

**CONTRACT RESULTING FROM REQUEST FOR PROPOSAL NUMBER 10090009-23-R, Consultant  
Services for FY 2025-2029 Consolidated Plan**

This Contract (Contract) is entered into by and between the City of San Diego, a municipal corporation (City), and the successful proposer to Request for Proposal (RFP) # 10090009-23-R, Consultant Services for FY 2025-2029 Consolidated Plan (Contractor).

**RECITALS**

On or about 2/6/2023, City issued an RFP to prospective proposers on services to be provided to the City. The RFP and any addenda and exhibit thereto are collectively referred to as the "RFP." The RFP is attached hereto as Exhibit A.

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

City wishes to retain Contractor to provide consulting services for the Fiscal Year 2025-2029 Consolidated Plan as further described in the Scope of Work, attached hereto as Exhibit B. (Services).

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

**ARTICLE I  
CONTRACTOR SERVICES**

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

**1.2 General Contract Terms and Provisions.** This Contract incorporates by reference the General Contract Terms and Provisions, attached hereto as Exhibit C, the Wage Requirements attached hereto as Exhibit D, and the Federal Contract Provisions attached hereto as Exhibit E.

**1.3 Contract Administrator.** The Economic Development Department is the Contract Administrator for this Agreement. Contractor shall provide the Services under the direction of a designated representative of the Department as follows:

Nadine Hassoun, Community Development Specialist  
1200 Third Avenue, Suite 1400  
San Diego, CA 92101  
(619) 533-6280  
[NHassoun@sandiego.gov](mailto:NHassoun@sandiego.gov)

**ARTICLE II  
DURATION OF CONTRACT**

**2.1 Term.** This Contract shall be for a period of one (1) year beginning on the Effective Date. City may, in its sole discretion, extend this Contract for one (1) additional one (1) year period(s). Unless otherwise terminated, this Contract shall be effective until completion of the Scope of Services, but no longer than two (2) years from the Effective Date, whichever is earliest.

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

**ARTICLE III  
COMPENSATION**

**3.1 Amount of Compensation.** City shall pay Contractor for performance of all Services rendered in accordance with this Contract in an amount not to exceed \$ 107,900.00 <sup>#12</sup>. (Not to exceed amount will be added in final contract prior to the final execution of the contract by the City, with vendor to initial to indicate acceptance.)

**ARTICLE IV  
WAGE REQUIREMENTS**

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

**ARTICLE V  
CONTRACT DOCUMENTS**

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

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

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

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

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

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

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

CONTRACTOR

CITY OF SAN DIEGO  
A Municipal Corporation

Root Policy Research  
Proposer

6740 E Colfax Ave  
Street Address

Denver Co 80220  
City, State, Zip

970-880-1415  
Telephone No.

hello@rootpolicy.com  
E-Mail

BY: C. Abarca

Print Name:  
Claudia Abarca  
Director, Purchasing & Contracting Department

Jun 12, 2023

Date Signed

BY:

Heidi Aggeben  
Signature of Proposer's  
Authorized Representative

Heidi Aggeben  
Print Name

Managing Director  
Title

2/28/23  
Date

Approved as to form this 12th day of  
June, 2023.  
MARA W. ELLIOTT, City Attorney

William Witt  
BY: William Witt (Jun 12, 2023 15:38 PDT)  
Deputy City Attorney

**EXHIBIT A  
PROPOSAL SUBMISSION AND REQUIREMENTS**

**A. PROPOSAL SUBMISSION**

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

**1.1 Reserved.**

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

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

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

**1.4.1 Reserved.**

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

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

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

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

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

**2.2 Exceptions requested by proposer, if any.** The proposer must present written factual or legal justification for any exception requested to the Scope of Work, the Contract, or the Exhibits thereto. Any exceptions to the Contract that have not been accepted by the City in writing are deemed rejected. The City, in its sole discretion, may accept some or all of proposer's exceptions, reject proposer's exceptions, and deem the proposal non-responsive, or award the Contract without

proposer's proposed exceptions. The City will not consider exceptions addressed elsewhere in the proposal.

2.3 The Contractor Standards Pledge of Compliance Form.

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

2.5 Reserved.

2.6 Reserved.

2.7 Reserved.

2.8 Additional Information as required in Exhibit B.

2.9 Reserved.

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

2.10 A title page.

2.11 A table of contents.

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

2.13 Proposer's response to the RFP.

**Tab C - Cost/Price Proposal.** Proposers shall submit a cost proposal in the form and format described herein. Failure to provide cost(s) in the form and format requested in Exhibit B, Section G, shall result in proposal being declared non-responsive and rejected. Proposers shall submit a detailed cost breakdown identifying: (1) number of staff hours and hourly rates for each professional and support/administrative staff person committed to this effort; (2) an estimate of all direct costs, such as materials and reproduction costs; and (3) an estimate of any subconsultant services. The total price must be stated as a total, not to exceed price for all the services and deliverables described in the Scope of Work.

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

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

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

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

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

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

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

**8. Public Records.** By submitting a proposal, the proposer acknowledges that any information submitted in response to this RFP is a public record subject to disclosure unless the City determines that a specific exemption in the California Public Records Act (CPRA) applies. If the proposer submits information clearly marked confidential or proprietary, the City may protect such information and treat it with confidentiality to the extent permitted by law. However, it will be the responsibility of the proposer to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the CPRA should the City choose to withhold such information. General references to sections of the CPRA will not suffice. Rather, the proposer must provide a specific and detailed legal basis, including applicable case law, that clearly establishes the requested information is exempt from the disclosure under the CPRA. If the proposer does not provide a specific and detailed legal basis for requesting the City to withhold proposer's confidential or proprietary information at the time of proposal submittal, City will release the information as required by the CPRA and proposer will hold the City, its elected officials, officers, and employees harmless for release of this information. It will be the proposer's obligation to defend, at proposer's expense, any legal actions or challenges seeking to obtain from the City any information requested under the CPRA withheld by the City at the proposer's request. Furthermore, the proposer shall indemnify and hold harmless the City, its elected officials, officers, and employees from and against any claim or liability, and defend any action brought against the City, resulting from the City's refusal to release information requested under the CPRA which was withheld at proposer's request. Nothing in the Contract resulting from this proposal creates any obligation on the part of the City to notify the proposer or obtain the proposer's approval or consent before releasing information subject to disclosure under the CPRA.

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

## **B. PRICING**

**1. Fixed Price.** All prices shall be firm, fixed, fully burdened, FOB destination, and include any applicable delivery or freight charges, and any other costs required to provide the requirements as specified in this RFP. The lowest total estimated contract price of all the proposals that meet the

requirements of this RFP will receive the maximum assigned points to this category as set forth in this RFP. The other price schedules will be scored based on how much higher their total estimated contract prices compare with the lowest:

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

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

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

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

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

## C. EVALUATION OF PROPOSALS

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

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

### 3. Evaluation Process.

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

### 3.2 Reserved.

**3.3 Mandatory Interview/Oral Presentation.** The City will require proposers to interview and/or make an oral presentation if one or more proposals score within 12 points or less of the proposal with the highest score. Only the proposer with the highest scoring proposal and those proposers scoring within 12 points or less of the highest scoring proposal will be asked to interview

and/or make an oral presentation. Interviews and/or oral presentations will be made to the Evaluation Committee in order to clarify the proposals and to answer any questions. The interviews and/or oral presentations will be scored as part of the selection process. The City will complete all reference checks prior to any oral interview. Additionally, the Evaluation Committee may require proposer's key personnel to interview. Interviews may be by telephone and/or in person. Multiple interviews may be required. Proposers are required to complete their oral presentation and/or interviews within seven (7) workdays after the City's request. Proposers should be prepared to discuss and substantiate any of the areas of the proposal submitted, as well as proposer's qualifications to furnish the subject goods and services. Proposer is responsible for any costs incurred for the oral presentation and interview of the key personnel.

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

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



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

	MAXIMUM EVALUATION POINTS
<b>A. Responsiveness to the RFP.</b>	<hr/> <b>20</b>
<ul style="list-style-type: none"> <li>1. Requested information included and thoroughness of responses</li> <li>2. Understanding of the project and ability to deliver as exhibited in the Executive Summary</li> <li>3. Technical aspects</li> </ul>	
<b>B. Staffing Plan.</b>	<b>25</b>
<ul style="list-style-type: none"> <li>1. Philosophy and approach to work</li> <li>2. Background of the consultant and subcontractor, if utilized</li> <li>3. Method of Quality Assurance, Compliance with applicable laws, and Internal Control Procedures</li> <li>4. Qualifications and technical competence of personnel to be assigned to the project (personnel bios, prior projects, roles, and responsibilities, etc.)</li> <li>5. Availability of personnel for required tasks</li> <li>6. Clearly defined roles/responsibilities of personnel</li> </ul>	
<b>C. Firm's Capability to provide the Services and Expertise and Past Performance.</b>	<b>30</b>
<ul style="list-style-type: none"> <li>1. Proven experience and technical competence of the Consultant and subcontractors.</li> <li>2. Previous relationship of Consultant and subcontractors on similar projects.</li> <li>3. Past record of performance, including such factors as quality of work, ability to meet deadlines, cooperation, responsiveness, and other pertinent managerial considerations.</li> <li>4. Willingness to involved and cooperate with City staff and stakeholders</li> <li>5. Specific experience working with government agencies developing strategic plans of similar size and scope.</li> <li>6. Timely and Accurate completion of similar projects within budget.</li> <li>7. Professional references of past performance.</li> </ul>	
<b>D. Price.</b>	<b>5</b>
<b>E. Mandatory Demonstration/Presentation.</b>	<b>20</b>
<ul style="list-style-type: none"> <li>1. Philosophy/Approach/Methodology</li> <li>2. Software, Equipment, and Data Resource</li> <li>3. Anticipated Timeline</li> <li>4. Internal controls, identifying and resolving issues</li> <li>5. Thoroughness and Clarity of Presentation</li> <li>6. Demonstrated knowledge of common tasks, issues, and solutions related to Services</li> </ul>	
<b>SUB TOTAL MAXIMUM EVALUATION POINTS:</b>	<hr/> <b>100</b>
<b>F. Participation by Small Local Business Enterprise (SLBE) or Emerging Local Business Enterprise (ELBE) Firms*</b>	<b>12</b>

FINAL MAXIMUM EVALUATION POINTS INCLUDING SLBE/ELBE:

112

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

#### D. ANNOUNCEMENT OF AWARD

1. **Award of Contract.** The City will inform all proposers of its intent to award a Contract in writing.
2. **Obtaining Proposal Results.** No solicitation results can be obtained until the City announces the proposal or proposals best meeting the City's requirements. Proposal results may be obtained by: (1) e-mailing a request to the City Contact identified on the eBidding System or (2) visiting the P&C eBidding System to review the proposal results. To ensure an accurate response, requests should reference the Solicitation Number. Proposal results will not be released over the phone.
3. **Multiple Awards.** City may award more than one contract by awarding separate items or groups of items to various proposers. Awards will be made for items, or combinations of items, which result in the lowest aggregate price and/or best meet the City's requirements. The additional administrative costs associated with awarding more than one Contract will be considered in the determination.

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

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

1. **Insurance Documents.** Evidence of all required insurance, including all required endorsements, as specified in Article VII of the General Contract Terms and Provisions.
2. **Taxpayer Identification Number.** Internal Revenue Service (IRS) regulations require the City to have the correct name, address, and Taxpayer Identification Number (TIN) or Social Security Number (SSN) on file for businesses or persons who provide goods or services to the City. This information is necessary to complete Form 1099 at the end of each tax year. To comply with IRS regulations, the City requires each Contractor to provide a Form W-9 prior to the award of a Contract.
3. **Business Tax Certificate.** Unless the City Treasurer determines a business is exempt, all businesses that contract with the City must have a current business tax certificate.
4. **Reserved.**
5. **Reserved.**
6. **COVID-19 Certification Form.**

**8. Unique Entity Identifier Number.** The federal government requires all organizations receiving federal funds to have a Unique Entity ID number that has an 'Active' status registration with the System of Award Management (SAM) website at [www.SAM.gov](http://www.SAM.gov). Effective April 2022, the Federal government will stop using Data Universal Number System (DUNS) number to uniquely identify entities. Entities doing business with the federal government will use a Unique Entity Identifier (UEI) number created on the System of Award Management (SAM) website at [www.SAM.gov](http://www.SAM.gov).

**9. Consultant Award Tracking Form.**

**10. Conflict of Interest Certification.**

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

## **EXHIBIT B SCOPE OF WORK**

### **A. INTRODUCTION**

The City is seeking a qualified consultant or team of consultants (Consultant) to conduct a Citywide, comprehensive participatory planning process that will culminate in a “Consolidated Plan for Fiscal Years 2025–2029” for the City of San Diego (City). The Consolidated Plan is designed to help the City assess its affordable housing and community development needs and market conditions, and to make data-driven, place-based investment decisions. The consolidated planning process serves as the roadmap for a community-wide dialogue to identify housing and community development priorities that align and focus funding from the following formula block grant programs:

1. Community Development Block Grant (CDBG) Program;
2. HOME Investment Partnerships (HOME) Program;
3. Emergency Solutions Grants (ESG) Program; and
4. Housing Opportunities for Persons With AIDS (HOPWA) Program, if needed

The Consolidated Plan is implemented through the Annual Action Plans, which provide a concise summary of the actions, activities, and the specific federal and non-federal resources that will be used each year to address the priority needs and specific goals identified in the Consolidated Plan.

It is important to note that while the City is the grantee for the aforementioned federal programs, the San Diego Housing Commission currently administers ESG and HOME. The County of San Diego has been designated as the alternative grantee for the Housing Opportunities for Persons with AIDS (HOPWA) Program through June 30, 2024 with an option to extend through June 30, 2025 or later. Under the terms of that designation, the County includes HOPWA grant activities in its Consolidated Planning documents

The United States Department of Housing and Urban Development (HUD) requires local jurisdictions to prepare a Consolidated Plan in order to receive housing and community development funding under the formula block grant programs. The City is required to develop the Consolidated Plan in consultation with those intended as the primary beneficiaries of HUD programs, the community at large, the adjoining jurisdictions, the non-profit and for-profit sectors, and faith-based organizations.

It is envisioned that the Consolidated Plan will:

1. Identify the City’s housing and community development (including neighborhood and economic development) needs, priorities, and goals;
2. Identify other federal, state, county, local, private sources of funding that may be utilized in order to leverage the CDBG, HOME, ESG, and HOPWA resources;
3. Arrive at a multi-year strategic plan the City will follow in order to address needs, priorities, and goals while considering the availability of other resources and mechanism.

### **B. BACKGROUND**

#### **About San Diego**

The City of San Diego lies in the southwest corner of California and immediately adjacent to Tijuana, Baja California, Mexico. It has approximately 1.42 million residents and is the second-largest city in California and eighth largest in the nation. San Diegans, who have come from all parts of the world to live here, speak more than 100 languages.

San Diego is an exciting urban city surrounded by unmatched natural beauty. With its great weather and miles of sandy beaches, the city has traditionally been known as a destination for people attracted to the outdoors in general and, specifically, water contact activity. This quality had remained, even as the region had reinvented itself after the military downsizing in the 1980s when policies were established to attract educational infrastructure, mobile communications, and life science industries to replace the vacating military support industries.

The outgrowth of these policies is the evolution of an innovation industry. The city displays a high level of livability, workability, and sustainability. It is a vibrant and sustainable urban ecosystem; with communities that combine technology and creativity to solve problems and overcome shared challenges.

San Diego's proximity to the Mexican border has strongly influenced the area's cultural landscape. Whether in terms of art, cuisine, or bilingual communications, all cultural practices in the San Diego region are directly or indirectly influenced by this 500-year history. The San Diego-Tijuana metropolitan region (also known as the Cali-Baja Mega Region) is the largest bi-national conurbation shared between the United States and Mexico; the second-largest shared between the US and another country, the fourth largest in the world. The City of San Diego serves a diverse population that includes the 1.42 million residents, an additional 1.91 million in the County of San Diego, and an additional 2.18 million from Tijuana's large cross border metropolises.

San Diego's city government aims to effectively serve and support its communities through Mayor Todd Gloria's vision to create a global city for all. The City's goals include providing high-quality public service, working with all communities to achieve safe and livable neighborhoods, and creating and sustaining a resilient and economically prosperous city. It is the kind of place where government works in harmony with the community to create opportunities for and improve all residents' lives in all neighborhoods.

### **About Economic Development Department**

Economic Development Department leads the City's efforts in business expansion, attraction and retention, community development through deployment of federal grants and strategic partnership and research. The Department implements economic development and community development programs in order to create and sustain a resilient and economically prosperous city.

The Business Expansion, Attraction and Retention (BEAR) Division provides services to businesses such as technical assistance, due diligence, expedited permitting, policy/legislative advocacy, utilities coordination and application support for financial incentives.

The Community Development Division is comprised of HUD Programs and Promise Zone. HUD Programs administers Community Development Block Grant (CDBG), HOME Investment Partnerships (HOME) and Emergency Solutions Grant (ESG) funds allocated to the City by the U.S. Department of Housing and Urban Development (HUD). The Promise Zone is a 10-year federal designation of some of the City's most culturally rich and ethnically diverse neighborhoods, but also some of the most under-resourced and underserved communities. Through the Promise Zone initiative, more than 80 community partners work together to form an ecosystem of opportunity and investment to deliver comprehensive support to improve the quality of life of residents.

The Strategic Partnerships and Research Division combines corporate partnerships; economic research, modeling, and forecasting; and Successor Agency activities including the winding down of the former Redevelopment Agency. The Strategic Partnerships and Research Division leads the City of San Diego's efforts in forming strategic collaborations that enable successful completion of Successor Agency assets that benefit community while maximizing city investment and exploring innovative ways to benefit our taxpayers and strengthen the City's General Fund with public private partnerships with regional, national, and international organizations.

The Business Operations and Support Services (BOSS) Division, formerly known as Fiscal Operations, is responsible for overseeing financial administration and internal operations support activities of the Economic Development Department which include managing the annual Economic Development - 198 - City of San Diego Fiscal Year 2023 Adopted Budget General Fund budget of \$10M. Collectively across various revenue sources, BOSS manages the projected federal and state grant fund portfolio.

### **C. CONTEXT FOR CONSOLIDATED PLANNING PROCESS**

Oversight of the planning process is by the City. Process and framework oversight will rest with the City's Economic Development Department, Community Development Division staff.

City staff will oversee the selection of the Consultant; issue and monitor the Consultant agreement; track progress against agreed-upon goals through the planning process; and collaborate with Consultant on community engagement planning and implementation.

Consultant will work to ensure the City's Strategic Plan Equity Commitment and Plan Operating Principles are reflected in the approach to draft the Consolidated Plan.

The City's Strategic Plan Equity Commitment is:

*"Equity is an achievable outcome when disparities are eliminated in systems, and when everyone has access to inclusive City services and resources essential to reaching opportunities and thriving in San Diego.*

*To do this successfully, we need to honestly and directly address persistent issues connected to neighborhood inequity and systemic racism in the City of San Diego. Creating equitable outcomes requires an intentional approach that includes and empowers our communities experiencing structural exclusion through ensuring disparities are eliminated in systems. We recognize the strength, worth, and promise of each person in San Diego, and will work towards creating a better future...for all of us.*

The City's Strategic Plan Operating Principles are:

- *Customer Service: We value our residents, customers, and employees by designing solutions and services that put people first.*
- *Empowerment & Engagement: We value a "Culture of Yes" where we empower employees to creatively solve problems and offer solutions.*
- *Equity & Inclusion: We value equity and inclusion by taking intentional action to create equal access to opportunity and resources.*
- *Trust & Transparency: We value transparency by using data to make better-informed decisions, answer questions, and build trust with the public.*

### **D. DELIVERABLES**

The Consultant will prepare the "Consolidated Plan for Fiscal Years 2025-2029" in accordance with all applicable federal and local policies, standards, and regulations. The work must be completed within the timeframe identified in this RFP. The consolidated planning process is subject to stringent federal regulations with mandatory deadlines.

The Consolidated Plan must incorporate the following elements:

1. A description of the City as the lead agency responsible for overseeing the development of the Consolidated Plan and a description of the process undertaken to develop the same.

2. A “Housing and Homeless Needs Assessment” inclusive of an analysis of the housing market.
3. An analysis of the community and economic development needs (the needs for public facilities, public improvements, public services, and other eligible uses of CDBG).
4. A 5-Year Strategic Plan which identifies:
  - a. The priority needs of the City, based on the housing and non-housing analysis, as well as the availability of resources;
  - b. A listing of federal, state, local, and private resources (beyond the entitlement grants/formula block grants) expected to be available to the City to address priority needs identified in the 5-Year Strategic Plan;
  - c. The goals and objectives of the 5-year plan, as well as the indicators the City will use to measure its progress;
  - d. A description of the strategies the City will pursue to address the priority needs and fulfill its goals and objectives; and
  - e. A summary of the organizations that will carry out the objectives outlined in the 5-Year Strategic Plan (which may include, but not limited to: specific City departments or its contractors; other governmental organizations, such as the Housing Commission and the County of San Diego; non-profit organizations; private industry; faith-based organizations; Community-Based Development Organizations (CBDO); and/or Community Development Financial Institutions).
5. A Fiscal Year 2025 Annual Action Plan which lists the specific actions, activities, and programs the City will undertake during the fiscal year 2025 (July 1, 2024 through June 30, 2025) to address the priority needs and goals identified in the Consolidated Plan. Note that, while City staff will take the lead in the preparation of the Annual Action Plan, the Consultant is expected to support the work of staff, as needed, given the strong linkages between the Annual Action Plan and the Consolidated Plan.
6. A Citizen Participation Plan: The Consolidated Plan must follow a chronological process to effectively allow for broad participation during its development, as well as to include any updates to the City’s Citizen Participation Plan to further define the process that will be utilized during the 5-year implementation period. In accordance with HUD standards, the City must strive to encourage participation from the following populations:
  - a. Very low-, low-, and moderate-income persons (LMI) as defined by HUD: Individuals and families with incomes below 30%, 50%, and 80% of the median income, respectively, for the San Diego Metropolitan Statistical Area (MSA), as well as those presumed by HUD to be principally LMI (i.e., abused children, battered spouses, elderly persons, severely disabled adults, homeless persons, illiterate adults, persons living with AIDS and migrant farm workers);
  - b. Residents of areas where CDBG funds may be proposed to be used;
  - c. Minorities, non-English-speaking persons, and persons with disabilities; and
  - d. Local and regional institutions, including the Continuum of Care, the nonprofit and for-profit sectors, philanthropic organizations, and community-based and faith-based organizations.
7. Other:
  - a. The Consolidated Plan must describe the actions the City will take to foster and maintain affordable housing; evaluate and reduce lead-based paint hazards; reduce the number of poverty-level families; develop institutional structure; and enhance coordination with others to further advance the goals and objectives of the Consolidated Plan;
  - b. The Consolidated Plan must identify obstacles to meeting underserved needs and propose actions to overcome those obstacles; and
  - c. The Consolidated Plan must meet specific requirements that apply to each of the three entitlement programs.

8. Identification and description of geographically targeted areas, including the San Diego Promise Zone and the Opportunity Zone, and the rationale for their selection (optional): The City may include this section if specific geographic areas are targeted as priorities for funding allocations.

The City intends to supplement the baseline information with additional content, in the form of other data, maps, images, text, and tables. The Consultant will review, compile, organize, and tabulate data and other information available through the City, HUD, the U.S. Census Bureau, and other public and private organizations, as well as input gathered from the public participation process to complete the HUD-required Consolidated Plan elements and integrate additional information into the HUD Consolidated Plan template.

#### **E. EXPERIENCE AND KEY PERSONNEL**

Consultant should have a proven record of experience in completing plans similar in scope to this RFP. The following experience is highly preferred:

1. Experience in project management and administration of public projects.
2. Experience in preparing and facilitating creative and inclusive, public participation and engagement plans, strategies, and tactics.
3. Experience in the development and preparation of plans for federal programs.
4. Experience in producing high quality product information.
5. Ability to lead, facilitate, and coordinate projects involving comprehensive participation.
6. Experience with GIS mapping and demographic surveys.
7. Experience on public project implementation strategies.
8. Knowledge of financing plans and strategies.
9. Capacity to accomplish work in the required time.
10. Experience working with government agencies.

#### **F. PROJECT SCHEDULE**

The duration of the consolidated planning process is anticipated to be 15 months and will start with the execution of the Consultant Agreement in the first quarter of 2023. Phases, which can overlap, may include:

##### **Phase 1: Research and Community Engagement**

1. Review of background information and community engagement plan
2. Perform Housing and Homeless Needs Assessment
3. Perform Community and Economic Development Needs Assessment
4. Perform Housing Market Analysis
5. Develop citywide survey of priority needs and assessment of survey results
6. Citywide, comprehensive community engagement and outreach

##### **Phase 2: Preparation of Consolidated Plan Goals**

1. Draft preliminary Consolidated Plan Goals materials
2. City feedback on preliminary Consolidated Plan Goals
3. Refinement of the draft Consolidated Plan Goals
4. Draft Consolidated Plan Goals release for public input
5. Community at Large, Advisory Board, Council Committee and City Council Presentations
6. Public input integrated to draft Consolidated Plan Goals

##### **Phase 3: Preparation of Consolidated Plan and Annual Action Plan**

1. Draft preliminary Consolidated Plan and Annual Action Plan materials
2. City staff feedback on preliminary Consolidated Plan and Annual Action Plan
3. Refinement of the draft Consolidated Plan and Annual Action Plan
4. Draft Consolidated Plan and Annual Action Plan released for public input



5. Community at Large, Advisory Board, Council Committee and City Council Presentations
6. Public input integrated to draft Consolidated Plan and Annual Action Plan

Phase 4: Consolidated Plan Submission and Closeout

1. Assist with responses to questions and/or requests for additional information from HUD, if needed.

**G. SPECIFICATIONS**

The Consultant will contract with the City of San Diego to develop a “Consolidated Plan for Fiscal Years 2025–2029” inclusive of a “Fiscal Year 2025 Annual Action Plan,” services described in this RFP, and/or those activities incorporated into the resulting agreement.

The Consultant will perform and complete the following:

**1. PROJECT MANAGEMENT AND ADMINISTRATION**

**a. Project Kickoff Meeting**

Conduct a kickoff meeting with key City staff to discuss:

- Project scope and schedule
- Roles, responsibilities, and expectations
- Review of existing documents and other guiding data and materials
- Communication protocols
- Stakeholder groups
- Website and promotional materials
- Translation and concurrent interpretation
- Public engagement plan
- Final document format

**b. Background Information**

Become familiar with all background information. Relevant materials may include, but are not limited to:

- [City Strategic Plan](#)
- Council Policies [700-02](#) and [800-14](#)
- [General Plan Housing Element 2021-2029](#)
- [San Diego Regional Analysis of Impediments to Fair Housing Choice](#)
- [City of San Diego Visual Style Guide](#)
- [City of San Diego Community Action Plan on Homelessness](#)
- [Homes for All of Us – Housing Package](#)
- [24 CFR Part 91 – Consolidated Submissions for Community Planning and Development Programs](#)
- [HOME-ARP Allocation Plan](#)
- [Economic Development Strategy \(EDS\)](#)

**c. Communication Goals**

Under the direction of City staff, develop and maintain open lines of communication and cooperation to ensure a successful process. Attend press or media events associated with project, as directed.

**d. Coordination Meetings**

Meet with City staff on an established regular basis to discuss project coordination.

**e. Agendas and Minutes**

Issue meeting agendas and meeting minutes for meetings with City staff, and various Consolidated Plan stakeholder meetings.

**f. Project Schedule**

Issue and update a project schedule that includes review periods for City staff and time for revisions before all critical milestones.

**g. Quality Control**

Conduct internal review and quality control checks on all drafts and deliverables prior to issuing to City staff for review.

**h. Collateral Materials**

Collaborate with City staff on design of collateral materials and provide deliverables in a digital format for posting to the City’s website and social media. Content may include, but not limited to, project schedule, PowerPoint presentations, public meeting notices, and draft and versions of the Consolidated Plan. Posting of the materials and maintenance of the website and social media will be responsibility of City staff.

**Deliverables:**

1. Kickoff meeting agenda and minutes
2. Meeting agendas and minutes
3. Comprehensive project schedule
4. Website and social media materials

**2. RESEARCH AND COMMUNITY ENGAGEMENT**

**a. Research and Priority Needs Assessments Analyses**

The Consultant will review all applicable background information and perform the following:

- Housing and Homeless Needs Assessment, inclusive of the housing market
- Community and Economic Development Needs Assessment (i.e needs for public facilities, public improvements, public services, and other eligible uses of CDBG)
- Housing Market Analysis
- Design Citywide Priority Needs Survey and analysis of survey results

**b. Community Engagement and Outreach**

The Consultant will lead in the formulation and execution of a detailed, forward-thinking community engagement process that fosters a meaningful involvement of those intended to be served by the CDBG, HOME, ESG, and HOPWA programs, as well as community-based organizations, industry, housing and service providers, and the community at large.

The community engagement process should include new and innovative approach to provide direct outreach and increase the awareness of the City’s Consolidated Plan and associated programs and services. The Community Engagement Plan will include, but not limited to, the following:

- Goals, objectives and desired outcomes for community engagement, project branding and publicity
- Key messages
- Strategy for conducting the Consolidated Plan development process that involves a broad spectrum of the City’s communities and stakeholders as possible
- Assessment of potential project issues and stakeholders
- Timeline showing the relationship between the community engagement and planning tasks/activities
- Roles and responsibilities of the Consultant and City staff
- Coordination/cooperation with key stakeholders
- Communication plan for keeping the public up to date on planning progress and learnings

- Ensure Process collects input from the public of diverse backgrounds, for whom English is a second language

Consultant must coordinate and lead at a minimum nine (9) community outreach presentations and meetings to inform members of the public that the City is updating its Consolidated Plan for federal funds that primarily serve low-to moderate-income residents and areas. The Consultant will also facilitate community conversations surrounding community needs to solicit input from members of the public in the City of San Diego. Public presentations and meetings may include, but are not limited to, community engagement workshops, stakeholder meetings and presentations to the Consolidated Plan Advisory Board.

**Deliverables:**

1. Compilation of findings from the listed tasks/activities (Sections F.1.b, F.2.a and F.2.b) and produce a Summary of Findings
2. Citywide Priority Needs Survey (web base)
3. Community Engagement Plan
4. Minimum of 9 public presentations (in-person, virtual, and/or hybrid)
5. Community needs questionnaire
6. PowerPoint or other approved presentation
7. Digital content and materials for website and social media

**3. PREPARATION OF DRAFT CONSOLIDATED PLAN GOALS**

Base on the qualitative and quantitative data gathered through market and demographic analyses, community engagement and outreach workshops, and assessments of need, the Consultant will draft Consolidated Plan Goals that will meet the identified high-priority needs.

**a. First Draft**

The Consultant will prepare a draft Consolidated Plan Goals for City staff review.

**b. Second Draft**

Based on the feedback of City staff, the Consultant will revise the draft Consolidated Plan Goals.

**c. Draft Consolidated Plan Goals Online Engagement**

Prepare a draft Consolidated Plan Goals and place on City website for public input.

**d. Draft Consolidated Plan Goal Public Workshops**

Provide a minimum of nine (9) public workshops/town halls/sessions. The workshops will be used as a mechanism to gain input while the draft Consolidated Plan Goals is available online. The Consultant is to provide a record of all comments to the City.

**e. Draft Consolidated Plan Goals Public Presentations**

Prepare a draft report to be presented to the Consolidated Plan Advisory Board, City Council Committee and/or City Council on or before August 11, 2023, or an alternate date confirmed with City Staff. The Consultant is to provide a record of all comments to the City.

A minimum of four (4) presentations on the Draft Consolidated Plan Goals will be provided by the Economic Development Department with support provided by the Consultant. Tentative timeline includes:

- August 2023 – Presentation to the Mayor/Executive Management, if requested
- September 2023 – Presentation to Consolidated Plan Advisory Board
- September 2023 – Briefings to City Council, if requested
- September 2023 – Presentation to Council Committee
- September/October 2023 – Presentation to City Council

## **Deliverables**

1. First Draft Consolidated Plan Goals
2. Second Draft Consolidated Plan Goals
3. Draft Consolidated Plan Goals Online Engagement materials for website Public Input and summary
4. Draft Consolidated Plan Goals Public Presentation PowerPoint or other approved presentation materials and summary
5. Public input integrated into the final Consolidated Plan Goals

## **4. PREPARATION OF DRAFT CONSOLIDATED PLAN**

### **a. First Draft**

The Consultant will prepare a draft Consolidated Plan and Annual Action Plan for City staff review.

### **b. Second Draft**

Based on the feedback of City staff, the Consultant will revise the draft Consolidated Plan and Annual Action Plan.

### **c. Draft Consolidated Plan Online Engagement**

Prepare a draft Consolidated Plan and Annual Action Plan, and place on City website for public input.

### **d. Draft Consolidated Plan and Annual Action Plan Public Workshops**

Provide a minimum of nine (9) public workshops/town halls/sessions. The workshops will be used as a mechanism to gain input while the draft Consolidated Plan is available online. The Consultant is to provide a record of all comments to the City.

### **e. Draft Consolidated Plan and Annual Action Plan Public Presentations**

Prepare a draft report to be presented to the Consolidated Plan Advisory Board, City Council Committee and/or City Council on or before February 29, 2024, or an alternate date confirmed with City Staff. The Consultant is to provide a record of all comments to the City.

A minimum of four (4) presentations on the Draft Consolidated Plan and Annual Action Plan will be provided by the Economic Development Department with support provided by the Consultant. Tentative timeline includes:

- December 2023 - Presentation to the Mayor/Executive Management, if requested
- January 2024 - Presentation to Consolidated Plan Advisory Board
- January/February 2024 - Briefings to City Council, if requested
- January/February 2024 - Presentation to Council Committee
- February/March 2024 - Presentation to City Council

## **Deliverables**

1. First Draft Consolidated Plan and Annual Action Plan
2. Second Draft Consolidated Plan and Annual Action Plan
3. Draft Consolidated Plan and Annual Action Plan Online Engagement materials for website Public Input and summary
4. Draft Consolidated Plan and Annual Action Plan Public Presentation PowerPoint or other approved presentation materials and summary
5. Public input integrated into the final Consolidated Plan and Annual Action Plan

**5. PREPARATION OF FINAL CONSOLIDATED PLAN**

Based on the direction of City Council and any further directions by City staff, the Consultant will finalize the Consolidated Plan and deliver to City staff on or before April 30, 2024, or an alternate date confirmed with City Staff.

**6. SUBMISSION OF CONSOLIDATED PLAN AND PROJECT CLOSEOUT**

The City must submit its Consolidated Plan to HUD using the Consolidated Plan template required by HUD’s online Integrated Disbursement and Information System (IDIS). HUD’s Consolidated Plan template follows a uniform, web-based format which automates the baseline content of the Consolidated Plan. Data, which prepopulates tables in the template, comes from HUD’s Office of Community Planning and Development database. The template does allow for entitlement grantees to integrate information in the Consolidated Plan beyond that which is generally determined by the IDIS automated process. IDIS imposes character count limits and file format restrictions. The Consultant must be aware of these limits and restrictions and be fully prepared to deliver a complete Consolidated Plan within these boundaries.

**G. PRICE SCHEDULE**

Costs for Services provided in Table 1 below will be used to calculate pricing for this proposal.

For each Task, the Proposer shall submit the estimated time required to accomplish the tasks identified and the total cost for all tasks to be performed as listed. Proposers shall submit a cost proposal in the form and format described herein. Failure to provide cost(s) in the form and format requested below, shall result in proposal being declared non-responsive and rejected.

Proposers shall submit a detailed cost breakdown identifying: (1) number of staff hours and hourly rates for each professional and support/administrative staff person committee to this effort; (2) an estimate of all direct costs, such as materials and reproduction costs; and (3) an estimate of any subconsultant services. The total price must be stated as a total, not to exceed price from all the services and deliverables described in the Scope of Work.

**All cells for each category must be filled out. If no cost, enter a zero (0). Failure to complete all cells shall be cause for rejection.**

**Table 1.**

<b>Tasks</b>	<b>Total Hours</b>	<b>Total Cost</b>
<b>Project Management and Administration</b>		\$
<b>Research and Community Engagement</b>		\$
<b>Preparation of Consolidated Plan Goals</b>		\$
<b>Preparation of Consolidated Plan and Annual Action Plan</b>		\$
<b>Preparation of Final Consolidated Plan and Submission</b>		\$
<b>Materials</b>		\$
<b>TOTAL</b>		\$



**EXHIBIT C**



**THE CITY OF SAN DIEGO**

**GENERAL CONTRACT TERMS AND PROVISIONS**

**APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS**

## ARTICLE I

### SCOPE AND TERM OF CONTRACT

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

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

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

## ARTICLE II

### CONTRACT ADMINISTRATOR

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

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

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



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

### **ARTICLE III COMPENSATION**

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

**3.2 Invoices.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE VI INTELLECTUAL PROPERTY RIGHTS**

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

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

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

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

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

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



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

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

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

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

## **ARTICLE VII INDEMNIFICATION AND INSURANCE**

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

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

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

Contractor shall provide, at a minimum, the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE VIII BONDS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE XI DISPUTE RESOLUTION**

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

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

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

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

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

## **ARTICLE XII MANDATORY ASSISTANCE**

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



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

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

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

### **ARTICLE XIII MISCELLANEOUS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## EXHIBIT D

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

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

**A. Living Wages.** This Contract is subject to the City's Living Wage Ordinance (LWO), codified at SDMC sections 22.4201 through 22.4245. The LWO requires payment of minimum hourly wage rates and other benefits unless an exemption applies. SDMC section 22.4225 requires each contractor to fill out and file a living wage certification with the City Manager within thirty (30) days of Award of the Contract. LWO wage and health benefit rates are adjusted annually in accordance with SDMC section 22.4220(b) to reflect the Consumer Price Index. Service contracts, financial assistance agreements, and City facilities agreements must include this upward adjustment of wage rates to covered employees on July 1 of each year. In addition, Contractor agrees to require all of its subcontractors, sublessees, and concessionaires subject to the LWO to comply with the LWO and all applicable regulations and rules.

**1. Exemption from Living Wage Ordinance.** Pursuant to SDMC section 22.4215, this Contract may be exempt from the LWO. For a determination on this exemption, Contractor must complete the Living Wage Ordinance Application for Exemption.

## EXHIBIT E

### FEDERAL CONTRACT PROVISIONS

- 1. UNIFORM ADMINISTRATIVE REQUIREMENTS.** Contractor shall comply with 2 C.F.R. Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," as modified by 24 C.F.R. § 570.502.
- 2. GENERAL FEDERAL CDBG PROGRAM REQUIREMENTS.** Contractor shall comply with all Federal laws and regulations described in 24 C.F.R. § 570, including subpart K (sections 570.600-570.614), except that: (a) Contractor does not assume City's environmental responsibilities described at 24 C.F.R. § 570.604; and (b) Contractor does not assume City's responsibility for initiating the review process under the provisions of 24 C.F.R. Part 52.
- 3. LOBBYING AND POLITICAL ACTIVITIES.** Contractor shall not use any of the CDBG Funds provided to it under this Contract to pay any Person for influencing or attempting to influence any decision or election by any electorate, legislative body, government agency, grantee, bureau, board, commission, district, or any other instrument of Federal, state, city or other local government. The phrase "influencing or attempting to influence" means making, with the intent to influence, any communication to, or appearance before, a board, body, officer, or employee of a governmental entity, as well as any communication made to any electorate, regarding any ballot measure or candidate election. Contractor shall comply with 31 USC 1352 and 24 C.F.R. Part 87. Contractor shall sign and deliver to City the certification set forth in 24 C.F.R. Part 87, Appendix A, prior to entering into this Contract, which certification shall be a condition precedent to this Contract. Contractor shall also require this same certification to be included in all subcontracts. Additionally, Contractor shall disclose to City any funds from any other source paid by Contractor (or their respective principals or agents) to any person, within the last year, for influencing or attempting to influence decisions of the Federal government, by completing, signing, and submitting to City, Standard Form LLL, "Disclosure of Lobbying Activities," found at 24 C.F.R. Part 87, Appendix B. Contractor understands that the duty to disclose lobbying activities is a continuing requirement and, therefore, shall make such disclosures at the end of each calendar quarter during the Term in which any activity requiring disclosure occurs or more often, if required by applicable law.
- 4. Reserved.**
- 5. PLAYING BY THE RULES HANDBOOK.** By entering into this Contract, Contractor acknowledges that Contractor has received, read, and understood the contents of the Playing by the Rules Handbook and shall fully comply with all of the administrative recommendations set forth in such handbook.
- 6. NO DISCRIMINATION.** Contractor shall comply with Title VI of the Civil Rights Act of 1964 and the implementing regulations in 24 C.F.R. Part 1, Executive Order 11063, as amended by Executive Order 12259, and the implementing regulations in 24 C.F.R. Part 107, the California Fair Employment Practices Act, and any other applicable Federal or State law or regulation prohibiting discrimination on any basis enacted before or after the Effective Date. Contractor shall not discriminate on the basis of race, color, gender, religion, national

origin, sexual orientation, age, familial status, or disability, in performing this Contract, including in employment opportunities, the provision of labor, services, privileges, facilities, advantages, or accommodations. Contractor's failure to comply with the requirements of this EXHIBIT E, Section 6, shall be constitute a default by Contractor.

**7. COPELAND "ANTI-KICKBACK" ACT.** As applicable, Contractor shall comply with the Copeland "Anti-Kickback" Act (18 USC 874), as supplemented by the Department of Labor regulations at 29 C.F.R. Part 3.

**8. ENERGY POLICY AND CONSERVATION ACT.** As applicable, Contractor shall comply with the mandatory standards and policies relating to energy efficiency, contained in the State's energy conservation plan, issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163, 89 Stat. 871).

**9. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT.** As applicable, Contractor shall comply with all applicable standards, orders or regulations issued pursuant to Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 USC 1251-1387), for contracts in excess of \$150,000.

**10. RELIGIOUS ACTIVITIES.** Contractor shall comply with all applicable HUD requirements governing the use of CDBG Funds by religious organizations, including 24 C.F.R. § 570.200(j), referring to 24 C.F.R. § 5.109, and Executive Order 11245, as amended by Executive Order 13279.

**11. SECTION 3 CLAUSE.** If applicable under 24 C.F.R. §75.3, then pursuant to 24 C.F.R. §75.27, Contractor (and, if indicated below, City) shall comply with the following "Section 3 Clause":

11.1. The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

11.2. The Parties to this Contract agree to comply with HUD's regulations in 24 C.F.R. Part75, which implement Section 3. As evidenced by their execution of this Contract, the Parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.

11.3. Contractor agrees to send to each labor organization or representative of workers with which Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of Contractor's commitments under this Section 3 Clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, the name and location of the Person(s) taking applications for each of the positions and the anticipated date the work shall begin.

11.4. Contractor agrees to include this Section 3 Clause in every subcontract subject to compliance with the regulations in 24 C.F.R. Part75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 Clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part75. Contractor will not subcontract with any subcontractor where Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part75.

11.5. Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after Contractor is selected, but before this Contract is signed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 75 require employment opportunities to be directed, were not filled to circumvent Contractor's obligations under 24 C.F.R. Part75.

11.6. Noncompliance with HUD's regulations in 24 C.F.R. Part 75 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted agreements.

11.7. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 USC 450e) also applies to the work to be performed under this Contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

11.8. Contractor shall document its good faith efforts to comply with the terms and conditions of the above Section 3 Clause and furnish such documentation to City, upon request.

**12. REVERSION OF ASSETS.** Upon the expiration or termination of this Contract, Contractor shall transfer to City any CDBG funds on hand at the time of such expiration or termination and relating to the City grant. As applicable, Contractor shall comply with the requirements of 24 C.F.R. § 570.503(b)(7) regarding the use or disposition of any real property acquired or improved with CDBG funds in excess of \$25,000. If Contractor does not use the real property to meet one of the national objectives in 24 C.F.R. § 570.208 for at least five (5) years after the expiration or termination of this Contract, Contractor shall pay City an amount equal to the current market value of the property, less any portion of the value attributable to expenditures of funds other than CDBG funds for the acquisition of, or improvement to, the property.

**13. FAIR HOUSING ACT.** As applicable, Contractor shall comply with Title VIII of the Civil Rights Act of 1968, as amended, which prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18), age or disability. Contractor shall post in a prominent place at its offices the Equal Housing Opportunity Logo provided by City, which may be obtained through the

City's Economic Development Department, and any other fair housing materials provided by City during the Contract term.

**14. SECTION 504.** As applicable, Contractor shall comply with any and all Federal regulations issued pursuant to Section 504 of the Rehabilitation Act of 1973, prohibiting discrimination against persons with disabilities in any Federally assisted program. City shall provide Contractor with any guidelines necessary for compliance with that portion of the regulations applicable during the Term.

**15. LIMITED ENGLISH PROFICIENCY.** As applicable, Contractor shall comply with Executive Order 12166, enacted on August 11, 2000, mandating that any recipient of HUD assistance funds reduce barriers to access for limited English proficiency ("LEP") persons. Contractor shall comply with and make good faith and reasonable efforts to carry out the purposes of Executive Order 12166 relating to "Improving Access to Services by Persons with Limited English Proficiency." Contractor acknowledges that failure to ensure LEP access to HUD benefits may violate Title VI of the Civil Rights Act of 1964.

**16. LEAD-BASED PAINT.** As applicable, Contractor shall comply with 24 C.F.R. § 570.608 relating to the Lead-Based Paint Poisoning Prevention Act (42 USC 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 USC 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, and R.

**17. REIMBURSEMENT OF EXPENDITURES.**

17.1 City Grant Budget Amount. The total of all payments to be reimbursed to or on behalf of Contractor under this Contract shall not, under any circumstances, exceed the total budget. Contractor acknowledges and agrees that any and all expenditures by Contractor exceeding the total budget, expenditures not permissible under the operating manual or laws governing this Contract, or expenditures not pre-approved by the City prior to incurring the expense, shall be borne solely by Contractor. City is under no obligation to contribute any financial assistance to performance of the activity other than the City grant, regardless of the actual cost of performing the activity.

17.2 Reimbursement Requests. Contractor shall submit to City monthly timely, complete reimbursement requests in accordance with this Contract, using forms and instructions (including submittals over the internet) provided by City. City will reimburse Contractor on a reporting period basis for eligible expenditures, provided that all reports and/or supporting documents from Contractor required under this Contract (including those required by the operating manual), are received by City (on such forms as City may require) within fifteen (15) calendar days after the last day of the immediately preceding reporting period. The final payment to Contractor shall be withheld by City until all reporting period reports required from Contractor under this Contract have been received by City. City additionally reserves the right to withhold ten percent (10%) of the total budget, until Contractor has submitted all City Grant close out documentation to City. Contractor shall not be reimbursed for any expenditure without sufficient documentation that the expenditure is eligible for reimbursement under this Contract and that such eligible expenditure has been paid in full by Contractor.

17.3 Ineligible Expenditures. Contractor shall not be reimbursed by the City for any non pre-approved expenditure nor for alcoholic beverages, under any circumstances. Contractor shall not be reimbursed for any expenditures, directly or indirectly, during any period of



Federal, State, City or other debarment, suspension, or ineligibility of Contractor from participation in activities using CDBG Funds, when Contractor has notice (actual, constructive, or implied) of such debarment, suspension, or ineligibility.

17.4 Supporting Information. Contractor shall provide City with authentic, accurate, and legible written documentation for all expenditures relating to the activity and for which Contractor requests reimbursement under this Contract on a reporting period basis. Written invoices from Contractor's subcontractors shall be provided to City in the form originally provided to Contractor, with no alterations or other markings on such invoices. Contractor shall make original invoices immediately available to City upon request. The documentation provided by Contractor to City shall include an itemized description of the completed work, the date such work was done, and all supporting invoices and documentation sufficient for City to adequately determine eligibility for reimbursement of each and every expenditure and that such expenditure has been paid in full by Contractor. Partial reimbursement may be made for reimbursement requests that receive only partial approval from City. The Contractor shall sign each and every request for reimbursement, attesting to its truthfulness and accuracy under penalty of perjury. Contractor acknowledges and agrees that City reserves the right to deny reimbursement for any request that is not properly submitted.

17.5 Time for Submittal. Contractor shall timely and properly submit a minimum of one reimbursement request for each reporting period, even if Contractor did not make any expenditures in performance of the activity that are reimbursable under this Contract during the reporting period and the reimbursement request is for zero dollars (\$0). Within forty-five (45) calendar days after the date of performance of any labor or services as part of the activity, purchase of materials, supplies or equipment relating to the activity, or receipt of an invoice for any expenditures incurred by Contractor relating to the activity, in each case that are reimbursable under this Contract, Contractor shall submit a reimbursement request for such labor, services, materials, supplies, equipment, or other expenditure(s) to City. Any failure to so submit a reimbursement request may be deemed a waiver of Contractor's right to reimbursement for such labor, services, materials, supplies, equipment, or other expenditure(s). Contractor shall submit to City any and all final reimbursement requests, including any documentation substantiating the requests, within thirty (30) calendar days after the earlier of: (a) completion of the activity; (b) expiration of the Contract term; or (c) termination of this Contract. Contractor waives any and all right to submit any documentation of activity expense or to receive reimbursement for any activity expense submitted to City for reimbursement after such thirty (30) calendar day time period. Furthermore, any remaining CDBG funds balance in the budget for which a reimbursement request has not been properly and timely submitted to City before the expiration of such thirty (30) calendar day time period shall be subject to reprogramming by City, without notice to Contractor.

17.6 Other Funding Sources. If Contractor receives (or has received) additional funding for the activity from a source or sources other than City, then Contractor shall charge activity expenditures to the appropriate funding source at the time incurred. Any expenditure incurred in connection with the activity that is properly chargeable to a funding source other than CDBG Funds allocated to the activity under this Contract shall not be allowed as a reimbursable activity expense under this Contract.

17.7 Timely Expenditure. Contractor acknowledges that City must comply with HUD's requirement that CDBG Funds allocated for the activity be expended in a timely manner and that City must monitor and administer all contracts involving City CDBG funds. Contractor

agrees to expend all CDBG funds allocated to the budget and complete the activity before expiration of the Contract term.

**18. REPORTS, FINANCIAL STATEMENTS, AND AUDITS.**

18.1 Periodic Reports. Contractor shall submit to City a fiscal and programmatic report on a reporting period basis summarizing Contractor's expenditures in pursuing the activity and the elements of the activity completed during the applicable reporting period, along with any and all invoices and other documentation required by City. Such a report shall be submitted within fifteen (15) calendar days after the end of each reporting period.

18.2 End of Agreement Report. Contractor shall submit to City a report containing a narrative summary of the elements of the activity completed as of the date of the report, and a financial summary of activity expenditures claimed to and reimbursed by City under this Contract .

18.3 Reserved.

18.4 Reserved.

18.5 Reserved.

18.6 Other Audits. If Contractor is subject to an audit from a source other than City, Contractor shall provide a copy of the audit to City within thirty (30) calendar days after Contractor's receipt of the audit. City, in its sole and absolute discretion, may conduct a review of any such third person audit(s). Contractor shall fully cooperate with any such review by City, including providing any and all documentation associated with any such third person audit(s) within fourteen (14) calendar days after notice from City.

18.7 Adverse Audit Findings. If any type of audit or monitoring review reveals any pattern of suspicious or questionable requests for reimbursement by Contractor under this Contract, City shall have the right, in its sole and absolute discretion, to take remedial action under Section 17 or 18. If an independent audit identifies any concerns about Contractor's accounting practices or internal controls that results in an independent auditor's opinion other than an unqualified opinion, City shall have the right to suspend or terminate this Contract, effective immediately upon notice to Contractor.

18.8 Contractor Cooperation. Contractor shall fully cooperate with City and any other auditors in any review or investigation of Contractor's conduct or action(s) relating to this Contract. Failure by Contractor to so cooperate shall be a default by Contractor under this Contract.

18.9 Return of Improper Reimbursement. Upon the determination of City or HUD that any reimbursement provided to Contractor under this Contract was for an ineligible expenditure or based on a fraudulent or other illegal or improper submittal of a request for reimbursement by Contractor, Contractor shall return such funds to City within fourteen (14) calendar days after notice to Contractor. Upon the determination of City or HUD that any reimbursement provided to Contractor was based on an inadequate or improper submittal of a request for reimbursement by Contractor, Contractor shall provide any and all documentation required by City or HUD to fully remedy such concern(s), within fourteen (14) calendar days after notice to Contractor. If Contractor is unable or unwilling to provide documentation to fully remedy such concern(s), Contractor shall return the reimbursed

funds to City within such fourteen (14) calendar day time period. In addition to the remedies set forth in Section 17, if Contractor fails to timely return any funds to City in accordance with this Section 18.9, City reserves the right to deduct such amounts from any future reimbursement becoming due to Contractor under this Contract.

## **19. RECORDS.**

19.1 Maintenance, Inspection and Photocopying. Contractor and its subcontractors shall maintain all records during the Contract term and the Retention Period (defined in Section 19.3). At any time during normal business hours and as often as requested, Contractor and its subcontractors shall permit City, HUD, the Comptroller General of the United States (“Comptroller General”), or any of their duly authorized representatives, to inspect and photocopy, at a reasonable location within the County (e.g., the offices of Contractor), all records for the purposes of making audits, examinations, excerpts, or transcriptions, or monitoring and evaluating Contractor’s performance of its obligations under this Contract. Upon any request by City, HUD, Comptroller General, or any of their duly authorized representatives, for any records, Contractor and its subcontractors shall submit exact duplicates of the originals of the requested records to the requesting party for the purposes described in this Section 19.1. City, HUD, and Comptroller General may retain copies of the records, if such retention is deemed necessary by City, HUD, or Comptroller General, in their respective sole and absolute discretion. If Contractor or a subcontractor is unable to make any records available for inspection within the County, then Contractor shall pay all of City’s travel-related costs to inspect and photocopy the records at the location where the records are maintained. Any refusal by Contractor or a subcontractor to comply with this Section 19.1 shall be a default by Contractor under this Contract.

19.2 Ownership of Original Records. Once Contractor receives any reimbursement from City under this Contract, all records shall be the property of City. City’s ownership of the records includes the use, reproduction, or reuse of the records, and all incidental rights, whether or not the work for which the records were prepared is performed. No records shall be shown to any other person, except as authorized by City in writing, or where such records are subject disclosure pursuant to the California Public Records Act, as determined by the City Attorney.

19.3 Records Retention Period. Contractor and its subcontractors shall retain originals of all records for at least three (3) years after the later of (“Retention Period”): (a) Contractor’s submission of all required reports under this Contract; or (b) City and Contractor make all final payments and resolve all pending matters (including audit findings) under this Contract. All records shall be kept at Contractor’s (or relevant subcontractor’s) regular place of business. At any time during the Retention Period, Contractor and its subcontractors shall permit City, HUD, Comptroller General, or any of their respective authorized representatives, to inspect and photocopy any and all records for the purposes described in Section 19.1 After expiration of the Retention Period, Contractor and its subcontractors shall provide City with thirty (30) calendar days’ advance notice of their respective intent to dispose of any records. During this thirty (30) calendar daytime period, Contractor and its subcontractors shall provide any and all records to City upon notice from City requesting the records.











# Contract No.10090009-23-R, Consultant Services for FY 2025-2029 Consolidated Plan

Final Audit Report

2023-06-12

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