

CONTRACT RESULTING FROM INVITATION TO BID NUMBER ITB 10089996-23-K

This Contract (Contract) is entered into by and between the City of San Diego, a municipal corporation (City), and the successful bidder to Invitation to Bid (ITB) # ITB 10089996-23-K (Contractor).

RECITALS

On or about 3/28/2023, City issued an ITB to prospective bidders on goods and services to be provided to the City. The ITB and any addenda and exhibits thereto are collectively referred to as the "ITB." The ITB is attached hereto as Exhibit A.

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

City wishes to retain Contractor to provide the City with the lease and maintenance of Heavy Duty Equipment as further described in the Scope of Work, attached hereto as Exhibit B. (Goods and 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 Goods and 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 Goods and Services.

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

**ARTICLE II
DURATION OF CONTRACT**

2.1 Term. This Contract shall be for a period of five (5) years beginning on the Effective Date. Unless otherwise terminated, this Contract shall be effective until completion of the Scope of Services. The term of this Contract shall not exceed five years unless approved by the City Council by ordinance.

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

**ARTICLE III
COMPENSATION**

3.1 Amount of Compensation. City shall pay Contractor for performance of all Services rendered in accordance with this Contract in an amount not to exceed \$1,626,100.00. Initials: 

**ARTICLE IV
WAGE REQUIREMENTS**

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

**ARTICLE V
CONTRACT DOCUMENTS**

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

5.2 Contract Interpretation. The Contract Documents completely describe the Goods and Services to be provided. Contractor will provide any Goods and 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 Goods and Services will be interpreted in accordance with that meaning unless a definition has been provided in the Contract Documents.

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

- 1st The Contract

- 2nd The ITB and the City's written acceptance of any exceptions or clarifications to the ITB, if any

- 3rd Contractor's Pricing

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

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

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

CONTRACTOR

CITY OF SAN DIEGO
A Municipal Corporation

Hawthorne Machinery Co.
Bidder

BY:



16945 Camino San Bernardo
Street Address

Print Name: Claudia C. Abarca
Director

San Diego, CA
City

Purchasing & Contracting Department

858-674-7044
Telephone No.

September 20, 2023
Date Signed

Cbaker@hawthornecat.com
E-Mail

BY:


Signature of Bidder's Authorized Representative

Approved as to form this 31st day of
October, 2023.
MARA W. ELLIOTT, City Attorney

Craig Baker
Print Name

BY: Nicole M. Denow
Deputy City Attorney

Corp. Sales & Operations Manager
Title

4/21/2023
Date

EXHIBIT A
INSTRUCTIONS AND BID REQUIREMENTS

A. BID SUBMISSION

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

1.1 Reserved.

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

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

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

1.4.1 Reserved.

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

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

2. Submission of Information and Forms.

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

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

2.3 The Contractor Standards Pledge of Compliance Form.

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

2.5 Living Wage Ordinance Certification of Compliance.

2.6 Reserved.

2.7 Manufacturer's Price List.

2.8 Additional Information as required in Exhibit B.

2.9 Reserved

2.10 Reserved

2.11 Reserved

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

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

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

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

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

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

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

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

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

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

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

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

B. PRICING

1. **Fixed Price.** All prices shall be firm, fixed, fully burdened, FOB destination, and include any applicable delivery or freight charges, and any other costs required to provide the requirements as specified in this ITB.

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

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

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

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

D. EVALUATION OF BIDS

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

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

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

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

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

E. ANNOUNCEMENT OF AWARD

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

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

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

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

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

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

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

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

4. **Bond.** A bond as described in Exhibit B.

5. Reserved.

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

**EXHIBIT B
SCOPE OF WORK**

I. SPECIFIC PROVISIONS

A. SCOPE OF WORK

Furnish the City with the lease and maintenance of the following pieces of heavy equipment in accordance with the terms, conditions, and specifications in this ITB.

1. Two (2) heavy-duty loaders, Caterpillar model 972M or equivalent, with full maintenance. Loaders of a similar size, weight, and power will also be considered i.e. CAT model 950 to 980, or equivalent, to facilitate expeditious delivery.
2. One (1) articulated dump truck, Caterpillar model 745C or equivalent, with full maintenance. Articulated dump trucks of similar size, weight, and power will also be considered i.e. CAT model 725 to 745, or equivalent, to facilitate expeditious delivery.
3. One (1) **OPTIONAL** heavy-duty track type bulldozer, Caterpillar model D9T WH or equivalent, with full maintenance. Heavy-duty track type bulldozers of a similar size, weight, and power will also be considered i.e. CAT model D8T WH or equivalent, to facilitate expeditious delivery. During the first two years of the term of the Contract, Contractor shall provide City with the option, to be exercised at the City's sole discretion, to lease a heavy-duty track type bulldozer from Contractor at the price provided on the Contractor's pricing page. At any time during the first two years of the Contract term, City may exercise this option by duly authorized written amendment to the Contract.

The Miramar Landfill and Greenery are open and operational 361 days of each year. These pieces of heavy equipment are vital to the day-to-day operations of these facilities.

The equipment shall have been manufactured within the last 5 years and the engines shall have less than 5,000 hours of total runtime at the time of bid submission.

B. BID SUBMISSION

1. Equipment Specifications Checklist Forms
Each contractor shall complete and furnish, as part of the bid, the Equipment Specifications Checklist Forms herein. Any exceptions to the specifications must be clearly stated with the bid submittal. Any exceptions will be evaluated and may be basis for rejection if they are found to be detrimental to the operation of the City. The City shall be the sole judge as to whether or not the proposed exceptions meet the requirements of this bid. The Equipment Specifications Checklist Forms shall be completed in their entirety. Failure to provide complete, accurate Equipment Specifications Checklist Forms may cause the bid to be rejected as non-responsive.
2. Equipment Specifications/Brochures

Each contractor shall furnish, as a part of their bid, the most recent manufacturer's equipment specifications and brochures clearly describing the equipment they propose to furnish. These accompanying documents shall clearly indicate all points specified herein. Failure to provide manufacturer's specifications and brochures may cause the bid to be rejected as non-responsive.

3. Contractor's Statement of Available Equipment

Each contractor is required to list all necessary equipment to meet the requirements herein as specified and an estimated delivery date for equipment not currently available. See section VII.

C. PRICING

Prices quoted shall include all delivery charges, and all removal charges as required, and shall be FOB Destination to the following delivery point:

Environmental Services/Miramar Landfill
5180 Convoy Street
San Diego, CA 92111-1208

Unit prices shall be based on the Unit of Measure as specified on the Pricing Page(s). Any changes to the Unit of Measure made by the contractor may be a cause for the item to be rejected as non-responsive.

D. PERMITTING

The successful contractor shall register each piece of equipment in their fleet in the Diesel Off-Road Online Reporting System (DOORS). Equipment shall arrive with all necessary permits and decals for operation in San Diego County. Equipment shall stay registered in the successful contractor's fleet throughout the duration of the agreement.

E. DAMAGE

If the successful contractor is not an authorized service center and causes any damage to the equipment being serviced, which results in the existing warranty being voided, the contractor shall be liable for all costs of repairs to the equipment, or the costs of replacing the equipment with new equipment that meets the City's operational needs.

F. LAWS AND REGULATIONS

All equipment provided under this bid shall be compliant with the applicable laws and/or regulations of all federal, state, and local agencies. Changes in any components supplied or the component mounting location that are required as a result of changes in these laws and/or regulations shall be submitted to the City of San Diego in writing for review of compatibility with the current equipment specifications. All units per order shall be from the same production run.

G. ENGINE EMISSIONS

All items offered shall meet the most recent applicable engine emission regulations and requirements of the Environmental Protection Agency at all times through the term of any contract resulting from this ITB.

H. MACHINE DELIVERY SCHEDULE

Contractors shall state the best delivery time, not to exceed ninety (90) days from date of order, by which the machine shall be delivered to the specified location. Failure to provide the City with the machine in the specified delivery time may, at the City's option, result in Liquidated Damages as specified in Section I, paragraph J. The successful contractor shall furnish the City no less than one (1) week advance notice of the delivery of each machine and shall permit the Environmental Services/Disposal and Environmental Protection management staff to inspect and verify that each machine meets the specifications as stated herein upon delivery.

I. INVOICING

The successful contractor shall invoice the City every four (4) weeks for usage as determined by reports derived from the City's Disposal and Environmental Protection Division records. Liquidated damages assessed for failure to timely deliver the equipment specified in this Bid will, to the extent possible, be subtracted from the payment due to contractor for the billing period during which the failure to timely furnish the required equipment occurred. Otherwise, liquidated damages will be subtracted from a future payment.

J. LIQUIDATED DAMAGES

The successful contractor and the City acknowledge that time is of the essence in the performance of this Contract; that the timely provision of the equipment and services as specified in the Scope of Work is of utmost importance to the City; and that the City has considered and relied on the successful contractor's representations as to the quality and reliability of the equipment and maintenance services contractor will provide under this Contract. The successful contractor and the City further acknowledge that the contractor's failure or refusal to deliver each piece of equipment as specified in this Contract to the designated delivery location in the time specified under the Contract, including but not limited to initial equipment and replacement equipment, shall result in damages to the City. The contractor and the City further acknowledge that it is, and will continue to be, impractical, extremely difficult, and costly to ascertain and determine the exact amount of those damages that the City will suffer. Therefore, the successful contractor and the City agree that the liquidated damage amounts listed in the table below represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date of the Contract including, but not limited to, the relationship the sums have to the range of harm to the City that reasonably could be anticipated and the anticipation that proof of actual damages would be impractical, extremely difficult, and costly. The successful contractor agrees to pay as liquidated damages, and not as a penalty, the amounts set forth in the table

below and further agrees that these amounts may be deducted by the City from payments otherwise due to the contractor.

Table 1: Schedule for Liquidated Damages

1.	Equipment delivered after the date the equipment was due to be delivered as set forth in the Contract ("late delivery")	The unit price of each piece of equipment delivered late will be reduced by one hundred dollars (\$100) per calendar day for each and every day for each initial or replacement piece of equipment which is delivered after the date the equipment was due to be delivered as set forth in the Contract.
2.	Equipment delivered does not meet the Contract specifications	The unit price of each piece of equipment delivered which does not meet the Contract specifications for that piece of equipment will be reduced by one hundred dollars (\$100) per calendar day of each and every day for each initial or replacement piece of equipment that does not meet the Contract specifications.
3.	Late delivery and equipment delivered does not meet the Contract specifications	The unit price of each piece of equipment which is delivered late and which does not meet the Contract specifications for that piece of equipment will be reduced by one hundred dollars (\$100) per calendar day for each and every day for each initial or replacement piece of equipment that does not meet the Contract specifications and that is delivered after the date the equipment was due to be delivered as set forth in the Contract.

Should the successful contractor be obstructed or delayed in the work required to be done hereunder by changes in the work or by default, act, or omission of the City, or by fire, act of God, or by the inability to obtain materials, equipment, or labor due to Federal Government restrictions arising out of the defense or war program, then the time of completion shall be extended for such period as may be agreed. Should there be insufficient time to grant such extensions prior to the completion date of the Contract, the City may, at the time of acceptance of the work, waive liquidated damages which may have accrued for failure to complete on time, due to any of the above reasons, after hearing evidence as to the reasons for such delay.

The City's right to recover liquidated damages for the contractor's failures described herein shall not preclude City from obtaining equitable relief for such failures, nor from terminating the Contract for such failures, nor from seeking any other remedy available at law or in equity.

K. TERMINATION

In addition to the termination provisions set forth in the Contract and in the City's General Terms and Provisions Article IV, section 4.2, the City also reserves the right to terminate any Contract resulting from this Bid in the event existing, pending, or future legislation alters the City's responsibility for sanitary landfills and compost facilities presently operated by the City.

L. EQUIPMENT DEMONSTRATION

Contractors may be required, at contractor's sole expense and upon receipt of a written notice from the Purchasing & Contracting Department, to demonstrate their proposed equipment meets the requirements of this bid for a minimum of seven (7) consecutive calendar days in the City of San Diego prior to awarding the contract. Contractor shall furnish demonstration equipment within seven (7) calendar days upon receipt of a written demonstration request.

Equipment provided for the demonstration shall be completely identical to all equipment bid. A demonstration will allow the City to evaluate criteria including, but not limited to equipment productivity, serviceability, and maneuverability. The City shall be the sole judge as to whether or not the proposed equipment meets the requirements of this bid.

II. **SPECIFICATIONS**

A. LEASE MAINTENANCE AGREEMENT

1. At the end of each lease year, the successful contractor shall replace any machine if it has a history of a ten percent (10%) or greater non-available hours, excluding warm-up time.
2. Contractor is required to have the machines fully available for use between the hours of 7:00 a.m. and 5:30 p.m., seven (7) days each week. However, for every fifty (50) hours of operation, a three (3) hour maintenance period may be scheduled without penalty. To arrange for this maintenance, the Contractor must contact a City General Utility Supervisor at least one (1) week [seven (7) consecutive calendar days] in advance, to arrange for a mutually convenient period. With the exception of these scheduled maintenance periods, all other downtime between the hours of 7:00 a.m. and 5:30 p.m., seven (7) days each week will be considered machine time not available. Said maintenance periods may not be in response to an equipment breakdown. The City may at its discretion provide the Contractor with an equipment service yard for the purpose of maintaining equipment on-site.
3. The intent of this agreement is to ensure the continued availability of the machines. If any machine breaks down, the Contractor shall have it inspected and/or repairs started within four (4) hours after notification. If the machine is out of service for more than two (2) full consecutive calendar days, a comparably equipped machine in good operating condition and of the same size and type shall be furnished. The replacement machine shall be fully capable of performing all the functions and tasks of the machine it replaces, including the need to be registered in DOORS and have all necessary permits and decals for operation in San Diego County. The usage on the replacement machine will accrue against the machine being repaired. It is extremely important to the City's daily operation to have the machines operating to provide required daily and final cover, to excavate new landfill dump sites, and to provide landfill surface repairs as required by California State Landfill Regulations.

The City's daily operation will not allow the equipment to be non-operational for a time period longer than 2 calendar days.

Contractor shall obtain written approval from the General Utility Supervisor for any replacement machine offered. If a replacement machine is not provided, the Contractor shall pay liquidated damages in accordance with Table 1, No. 1 in Section I, paragraph J. Liquidated damages shall be retroactive to the time the machine became inoperable and shall continue until the machine is operational or a suitable replacement is furnished. Liquidated damages shall be assessed for all working days at the landfill, including Saturdays, Sundays, and holidays.

4. It is the intention of the City to regularly provide diesel fuel and all labor necessary to perform the fueling. The fuel will be No. 2 Grade, B5 (5%) bio Diesel, Red Dyed Diesel. However, Contractor shall also quote a "cents per gallon" or a percentage mark-up over their actual fuel cost to provide Ultra Low Sulfur Diesel No. 2. grade fuel as an option to the City. If required, the Contractor shall furnish the fuel, along with copies of invoices from the fuel supplier, whenever the City is unable to provide fuel for the units. Failure to provide this information with the bid may cause the bid to be rejected as non-responsive.
5. City equipment operators will perform daily inspections as specified in Manufacturer's Instruction Book. This may include such typical tasks as:
 - a. Checking instrument operation.
 - b. Checking radiator coolant level.
 - c. Checking air intake filters (by gauge only).
 - d. Blowing out radiator (if grill can be opened without tools; if not, Contractor shall provide service daily).
 - e. Draining fuel tank sediment valve.

The Contractor shall perform all other services and inspections required that are not completed by the operator daily during the three-hour maintenance period described in Section II, Paragraph A2 above. Such services shall include, but are not limited to, all labor and materials for lubricating, oil filters, grease, antifreeze, diesel exhaust fluid (DEF), batteries, brake linings, cleaning, painting and ground engaging tools (cutting edges, ripper points and excavator/backhoe teeth). The Contractor will not be responsible for services required to repair or replace cab window glass. However, the City may elect to request Contractor to provide these services on a "bill for service" basis.

The Contractor shall be responsible for fixing all flats on all wheels and for normal wear on all tires. Repair or replacement of damaged or destroyed tires due to foreign object penetration or abuse shall be at the City's expense. Tire damage invoices shall be for the actual cost of repair or shall be based upon the proportion of remaining tire life, whichever is less.

6. The City will be responsible for all costs and losses resulting from damage caused by fire originating outside of the machines, for damage caused by operator's negligence or when the City moves the machines between landfills and/or use sites, and for loss or damage to the machines resulting from theft, vandalism, or mysterious disappearance. Contractor shall assume liability for all damage caused by fire which originates from inside the machines.

Claims of damages due to operator error or negligence shall be reviewed by a committee consisting of a representative from the Contractor, the Disposal and Environmental Protection Division and the Purchasing & Contracting Department. The findings shall be based upon the majority opinion.

In all cases in which the Contractor anticipates invoicing the City for damages, the Contractor shall notify the Disposal and Environmental Protection Division in advance of making any repairs. The Contractor shall furnish a description of all needed repair work and a complete estimate of repair costs, outlining all other non-invoiced repairs being made concurrently. The notice referred to above shall be a letter to the Deputy Director at 9601 Ridgehaven Ct, Suite 310, San Diego, CA 92123 and shall be submitted within five (5) working days of discovery of any damage or equipment failure. The letter shall document the discovery of the damage or equipment failure and shall state that a claim will be made against the City for damages and the reasons why the failure or loss is believed to have been caused by a negligent act or omission by a City operator. The Contractor shall permit the Deputy Director and/or their staff to inspect any and all damaged parts prior to and after disassembly. The failure to notify the Deputy Director or permit such inspection shall be grounds for the City to disallow the claim.

The Contractor shall have shop facilities with an adequate stock of repair parts and trained personnel sufficient to perform service and repairs in a timely and satisfactory manner. Subcontractors for service and repairs are unacceptable. The shop shall be within the San Diego county radius of the Miramar Landfill, located at 5180 Convoy Street, San Diego, CA 92111. The Contractor shall have service trucks and personnel for prompt and efficient inspection, service, and repair of the machine on site at any City Sanitary Landfill or supplemental equipment location.

7. The City will not make any repairs or modifications or perform any cleaning of crankcase guards.
8. The Contractor shall maintain the machines and perform all maintenance in accordance with the Manufacturer's published recommendations. All repair parts used shall be original factory parts as recommended by the machine's Manufacturers. The Deputy Director or their representative must approve any deviation from the Manufacturer's recommended specifications for maintenance and repair in advance and in writing.
9. During the contract period, the Contractor may, at their option, replace any machine with a new machine of identical characteristics, which meets these specifications upon the

City's written approval. The replacement machine will assume the accumulated hours, anniversary date, and hourly rate of the machine replaced. The Contractor shall notify the City at least one (1) week prior to delivery of the replacement machine and shall permit the Environmental Services/Disposal and Environmental Protection management staff to inspect and verify the machine meets specifications as stated within. Any new replacement machine shall be delivered ready for service at the time the Contractor removes the older machine.

10. The contractor shall be the FLEET OWNER under 13 CCR Section 2449 and shall be responsible for compliance with the In-Use Off-road Diesel Vehicle rule, including requirements for reporting to CARB and for meeting emission standards by fleet averaging or be engine turnover/retrofit.

B. MANUFACTURER'S CERTIFIED TRAINING

Contractor may be required, at the City's discretion, to conduct Manufacturer's Certified Operator and Mechanic Training at the delivery location specified in Section I, paragraph C for a minimum of one (1) eight (8) hour business day. Special emphasis shall be given to any unique characteristics of the equipment and repair. Contractor will be responsible for any cost incurred in providing the training. Training shall be provided by a Manufacturer's qualified instructor.

C. DEFINITION – HEAVY DUTY

The term "Heavy Duty" shall be interpreted to mean the equipment shall exceed the usual quality, operational capacity or functionality of standard equipment, and shall be able to withstand unusual strain, exposure, temperature, wear, and use.

D. MANUALS

Contractor shall provide at time of delivery the following information for each machine:

1. Two (2) sets of Operator's Manuals for each machine delivered;
2. One (1) set of each of the following for each model:
 - a) Service;
 - b) Shop Repair (Body and Chassis);
 - c) Major Component Overhaul (Engine, Transmission, and Drive Axles); and
 - d) Illustrated Parts List (CD-R or Flash Drive Preferred).

III. SPECIFICATIONS CHECK LIST FOR PRICING PAGE ITEM 1 HEAVY-DUTY LOADER, CATERPILLAR MODEL 972M OR EQUIVALENT

It is the intent of these specifications to describe a Heavy-Duty Loader (Pricing Page Item 1). These units will be used primarily for pushing and loading wood and yard waste materials.

A. WEIGHT

The unit shall have a minimum operating weight of 54,000 lbs. SAE.

Weight Offered: 54,858 lbs

Meets Specifications or Exceptions: _____

B. ENGINE

Engine shall be a water-cooled, turbo-charged, diesel-powered engine rated at not less than 285 net horsepower at the flywheel, at the governed engine RPM. Engine horsepower shall be at the rating shown in the Manufacturer's current specifications with accessories and conditions listed therein.

Horsepower Offered: 339 hp

Meets Specifications or Exceptions: _____

The engine shall be equipped with the following:

1. Heavy-duty primary and secondary spin-on type fuel filters.

Meets Specifications or Exceptions: _____

2. Heavy-duty full-flow engine oil filter with a replaceable cartridge or element rated at 25 microns (nominal).

Meets Specifications or Exceptions: _____

3. Heavy-duty two (2) stage dry-type air cleaner with a pre-cleaner, dirt ejector, and dash mounted air filter restriction indicator or gauge.

Meets Specifications or Exceptions: _____

4. Electronic Monitoring System with an audible warning system for monitoring low engine oil pressure, high engine coolant temperature, low coolant flow, high transmission oil temperature, and high hydraulic oil temperature.

Meets Specifications or Exceptions: _____

5. Muffler and exhaust stack designed to prevent rainwater from entering the exhaust system. The exhaust noise level shall comply with San Diego Ordinance No. 11122.

✓ Meets Specifications or Exceptions: _____

6. Ground level engine shutdown control.

✓ Meets Specifications or Exceptions: _____

7. Quick oil change system.

✓ Meets Specifications or Exceptions: _____

C. COOLING SYSTEM

1. The radiator shall be constructed to minimize clogging from dirt and debris encountered in sanitary landfill operations.

✓ Meets Specifications or Exceptions: _____

2. The cooling systems shall have an auto reversing fan.

✓ Meets Specifications or Exceptions: _____

3. The engine cooling system shall have a low coolant flow warning system.

✓ Meets Specifications or Exceptions: _____

4. Cooling system shall be located near ground level with easy access doors to the radiator.

✓ Meets Specifications or Exceptions: _____

D. ELECTRICAL SYSTEM

1. Shall be 24 volts.

✓ Meets Specifications or Exceptions: _____

2. Shall have two (2) maintenance free, 12 volt batteries and a master disconnect switch.

✓ Meets Specifications or Exceptions: _____

3. Alternator shall be 24 volts, rated at 100 AMP minimum.

✓ Meets Specifications or Exceptions: _____

4. Electrical hour meter with circuitry that allows the meter to record clock time only when the engine is operating.

✓ Meets Specifications or Exceptions: _____

E. TRANSMISSION

1. The transmission shall be a heavy-duty planetary-type automatic shifting with four (4) speeds forward and minimum three (3) speeds reverse. A unit with a hydrostatic drive system is unacceptable.

✓ Meets Specifications or Exceptions: _____

2. The transmission shall be equipped with an oil cooler.

✓ Meets Specifications or Exceptions: _____

3. The minimum travel speed shall be 20 MPH in forward high gear and 18 MPH in reverse, with wheels provided.

✓ Meets Specifications or Exceptions: _____

4. The transmission shall have a neutral safety switch to prevent starting engine when the transmission is in gear.

✓ Meets Specifications or Exceptions: _____

F. AXLES

1. The rear axle differential shall be lockable on demand or limited slip.

✓ Meets Specifications or Exceptions: _____

G. CAB

The cab shall be a steel modular pressurized environmental-type cab with doors. The cab design shall incorporate a rollover protective structure (ROPS), tinted safety glass and an on-board fire suppression system. The cab shall be insulated with sound suppression material per the California Division of Industrial Safety Construction Safety Orders (CAL-OSHA).

✓ Meets Specifications or Exceptions: _____

The cab shall be equipped with the following:

1. Manufacturer's standard air conditioning, heater, and defroster.

✓ Meets Specifications or Exceptions: _____

2. Front and rear windshield wipers and washers.

✓ Meets Specifications or Exceptions: _____

3. A shock dampened air-suspension type seat with seat belt. The seat shall be adjustable to the operator's weight.

Meets Specifications or Exceptions: _____

4. An instrument panel with gauges to visually check the engine RPM, engine coolant temperature, engine oil pressure, transmission oil temperature, and charging system. The instrument panel and gauges shall be illuminated.

Meets Specifications or Exceptions: _____

5. An electrical hour meter that records engine hours only while the engine is running.

Meets Specifications or Exceptions: _____

6. Control levers that are positioned to be easily and comfortably reached by the operator.

Meets Specifications or Exceptions: _____

7. Adjustable inside rear view mirror and adjustable left and right outside mirrors.

Meets Specifications or Exceptions: Inside display of rear view camera with left and right outside mirrors

8. AM/FM radio.

Meets Specifications or Exceptions: _____

H. FINAL DRIVES

The final drive shall be all-wheel drive with planetary reduction at each wheel.

Meets Specifications or Exceptions: _____

I. WHEELS

Wheels shall be equipped with 26.5 R25 (L-5) tires or equivalent, and interchangeable between front and rear.

Meets Specifications or Exceptions: _____

J. HYDRAULIC SYSTEM

1. The hydraulic system shall be filtered on return to the reservoir.

Meets Specifications or Exceptions: _____

2. The hydraulic pumps, valves, and reservoir shall be mounted in such a manner as not to restrict air flow, visibility, or enclose operator's compartment.

Meets Specifications or Exceptions: _____

K. BRAKES

Service brakes shall be power-assisted sealed wet-type disc on the two (2) front and two (2) rear wheels. If the brakes are air assisted, a 0-90 PSI warning lamp and buzzer shall be provided.

Check One:

Power Assisted Air Assisted

Meets Specifications or Exceptions: _____

The following additional brake features shall be provided:

1. The unit shall have two (2) brake pedals allowing standard braking with the right or left foot.

Meets Specifications or Exceptions: _____

2. The parking brake shall be spring actuated, hydraulically released, and capable of stopping loaded vehicle in the event of total brake failure.

Meets Specifications or Exceptions: _____

L. STEERING SYSTEM

1. The steering system shall be center-pivot frame articulation of 30° minimum.

Meets Specifications or Exceptions: _____

2. Steering shall be fully hydraulic powered with flow-amplified system. The flow to the steering cylinders shall be controlled by a steering wheel operated metering pump.

Meets Specifications or Exceptions: Choice of steering wheel or joystick controls.

3. Steering wheel shall include transmission controls.

Meets Specifications or Exceptions: _____

M. FUEL SYSTEM

1. The machine shall have a fuel storage tank with minimum capacity of 75 gallons.

Capacity Offered: 80.1 Gal.

Meets Specifications or Exceptions: _____

2. The fuel system shall have a Wiggins fitting (#ZZ9A1).

Manufacturer: CAT equivalent

Meets Specifications or Exceptions: _____

N. GUARDS

The machine shall be equipped with the following guards and guard-related features:

1. Hinged exterior radiator guards designed for easy opening without tools.

Meets Specifications or Exceptions: _____

2. Guard rails and hand clasps for operator access and egress.

Meets Specifications or Exceptions: _____

3. Safety tread or tape installed on all walking surfaces.

Meets Specifications or Exceptions: _____

4. Axle seal guards, headlight and tail light guards, power train guard, front frame bottom guard, hydraulic tank guard, fuel tank guard, and steering cylinder guards.

Meets Specifications or Exceptions: _____

5. Narrow front fenders.

Meets Specifications or Exceptions: _____

6. Hood and side screens shall be perforated hole type metal. Side panels shall have opening for easy access for checking oil, filters, etc.

Meets Specifications or Exceptions: _____

O. LIGHTING

1. The unit shall have a minimum of two (2) front headlamps with high and low beams and two (2) front, and two (2) rear flood type work lights, rear stoplights, and back-up lights.

Meets Specifications or Exceptions: _____

2. The unit shall have a cab interior lamp and an illuminated instrument panel.

Meets Specifications or Exceptions: _____

P. WARNING DEVICES

1. The unit shall have a horn, audible for a distance of 500'.

✓ Meets Specifications or Exceptions: _____

2. The unit shall have a rear mounted, electrically operated back up alarm, audible to a distance of 500'.

✓ Meets Specifications or Exceptions: _____

Q. GROUND CLEARANCE

The ground clearance shall be 18" minimum, with the wheels provided.

Clearance Offered: 18" w/ L5 tires

✓ Meets Specifications or Exceptions: _____

R. BUCKET

Unit shall have a standard bucket. Bucket capacity shall be 5.5 cubic yard minimum when struck. Full-width replaceable skid plates shall be included. Cutting edges shall be reversible bolt-on type, minimum 1" thickness. End bits shall be self-sharpening, minimum 1" thickness.

Bucket Type and Capacity Offered: 6.25 CYD GP Bucket

✓ Meets Specifications or Exceptions: _____

S. DUMP CLEARANCE

The dump clearance at full list shall be a minimum of 10' for the standard bucket and 17' for the Tink or equal bucket.

Dump Clearance offered: 10'5" w/ 6.25 GP Bkt and 17'8" w/ Tink Bkt

✓ Meets Specifications or Exceptions: _____

T. CONTROLS

The bucket and boom controls shall be located to facilitate right-hand operation. The boom control shall have raise, hold, lower and float positions and an automatic boom kick-out device. The bucket controls shall have tilt back, hold and dump positions and an adjustable automatic bucket positioner.

✓ Meets Specifications or Exceptions: _____

IV. SPECIFICATIONS CHECK LIST FOR PRICING PAGE ITEM 1 HEAVY-DUTY LOADER, CATERPILLAR MODEL 972M OR EQUIVALENT

It is the intent of these specifications to describe a Heavy-Duty Loader (Pricing Page Item 1). These units will be used primarily for pushing and loading wood and yard waste materials.

A. WEIGHT

The unit shall have a minimum operating weight of 54,000 lbs. SAE.

Weight Offered: 54,858 lbs

Meets Specifications or Exceptions: _____

B. ENGINE

Engine shall be a water-cooled, turbo-charged, diesel-powered engine rated at not less than 285 net horsepower at the flywheel, at the governed engine RPM. Engine horsepower shall be at the rating shown in the Manufacturer's current specifications with accessories and conditions listed therein.

Horsepower Offered: 339 hp

Meets Specifications or Exceptions: _____

The engine shall be equipped with the following:

1. Heavy-duty primary and secondary spin-on type fuel filters.

Meets Specifications or Exceptions: _____

2. Heavy-duty full-flow engine oil filter with a replaceable cartridge or element rated at 25 microns (nominal).

Meets Specifications or Exceptions: _____

3. Heavy-duty two (2) stage dry-type air cleaner with a pre-cleaner, dirt ejector, and dash mounted air filter restriction indicator or gauge.

Meets Specifications or Exceptions: _____

4. Electronic Monitoring System with an audible warning system for monitoring low engine oil pressure, high engine coolant temperature, low coolant flow, high transmission oil temperature, and high hydraulic oil temperature.

Meets Specifications or Exceptions: _____

5. Muffler and exhaust stack designed to prevent rainwater from entering the exhaust system. The exhaust noise level shall comply with San Diego Ordinance No. 11122.

✓ Meets Specifications or Exceptions: _____

6. Ground level engine shutdown control.

✓ Meets Specifications or Exceptions: _____

7. Quick oil change system.

✓ Meets Specifications or Exceptions: _____

C. COOLING SYSTEM

1. The radiator shall be constructed to minimize clogging from dirt and debris encountered in sanitary landfill operations.

✓ Meets Specifications or Exceptions: _____

2. The cooling systems shall have an auto reversing fan.

✓ Meets Specifications or Exceptions: _____

3. The engine cooling system shall have a low coolant flow warning system.

✓ Meets Specifications or Exceptions: _____

4. Cooling system shall be located near ground level with easy access doors to the radiator.

✓ Meets Specifications or Exceptions: _____

D. ELECTRICAL SYSTEM

1. Shall be 24 volts.

✓ Meets Specifications or Exceptions: _____

2. Shall have two (2) maintenance free, 12 volt batteries and a master disconnect switch.

✓ Meets Specifications or Exceptions: _____

3. Alternator shall be 24 volts, rated at 100 AMP minimum.

✓ Meets Specifications or Exceptions: _____

4. Electrical hour meter with circuitry that allows the meter to record clock time only when the engine is operating.

✓ Meets Specifications or Exceptions: _____

E. TRANSMISSION

1. The transmission shall be a heavy-duty planetary-type automatic shifting with four (4) speeds forward and minimum three (3) speeds reverse. A unit with a hydrostatic drive system is unacceptable.

✓ Meets Specifications or Exceptions: _____

2. The transmission shall be equipped with an oil cooler.

✓ Meets Specifications or Exceptions: _____

3. The minimum travel speed shall be 20 MPH in forward high gear and 18 MPH in reverse, with wheels provided.

✓ Meets Specifications or Exceptions: _____

4. The transmission shall have a neutral safety switch to prevent starting engine when the transmission is in gear.

✓ Meets Specifications or Exceptions: _____

F. AXLES

1. The rear axle differential shall be lockable on demand or limited slip.

✓ Meets Specifications or Exceptions: _____

G. CAB

The cab shall be a steel modular pressurized environmental-type cab with doors. The cab design shall incorporate a rollover protective structure (ROPS), tinted safety glass and an on-board fire suppression system. The cab shall be insulated with sound suppression material per the California Division of Industrial Safety Construction Safety Orders (CAL-OSHA).

✓ Meets Specifications or Exceptions: _____

The cab shall be equipped with the following:

1. Manufacturer's standard air conditioning, heater, and defroster.

✓ Meets Specifications or Exceptions: _____

2. Front and rear windshield wipers and washers.

✓ Meets Specifications or Exceptions: _____

3. A shock dampened air-suspension type seat with seat belt. The seat shall be adjustable to the operator's weight.

✓ Meets Specifications or Exceptions: _____

4. An instrument panel with gauges to visually check the engine RPM, engine coolant temperature, engine oil pressure, transmission oil temperature, and charging system. The instrument panel and gauges shall be illuminated.

✓ Meets Specifications or Exceptions: _____

5. An electrical hour meter that records engine hours only while the engine is running.

✓ Meets Specifications or Exceptions: _____

6. Control levers that are positioned to be easily and comfortably reached by the operator.

✓ Meets Specifications or Exceptions: _____

7. Adjustable inside rear view mirror and adjustable left and right outside mirrors.

✓ Meets Specifications or Exceptions: _____

8. AM/FM radio.

✓ Meets Specifications or Exceptions: _____

H. FINAL DRIVES

The final drive shall be all-wheel drive with planetary reduction at each wheel.

✓ Meets Specifications or Exceptions: _____

I. WHEELS

Wheels shall be equipped with 26.5 R25 (L-5) tires or equivalent, and interchangeable between front and rear.

✓ Meets Specifications or Exceptions: _____

J. HYDRAULIC SYSTEM

1. The hydraulic system shall be filtered on return to the reservoir.

✓ Meets Specifications or Exceptions: _____

2. The hydraulic pumps, valves, and reservoir shall be mounted in such a manner as not to restrict air flow, visibility, or enclose operator's compartment.

Meets Specifications or Exceptions: _____

K. BRAKES

Service brakes shall be power-assisted sealed wet-type disc on the two (2) front and two (2) rear wheels. If the brakes are air assisted, a 0-90 PSI warning lamp and buzzer shall be provided.

Check One:

Power Assisted Air Assisted

Meets Specifications or Exceptions: _____

The following additional brake features shall be provided:

1. The unit shall have two (2) brake pedals allowing standard braking with the right or left foot.

Meets Specifications or Exceptions: _____

2. The parking brake shall be spring actuated, hydraulically released, and capable of stopping loaded vehicle in the event of total brake failure.

Meets Specifications or Exceptions: _____

L. STEERING SYSTEM

1. The steering system shall be center-pivot frame articulation of 30° minimum.

Meets Specifications or Exceptions: _____

2. Steering shall be fully hydraulic powered with flow-amplified system. The flow to the steering cylinders shall be controlled by a steering wheel operated metering pump.

Meets Specifications or Exceptions: Choice of steering wheel or joystick controls.

3. Steering wheel shall include transmission controls.

Meets Specifications or Exceptions: _____

M. FUEL SYSTEM

1. The machine shall have a fuel storage tank with minimum capacity of 75 gallons.

Capacity Offered: 80.1 gal.

Meets Specifications or Exceptions: _____

2. The fuel system shall have a Wiggins fitting (#ZZ9A1).

Manufacturer: CAT equivalent

Meets Specifications or Exceptions: _____

N. GUARDS

The machine shall be equipped with the following guards and guard-related features:

1. Hinged exterior radiator guards designed for easy opening without tools.

Meets Specifications or Exceptions: _____

2. Guard rails and hand clasps for operator access and egress.

Meets Specifications or Exceptions: _____

3. Safety tread or tape installed on all walking surfaces.

Meets Specifications or Exceptions: _____

4. Axle seal guards, headlight and tail light guards, power train guard, front frame bottom guard, hydraulic tank guard, fuel tank guard, and steering cylinder guards.

Meets Specifications or Exceptions: _____

5. Narrow front fenders.

Meets Specifications or Exceptions: _____

6. Hood and side screens shall be perforated hole type metal. Side panels shall have opening for easy access for checking oil, filters, etc.

Meets Specifications or Exceptions: _____

O. LIGHTING

1. The unit shall have a minimum of two (2) front headlamps with high and low beams and two (2) front, and two (2) rear flood type work lights, rear stoplights, and back-up lights.

Meets Specifications or Exceptions: _____

2. The unit shall have a cab interior lamp and an illuminated instrument panel.

Meets Specifications or Exceptions: _____

P. WARNING DEVICES

1. The unit shall have a horn, audible for a distance of 500'.

Meets Specifications or Exceptions: _____

2. The unit shall have a rear mounted, electrically operated back up alarm, audible to a distance of 500'.

Meets Specifications or Exceptions: _____

Q. GROUND CLEARANCE

The ground clearance shall be 18" minimum, with the wheels provided.

Clearance Offered: 18" w/ L5 tires

Meets Specifications or Exceptions: _____

R. BUCKET

Unit shall have a standard bucket. Bucket capacity shall be 5.5 cubic yard minimum when struck. Full-width replaceable skid plates shall be included. Cutting edges shall be reversible bolt-on type, minimum 1" thickness. End bits shall be self-sharpening, minimum 1" thickness.

Bucket Type and Capacity Offered: 6.25 CYD GP Bkt

Meets Specifications or Exceptions: _____

S. DUMP CLEARANCE

The dump clearance at full list shall be a minimum of 10' for the standard bucket and 17' for the Tink or equal bucket.

Dump Clearance offered: 10'5" w/ 6.25 GP Bkt and 17'8" w/ Tink Bkt

Meets Specifications or Exceptions: _____

T. CONTROLS

The bucket and boom controls shall be located to facilitate right-hand operation. The boom control shall have raise, hold, lower and float positions and an automatic boom kick-out device. The bucket controls shall have tilt back, hold and dump positions and an adjustable automatic bucket positioner.

Meets Specifications or Exceptions: _____

V. **SPECIFICATIONS CHECK LIST FOR PRICING PAGE ITEM 2 ARTICULATED DUMP TRUCK, CATERPILLAR MODEL 745C OR EQUIVELANT**

It is the intent of these specifications to describe a heavy-duty articulated dump truck (Item 2). The articulated dump truck will be used primarily to transport clean green waste materials mulch, and compost at the Miramar Landfill.

A. WEIGHT

This unit should have a minimum operating weight of 70,000 lbs. SAE

Weight Offered: 72,627 lb total empty

Meets Specifications or Exceptions: _____

B. ENGINE

Engine shall be water-cooled, turbo-charged, diesel-powered engine rated at not less than 440 net horsepower at the flywheel, at the governed engine RPM. Engine horsepower shall be at the rating shown in the Manufacturer's current specifications.

Horsepower Offered: 504 net hp

Meets Specifications or Exceptions: _____

The engine shall be equipped with the following:

1. Heavy duty primary and secondary spin-on fuel filters.

Meets Specifications or Exceptions: _____

2. Heavy Duty full-flow engine oil filter with a receptacle cartridge or element rated at 25 microns (nominal).

Meets Specifications or Exceptions: _____

3. Heavy-duty two (2) stage dry-type air cleaner with a pre-cleaner, dirt ejector and dash mounted air filter restriction indicator or gauge.

Meets Specifications or Exceptions: _____

4. Electronic Monitoring System with an audible warning system for monitoring low engine oil pressure, high engine coolant temperature, low coolant flow, high transmission oil temperature, and high hydraulic oil temperature.

Meets Specifications or Exceptions: _____

5. Muffler and exhaust stack designed to prevent rainwater from entering the exhaust system. The exhaust noise level shall comply with City of San Diego Ordinance No. 11122.

Meets Specifications or Exceptions: _____

6. Ground level engine shutdown control.

Meets Specifications or Exceptions: _____

7. Quick oil change system.

Meets Specifications or Exceptions: _____

C. COOLING SYSTEM

1. The radiator shall be constructed to minimize clogging from dirt and debris encountered in sanitary landfill operations.

Meets Specifications or Exceptions: _____

2. The engine cooling system shall have a low coolant flow warning system.

Meets Specifications or Exceptions: _____

D. ELECTRONICAL SYSTEM

1. Shall be 24 volts.

Meets Specifications or Exceptions: _____

2. Shall have two (2) maintenance free, 12 volt batteries and a master disconnect switch.

1. Meets Specifications or Exceptions: _____

3. Alternator shall be a minimum of 24 volts, rated at 100 AMP minimum

Meets Specifications or Exceptions: _____

4. Electrical hour meter with circuitry that allows the meter to record clock time only when the engine is operating.

Meets Specifications or Exceptions: _____

E. TRANSMISSION

1. Transmission shall be equipped with an oil cooler.

Meets Specifications or Exceptions: _____

2. The minimum travel speed shall be 30MPH in forward high gear and 7MPH in reverse. The transmission shall have a neutral safety switch to prevent starting engine when the transmission is in gear.

Meets Specifications or Exceptions: _____

3. The transmission shall have a neutral safety switch to prevent starting the engine when the transmission is in gear.

Meets Specifications or Exceptions: _____

F. AXELS

1. The unit shall have a minimum of three (3) drive axels.

Meets Specifications or Exceptions: _____

2. The unit shall have a planetary type of front and rear axels.

Meets Specifications or Exceptions: _____

3. The unit shall have differential lock on front and rear axels.

Meets Specifications or Exceptions: _____

G. CAB

The can shall be steel modular pressurized environmental-type cab with doors. The cab design shall incorporate a rollover protection structure (ROPS), and tinted safety glass. The cab shall be insulated with sound suppression material as per the California Division of Industrial Safety Construction Safety Orders (CAL-OSHA).

The cab shall be equipped with the following:

1. The manufacture's standard air conditioning, heater and defroster.

Meets Specifications or Exceptions: _____

2. Front windshield wiper and washer.

Meets Specifications or Exceptions: _____

3. A shock dampened air suspension type seat with seat belt. The seat shall be adjustable to the operator's weight.

Meets Specifications or Exceptions: _____

4. An instrument panel with gauges to visually check the engine RPM, engine coolant temperature, engine oil pressure, transmission oil temperature, and charging system. The instrument panel and gauges shall be illuminated.

✓ Meets Specifications or Exceptions: _____

5. An electronic hour meter that records engine hours only while the machine is running.

✓ Meets Specifications or Exceptions: _____

6. Control levers that are positioned to be easily and comfortably reached by the operator.

✓ Meets Specifications or Exceptions: _____

7. Adjustable inside rear view camera and adjustable left and right outside mirrors.

✓ Meets Specifications or Exceptions: _____

8. AM/FM radio.

✓ Meets Specifications or Exceptions: _____

H. FINAL DRIVES

1. The final drive shall be all-wheel drive with planetary reduction at each wheel.

✓ Meets Specifications or Exceptions: _____

I. WHEELS

1. Wheels shall be equipped with 29.5 R25 tires, interchangeable between front and rear.

✓ Meets Specifications or Exceptions: _____

J. HYDRAULIC SYSTEM

1. The hydraulic system shall be constructed of first quality heavy-duty components. The hydraulic system shall be filtered on return to the reservoir.

✓ Meets Specifications or Exceptions: _____

2. The hydraulic pumps, valves, and reservoirs shall be mounted in such a manner as not to restrict air flow, visibility, or enclose operator's compartment.

✓ Meets Specifications or Exceptions: _____

K. BRAKES

Service brakes shall be power-assisted sealed wet-type disc on a minimum of two (2) axles. If the brakes are air assisted, 0-60 PSI warning lamp and buzzer shall be provided.

1. The unit shall have one (1) brake pedal.

✓ Meets Specifications or Exceptions: _____

2. The parking brake shall be spring activated, hydraulically released, and capable of stopping loaded vehicle in the

Meets Specifications or Exceptions: _____

L. STEERING SYSTEM

1. The steering system shall be pivot from frame articulation of 40 degree minimum

Meets Specifications or Exceptions: _____

2. Steering shall be fully hydraulic powered with flow-amplified system. The flow to the steering shall be controlled by a steering wheel operating metering pump.

Meets Specifications or Exceptions: _____

3. Steering shall have an outside turn radius of 14 ft. minimum and an inside turn radius of 7 ft minimum.

Meets Specifications or Exceptions: 14.5' inside radius and 29.7' outside clearance

M. FUEL SYSTEM

1. The machine shall have a fuel storage tank with minimum capacity of 140 gallons.

Meets Specifications or Exceptions: _____

2. The fuel system shall have a Wiggins fitting (ZZ9A1 Model Type)

Meets Specifications or Exceptions: _____

N. GUARDS

This machine shall be equipped with the following:

1. Guard rails and hand clasps for operator access and egress.

Meets Specifications or Exceptions: _____

2. Safety tread or tape installed on all walking surfaces.

Meets Specifications or Exceptions: _____

3. Narrow front fenders.

Meets Specifications or Exceptions: _____

4. Hood shall be electrically raised fiberglass hood for easy access to service points.

Meets Specifications or Exceptions: _____

O. LIGHTING

1. The unit shall have a minimum of two (2) front headlamps with high and low beams and two (2) front, two (2) rear stoplights, and back-up lights.

Meets Specifications or Exceptions: _____

2. The unit shall have a cab interior lamp and an illuminated instrumental panel.

Meets Specifications or Exceptions: _____

P. WARNING DEVICES

1. The unit shall have an air-operated horn, audible for a distance of 500'.

Meets Specifications or Exceptions: Electric horn, audible for 500'

2. The unit shall have a rear mounted, electrically operated backup alarm, audible to a distance of 500'.

Meets Specifications or Exceptions: _____

Q. GROUND CLEARANCE

The ground clearance shall be 20" minimum, with wheels provided.

Meets Specifications or Exceptions: _____

R. BODY

1. The dump body shall have a payload of 24 cubic yards minimum.

Meets Specifications or Exceptions: _____

2. The dump body shall have a tip angle of 70 degrees minimum.

Meets Specifications or Exceptions: _____

VI. **SPECIFICATIONS CHECK LIST FOR PRICING PAGE ITEM 3 OPTIONAL HEAVY-DUTY TRACK TYPE BULLDOZER, CATERPILLAR MODEL D9T WH OR EQUIVALENT, WITH FULL MAINTENANCE**

A. WEIGHT

The unit shall have a minimum operating weight of 110,000 lbs. SAE.

Weight Offered: 110,225 lbs

Meets Specifications or Exceptions: _____

B. ENGINE

Engine shall be rated at not less than 435 net horsepower.

Horsepower Offered: 452 net hp.

Meets Specifications or Exceptions: _____

C. CAB

The cab shall be equipped with the following:

1. Manufacturer's standard air conditioning, heater, and defroster.

Meets Specifications or Exceptions: _____

2. AM/FM radio.

Meets Specifications or Exceptions: _____

D. FUEL SYSTEM

1. The machine shall have a fuel storage tank with minimum capacity of 215 gallons.

Capacity Offered: 254 gal.

Meets Specifications or Exceptions: _____

2. The fuel system shall have a Wiggins fitting (#ZZ9A1).

Manufacturer: CAT equivalent

Meets Specifications or Exceptions: _____

E. TRACKS AND PADS

The machine shall be equipped with the following:

1. "Extreme service" tracks and pads.

Meets Specifications or Exceptions: _____

2. Tracks twenty-four (24) inches wide with trapezoidal shaped center hole, and grouser height at least three inches measured from the face of the shoe.

Meets Specifications or Exceptions: _____

3. Track pins and bushings sealed and life-time lubricated.

Meets Specifications or Exceptions: _____

F. GROUND CLEARANCE

The unit shall have a minimum ground clearance of 21 inches.

Meets Specifications or Exceptions: 18.1 in.

G. BLADE

The machine shall be equipped with:

1. A wear resistant, high tensile strength, steel blade equivalent to a Balderson model BD97L-18', with the following design:
 - a. Minimum height of five (5) feet at center from bottom of cutting edge to bottom of trash rack, and width of seventeen (17) feet.
 - b. Wing angle of thirty (30) degrees, and minimum width of forty-nine (49) inches.
 - c. Thirty-six (36) inch minimum tilt.
 - d. Twenty-three (23) inch minimum digging depth.
 - e. Moldboard of A572 steel, 0.44 inches thick at minimum.
 - f. Face plated with one half (1/2) inch A514 steel.
 - g. Heavy-duty, high abrasion bolt-on type replaceable and reversible center cutting edges with bolt-on type replacement end bits.
 - h. Trash rack constructed from one half (1/2) inch steel bar, or two (2) inch square tubing, forty-two (42) inches minimum in height.
 - i. Minimum lift above ground of fifty (50) inches.
 - j. Minimum fifty (50) cubic yard capacity.

Meets Specifications or Exceptions: _____

H. UNDERCARRIAGE

The machine shall feature elevated sprocket and fully suspended undercarriage design that isolates final drives, axles, and steering components from harsh impacts.

Meets Specifications or Exceptions: _____

I. WASTE HANDLING FEATURES

The machine shall be equipped with:

1. Hinged cleanout slot covers for quick access to the front side of the radiator core.

Meets Specifications or Exceptions: _____

2. Engine enclosures having perforated hood and side panels to prevent airborne debris from entering the engine compartment.

Meets Specifications or Exceptions: _____

3. Turbine engine precleaner and dust ejector.

Meets Specifications or Exceptions: _____

4. High-capacity ducted alternator.

Meets Specifications or Exceptions: _____

5. Sealed bottom guards.

Meets Specifications or Exceptions: _____

6. Guarded idlers and guarded pivot shaft seal.

Meets Specifications or Exceptions: _____

7. Wrapped exhaust including steel covered, insulated exhaust shields for the exhaust manifolds, turbo, and muffler inlet tube.

Meets Specifications or Exceptions: _____

8. Powered cab air precleaner including an additional centrifugal precleaner to separate excess dust particles before air enters the cab air filter.

Meets Specifications or Exceptions: _____

Guarding on the implement hydraulic oil tank, DEF tank, fuel tank, and tilt cylinder lines.

Meets Specifications or Exceptions: _____

VII. CONTRACTOR'S STATEMENT OF AVAILABLE EQUIPMENT

The contractor is required to list all necessary equipment to meet the requirements herein as specified. The contractor shall state below the motive, industrial, construction and other equipment which contractor has or will have available to perform the work under this contract prior to the commencement of the contract. The City of San Diego reserves the right to reject any bid when, in its opinion, the contractor has not demonstrated they will be properly equipped to perform the work in an efficient, effective manner for the duration of the contract period. In instances where required equipment is not presently owned, the contractor shall explain how the equipment will be made available prior to commencement of work.

NOTE: Add additional pages if necessary.

Equipment Description: CAT 972

Owned **Rented** **Other** (explain below)

If Owned, Quantity Available: 15 - CAT 950M / 950GC

Year, Make & Model: 2023 CAT 972, 2019 to 2023 CAT 950M / 950GC

Estimated Delivery Date: 90 days

Explanation: We would order two new CAT 972's from the factory . We would deliver two CAT 950 loaders out of our rental fleet until the new machines arrive.

Equipment Description: CAT 745

Owned **Rented** **Other** (explain below)

If Owned, Quantity Available: 8 - 730 and 730C, 1 - 735, 1 - 740, 1- 745.

Year, Make & Model: 2023 CAT 745

Estimated Delivery Date: 90 days

Explanation: We would order a new CAT 745 from the factory . We would deliver a CAT 730 or 735 truck out of our rental fleet until the new machines arrive.

Equipment Description: CAT D9

Owned Rented Other (explain below)

If Owned, Quantity Available: 1 - CAT D9T, 5 - CAT D8T

Year, Make & Model: 2023 CAT D9

Estimated Delivery Date: 90 days

Explanation: We would order a new CAT D9 WHA from the factory . We would deliver a CAT D8T out of our rental fleet until the new machines arrive.

Equipment Description:

Owned Rented Other (explain below)

If Owned, Quantity Available:

Year, Make & Model:

Estimated Delivery Date: _____

Explanation:

VIII. PAYMENT AND PERFORMANCE BOND

Prior to the execution of the contract, the Contractor shall furnish the City with a surety bond executed in accordance with Section 8.1 of the General Contract Terms and Provisions, revised January 16, 2020. The Bond shall be in a sum of one hundred percent (100%) of the Contract amount and guarantee Contractor's faithful performance of the contract, assure payment to contractors, subcontractors, and to persons furnishing services under the contract.

IX. DEPARTMENT REPRESENTATIVE.

The Department Representative for this Contract is identified in the notice of award and is responsible for overseeing and monitoring this Contract.

X. DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION NUMBER. Per Exhibit D:

	Registration No.	Expiration Date	Name
DIR Registration No.	1000019799	6-30-24	Hawthorne Machinery Co.

XI. PRICING PAGE

LEASE OF HEAVY DUTY LANDFILL EQUIPMENT

Item No.	Est. Annual Usage	U/M	Description	Manufacturer	Model No.	Monthly Cost	Annual Cost
1.	12	Month	Lease of two (2) heavy-duty loaders, Caterpillar model 972M or equivalent, with full maintenance. Est. Annual Usage – 1,500 hours	CAT	972	\$ 8,300.00 Ea.	\$ 199,220.00
2.	12	Month	Lease of One (1) articulated dump truck, Caterpillar model 745C or equivalent, with full maintenance. Est. Annual Usage – 1,500 hours	CAT	745	\$ 10,500.00	\$ 126,000.00
3.	12	Month	Lease of One (1) OPTIONAL heavy-duty track type bulldozer, Caterpillar model D9T WH or equivalent, with full maintenance. Est. Annual Usage – 1,500 hours	CAT	D9 WH	\$ 45,000.00	\$ 540,000.00
TOTAL SECTION:							\$ 865,220.00

ESTIMATED RATE OF FUEL CONSUMPTION

Item No.	Description	Estimated Rate of Fuel Consumption
1.	Heavy-duty loaders, Caterpillar model 972M or equivalent.	\$ 4.1 GPH
2.	Articulated dump truck, Caterpillar model 745C or equivalent.	\$ 7.8 GPH
3.	OPTIONAL heavy-duty track type bulldozer, Caterpillar model D9T WH or equivalent, with full maintenance	\$ 13.5 GPH

Contractor agrees to furnish fuel at cost plus _____ ¢ per gallon or 10 % per gallon (as specified in Section II, paragraph A, item 4)

PAYMENT AND PERFORMANCE BOND

Item No.	Description	Extension
1.	Bond (Payment and Performance)	\$ 865,220.00

EXHIBIT C



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

ARTICLE I
SCOPE AND TERM OF CONTRACT

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

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

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

ARTICLE II
CONTRACT ADMINISTRATOR

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

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

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

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

ARTICLE III COMPENSATION

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

3.2 Invoices.

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

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

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

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

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

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

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

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

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

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

ARTICLE IV SUSPENSION AND TERMINATION

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

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

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

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

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

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

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

4.5 Contractor's Right to Payment Following Contract Termination.

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

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

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

ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE VI INTELLECTUAL PROPERTY RIGHTS

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

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

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

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

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

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

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

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

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

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

ARTICLE VII INDEMNIFICATION AND INSURANCE

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

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

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

Contractor shall provide, at a minimum, the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE VIII BONDS

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

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

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

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

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

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

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

ARTICLE IX CITY-MANDATED CLAUSES AND REQUIREMENTS

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

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

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

9.1.3 Non-Discrimination Requirements.

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

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

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

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

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

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

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

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

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

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

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

9.1.9 Product Endorsement. Contractor shall comply with Council Policy 000-41 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, Bidder certifies that he or she is aware of the wage provisions described herein and shall comply with such provisions before commencing services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**LIVING WAGE ORDINANCE
 CERTIFICATION OF COMPLIANCE**
 REQUIRED BY SAN DIEGO MUNICIPAL CODE §22.4225(c)

COMPANY INFORMATION

Company Name: Hawthorne Machinery Co.
 Company Address: 16945 Camino San Bernardo
 Company Contact Name: Craig Baker Contact Phone: 858-688-8614

CONTRACT INFORMATION

Contract Number (if no number, state location): ITB - 10089996-23-K Start Date: 6-2023
 Contract Title (or description): Heavy Equipment Rental End Date: 6-2028
 Purpose/Service Provided: Heavy Equipment Rental maintenance

TERMS OF COMPLIANCE

A contractor or subcontractor working on or under the authority of an agreement subject to the Living Wage Ordinance [LWO] must comply with all applicable provisions unless specifically approved for an exemption. Basic requirements of the LWO are:

- (a) Pay covered employees the current fiscal year hourly wage rate;
- (b) If any lesser amount is applied toward the health benefits rate, add this difference to the hourly wage rate as cash;
- (c) Provide minimum of 80 compensated leave hours per year for illness, vacation, or personal need at the employee's request and permit 80 additional unpaid leave hours for personal or family illness when accrued compensated leave hours have been used;
- (d) Annually distribute a notice with the first paycheck after July 1 to inform all covered employees of LWO requirements, their possible right to Federal Earned Income Tax Credit, and possible availability of health insurance coverage under the Affordable Care Act;
- (e) Prohibit retaliation against any covered employee who alleges noncompliance with the requirements of the LWO;
- (f) Permit access for authorized City representatives to work sites and records to review compliance with the LWO; and
- (g) Maintain wage and benefit records for covered employees for 3 years after final payment.

If a subcontractor fails to submit this completed form, the prime contractor may be found in violation of the LWO for failure to ensure its subcontractor's compliance. This may result in a withholding of payments or termination of the agreement.

CONTRACTOR CERTIFICATION

By signing, the contractor certifies under penalty of perjury under laws of the State of California to the following:


- (a) comply with the requirements of the Living Wage Ordinance; and
- (b) will perform at least fifty percent (50%) of the work with its own employees.

Craig Baker

 Name of Signatory

Corp. Sales & Operations Manager

 Title of Signatory



 Signature

4/20/2023

 Date

FOR OFFICIAL CITY USE ONLY

Date of Receipt: _____ LWO Analyst: _____ Contract Number: _____

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

WORK FORCE REPORT

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

**NO OTHER FORMS WILL BE ACCEPTED
CONTRACTOR IDENTIFICATION**

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

Name of Company: Hawthorne Machinery Co.

ADA/DBA: _____

Address (Corporate Headquarters, where applicable): 16945 Camino san Bernardo

City: San Diego County: San Diego State: CA Zip: 92127

Telephone Number: 858-674-7000 Fax Number: 858-674-3212

Name of Company CEO: David K. Ness

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

Address: _____

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

Telephone Number: _____ Fax Number: _____ Email: cbaker@hawthornecat.com

Type of Business: Sale, service, parts and equipment rental Type of License: _____

The Company has appointed: Jeffery Bowman

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

Address: 16945 Camino San Bernardo, San Diego, CA 92127

Telephone Number: 858-674-7000 Fax Number: 858-674-3212 Email: jbowman@hawthornecat.com

- One San Diego County (or Most Local County) Work Force - Mandatory
- Branch Work Force *
- Managing Office Work Force

Check the box above that applies to this WFR.

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

I, the undersigned representative of Hawthorne Machinery Co.

(Firm Name)

San Diego, California hereby certify that information provided

(County)

(State)

herein is true and correct. This document was executed on this 24th day of April, 2023



(Authorized Signature)

Craig Baker

(Print Authorized Signature Name)

WORK FORCE REPORT – Page 2

NAME OF FIRM: Hawthorne Machinery Co.

DATE: 4/24/2023

OFFICE(S) or BRANCH(ES): _____

COUNTY: San Diego

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

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

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

ADMINISTRATION OCCUPATIONAL CATEGORY	(1) Black or African American		(2) Hispanic or Latino		(3) Asian		(4) American Indian/ Nat. Alaskan		(5) Pacific Islander		(6) White		(7) Other Race/ Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Management & Financial	1	1	4		3	1					26	2	1	
Professional			3	2		1			1		6	3		2
A&E, Science, Computer														
Technical				1	1									
Sales	1		9	2					1		22	1		
Administrative Support	2		3	2	4	3		1			10	14	5	2
Services														
Crafts	3		24	2	1						40		5	1
Operative Workers			6						1		6			
Transportation														
Laborers*	2		16	1			2				14	1	8	2

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

Totals Each Column	9	1	65	10	9	5	2	1	3		124	21	19	7
--------------------	---	---	----	----	---	---	---	---	---	--	-----	----	----	---

Grand Total All Employees	276
----------------------------------	------------

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

Disabled			5	2	1			1			10	8	1	
----------	--	--	---	---	---	--	--	---	--	--	----	---	---	--

Non-Profit Organizations Only:

Board of Directors											2			
Volunteers														
Artists														

WORK FORCE REPORT – Page 3

NAME OF FIRM: Hawthorne Machinery Co.

DATE: 4/24/2023

OFFICE(S) or BRANCH(ES): _____

COUNTY: San Diego

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

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

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

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

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

Grand Total All Employees

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

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

Work Force Report

HISTORY

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

WORK FORCE & BRANCH WORK FORCE REPORTS

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

MANAGING OFFICE WORK FORCE

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

TYPES OF WORK FORCE REPORTS:

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

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

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

RACE/ETHNICITY CATEGORIES

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

Asian – A person having origins in any of the peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

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

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

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

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

Exhibit A: Work Force Report Job Categories – Administration

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

Management & Financial

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

Professional

Art and Design Workers
Counselors, Social Workers, and Other Community and Social Service Specialists
Entertainers and Performers, Sports and Related Workers
Health Diagnosing and Treating Practitioners
Lawyers, Judges, and Related Workers
Librarians, Curators, and Archivists
Life Scientists
Media and Communication Workers
Other Teachers and Instructors
Postsecondary Teachers
Primary, Secondary, and Special Education School Teachers
Religious Workers
Social Scientists and Related Workers

Architecture & Engineering, Science, Computer

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

Technical

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

Sales

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

Administrative Support

Financial Clerks
Information and Record Clerks
Legal Support Workers

Material Recording, Scheduling, Dispatching, and Distributing Workers
Other Education, Training, and Library Occupations
Other Office and Administrative Support Workers
Secretaries and Administrative Assistants
Supervisors, Office and Administrative Support Workers

Services

Building Cleaning and Pest Control Workers
Cooks and Food Preparation Workers
Entertainment Attendants and Related Workers
Fire Fighting and Prevention Workers
First-Line Supervisors/Managers, Protective Service Workers
Food and Beverage Serving Workers
Funeral Service Workers
Law Enforcement Workers
Nursing, Psychiatric, and Home Health Aides
Occupational and Physical Therapist Assistants and Aides
Other Food Preparation and Serving Related Workers
Other Healthcare Support Occupations
Other Personal Care and Service Workers
Other Protective Service Workers
Personal Appearance Workers
Supervisors, Food Preparation and Serving Workers
Supervisors, Personal Care and Service Workers
Transportation, Tourism, and Lodging Attendants

Crafts

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

Installers, and Repairers
Woodworkers

Operative Workers

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

Transportation

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

Laborers

Agricultural Workers
Animal Care and Service Workers
Fishing and Hunting Workers
Forest, Conservation, and Logging Workers
Grounds Maintenance Workers
Helpers, Construction Trades
Supervisors, Building and Grounds Cleaning
and Maintenance Workers
Supervisors, Farming, Fishing, and Forestry
Workers

Exhibit B: Work Force Report Job Categories-Trade

Brick, Block or Stone Masons

Brickmasons and Blockmasons
Stonemasons

Carpenters

Carpet, floor and Tile Installers and Finishers

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

Cement Masons, Concrete Finishers

Cement Masons and Concrete Finishers
Terrazzo Workers and Finishers

Construction Laborers

Drywall Installers, Ceiling Tile Inst

Drywall and Ceiling Tile Installers
Tapers

Electricians

Elevator Installers and Repairers

First-Line Supervisors/Managers

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

Glaziers

Helpers, Construction Trade

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

Millwrights

Heating, Air Conditioning and Refrigeration
Mechanics and Installers
Mechanical Door Repairers
Control and Valve Installers and Repairers
Other Installation, Maintenance and Repair
Occupations

Misc. Const. Equipment Operators

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

Painters, Const. Maintenance

Painters, Construction and Maintenance
Paperhangers

Pipelayers and Plumbers

Pipelayers
Plumbers, Pipefitters and Steamfitters

Plasterers and Stucco Masons**Roofers****Security Guards & Surveillance Officers****Sheet Metal Workers****Structural Iron and Steel Workers****Welding, Soldering and Brazing Workers**

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

Workers, Extractive Crafts, Miners

City of San Diego
CONTRACTOR STANDARDS
Pledge of Compliance

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

By signing and submitting this form, the contractor is certifying, to the best of their knowledge, that the contractor and any of its Principals have not within a five (5) year period – preceding this offer, been convicted of or had a civil judgement rendered against them for commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) contract or subcontract.

“Principal” means an officer, director, owner, partner or a person having primary management or supervisory responsibilities within the firm. The Contractor shall provide immediate written notice to the Procurement Contracting Officer handling the solicitation, at any time prior to award should they learn that this Representations and Certifications was inaccurate or incomplete.

This form contains 10 pages, additional information may be submitted as part of *Attachment A*.

A. BID/PROPOSAL/SOLICITATION TITLE:

Heavy Equipment Rental

Invitation to Bid (ITB) 10089996-23-K

B. BIDDER/PROPOSER INFORMATION:

Hawthorne Machinery Co.

Legal Name	San Diego	DBA	
16945 Camino San Bernardo	City	CA	92127
Street Address	(858) 688-8614	State	Zip
Craig Baker, Corp. Sales and Operations Mgr.	Phone	(858) 674-3212	Fax
Contact Person, Title			

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

* The precise nature of the interest includes:

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

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

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

David K. Ness	CEO/ President
Name	Title/Position
San Diego, CA	
City and State of Residence	Employer (if different than Bidder/Proposer)
Owner of 50.3% of corporation that will receive funds in the transaction	
Interest in the transaction	

Tee K. Ness	Chairman of the Board
Name	Title/Position
San Diego	
City and State of Residence	Employer (if different than Bidder/Proposer)
Owner of 3.9% of corporation that will receive funds in the transaction	
Interest in the transaction	

Micheal Ness	
Name	Title/Position
San Diego, CA	
City and State of Residence	Employer (if different than Bidder/Proposer)
Owner of 22.9% of corporation that will receive funds in the transaction	
Interest in the transaction	

Carly Ness	
Name	Title/Position
San Diego, CA	
City and State of Residence	Employer (if different than Bidder/Proposer)
Owner of 22.9% of corporation that will receive funds in the transaction	
Interest in the transaction	

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

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

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

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

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

C. OWNERSHIP AND NAME CHANGES:

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

Yes No

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

2. Is your firm a non-profit?

Yes No

If **Yes**, attach proof of status to this submission.

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

Yes No

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

D. BUSINESS ORGANIZATION/STRUCTURE:

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

Corporation Date incorporated: 02/14/1949 State of incorporation: CA

List corporation's current officers: President: David K. Ness
 Vice Pres: Chandra Ramamoorthy
 Secretary: Jeffery Bowman
 Treasurer: Brian J. Verhoeven

Type of corporation: C Subchapter S

Is the corporation authorized to do business in California: Yes No

If **Yes**, after what date: 02/14/1949

Is your firm a publicly traded corporation? Yes No

If **Yes**, how and where is the stock traded? _____

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

Do the President, Vice President, Secretary and/or Treasurer of your corporation have a third party interest or other financial interests in a business/enterprise that performs similar work, services or provides similar goods? Yes No

If **Yes**, please use Attachment A to disclose.

Please list the following:	Authorized	Issued	Outstanding
a. Number of voting shares:	<u>1,000,000</u>	<u>469,333</u>	<u>223,938</u>
b. Number of nonvoting shares:	<u>9,000,000</u>	<u>4,223,997</u>	<u>413,951</u>
c. Number of shareholders:			<u>4</u>
d. Value per share of common stock:		Par	<u>\$47,000.00</u>
		Book	<u>\$66,300,000.00</u>
		Market	<u>\$66,300,000.00</u>

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

List the name, title and address of members who own ten percent (10%) or more of the company:

Partnership Date formed: _____ State of formation: _____

List names of all firm partners:

Sole Proprietorship Date started: _____

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

Joint Venture Date formed: _____

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

Note: To be responsive, each member of a Joint Venture or Partnership must complete a separate *Contractor Standards form*.

E. FINANCIAL RESOURCES AND RESPONSIBILITY:

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

Yes No

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

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

Yes No

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

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

Yes No

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

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

Yes No

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

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

Yes No

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

6. Are there any claims, liens or judgements that are outstanding against your firm?

Yes No

If **Yes**, please use Attachment A to provide detailed information on the action.

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

Name of Bank: Comerica Bank

Point of Contact: Matt Atti

Address: 350 Tenth Avenue, San Diego CA 92101

Phone Number: (619) 652-5766

8. By submitting a response to a City solicitation, Contractor certifies that he or she has sufficient operating capital and/or financial reserves to properly fund the requirements identified in the solicitation. At City's request, Contractor will promptly provide to City

a copy of Contractor's most recent balance sheet and/or other necessary financial statements to substantiate financial ability to perform.

9. In order to do business in the City of San Diego, a current Business Tax Certificate is required. Business Tax Certificates are issued by the City Treasurer's Office. If you do not have one at the time of submission, one must be obtained prior to award.

Business Tax Certificate No.: B1974003098 Year Issued: 2023

F. PERFORMANCE HISTORY:

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

Yes No

If Yes, use Attachment A to explain specific circumstances.

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

Yes No

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

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

Yes No

If Yes, use Attachment A to explain specific circumstances.

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

Yes No

If Yes, use Attachment A to explain specific circumstances.

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

Yes No

If Yes, use Attachment A to explain specific circumstances.

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

Yes No

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

7. Performance References:

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

Please note that any references required as part of your bid/proposal submittal are in addition to those references required as part of this form.

Company Name: Superior Ready Mix

Contact Name and Phone Number: Chad Varney 760-670-6954

Contact Email: cvarney@superiorm.com

Address: 1508 Mission Road, Escondido

Contract Date: _____

Contract Amount: _____

Requirements of Contract: Provide parts and service since 1956

Company Name: Republic Services

Contact Name and Phone Number: Bill Huntington 619-421-9400

Contact Email: whuntington@republicservices.com

Address: 8364 Clairemont Mesa Blvd., San Diego

Contract Date: _____

Contract Amount: _____

Requirements of Contract: Provide parts and service since 1956

Company Name: Waste Management (USA Waste of CA Inc.)

Contact Name and Phone Number: Gary Beerbower 818-767-5867

Contact Email: gbeerbower@wm.com

Address: 9081 Tujunga Avenue, Sun Valley CA 91352

Contract Date: _____

Contract Amount: _____

Requirements of Contract: Provide parts and service since 1956

G. COMPLIANCE:

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

Yes No

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

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

Yes No

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

H. BUSINESS INTEGRITY:

1. In the past five (5) years, has your firm been convicted of or found liable in a civil suit for making a false claim or material misrepresentation to a private or public entity?
 Yes **No**

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

2. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a crime, including misdemeanors, or been found liable in a civil suit involving the bidding, awarding, or performance of a government contract?
 Yes **No**

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

3. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a federal, state, or local crime of fraud, theft, or any other act of dishonesty?
 Yes **No**

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

4. Do any of the Principals of your firm have relatives that are either currently employed by the City or were employed by the City in the past five (5) years?
 Yes **No**

If **Yes**, please disclose the names of those relatives in Attachment A.

I. BUSINESS REPRESENTATION:

1. Are you a local business with a physical address within the County of San Diego?
 Yes **No**

2. Are you a certified Small and Local Business Enterprise certified by the City of San Diego?
 Yes **No**

Certification # _____

3. Are you certified as any of the following:
a. Disabled Veteran Business Enterprise Certification # _____
b. Woman or Minority Owned Business Enterprise Certification # _____
c. Disadvantaged Business Enterprise Certification # _____

J. WAGE COMPLIANCE:

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

By signing this Pledge of Compliance, your firm is certifying to the City that you will comply with the requirements of the Equal Pay Ordinance set forth in SDMC sections 22.4801 through 22.4809.

K. STATEMENT OF SUBCONTRACTORS & SUPPLIERS:

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

Company Name: N/A

Address: _____

Contact Name: _____ Phone: _____ Email: _____

Contractor License No.: _____ DIR Registration No.: _____

Sub-Contract Dollar Amount: \$ _____ (per year) \$ _____ (total contract term)

Scope of work subcontractor will perform: _____

Identify whether company is a subcontractor or supplier: _____

Certification type (check all that apply): DBE DVBE ELBE MBE SLBE WBE Not Certified

Contractor must provide valid proof of certification with the response to the bid or proposal to receive participation credit.

Company Name: N/A

Address: _____

Contact Name: _____ Phone: _____ Email: _____

Contractor License No.: _____ DIR Registration No.: _____

Sub-Contract Dollar Amount: \$ _____ (per year) \$ _____ (total contract term)

Scope of work subcontractor will perform: _____

Identify whether company is a subcontractor or supplier: _____

Certification type (check all that apply): DBE DVBE ELBE MBE SLBE WBE Not Certified

Contractor must provide valid proof of certification with the response to the bid or proposal to receive participation credit.

L. STATEMENT OF AVAILABLE EQUIPMENT:

A full inventoried list of all necessary equipment to complete the work specified may be a requirement of the bid/proposal submission.

By signing and submitting this form, the Contractor certifies that all required equipment included in this bid or proposal will be made available one week (7 days) before work shall commence. In instances where the required equipment is not owned by the Contractor, Contractor shall explain how the equipment will be made available before the commencement of work. The City of San

Diego reserves the right to reject any response, in its opinion, if the Contractor has not demonstrated he or she will be properly equipped to perform the work in an efficient, effective matter for the duration of the contract period.

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

- Initial submission of *Contractor Standards Pledge of Compliance*
- Initial submission of *Contractor Standards Pledge of Compliance* as part of a Cooperative agreement
- Initial submission of *Contractor Standards Pledge of Compliance* as part of a Sole Source agreement
- Update of prior *Contractor Standards Pledge of Compliance* dated _____.

Complete all questions and sign below.

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

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

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

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

Craig Baker, Corp Sales Oper Mgr



4/24/2023

Name and Title

Signature

Date

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

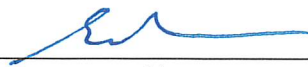
Provide additional information in space below. Use additional Attachment "A" pages as needed. Each page must be signed.
Print in ink or type responses and indicate question being answered.

N/A

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

Craig Baker, Corp Sales Oper Mgr

Print Name, Title



Signature

4/24/2023

Date

PERFORMANCE BOND, LABOR AND MATERIALMEN'S BOND

Bond No. K09207971
Premium: \$16,261
Premium will be adjusted
based on final contract amount

**FAITHFUL PERFORMANCE BOND AND LABOR AND MATERIALMEN'S
BOND:**

Hawthorne Machinery Co., a corporation, as principal, and
Federal Insurance Company, a corporation authorized to do business
in the State of California, as Surety, hereby obligate themselves, their successors and assigns, jointly and
severally, to The City of San Diego a municipal corporation in the sum of One Million Six
Hundred Twenty Six Thousand and One Hundred Dollars (\$1,626,100.00) for the faithful performance of
the annexed contract, 10089996-23-K Heavy Equipment Rental,
and in the sum of One Million Six Hundred Twenty Six Thousand and One Hundred Dollars (\$1,626,100.00)
for the benefit of laborers and materialmen designated below, effective for five (5) years, commencing on
August 1, 2023 through July 31, 2028.

Conditions:

If the Principal shall faithfully perform the annexed contract with the City of San Diego, California,
then the obligation herein with respect to a faithful performance shall be void; otherwise it shall remain in
full force.

If the Principal shall promptly pay all persons, firms and corporations furnishing materials for or
performing labor in the execution of this contract, and shall pay all amounts due under the California
Unemployment Insurance Act then the obligation herein with respect to laborers and materialmen shall be
void; otherwise it shall remain in full force.

The obligation herein with respect to laborers and materialmen shall inure to the benefit of all
persons, firms and corporations entitled to file claims under the provisions of Article 2. Claimants,
(iii) public works of improvement commencing with Civil Code Section 9100 of the Civil Code of the State
of California.

Changes in the terms of the annexed contract or specifications accompanying same or referred to
therein shall not affect the Surety's obligation on this bond, and the Surety hereby waives notice of same.

The Surety shall pay reasonable attorney's fees should suit be brought to enforce the provisions of
this bond.

The Surety expressly agrees that the City of San Diego may reject any contractor or subcontractor
which may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal.

The Surety shall not utilize the Principal in completing the improvements and work specified in the
Agreement in the event the City terminates the Principal for default.

PERFORMANCE BOND, LABOR AND MATERIALMEN'S BOND (continued)

THE CITY OF SAN DIEGO

APPROVED AS TO FORM

Mara W. Elliott, City Attorney

By: [Signature]

By: Nicole M. Denow

Print Name: Claudia C. Abanca
Mayor or designee
Director, P&C

Print Name: Nicole M. Denow
Deputy City Attorney

Date: September 20, 2023

Date: October 31, 2023

CONTRACTOR Hawthorne Machinery Co.

SURETY Federal Insurance Company

By: Brian Vanhoosen

By: [Signature]
Attorney-In-Fact

Print Name: Brian Vanhoosen

Print Name: Matthew C. Gaynor

Date: 9/20/2023

Date: August 21, 2023

Rancho Mesa Insurance Services, Inc.
2355 Northside Drive, Suite 200, San Diego, CA 92108
Local Address of Surety

(619) 937-0164
Local Phone Number of Surety

\$16,261
Premium

K09207971
Bond Number

Power of Attorney

Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company

Know All by These Presents. That FEDERAL INSURANCE COMPANY, an Indiana corporation, VIGILANT INSURANCE COMPANY, a New York corporation, and PACIFIC INDEMNITY COMPANY, a Wisconsin corporation, do each hereby constitute and appoint Daniel Frazee, David J. Garcia, Matthew C. Gaynor, Andrew Roberts and Kim D. Vasquez of Santee, California

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY have each executed and attested these presents and affixed their corporate seals on this 22nd day of February, 2019.

Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

Stephen M. Haney

Stephen M. Haney, Vice President



STATE OF NEW JERSEY

County of Hunterdon

ss.

On this 22nd day of February, 2019, before me, a Notary Public of New Jersey, personally came Dawn M. Chloros, to me known to be Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros, being by me duly sworn, did depose and say that she is Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that she signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that she is acquainted with Stephen M. Haney, and knows him to be Vice President of said Companies; and that the signature of Stephen M. Haney, subscribed to said Power of Attorney is in the genuine handwriting of Stephen M. Haney, and was thereto subscribed by authority of said Companies and in deponent's presence.

Notarial Seal



ROSE CURTIS
NOTARY PUBLIC OF NEW JERSEY
No. 50072400
Commission Expires November 22, 2022

Rose Curtis
Notary Public

CERTIFICATION

Resolutions adopted by the Boards of Directors of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY on August 30, 2016:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
(2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.
(3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
(4) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
(5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Dawn M. Chloros, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY (the "Companies") do hereby certify that

- (i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,
(ii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this 21st August, 2023.



Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

IN THE EVENT YOU WISH TO VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT:
Telephone (908) 903-3493 Fax (908) 903-3656 e-mail: surety@chubb.com

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego)

On August 21, 2023 before me, Lauren Craig, Notary Public
(insert name and title of the officer)

personally appeared Matthew C. Gaynor,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

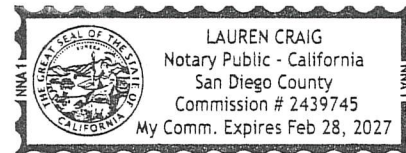
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego)

On August 28, 2023 before me, Ashley Marie Beauchamp, Notary Public,
(insert name and title of the officer)

personally appeared Brian Verhoeven,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Ashley Marie Beauchamp (Seal)