (Council Policy 100-04), and Contractor Standards Ordinance (SDMC section 22.3004).
- 7.2 **Contract Interpretation.** This Contract, its exhibits, and the documents listed in section 1.5 are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction industry standards. This Contract is entered into and shall be construed and interpreted in accordance with the laws of the State of California without regard to the conflicts or choice of law provisions thereof.
- 7.3 **Mandatory Mediation.** If a dispute arises out of or relates to this Contract that cannot be resolved through normal contract negotiations, the Design-Builder and the City must first endeavor to settle the dispute in an amicable manner, using mandatory non-binding mediation under the rules of JAMS, AAA or any other neutral organization agreed upon by the parties before having recourse in a court of law.
- 7.3.1 **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, and chosen from lists furnished by JAMS, AAA or any other agreed upon mediator.
- 7.3.2 **Mediation Expenses.** The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All joint 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.

- 7.3.3 Conduct of Mediation.** Mediation hearings will be conducted in an informal manner. Discovery shall not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 - 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 the 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.
- 7.3.4 Mediation Results.** Any resultant agreements from mediation shall be documented 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.
- 7.4 Time is of the Essence.** The City and the Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in Contract Documents.
- 7.5 Mutual Obligations.** The City and the Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each Party to realize the benefits afforded under this Contract.
- 7.6 Successors-In-Interest.** This Contract and all rights and obligations contained herein shall be in effect whether or not any or all Parties to this Contract have been succeeded by another entity, and all rights and obligations of the parties' signatory to this Contract shall be vested and binding on their successors in interest.
- 7.7 Third Party Beneficiaries.** Nothing in this Contract shall grant rights or benefits to anyone other than the City and the Design-Builder, and any alleged third-party beneficiaries are hereby expressly disclaimed. The Parties understand and agree, however, that to the extent permitted by law, the City is an intended third-party beneficiary of the Design-Builder's agreements with its consultants, designers, contractors and construction managers performing work on the Project.
- 7.8 Severability.** Should any provision of this Contract be held invalid or illegal by a court or administrative agency of competent jurisdiction, such invalidity or illegality shall not invalidate the whole of this Contract, but, rather, the Contract shall be construed as if it did not contain the invalid or illegal provision, and the rights and obligations of the Parties shall be construed and enforced accordingly, except to the extent that enforcement of this Contract without the invalidated provision would materially and adversely frustrate either or both Parties' essential objectives set forth in this Contract.

- 7.9 Independent Contractor.** The Design-Builder is and shall be an independent contractor. Any provisions in this Contract that may appear to give the City the right to direct the Design-Builder as to the details of accomplishing the work or to exercise a measure of control over the work means that the Design-Builder shall follow the wishes of the City as to the results of the work only.
- 7.10 Waivers.** The failure of either Party to enforce any of the provisions of this Contract or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions unless the waiver is in writing. Prior waivers shall not preclude the right of either Party to thereafter enforce each and every provision of this Contract.
- 7.11 Limitation on Powers.** Nothing in this Contract shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.
- 7.12 Conflict of Interest.** The Design-Builder shall establish and make known to its members, consultants, designers, contractors and construction managers, appropriate safeguards to prohibit employees from using their positions for a purpose that is, or gives the appearance of being, motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships. Design-Builder members shall not accept gratuities or any other favors from potential consultants, designers, contractors or construction managers who may or are working on the Project.
- 7.13 Notices.** Notices shall be mailed in accordance with section 5-2, "SPECIAL NOTICES" in The GREENBOOK to:
- Public Works Director
City of San Diego
202 C Street, 9th Floor
San Diego, CA 92101
- 7.14 Assignment.** The Design-Builder shall not assign its rights or obligations under this Contract without the City's prior written approval, which shall not be unreasonably withheld. Any attempted assignment in violation of this section shall be void and incapable of creating any contractual relationship between the City and a putative assignee.
- 7.15 Survival.** Any obligation that accrues under this Contract prior to its expiration or termination shall survive such expiration or termination.
- 7.16 Incorporation of Exhibits.** All exhibits referenced in this Contract and the documents referenced in section 1.5 are hereby incorporated into and made a part of this Contract by reference.

- 7.17 Integration Clause.** The City and the Design-Builder represent, warrant and agree that no oral promise or agreement not expressed herein has been made to them, that this Contract contains the entire agreement between the Parties, that this Contract supersedes any and all prior oral agreements or understandings between the Parties unless otherwise provided herein, and that in executing this Contract, neither Party is relying on any statement or representation made by the other Party concerning the subject matter, basis or effect of this Contract other than as set forth herein, and that each Party is relying solely on its own judgment and knowledge. This Contract may not be amended except by an instrument in writing signed by both Parties.
- 7.18 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.

ARTICLE 8 – Prevailing Wages

- 8.1 Worked Performed.** 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, the Contractor and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below
- 8.2 Compliance with Prevailing Wage Requirements.** Pursuant to sections 1720 through 1861 of the California Labor Code, the Contractor 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.
- 8.2.1** Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Contractor 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.
- 8.2.2** 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.

- 8.3 Penalties for Violations.** Contractor 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.
- 8.4 Payroll Records.** Contractor 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. Contractor shall require its subcontractors to also comply with section 1776. Contractor and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Contractor is responsible for ensuring its subcontractors submit certified payroll records to the City.
- 8.4.1** For contracts entered into on or after April 1, 2015, Contractor and their subcontractors shall furnish records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required by Labor Code section 1771.4.
- 8.5 Apprentices.** Contractor and its subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Contractor is held responsible for the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.
- 8.6 Working Hours.** Contractor and their 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.
- 8.7 Required Provisions for Subcontracts.** Contractor 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.
- 8.8 Labor Code Section 1861 Certification.** Contractor in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Contract, Contractor 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."
- 8.9 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.

8.10 Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. As of March 1, 2015, no contractor or subcontractor may be listed on a bid or proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5. As of April 1, 2015, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or enter into any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. By submitting a bid or proposal to the City, Contractor is certifying that he or she has verified that all subcontractors used on this public work project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration to the City upon request.

8.10.1 A Contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in 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 subcontractor pursuant to Public Contract Code section 4107.

IN WITNESS WHEREOF, this Contract is executed by the City of San Diego pursuant to Resolution No. R- 312862 authorizing such execution, and the Design-Builder acting by and through its authorized officers.

Landscapes Unlimited, LLC

By: Roy Wilson

Name: Roy Wilson

Date: 11-14-2019

THE CITY OF SAN DIEGO

By: James Nagelvoort
Director
Department of Public Works

Date: 3/2/2020

I HEREBY APPROVE the form of the foregoing agreement this 5th day of July March, 2019.
20

Mara W. Elliott, City Attorney

By: [Signature]
Deputy City Attorney

Stem 100
2/24/20
(R-2020-311)

RESOLUTION NUMBER R- 312862

DATE OF FINAL PASSAGE FEB 26 2020

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING FOUR MULTIPLE AWARD DESIGN-BUILD CONTRACTS K-20-1852-MAC-3-C FOR GOLF COURSE IMPROVEMENT PROJECTS; AND TAKING RELATED ACTIONS.

WHEREAS, the Public Works Department requests City Council to approve the award of four (4) Multiple Award Design-Build Contracts for a cumulative value of \$15,000,000 for the purpose of providing design and construction services for golf course Capital Improvement Program (CIP) projects (Agreements); and

WHEREAS, the selected firms receive a \$5,000 guarantee and will compete for task orders that have an estimated construction cost between \$250,000 and \$2,500,000, for a cumulative value of up to \$15,000,000. These projects will be exclusively for the golf course Capital Improvement Program throughout the City. This action only authorizes an agreement with the selected firms to compete for task orders and does not authorize any design or construction activities; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That the Mayor, or his designee, is authorized to execute, for and on behalf of the City, four Multiple Award Construction Contracts (MACC) simultaneously, with the first being Duininck Inc, under the terms and conditions set forth in the Agreement, on file in the Office of the City Clerk as Document No. RR- 312862-1

2. That the Mayor, or his designee, is authorized to execute, for and on behalf of the City, four Multiple Award Construction Contracts (MACC) simultaneously, with the second

being Landscapes Unlimited, LLC, under the terms and conditions set forth in the Agreement, on file in the Office of the City Clerk as Document No. RR- 312862-2

3. That the Mayor, or his designee, is authorized to execute, for and on behalf of the City, four Multiple Award Construction Contracts (MACC) simultaneously, with the third being Lexicon, Inc., under the terms and conditions set forth in the Agreement, on file in the Office of the City Clerk as Document No. RR- 312862-3

4. That the Mayor, or his designee, is authorized to execute, for and on behalf of the City, four Multiple Award Construction Contracts (MACC) simultaneously, with the fourth being Wadsworth Golf Construction Company, under the terms and conditions set forth in the Agreement, on file in the Office of the City Clerk as Document No. RR- 312862-4

5. That the Chief Financial Officer is authorized to expend an amount not to exceed \$15,000,000 over five years for the purpose of funding the MACC contracts (K-20-1852-MAC-3-C) with the listed firms upon the adoption of the Annual Appropriation Ordinance for the applicable fiscal year, and contingent upon the Chief Financial Officer first furnishing one or more certificates certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

6. That the Chief Financial Officer is authorized to expend an amount not to exceed \$5,000 with Duinick Inc. from annual A-EA.00001, Torrey Pines Golf Course, Fund 700045, Torrey Pines Golf Course CIP, for the purpose of executing this agreement and meet the minimum financial requirements.

7. That the Chief Financial Officer is authorized to expend an amount not to exceed \$5,000 with Landscapes Unlimited, LLC from annual A-EA.00001, Torrey Pines Golf Course,

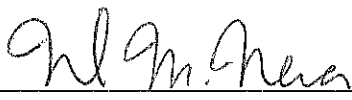
Fund 700045, Torrey Pines Golf Course CIP, for the purpose of executing this agreement and meet the minimum financial requirements.

8. That the Chief Financial Officer is authorized to expend an amount not to exceed \$5,000 with Lexicon, Inc. from annual A-EA.00001, Torrey Pines Golf Course, Fund 700045, Torrey Pines Golf Course CIP, for the purpose of executing this agreement and meet the minimum financial requirements.

9. That the Chief Financial Officer is authorized to expend an amount not to exceed \$5,000 with Wadsworth Golf Construction Company from annual A-EA.00001, Torrey Pines Golf Course, Fund 700045, Torrey Pines Golf Course CIP, for the purpose of executing this agreement and meet the minimum financial requirements.

10. That the Chief Financial Officer is authorized, upon advice from the administering department, to transfer excess budgeted funds, if any, to the appropriate reserves.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Mark M. Mercer
Deputy City Attorney

MMM:cw
01/30/20
Or.Dept: Public Works Department
CC No.: 3000012826
Doc. No.: 2291828

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego,
at its meeting of Feb. 24, 2020.

ELIZABETH S. MALAND
City Clerk

By Connie Peterson
Deputy City Clerk

Approved: 2/26/2020
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on FEB 24 2020, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage FEB 26 2020

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

(Seal)

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

Office of the City Clerk, San Diego, California
Resolution Number R- **312862**

Passed by the Council of The City of San Diego on February 24, 2020, by the following vote:

YEAS: **BRY, CAMPBELL, WARD, MONTGOMERY, KERSEY, CATE, SHERMAN,
MORENO, & GÓMEZ.**

NAYS: **NONE.**

NOT PRESENT: **NONE.**

RECUSED: **NONE.**

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: **Connie Patterson**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of
RESOLUTION NO. **R-312862**, approved on **February 24, 2020**. The date of final
passage is **February 26, 2020**.

ELIZABETH S. MALAND

City Clerk of the City of San Diego, California

(Seal)

By: *Connie Patterson* Deputy

ORIGINAL

City of San Diego

CONTRACTOR'S NAME: Lexicon, Inc.

ADDRESS: 8900 Fourche Dam Pike, Little Rock, AR 72206

TELEPHONE NO.: 281-866-0909

CITY CONTACT: Brittany Friedenreich, Senior Contract Specialist

Email: BFriedenreic@sandiego.gov Phone No. (619) 533-3104

CONTRACT DOCUMENTS



FOR

MULTIPLE AWARD DESIGN-BUILD CONTRACT FOR GOLF COURSE IMPROVEMENT PROJECTS

RFQ NO.: 1852

DOCUMENT NO. RR-312862-3
FILED FEB 24 2020
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

**MULTIPLE AWARD DESIGN-BUILD CONTRACT
FOR GOLF COURSE IMPROVEMENT PROJECTS**

This multiple award Design-Build contract (Contract) is made and entered into by and between the City of San Diego (City), a municipal corporation, and **Lexicon, Inc.** (Design-Builder), for the purpose of designing and constructing, alteration, and repair to the City's golf courses, (Projects). The City and Design-Builder may be referred to individually as "Party" and collectively as the "Parties."

RECITALS

- A. The City needs to design and construct Projects located in the City of San Diego, California.
- B. The City issued Request for Qualifications No. 1852 (RFQ) for multiple award Design-Build contracts, to which the Design-Builder responded and was approved by the Mayor and City Council (Resolution No. R-312862) as one of the four firms eligible to submit future proposals to design and construct Projects through this program.
- C. The City will hire one firm to design and construct each Project, to be described in Request for Proposals (RFPs) issued pursuant to section 22.3310 of the San Diego Municipal Code (SDMC).
- D. The Design-Builder is prepared to enter into this Contract and to submit, in accordance with each RFP, a Proposal for each Project.
- E. The Design-Builder is ready, willing, and able to design and construct Projects in accordance with the terms and conditions of this Contract.

In consideration of the above recitals and the mutual covenants and conditions set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

ARTICLE 1 – PROJECT AWARD

- 1.1 Request for Proposals.** From time to time during the term of this Contract, the City will issue a RFP to the Design-Builder for the design and construction of a Project. The RFP will describe the specific requirements and scope of work for the Project. There is no minimum or maximum number of RFPs to be issued under this Contract. Issuing a RFP does not obligate the City to award a task order for the Project, and a RFP may be canceled by the City at any time prior to award of a task order. The City may issue addenda to a RFP or extend the deadline for submitting proposals, in the City's discretion.

- 1.1.1 Project Descriptions.** Projects may be non-complex performance oriented tasks requiring minimal design, may be complex construction requiring substantial design development, or a combination thereof. Projects will be varying in size and complexity. The RFP may or may not have preliminary plans and specifications but may include sketches, and requests for catalog cuts, and other submittals.
- 1.2 Proposals.** The Design-Builder's proposal must be complete and satisfy all the requirements of the RFP, consistent with industry standards and proposals submitted by competent design-build firms performing similar work in California. Proposals submitted by the Design-Builder shall constitute a firm offer, which may be accepted by the City within the time specified in the RFP. Subcontractors shall be identified in the proposals pursuant to SDMC section 22.3309. Preparing and submitting proposals shall be at the Design-Builder's sole cost and expense. The Design-Builder shall submit a proposal to the City responding to each RFP, by the deadline specified in the RFP, unless an exception applies:
- 1.2.1 Response Effort.** The Design-Builder does not have to submit a proposal in response to an RFP if the deadline to submit a proposal is less than thirty (30) days from the date the RFP is issued, or if the City has issued more than two RFPs in the thirty (30) days immediately preceding the date of issuance of the current RFP.
- 1.3 Evaluation.** The City will evaluate the proposals in accordance with SDMC section 22.3308 and the criteria set forth in the RFP. The City may negotiate and clarify the final components of the winning proposal with the Design-Builder pursuant to SDMC section 22.3008(b). The winning proposal will be recommended for award to the Mayor or his/her designee, who must approve all task orders. If at least two proposals are not received in response to a RFP, the City will not issue a task order for the Project and instead procure the Project through another process. The City may accept the winning proposal, reject proposals that do not meet all the requirements of the RFP or this Contract, waive any defects and technicalities in a proposal, or reject all proposals, all in its sole discretion.
- 1.4 Task Orders.** If the City accepts the Design-Builder's proposal, the award of the Project will be acknowledged by the issuance of a task order. The award of a task order is contingent upon the Design-Builder's compliance with all conditions precedent to award described in the RFP. The task order becomes effective upon the Design-Builder's receipt of the task order signed by the Mayor or his designee. Task orders will be issued with a specific completion date or performance period and a firm fixed price for design and construction. The Design-Builder is responsible for designing and constructing each Project for the fixed price contract value. Failure to do so is at the Design-Builder's risk.
- 1.5 Contract Documents.** Upon the award of a task order, the RFP, the Design-Builder's proposal, and the task order (which may include modifications to the proposal negotiated pursuant to section 1.3) shall be considered as incorporated into this Contract, but only for the particular Project for which they are issued or submitted. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the order of precedence shall be as set forth below in descending order of precedence (the document in section 1.5.1 having the highest precedence). Provisions

of the Contract Documents addressing the same subject which are consistent but have different degrees of specificity shall not be considered to be in conflict, and the more specific language shall control.

- 1.5.1 This Contract.
 - 1.5.2 The task order.
 - 1.5.3 The RFP and all documents referenced therein.
 - 1.5.4 The 2018 City Supplements (The WHITEBOOK).
 - 1.5.5 The 2018 Standard Specifications for Public Works Construction (The GREENBOOK).
 - 1.5.6 The Design-Builder's proposal (Proposal).
 - 1.5.7 RFQ No. 1852 and all addenda thereto.
 - 1.5.8 The Design-Builder's Statement of Qualifications (SOQ).
- 1.6 **Eligibility to Submit Proposals.** Pursuant to SDMC section 22.3310(h) (3), if the Design-Builder is awarded a task order and fails to achieve the mandatory minimum participation levels established in the RFP for that Project for Small Local Business Enterprises, Emerging Local Business Enterprises, or Disabled Veteran Business Enterprises, the Design-Builder shall be ineligible to submit proposals for any further task orders under this Contract.

ARTICLE 2 – SCOPE OF WORK

- 2.1 **Scope of Work.** Upon the award of a task order, the Design-Builder shall furnish any and all labor, materials, equipment, transportation, utilities, services and temporary facilities required to complete each Project as described in the task order, the RFP and the Design-Builder's proposal. All work shall be performed in a good and workmanlike manner and within the care and skill of a qualified design firm and licensed contractor in California. The work shall be performed pursuant to and in conformity with the RFP, the Project's plans and specifications, and all other Contract Documents and subject to the approval of the City, whose approval shall not be unreasonably withheld.
- 2.2 **Design-Builder's Representative.** The Design-Builder shall designate a local representative, who shall be reasonably available to City and shall have the necessary expertise and experience required to supervise the Projects. The Design-Builder's representative shall communicate regularly with City, but no less than once a week if the Design-Builder is working on a task order, and shall be vested with the authority to act on behalf of the Design-Builder. The Design-Builder's representative may be replaced only with the written consent of City.

- 2.3 Changes to Key Personnel and Substitution of Subcontractors.** The Design-BUILDER shall not change or substitute any individual that is identified as "key personnel" in its statement of qualifications or any proposal without the written consent of the City, which will not be unreasonably withheld. The Design-BUILDER shall not change or substitute any material, supplier, or subcontractor identified in its statement of qualifications or proposal without written consent of the City.
- 2.4 Contract Terms and Conditions.** This Contract incorporates by reference, as if fully set forth herein, the 2018 Edition of The GREENBOOK as modified by the 2018 Edition of The WHITEBOOK, except as otherwise specified in this Contract, a RFP or a task order.
- 2.5 Subcontractors and Suppliers.** The Design-BUILDER shall be responsible for the work done by subcontractors and suppliers, and any discrepancy or gaps in their scope of works. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between the City and any subcontractor or supplier of any tier.
- 2.6 Equal Opportunity Contracting.** The Design-BUILDER shall comply with the City's "Equal Opportunity Contracting Program" Requirements found in Part 0 of The WHITEBOOK, hereby incorporated into this Contract by reference. At the pre-construction conference (if any), the Design-BUILDER shall provide a statement of proposed SLBE, ELBE, and DVBE utilization identifying the certified entities that will be utilized on the Project to meet the mandatory minimum participation levels in the RFP. The Design-BUILDER shall also provide copies of all purchase orders and/or contracts with SLBE, ELBE, and DVBE subcontractors used to meet the mandatory minimum participation levels in the RFP.
- 2.7 Coordination of the Work.** The Design-BUILDER shall coordinate all design and construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. The Design-BUILDER shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of design and construction. The Design-BUILDER shall coordinate scheduling of bid packages, submittals, and all RFI's, and the construction of the Project to ensure the efficient and orderly sequence of the construction of the Project. The Design-BUILDER shall monitor and report monthly to the City on actual performance compared to the Project schedule. If City performs other work on the Project or at the site itself or with separate contractors under City's control, the Design-BUILDER and the City both agree to reasonably cooperate and coordinate respective activities with the other so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- 2.8 Superintendent.** The Design-BUILDER's superintendent shall be present at the site at all times that construction activities are taking place. All elements of the construction work shall be under the direct supervision of the Design-BUILDER's superintendent or his designated representative on the site who shall have the authority to take actions required to properly perform that particular element of the Project. The City may require the Design-BUILDER to stop or suspend the construction work if the City reasonably believes supervision at the site is inadequate.

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ARTICLE 3 – CONTRACT TERM

- 3.1 **Contract Effective.** This Contract shall become effective on the date it is fully executed. The performance period will include an initial base period of one (1) year with two additional one (1) year option periods, for a total performance period of three (3) years. Contracts will automatically renew unless cancelled by the City.
- 3.2. **Termination.** This Contract, or task orders issued under this Contract, may be terminated by the City for default or for convenience in accordance with Part 1 of The GREENBOOK and The WHITEBOOK.
- 3.3 **Force Majeure.** In the event the performance of either Party is delayed due to causes which are outside their control, and could not be avoided by the exercise of due care, which may include, but is not limited to, war, terrorist attack, act of God, government regulations, labor disputes, strikes, fires, floods, adverse weather or elements necessitating cessation of the work, inability to obtain materials, labor or equipment, or litigation or legal proceedings challenging one or more of the project approvals, then the time for performance shall be extended by an amount equivalent to the length of delay. Neither Party shall receive compensation from the other party for a force majeure event.

ARTICLE 4 – COMPENSATION

- 4.1 **Compensation.** The total cumulative compensation to all design-build firms eligible to submit proposals pursuant to RFQ No. 1852 shall not exceed \$15 million. The guaranteed minimum compensation to the Design-Builder is \$5,000. The total compensation for each Project will be set forth in each task order, which shall be a firm fixed price for successful completion of the Project.
- 4.2 **Progress Payments.** The City will make periodic payments to the Design-Builder in accordance with the payment provisions in The GREENBOOK, The WHITEBOOK, the RFP and the task order.

ARTICLE 5 – INDEMNITY

- 5.1 **General Indemnity.** The Design-Builder agrees to defend, indemnify, protect and hold harmless the City, its elected officials, officers and employees, from and against all third-party claims or judgments asserted, or third-party liability established for damages or injuries to any person or property arising directly or indirectly out of the construction of each Project, or the Design-Builder's obligations under this Contract, which are caused or claimed to be caused by the negligent acts or omissions or willful misconduct of the Design-Builder, its officers, agents, or employees. The Design-Builder's obligation to indemnify the City shall not include any claims or liability arising from the established active or sole negligence, or willful misconduct of the City, its elected officials, officers or employees. The City may elect to conduct its own defense, in its sole discretion, without invalidating this section.
- 5.2 **Indemnity for Design Services.** With respect to the design of the Project, except as otherwise provided by California Civil Code section 2782.8, the Design-Builder shall indemnify and hold harmless the City, its elected officials, officers and employees, from all claims, demands or liability that arise out of, pertain to or relate to the

negligence, recklessness, or willful misconduct of the Design-Builder, its design professionals, officers, agents or employees.

- 5.3 **Survival.** Notwithstanding Article 3, the indemnity provisions in this Article shall survive expiration and termination of this Contract and continue so long as a viable claim exists.

ARTICLE 6 – BONDS AND INSURANCE

- 6.1 **Bonds and Insurance.** The Design-Builder shall furnish evidence of bonds and insurance required by the RFP within fourteen (14) days after written notification from the City that the Design-Builder has submitted the winning proposal, unless an extension of time is granted by the City in writing. If the Design-Builder takes longer than fourteen (14) days to provide evidence of bonds and insurance, then the additional time taken shall be added to the time the Design-Builder must guarantee the price of its proposal prior to the issuance of a task order. The City may reject the proposal if the Design-Builder fails to provide evidence of bonds and insurance within fourteen (14) days or the extension of time granted by the City.

ARTICLE 7 – GENERAL PROVISIONS

- 7.1 **Compliance with Laws.** The Design-Builder shall comply with all applicable local, state and federal laws, statutes, ordinances, and regulations in the performance of its obligations under this Contract. Local ordinances and regulations requiring written certifications or information from the Design-Builder include the Equal Benefits Ordinance (SDMC sections 22.4301 *et. seq.*), Non-Discrimination Ordinance (SDMC sections 22.3501 *et. seq.*), Drug-Free Workplace Policy (Council Policy 100-17), Americans with Disabilities Act Policy (Council Policy 100-04), and Contractor Standards Ordinance (SDMC section 22.3004).
- 7.2 **Contract Interpretation.** This Contract, its exhibits, and the documents listed in section 1.5 are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction industry standards. This Contract is entered into and shall be construed and interpreted in accordance with the laws of the State of California without regard to the conflicts or choice of law provisions thereof.
- 7.3 **Mandatory Mediation.** If a dispute arises out of or relates to this Contract that cannot be resolved through normal contract negotiations, the Design-Builder and the City must first endeavor to settle the dispute in an amicable manner, using mandatory non-binding mediation under the rules of JAMS, AAA or any other neutral organization agreed upon by the parties before having recourse in a court of law.
- 7.3.1 **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, and chosen from lists furnished by JAMS, AAA or any other agreed upon mediator.
- 7.3.2 **Mediation Expenses.** The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All joint 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.

- 7.3.3 Conduct of Mediation.** Mediation hearings will be conducted in an informal manner. Discovery shall not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 - 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 the 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.
- 7.3.4 Mediation Results.** Any resultant agreements from mediation shall be documented 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.
- 7.4 Time is of the Essence.** The City and the Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in Contract Documents.
- 7.5 Mutual Obligations.** The City and the Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each Party to realize the benefits afforded under this Contract.
- 7.6 Successors-In-Interest.** This Contract and all rights and obligations contained herein shall be in effect whether or not any or all Parties to this Contract have been succeeded by another entity, and all rights and obligations of the parties' signatory to this Contract shall be vested and binding on their successors in interest.
- 7.7 Third Party Beneficiaries.** Nothing in this Contract shall grant rights or benefits to anyone other than the City and the Design-Builder, and any alleged third-party beneficiaries are hereby expressly disclaimed. The Parties understand and agree, however, that to the extent permitted by law, the City is an intended third-party beneficiary of the Design-Builder's agreements with its consultants, designers, contractors and construction managers performing work on the Project.
- 7.8 Severability.** Should any provision of this Contract be held invalid or illegal by a court or administrative agency of competent jurisdiction, such invalidity or illegality shall not invalidate the whole of this Contract, but, rather, the Contract shall be construed as if it did not contain the invalid or illegal provision, and the rights and obligations of the Parties shall be construed and enforced accordingly, except to the extent that enforcement of this Contract without the invalidated provision would materially and adversely frustrate either or both Parties' essential objectives set forth in this Contract.

- 7.9 Independent Contractor.** The Design-Builder is and shall be an independent contractor. Any provisions in this Contract that may appear to give the City the right to direct the Design-Builder as to the details of accomplishing the work or to exercise a measure of control over the work means that the Design-Builder shall follow the wishes of the City as to the results of the work only.
- 7.10 Waivers.** The failure of either Party to enforce any of the provisions of this Contract or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions unless the waiver is in writing. Prior waivers shall not preclude the right of either Party to thereafter enforce each and every provision of this Contract.
- 7.11 Limitation on Powers.** Nothing in this Contract shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.
- 7.12 Conflict of Interest.** The Design-Builder shall establish and make known to its members, consultants, designers, contractors and construction managers, appropriate safeguards to prohibit employees from using their positions for a purpose that is, or gives the appearance of being, motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships. Design-Builder members shall not accept gratuities or any other favors from potential consultants, designers, contractors or construction managers who may or are working on the Project.
- 7.13 Notices.** Notices shall be mailed in accordance with section 5-2, "SPECIAL NOTICES" in The GREENBOOK to:
- Public Works Director
City of San Diego
202 C Street, 9th Floor
San Diego, CA 92101
- 7.14 Assignment.** The Design-Builder shall not assign its rights or obligations under this Contract without the City's prior written approval, which shall not be unreasonably withheld. Any attempted assignment in violation of this section shall be void and incapable of creating any contractual relationship between the City and a putative assignee.
- 7.15 Survival.** Any obligation that accrues under this Contract prior to its expiration or termination shall survive such expiration or termination.
- 7.16 Incorporation of Exhibits.** All exhibits referenced in this Contract and the documents referenced in section 1.5 are hereby incorporated into and made a part of this Contract by reference.

- 7.17 Integration Clause.** The City and the Design-Builder represent, warrant and agree that no oral promise or agreement not expressed herein has been made to them, that this Contract contains the entire agreement between the Parties, that this Contract supersedes any and all prior oral agreements or understandings between the Parties unless otherwise provided herein, and that in executing this Contract, neither Party is relying on any statement or representation made by the other Party concerning the subject matter, basis or effect of this Contract other than as set forth herein, and that each Party is relying solely on its own judgment and knowledge. This Contract may not be amended except by an instrument in writing signed by both Parties.
- 7.18 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.

ARTICLE 8 – Prevailing Wages

- 8.1 Worked Performed.** 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, the Contractor and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below
- 8.2 Compliance with Prevailing Wage Requirements.** Pursuant to sections 1720 through 1861 of the California Labor Code, the Contractor 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.
- 8.2.1** Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Contractor 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.
- 8.2.2** 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.

- 8.3 Penalties for Violations.** Contractor 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.
- 8.4 Payroll Records.** Contractor 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. Contractor shall require its subcontractors to also comply with section 1776. Contractor and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Contractor is responsible for ensuring its subcontractors submit certified payroll records to the City.
- 8.4.1** For contracts entered into on or after April 1, 2015, Contractor and their subcontractors shall furnish records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required by Labor Code section 1771.4.
- 8.5 Apprentices.** Contractor and its subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Contractor is held responsible for the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.
- 8.6 Working Hours.** Contractor and their 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.
- 8.7 Required Provisions for Subcontracts.** Contractor 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.
- 8.8 Labor Code Section 1861 Certification.** Contractor in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Contract, Contractor 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."
- 8.9 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.

8.10 Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. As of March 1, 2015, no contractor or subcontractor may be listed on a bid or proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5. As of April 1, 2015, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or enter into any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. By submitting a bid or proposal to the City, Contractor is certifying that he or she has verified that all subcontractors used on this public work project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration to the City upon request.

8.10.1 A Contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in 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 subcontractor pursuant to Public Contract Code section 4107.

IN WITNESS WHEREOF, this Contract is executed by the City of San Diego pursuant to Resolution No. R-~~312862~~ authorizing such execution, and the Design-Builder acting by and through its authorized officers.

Lexicon, Inc.

By: [Signature]

Name: Jon Poirerell

Date: 11/18/19

THE CITY OF SAN DIEGO

By: [Signature]
James Nagelvoort
Director
Department of Public Works

Date: 3/2/2020

I HEREBY APPROVE the form of the foregoing agreement this 5th day of March, 2020.

Mara W. Elliott, City Attorney

By: [Signature]
Deputy City Attorney

Item 100
2/24/20
(R-2020-311)

RESOLUTION NUMBER R- 312862

DATE OF FINAL PASSAGE FEB 26 2020

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING FOUR MULTIPLE AWARD
DESIGN-BUILD CONTRACTS K-20-1852-MAC-3-C FOR
GOLF COURSE IMPROVEMENT PROJECTS; AND TAKING
RELATED ACTIONS.

WHEREAS, the Public Works Department requests City Council to approve the award of four (4) Multiple Award Design-Build Contracts for a cumulative value of \$15,000,000 for the purpose of providing design and construction services for golf course Capital Improvement Program (CIP) projects (Agreements); and

WHEREAS, the selected firms receive a \$5,000 guarantee and will compete for task orders that have an estimated construction cost between \$250,000 and \$2,500,000, for a cumulative value of up to \$15,000,000. These projects will be exclusively for the golf course Capital Improvement Program throughout the City. This action only authorizes an agreement with the selected firms to compete for task orders and does not authorize any design or construction activities; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That the Mayor, or his designee, is authorized to execute, for and on behalf of the City, four Multiple Award Construction Contracts (MACC) simultaneously, with the first being Duininck Inc, under the terms and conditions set forth in the Agreement, on file in the Office of the City Clerk as Document No. RR- 312862-1

2. That the Mayor, or his designee, is authorized to execute, for and on behalf of the City, four Multiple Award Construction Contracts (MACC) simultaneously, with the second

being Landscapes Unlimited, LLC, under the terms and conditions set forth in the Agreement, on file in the Office of the City Clerk as Document No. RR- 312862-2

3. That the Mayor, or his designee, is authorized to execute, for and on behalf of the City, four Multiple Award Construction Contracts (MACC) simultaneously, with the third being Lexicon, Inc., under the terms and conditions set forth in the Agreement, on file in the Office of the City Clerk as Document No. RR- 312862-3

4. That the Mayor, or his designee, is authorized to execute, for and on behalf of the City, four Multiple Award Construction Contracts (MACC) simultaneously, with the fourth being Wadsworth Golf Construction Company, under the terms and conditions set forth in the Agreement, on file in the Office of the City Clerk as Document No. RR- 312862-4

5. That the Chief Financial Officer is authorized to expend an amount not to exceed \$15,000,000 over five years for the purpose of funding the MACC contracts (K-20-1852-MAC-3-C) with the listed firms upon the adoption of the Annual Appropriation Ordinance for the applicable fiscal year, and contingent upon the Chief Financial Officer first furnishing one or more certificates certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

6. That the Chief Financial Officer is authorized to expend an amount not to exceed \$5,000 with Duinick Inc. from annual A-EA.00001, Torrey Pines Golf Course, Fund 700045, Torrey Pines Golf Course CIP, for the purpose of executing this agreement and meet the minimum financial requirements.

7. That the Chief Financial Officer is authorized to expend an amount not to exceed \$5,000 with Landscapes Unlimited, LLC from annual A-EA.00001, Torrey Pines Golf Course,

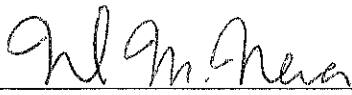
Fund 700045, Torrey Pines Golf Course CIP, for the purpose of executing this agreement and meet the minimum financial requirements.

8. That the Chief Financial Officer is authorized to expend an amount not to exceed \$5,000 with Lexicon, Inc. from annual A-EA.00001, Torrey Pines Golf Course, Fund 700045, Torrey Pines Golf Course CIP, for the purpose of executing this agreement and meet the minimum financial requirements.

9. That the Chief Financial Officer is authorized to expend an amount not to exceed \$5,000 with Wadsworth Golf Construction Company from annual A-EA.00001, Torrey Pines Golf Course, Fund 700045, Torrey Pines Golf Course CIP, for the purpose of executing this agreement and meet the minimum financial requirements.

10. That the Chief Financial Officer is authorized, upon advice from the administering department, to transfer excess budgeted funds, if any, to the appropriate reserves.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Mark M. Mercer
Deputy City Attorney

MMM:cw
01/30/20
Or.Dept: Public Works Department
CC No.: 3000012826
Doc. No.: 2291828

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego,
at its meeting of Feb. 24, 2020.

ELIZABETH S. MALAND
City Clerk

By *Cassie Patterson*
Deputy City Clerk

Approved: 2/26/2020
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on FEB 24 2020, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage FEB 26 2020

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

Office of the City Clerk, San Diego, California
Resolution Number R- **312862**

Passed by the Council of The City of San Diego on February 24, 2020, by the following vote:

YEAS: **BRY, CAMPBELL, WARD, MONTGOMERY, KERSEY, CATE, SHERMAN,
MORENO, & GÓMEZ.**

NAYS: **NONE.**

NOT PRESENT: **NONE.**

RECUSED: **NONE.**

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: **Connie Patterson**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of
RESOLUTION NO. **R-312862**, approved on **February 24, 2020**. The date of final
passage is **February 26, 2020**.

ELIZABETH S. MALAND

City Clerk of the City of San Diego, California

(Seal)

By: *Connie Patterson*, Deputy

ORIGINAL

City of San Diego

CONTRACTOR'S NAME: Wadsworth Golf Construction Company _____
ADDRESS: 13941 S. Van Dyke Rd., Plainfield, IL 60544 _____
TELEPHONE NO.: 815-436-8400 ext. 109 _____
CITY CONTACT: Brittany Friedenreich, Senior Contract Specialist _____
Email: BFriedenreic@sandiego.gov Phone No. (619) 533-3104 _____

CONTRACT DOCUMENTS



FOR

MULTIPLE AWARD DESIGN-BUILD CONTRACT FOR GOLF COURSE IMPROVEMENT PROJECTS

RFQ NO.: 1852

722-312862-4
DOCUMENT NO. _____
FILED FEB 24 2020
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

**MULTIPLE AWARD DESIGN-BUILD CONTRACT
FOR GOLF COURSE IMPROVEMENT PROJECTS**

This multiple award Design-Build contract (Contract) is made and entered into by and between the City of San Diego (City), a municipal corporation, and **Wadsworth Golf Construction Company** (Design-Builder), for the purpose of designing and constructing, alteration, and repair to the City's golf courses, (Projects). The City and Design-Builder may be referred to individually as "Party" and collectively as the "Parties."

RECITALS

- A. The City needs to design and construct Projects located in the City of San Diego, California.
- B. The City issued Request for Qualifications No. 1852 (RFQ) for multiple award Design-Build contracts, to which the Design-Builder responded and was approved by the Mayor and City Council (Resolution No. R-312862) as one of the four firms eligible to submit future proposals to design and construct Projects through this program.
- C. The City will hire one firm to design and construct each Project, to be described in Request for Proposals (RFPs) issued pursuant to section 22.3310 of the San Diego Municipal Code (SDMC).
- D. The Design-Builder is prepared to enter into this Contract and to submit, in accordance with each RFP, a Proposal for each Project.
- E. The Design-Builder is ready, willing, and able to design and construct Projects in accordance with the terms and conditions of this Contract.

In consideration of the above recitals and the mutual covenants and conditions set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

ARTICLE 1 – PROJECT AWARD

- 1.1 Request for Proposals.** From time to time during the term of this Contract, the City will issue a RFP to the Design-Builder for the design and construction of a Project. The RFP will describe the specific requirements and scope of work for the Project. There is no minimum or maximum number of RFPs to be issued under this Contract. Issuing a RFP does not obligate the City to award a task order for the Project, and a RFP may be canceled by the City at any time prior to award of a task order. The City may issue addenda to a RFP or extend the deadline for submitting proposals, in the City's discretion.

- 1.1.1 Project Descriptions.** Projects may be non-complex performance oriented tasks requiring minimal design, may be complex construction requiring substantial design development, or a combination thereof. Projects will be varying in size and complexity. The RFP may or may not have preliminary plans and specifications but may include sketches, and requests for catalog cuts, and other submittals.
- 1.2 Proposals.** The Design-Builder's proposal must be complete and satisfy all the requirements of the RFP, consistent with industry standards and proposals submitted by competent design-build firms performing similar work in California. Proposals submitted by the Design-Builder shall constitute a firm offer, which may be accepted by the City within the time specified in the RFP. Subcontractors shall be identified in the proposals pursuant to SDMC section 22.3309. Preparing and submitting proposals shall be at the Design-Builder's sole cost and expense. The Design-Builder shall submit a proposal to the City responding to each RFP, by the deadline specified in the RFP, unless an exception applies:
- 1.2.1 Response Effort.** The Design-Builder does not have to submit a proposal in response to an RFP if the deadline to submit a proposal is less than thirty (30) days from the date the RFP is issued, or if the City has issued more than two RFPs in the thirty (30) days immediately preceding the date of issuance of the current RFP.
- 1.3 Evaluation.** The City will evaluate the proposals in accordance with SDMC section 22.3308 and the criteria set forth in the RFP. The City may negotiate and clarify the final components of the winning proposal with the Design-Builder pursuant to SDMC section 22.3008(b). The winning proposal will be recommended for award to the Mayor or his/her designee, who must approve all task orders. If at least two proposals are not received in response to a RFP, the City will not issue a task order for the Project and instead procure the Project through another process. The City may accept the winning proposal, reject proposals that do not meet all the requirements of the RFP or this Contract, waive any defects and technicalities in a proposal, or reject all proposals, all in its sole discretion.
- 1.4 Task Orders.** If the City accepts the Design-Builder's proposal, the award of the Project will be acknowledged by the issuance of a task order. The award of a task order is contingent upon the Design-Builder's compliance with all conditions precedent to award described in the RFP. The task order becomes effective upon the Design-Builder's receipt of the task order signed by the Mayor or his designee. Task orders will be issued with a specific completion date or performance period and a firm fixed price for design and construction. The Design-Builder is responsible for designing and constructing each Project for the fixed price contract value. Failure to do so is at the Design-Builder's risk.
- 1.5 Contract Documents.** Upon the award of a task order, the RFP, the Design-Builder's proposal, and the task order (which may include modifications to the proposal negotiated pursuant to section 1.3) shall be considered as incorporated into this Contract, but only for the particular Project for which they are issued or submitted. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the order of precedence shall be as set forth below in descending order of precedence (the document in section 1.5.1 having the highest precedence). Provisions

of the Contract Documents addressing the same subject which are consistent but have different degrees of specificity shall not be considered to be in conflict, and the more specific language shall control.

- 1.5.1 This Contract.
 - 1.5.2 The task order.
 - 1.5.3 The RFP and all documents referenced therein.
 - 1.5.4 The 2018 City Supplements (The WHITEBOOK).
 - 1.5.5 The 2018 Standard Specifications for Public Works Construction (The GREENBOOK).
 - 1.5.6 The Design-Builder's proposal (Proposal).
 - 1.5.7 RFQ No. 1852 and all addenda thereto.
 - 1.5.8 The Design-Builder's Statement of Qualifications (SOQ).
- 1.6 **Eligibility to Submit Proposals.** Pursuant to SDMC section 22.3310(h) (3), if the Design-Builder is awarded a task order and fails to achieve the mandatory minimum participation levels established in the RFP for that Project for Small Local Business Enterprises, Emerging Local Business Enterprises, or Disabled Veteran Business Enterprises, the Design-Builder shall be ineligible to submit proposals for any further task orders under this Contract.

ARTICLE 2 – SCOPE OF WORK

- 2.1 **Scope of Work.** Upon the award of a task order, the Design-Builder shall furnish any and all labor, materials, equipment, transportation, utilities, services and temporary facilities required to complete each Project as described in the task order, the RFP and the Design-Builder's proposal. All work shall be performed in a good and workmanlike manner and within the care and skill of a qualified design firm and licensed contractor in California. The work shall be performed pursuant to and in conformity with the RFP, the Project's plans and specifications, and all other Contract Documents and subject to the approval of the City, whose approval shall not be unreasonably withheld.
- 2.2 **Design-Builder's Representative.** The Design-Builder shall designate a local representative, who shall be reasonably available to City and shall have the necessary expertise and experience required to supervise the Projects. The Design-Builder's representative shall communicate regularly with City, but no less than once a week if the Design-Builder is working on a task order, and shall be vested with the authority to act on behalf of the Design-Builder. The Design-Builder's representative may be replaced only with the written consent of City.
- 2.3 **Changes to Key Personnel and Substitution of Subcontractors.** The Design-Builder shall not change or substitute any individual that is identified as "key personnel" in its statement of qualifications or any proposal without the written consent of the City, which will not be unreasonably withheld. The Design-Builder shall not change or substitute any material, supplier, or subcontractor identified in its statement of qualifications or proposal without written consent of the City.
- 2.4 **Contract Terms and Conditions.** This Contract incorporates by reference, as if fully set forth herein, the 2018 Edition of The GREENBOOK as modified by the 2018 Edition of The WHITEBOOK, except as otherwise specified in this Contract, a RFP or a task order.

- 2.5 Subcontractors and Suppliers.** The Design-Builder shall be responsible for the work done by subcontractors and suppliers, and any discrepancy or gaps in their scope of works. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between the City and any subcontractor or supplier of any tier.
- 2.6 Equal Opportunity Contracting.** The Design-Builder shall comply with the City's "Equal Opportunity Contracting Program" Requirements found in Part 0 of The WHITEBOOK, hereby incorporated into this Contract by reference. At the pre-construction conference (if any), the Design-Builder shall provide a statement of proposed SLBE, ELBE, and DVBE utilization identifying the certified entities that will be utilized on the Project to meet the mandatory minimum participation levels in the RFP. The Design-Builder shall also provide copies of all purchase orders and/or contracts with SLBE, ELBE, and DVBE subcontractors used to meet the mandatory minimum participation levels in the RFP.
- 2.7 Coordination of the Work.** The Design-Builder shall coordinate all design and construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. The Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of design and construction. The Design-Builder shall coordinate scheduling of bid packages, submittals, and all RFI's, and the construction of the Project to ensure the efficient and orderly sequence of the construction of the Project. The Design-Builder shall monitor and report monthly to the City on actual performance compared to the Project schedule. If City performs other work on the Project or at the site itself or with separate contractors under City's control, the Design-Builder and the City both agree to reasonably cooperate and coordinate respective activities with the other so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- 2.8 Superintendent.** The Design-Builder's superintendent shall be present at the site at all times that construction activities are taking place. All elements of the construction work shall be under the direct supervision of the Design-Builder's superintendent or his designated representative on the site who shall have the authority to take actions required to properly perform that particular element of the Project. The City may require the Design-Builder to stop or suspend the construction work if the City reasonably believes supervision at the site is inadequate.

ARTICLE 3 – CONTRACT TERM

PK
11/8/19

- 3.1 **Contract Effective.** This Contract shall become effective on the date it is fully executed. The performance period will include an initial base period of one (1) year with two additional one (1) year option periods, for a total performance period of three (3) years. Contracts will automatically renew unless cancelled by the City.
- 3.2 **Termination.** This Contract, or task orders issued under this Contract, may be terminated by the City for default or for convenience in accordance with Part 1 of The GREENBOOK and The WHITEBOOK.
- 3.3 **Force Majeure.** In the event the performance of either Party is delayed due to causes which are outside their control, and could not be avoided by the exercise of due care, which may include, but is not limited to, war, terrorist attack, act of God, government regulations, labor disputes, strikes, fires, floods, adverse weather or elements necessitating cessation of the work, inability to obtain materials, labor or equipment, or litigation or legal proceedings challenging one or more of the project approvals, then the time for performance shall be extended by an amount equivalent to the length of delay. Neither Party shall receive compensation from the other party for a force majeure event.

ARTICLE 4 – COMPENSATION

- 4.1 **Compensation.** The total cumulative compensation to all design-build firms eligible to submit proposals pursuant to RFQ No. 1852 shall not exceed \$15 million. The guaranteed minimum compensation to the Design-Builder is \$5,000. The total compensation for each Project will be set forth in each task order, which shall be a firm fixed price for successful completion of the Project.
- 4.2 **Progress Payments.** The City will make periodic payments to the Design-Builder in accordance with the payment provisions in The GREENBOOK, The WHITEBOOK, the RFP and the task order.

ARTICLE 5 - INDEMNITY

- 5.1 **General Indemnity.** The Design-Builder agrees to defend, indemnify, protect and hold harmless the City, its elected officials, officers and employees, from and against all third-party claims or judgments asserted, or third-party liability established for damages or injuries to any person or property arising directly or indirectly out of the construction of each Project, or the Design-Builder's obligations under this Contract, which are caused or claimed to be caused by the negligent acts or omissions or willful misconduct of the Design-Builder, its officers, agents, or employees. The Design-Builder's obligation to indemnify the City shall not include any claims or liability arising from the established active or sole negligence, or willful misconduct of the City, its elected officials, officers or employees. The City may elect to conduct its own defense, in its sole discretion, without invalidating this section.
- 5.2 **Indemnity for Design Services.** With respect to the design of the Project, except as otherwise provided by California Civil Code section 2782.8, the Design-Builder shall indemnify and hold harmless the City, its elected officials, officers and employees, from all claims, demands or liability that arise out of, pertain to or relate to the

negligence, recklessness, or willful misconduct of the Design-Builder, its design professionals, officers, agents or employees.

- 5.3 **Survival.** Notwithstanding Article 3, the indemnity provisions in this Article shall survive expiration and termination of this Contract and continue so long as a viable claim exists.

ARTICLE 6 – BONDS AND INSURANCE

- 6.1 **Bonds and Insurance.** The Design-Builder shall furnish evidence of bonds and insurance required by the RFP within fourteen (14) days after written notification from the City that the Design-Builder has submitted the winning proposal, unless an extension of time is granted by the City in writing. If the Design-Builder takes longer than fourteen (14) days to provide evidence of bonds and insurance, then the additional time taken shall be added to the time the Design-Builder must guarantee the price of its proposal prior to the issuance of a task order. The City may reject the proposal if the Design-Builder fails to provide evidence of bonds and insurance within fourteen (14) days or the extension of time granted by the City.

ARTICLE 7 – GENERAL PROVISIONS

- 7.1 **Compliance with Laws.** The Design-Builder shall comply with all applicable local, state and federal laws, statutes, ordinances, and regulations in the performance of its obligations under this Contract. Local ordinances and regulations requiring written certifications or information from the Design-Builder include the Equal Benefits Ordinance (SDMC sections 22.4301 *et. seq.*), Non-Discrimination Ordinance (SDMC sections 22.3501 *et. seq.*), Drug-Free Workplace Policy (Council Policy 100-17), Americans with Disabilities Act Policy (Council Policy 100-04), and Contractor Standards Ordinance (SDMC section 22.3004).
- 7.2 **Contract Interpretation.** This Contract, its exhibits, and the documents listed in section 1.5 are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction industry standards. This Contract is entered into and shall be construed and interpreted in accordance with the laws of the State of California without regard to the conflicts or choice of law provisions thereof.
- 7.3 **Mandatory Mediation.** If a dispute arises out of or relates to this Contract that cannot be resolved through normal contract negotiations, the Design-Builder and the City must first endeavor to settle the dispute in an amicable manner, using mandatory non-binding mediation under the rules of JAMS, AAA or any other neutral organization agreed upon by the parties before having recourse in a court of law.
- 7.3.1 **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, and chosen from lists furnished by JAMS, AAA or any other agreed upon mediator.
- 7.3.2 **Mediation Expenses.** The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All joint 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.

- 7.3.3 Conduct of Mediation.** Mediation hearings will be conducted in an informal manner. Discovery shall not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 - 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 the 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.
- 7.3.4 Mediation Results.** Any resultant agreements from mediation shall be documented 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.
- 7.4 Time is of the Essence.** The City and the Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in Contract Documents.
- 7.5 Mutual Obligations.** The City and the Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each Party to realize the benefits afforded under this Contract.
- 7.6 Successors-In-Interest.** This Contract and all rights and obligations contained herein shall be in effect whether or not any or all Parties to this Contract have been succeeded by another entity, and all rights and obligations of the parties' signatory to this Contract shall be vested and binding on their successors in interest.
- 7.7 Third Party Beneficiaries.** Nothing in this Contract shall grant rights or benefits to anyone other than the City and the Design-Builder, and any alleged third-party beneficiaries are hereby expressly disclaimed. The Parties understand and agree, however, that to the extent permitted by law, the City is an intended third-party beneficiary of the Design-Builder's agreements with its consultants, designers, contractors and construction managers performing work on the Project.
- 7.8 Severability.** Should any provision of this Contract be held invalid or illegal by a court or administrative agency of competent jurisdiction, such invalidity or illegality shall not invalidate the whole of this Contract, but, rather, the Contract shall be construed as if it did not contain the invalid or illegal provision, and the rights and obligations of the Parties shall be construed and enforced accordingly, except to the extent that enforcement of this Contract without the invalidated provision would materially and adversely frustrate either or both Parties' essential objectives set forth in this Contract.

- 7.9 Independent Contractor.** The Design-BUILDER is and shall be an independent contractor. Any provisions in this Contract that may appear to give the City the right to direct the Design-BUILDER as to the details of accomplishing the work or to exercise a measure of control over the work means that the Design-BUILDER shall follow the wishes of the City as to the results of the work only.
- 7.10 Waivers.** The failure of either Party to enforce any of the provisions of this Contract or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions unless the waiver is in writing. Prior waivers shall not preclude the right of either Party to thereafter enforce each and every provision of this Contract.
- 7.11 Limitation on Powers.** Nothing in this Contract shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.
- 7.12 Conflict of Interest.** The Design-BUILDER shall establish and make known to its members, consultants, designers, contractors and construction managers, appropriate safeguards to prohibit employees from using their positions for a purpose that is, or gives the appearance of being, motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships. Design-BUILDER members shall not accept gratuities or any other favors from potential consultants, designers, contractors or construction managers who may or are working on the Project.
- 7.13 Notices.** Notices shall be mailed in accordance with section 5-2, "SPECIAL NOTICES" in The GREENBOOK to:
- Public Works Director
City of San Diego
202 C Street, 9th Floor
San Diego, CA 92101
- 7.14 Assignment.** The Design-BUILDER shall not assign its rights or obligations under this Contract without the City's prior written approval, which shall not be unreasonably withheld. Any attempted assignment in violation of this section shall be void and incapable of creating any contractual relationship between the City and a putative assignee.
- 7.15 Survival.** Any obligation that accrues under this Contract prior to its expiration or termination shall survive such expiration or termination.
- 7.16 Incorporation of Exhibits.** All exhibits referenced in this Contract and the documents referenced in section 1.5 are hereby incorporated into and made a part of this Contract by reference.

- 7.17 **Integration Clause.** The City and the Design-Builder represent, warrant and agree that no oral promise or agreement not expressed herein has been made to them, that this Contract contains the entire agreement between the Parties, that this Contract supersedes any and all prior oral agreements or understandings between the Parties unless otherwise provided herein, and that in executing this Contract, neither Party is relying on any statement or representation made by the other Party concerning the subject matter, basis or effect of this Contract other than as set forth herein, and that each Party is relying solely on its own judgment and knowledge. This Contract may not be amended except by an instrument in writing signed by both Parties.
- 7.18 **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.

ARTICLE 8 – Prevailing Wages

- 8.1 **Worked Performed.** 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, the Contractor and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below
- 8.2 **Compliance with Prevailing Wage Requirements.** Pursuant to sections 1720 through 1861 of the California Labor Code, the Contractor 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.
- 8.2.1 Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Contractor 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.
- 8.2.2 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.

- 8.3 Penalties for Violations.** Contractor 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.
- 8.4 Payroll Records.** Contractor 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. Contractor shall require its subcontractors to also comply with section 1776. Contractor and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Contractor is responsible for ensuring its subcontractors submit certified payroll records to the City.
- 8.4.1** For contracts entered into on or after April 1, 2015, Contractor and their subcontractors shall furnish records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required by Labor Code section 1771.4.
- 8.5 Apprentices.** Contractor and its subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Contractor is held responsible for the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.
- 8.6 Working Hours.** Contractor and their 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.
- 8.7 Required Provisions for Subcontracts.** Contractor 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.
- 8.8 Labor Code Section 1861 Certification.** Contractor in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Contract, Contractor 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."
- 8.9 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.

8.10 Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. As of March 1, 2015, no contractor or subcontractor may be listed on a bid or proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5. As of April 1, 2015, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or enter into any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. By submitting a bid or proposal to the City, Contractor is certifying that he or she has verified that all subcontractors used on this public work project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration to the City upon request.

8.10.1 A Contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in 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 subcontractor pursuant to Public Contract Code section 4107.

IN WITNESS WHEREOF, this Contract is executed by the City of San Diego pursuant to Resolution No. R-312862 authorizing such execution, and the Design-Builder acting by and through its authorized officers.

Wadsworth Golf Construction Company

By: Patrick Karnick

Name: PATRICK KARNICK (PRESIDENT)

Date: 11/14/19

THE CITY OF SAN DIEGO

By: [Signature]
James Nagelvoort
Director
Department of Public Works

Date: 3/2/2020

I HEREBY APPROVE the form of the foregoing agreement this 5th day of March, 2019.

Mara W. Elliott, City Attorney

By: [Signature]
Deputy City Attorney

Item 100
2/24/20
(R-2020-311)

RESOLUTION NUMBER R- 312862

DATE OF FINAL PASSAGE FEB 26 2020

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING FOUR MULTIPLE AWARD DESIGN-BUILD CONTRACTS K-20-1852-MAC-3-C FOR GOLF COURSE IMPROVEMENT PROJECTS; AND TAKING RELATED ACTIONS.

WHEREAS, the Public Works Department requests City Council to approve the award of four (4) Multiple Award Design-Build Contracts for a cumulative value of \$15,000,000 for the purpose of providing design and construction services for golf course Capital Improvement Program (CIP) projects (Agreements); and

WHEREAS, the selected firms receive a \$5,000 guarantee and will compete for task orders that have an estimated construction cost between \$250,000 and \$2,500,000, for a cumulative value of up to \$15,000,000. These projects will be exclusively for the golf course Capital Improvement Program throughout the City. This action only authorizes an agreement with the selected firms to compete for task orders and does not authorize any design or construction activities; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That the Mayor, or his designee, is authorized to execute, for and on behalf of the City, four Multiple Award Construction Contracts (MACC) simultaneously, with the first being Duininck Inc, under the terms and conditions set forth in the Agreement, on file in the Office of the City Clerk as Document No. RR- 312862-1

2. That the Mayor, or his designee, is authorized to execute, for and on behalf of the City, four Multiple Award Construction Contracts (MACC) simultaneously, with the second

being Landscapes Unlimited, LLC, under the terms and conditions set forth in the Agreement, on file in the Office of the City Clerk as Document No. RR- 312862-2

3. That the Mayor, or his designee, is authorized to execute, for and on behalf of the City, four Multiple Award Construction Contracts (MACC) simultaneously, with the third being Lexicon, Inc., under the terms and conditions set forth in the Agreement, on file in the Office of the City Clerk as Document No. RR- 312862-3

4. That the Mayor, or his designee, is authorized to execute, for and on behalf of the City, four Multiple Award Construction Contracts (MACC) simultaneously, with the fourth being Wadsworth Golf Construction Company, under the terms and conditions set forth in the Agreement, on file in the Office of the City Clerk as Document No. RR- 312862-4

5. That the Chief Financial Officer is authorized to expend an amount not to exceed \$15,000,000 over five years for the purpose of funding the MACC contracts (K-20-1852-MAC-3-C) with the listed firms upon the adoption of the Annual Appropriation Ordinance for the applicable fiscal year, and contingent upon the Chief Financial Officer first furnishing one or more certificates certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

6. That the Chief Financial Officer is authorized to expend an amount not to exceed \$5,000 with Duininck Inc. from annual A-EA.00001, Torrey Pines Golf Course, Fund 700045, Torrey Pines Golf Course CIP, for the purpose of executing this agreement and meet the minimum financial requirements.

7. That the Chief Financial Officer is authorized to expend an amount not to exceed \$5,000 with Landscapes Unlimited, LLC from annual A-EA.00001, Torrey Pines Golf Course,


Fund 700045, Torrey Pines Golf Course CIP, for the purpose of executing this agreement and meet the minimum financial requirements.

8. That the Chief Financial Officer is authorized to expend an amount not to exceed \$5,000 with Lexicon, Inc. from annual A-EA.00001, Torrey Pines Golf Course, Fund 700045, Torrey Pines Golf Course CIP, for the purpose of executing this agreement and meet the minimum financial requirements.

9. That the Chief Financial Officer is authorized to expend an amount not to exceed \$5,000 with Wadsworth Golf Construction Company from annual A-EA.00001, Torrey Pines Golf Course, Fund 700045, Torrey Pines Golf Course CIP, for the purpose of executing this agreement and meet the minimum financial requirements.

10. That the Chief Financial Officer is authorized, upon advice from the administering department, to transfer excess budgeted funds, if any, to the appropriate reserves.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Mark M. Mercer
Deputy City Attorney

MMM:cw
01/30/20
Or.Dept: Public Works Department
CC No.: 3000012826
Doc. No.: 2291828

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego,
at its meeting of Feb. 24, 2020.

ELIZABETH S. MALAND
City Clerk

By Connie Peterson
Deputy City Clerk

Approved: 2/26/2020
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on FEB 24 2020, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage FEB 26 2020

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

Office of the City Clerk, San Diego, California
Resolution Number R- **312862**

Passed by the Council of The City of San Diego on February 24, 2020, by the following vote:

YEAS: BRY, CAMPBELL, WARD, MONTGOMERY, KERSEY, CATE, SHERMAN, MORENO, & GÓMEZ.

NAYS: NONE.

NOT PRESENT: NONE.

RECUSED: NONE.

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: Connie Patterson, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of RESOLUTION NO. R-312862, approved on February 24, 2020. The date of final passage is February 26, 2020.

ELIZABETH S. MALAND

City Clerk of the City of San Diego, California

(Seal)

By: Connie Patterson, Deputy