

**CONTRACT RESULTING FROM INVITATION TO BID NUMBER 10089987-24-G, As-Needed Fertilizer for the City of San Diego Parks and Recreation Department's Golf Division**

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) # 10089987-24-G, As-Needed Fertilizer for the City of San Diego Parks and Recreation Department's Golf Division (Contractor).

**RECITALS**

On or about March 28, 2024, the 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 and deliver fertilizer as further described in the Scope of Work, attached hereto as Exhibit B. (Scope of Work).

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 will provide 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 will be for a period of five years beginning on the Effective Date. The term of this Contract must not exceed five years unless approved by the City Council by ordinance.

**2.2 Effective Date.** This Contract will 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 will pay Contractor for performance of all Services rendered and delivery of Goods in accordance with this Contract in an amount not to exceed \$3,000,000.00. The total expenditure of this Contract cannot exceed \$3,000,000.00 unless approved by the City Council by resolution or ordinance.

**ARTICLE IV  
WAGE REQUIREMENTS**

**4.1** Reserved.

**ARTICLE V  
CONTRACT DOCUMENTS**

**5.1 Contract Documents.** The following documents comprise the Contract between the City and Contractor: this Contract and all exhibits thereto; the 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/or services to be provided. Contractor will provide any goods and/or 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/or 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:

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

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

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

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

Wilbur Ellis

CITY OF SAN DIEGO  
A Municipal Corporation

\_\_\_\_\_  
Bidder

2275 e locust Ct

\_\_\_\_\_  
Street Address

Ontario CA 91761

\_\_\_\_\_  
City, State, Zip

951-403-9683

\_\_\_\_\_  
Telephone No.

bbaker@wilburellis.com

\_\_\_\_\_  
E-Mail

BY:



\_\_\_\_\_  
Print Name: Claudia Abarca

Director

Purchasing & Contracting Department

Jun 6, 2024

\_\_\_\_\_  
Date Signed

BY:

  
Brad baker (Jun 5, 2024 09:30 PDT)

\_\_\_\_\_  
Signature of Bidder's Authorized  
Representative

Brad baker

\_\_\_\_\_  
Print Name

Territory sales manager

\_\_\_\_\_  
Title

Jun 5, 2024

\_\_\_\_\_  
Date

Approved as to form this 10th day of

June \_\_\_\_\_, 2024.

MARA W. ELLIOTT, City Attorney

BY: Jane M. Boardman  
Jane M. Boardman (Jun 10, 2024 07:35 PDT)

\_\_\_\_\_  
Jane M. Boardman Deputy City Attorney

**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 will 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** Reserved

**2.6** Licenses as required in Exhibit B.

**2.7** Manufacturer's Price List.

**2.8** Additional Information as required in Exhibit B.

**2.9** Reserved

**2.10** Reserved

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

**3. Bid Review.** Bidders are responsible for carefully examining the ITB, the Scope of Work, this Contract, and all documents incorporated into the Contract by reference before submitting a bid. If selected for award of contract, bidder will 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 must be new and the best of their kind.

**6.1 Items Offered.** Bidder must 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 must notify the City Contact identified on the eBidding System no later than three working days following the Closing Date. The bidder must 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 disclosure under the CPRA. If the bidder does not provide a specific and detailed legal basis for requesting the City 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 will 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 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 will have the right to ask the announcements be repeated or to ask that omitted data be supplied. Such requests will be honored to the extent they do not unreasonably delay or interfere with the bid opening procedure, as determined at the sole discretion of the City employee opening the bids.

**D. EVALUATION OF BIDS**

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

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

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

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

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

**E. ANNOUNCEMENT OF AWARD**

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

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



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

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

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

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

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

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

**4. Reserved.**

**5. Reserved.**

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

**EXHIBIT B  
SCOPE OF WORK**

**A. BID SPECIFICATIONS.** Contractor will provide and deliver fertilizers to the City of San Diego Park and Recreation Department's Golf Division (City) for the golf facilities (Golf Courses) located at:

Torrey Pines Golf Course  
11480 North Torrey Pines Road  
San Diego, CA 92037

Mission Bay Golf Course  
2702 North Mission Bay Drive  
San Diego, CA 92109

Balboa Park Golf Course  
2600 Golf Course Drive  
San Diego, CA 92102

**B. LICENSES.** To perform the work described in this ITB, bidders must have a California Highway Patrol – Hazardous Materials Transportation License (HMPL).

	License Number	Expiration Date	Licensee's Name
California Highway Patrol – Hazardous Materials Transportation License	235106	2-28-25	Wilbur Ellis CO. L4C.

Any bidder holding a different license which they believe qualifies them to bid must notify the City Contact in writing at least seven days prior to the bid closing of their intent to bid and the proposed license substitution. After a thorough review of the proposed license substitution, the City will inform the bidder, in writing, of its decision to accept or reject the proposed license substitution prior to the bid closing. The City's decision is final.

**C. CUSTOMER SERVICE AND LOCAL SALES REPRESENTATIVE.**

Contractor shall assign a representative familiar with our Golf Courses, products, and staff to serve as the main point of contact for this contract. This representative should be geographically proximate to ensure responsiveness and familiarity with our supply needs. "Local" is defined as being within the same geographical region as the Golf Courses. This requirement aims to establish effective communication and build rapport with our staff, thus enhancing the overall service experience.

**D. DELIVERIES.** Contractor shall make deliveries to Torrey Pines, Mission Bay and Balboa Park municipal golf courses within the City of San Diego. Deliveries can only take place from 5:30 am to 1:00 pm Monday through Friday. The Golf Course Superintendent or designee for each individual golf course must be notified at least twenty-four (24) hours in advance of deliveries. Contact information for each of the Golf Course Superintendents will be listed on the individual purchase orders.

The City is not responsible for any shipped item until it is accepted by the City at the designated delivery location. Delivery drivers shall follow City employee instructions when unloading materials; this includes moving to specific locations within each Golf Course before unloading.

All deliveries must be accompanied by an invoice or delivery receipt which includes the price of the item(s) being delivered, date, time, and signature of the City employee accepting delivery. All invoices or delivery receipts must reference applicable purchase order numbers and/or sub-order numbers.

Orders shall be delivered within ten (10) business days after receipt of order (verbal and/or written).

Notwithstanding the foregoing, emergency orders (which shall be appropriately designated by City employees) shall be delivered within 48 hours of such request. The City will pay reasonable handling charges, if required by the Contractor, for such emergency orders.

In instances where the Contractor cannot deliver within the specified delivery time, the City reserves the right to obtain products, or equivalent product(s), elsewhere and bill the Contractor for the difference in cost between the Contractor's bid price and the emergency pricing paid by the City. This applies to both routine product orders and emergency product orders.

**E. BACKORDERS.** Contractor shall ship items in the quantities shown on the purchase order. Backorders are unacceptable without prior written City approval. Unauthorized backorders may be grounds for Contract termination by the City at the City's sole discretion. The City reserves the right to evaluate the number of backorders to determine if backorders are negatively impacting the City's daily operations, and, at the City's sole discretion, may be cause for termination of the City's Contract with the Contractor.

**F. SAFETY DATA SHEETS (SDS).** Bidders must submit, with their bids, one copy of the Safety Data Sheet (SDS) for each product bid. Only those products whose label and SDS clearly state the contents, hazard potential and protective measures required shall be considered for award.

Contractor will be required to include, with each shipment delivered to the City, one copy of the SDS for each product shipped. Failure to comply with this procedure set forth in this paragraph, may, at the City's sole discretion, be cause for termination of the City's contract with the Contractor.

**G. REGULATORY REPORTING FOR CHEMICAL RELEASE OR THREATENED RELEASE.** Chemical releases or threatened releases, caused by Contractor on City property, and involving liquid or solid hazardous materials or hazardous waste shall be immediately assessed utilizing the County Department of Environmental Health's Assessment Form as a guide to determine if the incident requires regulatory reporting to the California Emergency Management Agency, County Department of Environmental Health, Hazardous Materials Division, the National Response Center and/or any other pertinent regulatory agency.

Chemical releases, caused by the Contactor on City property, and any contaminated media (rags, absorbents, soil, etc.) shall be immediately contained, cleaned up, and handled as hazardous waste at the Contractor's expense. The waste shall be handled as hazardous waste

unless a complete hazardous waste analysis, as approved by the City, is performed which determines the waste to be non-hazardous.

A Chemical Release Report Form or similar document shall be completed and transmitted via electronic mail to the Technical Representative and to other contacts as listed on the Chemical Release Report Form within four hours of the occurrence of the chemical release for all incidents of hazardous materials or hazardous wastes in quantities equal to or exceeding five gallons in quantity or for any size release that requires regulatory reporting as determined by the County Department of Environmental Health's Assessment form. See Attachment A for a copy of a blank Chemical Release Report Form.

Chemical releases or threatened releases involving liquid, or solid hazardous materials or hazardous waste shall be immediately reported to the City.

Lack of timely reporting a chemical release or threatened release shall be subject to fines and penalties by the County of San Diego and any other pertinent regulatory agency.

**H. PRICE ADJUSTMENT CLAUSE.** In the event the Contractor does not request a price increase at the time of the Contract renewal pursuant to Exhibit C, Article III, section 3.4, and the manufacturer(s) that are direct suppliers to the Contractor under this Contract subsequently announces a general increase in the price of their products, the Contractor may request an increase due to manufacturer(s) increase within 30 calendar days of the manufacturer(s) increase. The Contractor must provide detailed supporting documentation from the manufacturer(s) to support the requested increase. The requested increase shall not exceed the percentage increase indicated in the "General Contract Terms and Provisions (GCTAP), Section 3.4. The requested increase will be evaluated by the City, and the City reserves the right to accept or reject such request. In the event that a requested increase exceeds the GCTAP, the City reserves the right to accept or reject such request. Contractor is only eligible to receive a single pricing increase in a twelve-month period.

**I. BIDDER'S RESPONSIBILITIES.**

**1. Safety Requirements.** Contractor will ensure its employees provide goods and services in such a manner as to provide maximum safety to the public and employees and must comply with all safety provisions and regulations. Contractor is responsible for abiding by all CAL OSHA requirements, including the labeling of the units of measure. Bidders who have ten or more employees must have an injury/illness program as required by CAL OSHA. The Technical representative reserves the right to terminate orders to the Contractor when unsafe or harmful acts are observed or reported relative to the performance of Contractor's work under the Contract.

It is the Contractor's responsibility to ensure that adequate warning signs are posted, and all safety regulations are adhered to.

Personal Protective Equipment (PPE) shall be supplied by the Contractor for employees' staff and properly used at all times.

**2. Damages.** Contractor's personnel will immediately report to the Technical representative, any injuries, damages, defects, leaks, or any other problems or irregularities that arise out of winning bidder's performance of any duties or obligations performed pursuant to the Contract resulting from the Contractor's bid.

Contractor will be responsible for all damages to people and/or property that occurs as a result of Contractor or Contractor's employees' performance of this work/delivery services resulting from this bid.

**3. Parking.** Contractor must obey all parking regulations while on City property and will be solely responsible for any tickets or costs assessed against Contractor for failure to adhere to said regulations.

**4. City Work Rules.** Employees and agents of the Contractor must, while on City premises, comply with all City rules and regulations including all direction from City staff. Contractor must acquaint itself with conditions and customs at the delivery sites so as not to interfere with City operations. Contractor must not stop, delay, or interfere with City work schedules without the prior written approval of the Technical representative.

**J. PAYMENTS WITHHELD.** The City may withhold payment for services/deliveries not performed and for unsatisfactory or substandard work not corrected to the satisfaction of the Technical representative within the time specified. Such deductions will not prevent the City from proceeding with termination of the Contract in accordance with Section 4.5 of the General Terms and Provisions of the Contract awarded to the Contractor.

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

1. Overpayment of invoices.
2. Required repairs to City property, or other damages suffered by the City, due to Contractor's failure to include appropriate and necessary labor, materials, and equipment.

**K. PAYMENT.** To receive payment, Contractor is required to submit invoices to City of San Diego at the following address:

Account Clerk - Brenda Garcia or Marissa O'Connor  
Email address: [BrendaG@sandiego.gov](mailto:BrendaG@sandiego.gov) or [MMOConnor@sandiego.gov](mailto:MMOConnor@sandiego.gov)  
Parks and Recreation - Golf Division  
2702 N. Mission Bay Dr.  
San Diego, CA 92109

**L. TECHNICAL REPRESENTATIVE.**

The Technical Representative for the Contract will be the City's Golf Division Department's designee, who will be specified on individual purchase orders issued under this contract. The Technical Representative will provide daily oversight of this Contract to ensure compliance to the scope of work and performance to Contract specifications. The Technical Representative, or designee, is also responsible for oversight of all invoice payments and billing questions for purchase orders issued under this Contract.

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

**M. CONTRACT MODIFICATIONS**

The City's Purchasing and Contracting Department will be responsible for all contractual matters and are the only individuals authorized to make changes of any kind to this Contract. The Contractor must not rely upon any oral change from anyone, or a written request for change, from someone other than the Purchasing Agent for any changes to this Contract. All changes must be in writing, signed by the Purchasing Agent.

**N. NEW OR UPDATED PRODUCTS.**

If part numbers, products, or manufacturers listed in this ITB or Pricing Schedule are no longer available, the Bidder must update the part number/product/manufacturer with the most current product and must indicate as such on the Pricing Schedule. The City, in its discretion, retains the right to modify, substitute, update, upgrade, or alter part numbers, products, or manufacturers listed in the Price Schedule during the term of the Contract and within the scope of this Contract. This includes the ability to change part numbers, products, or manufacturers due to new, upgraded, or updated products within the scope of this ITB. The changes may encompass new offerings in the Contractor's or Manufacturer's catalog and technologically advanced products. All modifications of this Contract, regardless of type, must be made in accordance with Exhibit B, Section M. Contract Modifications must be in writing, and be reviewed and approved by the Parks and Recreation Department and the City's Purchasing and Contracting Department.

- 1. Discount Off All Catalogs Prevailing Published Price List.** The City desires to purchase the products listed in the Price Schedule as well as other products not specifically listed throughout the term of this Contract. As new items become available in the designated product lines, they too will become part of the Contract and will be subject to the same discount offered. Your most current catalog(s) price list will be used to determine pricing during the Term. Contractor must provide price updates and catalogs as new items become available, or at any time they are updated.

If product categories are not listed in the bid, the City will interpret this to mean the entire catalog will be offered at a discounted price This information will not be considered in the award evaluation.

<b>Product Category</b>	<b>Discount off Manufacturer List Price</b>
	%
	%
	%
	%

## **O. PRICING SCHEDULE**

The Price Schedule (Section O) is the only form and format that will be accepted for bid pricing. Failure to provide pricing utilizing the Price Schedule will result in rejection of the bid. Any/all required fees must be included within the pricing bid. The City will not accept any additional costs or fees not reflected in the Price Schedule.

1. The estimated annual quantities provided by the City are not guaranteed. The quantities may vary depending on the demands of the City. Any variations from these estimated quantities will not entitle the Contractor to an adjustment in the unit price or to any additional compensation. At no time will the Contract amount exceed \$3 million without City Council approval.
2. Bidders are required to complete the Price Schedule for a minimum of 80% of the specified line items in order to be deemed responsive. In the event that the Primary Contractor awarded the contract does not submit a bid for all line items, purchases for such unbid line items may be directed to the Secondary Contractor. Should neither the Primary nor Secondary Contractor submit a bid for a particular line item, such purchase will be made off-contract. Contractor must notate "No Bid" on the Price Schedule for any line item for which it is unable to provide a bid. For the purposes of bid evaluation, only line items for which bids have been submitted will be considered.
3. Bidder must list every component of each product bid under "Bidder's Product Specifications", including percentages. The City will use this information to evaluate and determine if the product bid is equivalent to the product listed in the "Description" section of the Price Schedule. The City's decision in this matter is final. A line-item bid will be rejected as non-responsive if the City determines that the product bid is not an acceptable equivalent to the specified product listed on the "Price Schedule". Failure of the bidder to provide this information may be cause for the line item to be rejected as non-responsive.

**PRICING SCHEUDLE**

Item No.	Estimated Annual Quantity	UOM	Description	Column A Will a Different Unit of Measure (UOM) be Utilized as an Equivalent?  YES or NO	Proposed Alternate Unit of Measure (UOM) Provide a Response  Only if Answer YES to Column A	Manufacturer	Bidder's Product Specifications <sup>(1)</sup> (List each component including percentages)	Unit Price (Example: \$xx/50 lb. bag)	Extension (Estimated Annual Quantity X Unit Price)
1.	100	50 lb. bag Each	0-0-22 (K-Mag, Grns grade)			Solucal		\$ 42.75 1 50 lb	\$ 4,275.00
2.	80	50 lb. bag Each	0-0-50 (Grns grade)			Simplot		\$ 38.25 1 50	\$ 3,060
3.	725	50 lb. bag Each	0-0-50 (Fairway grade)			Yara-		\$ 29.75 1 50	\$ 21,568.75
4.	82	50 lb. bag Each	11-55-0 (Grns grade, Best Phos)			Simplot		\$ 31 1 50	\$ 2,542
5.	150	50 lb. bag Each	13.5-0-46 (Pot. Nitrate, Soluble)			Haifa		\$ 43.00 1 50	\$ 6,450

*ED*



Item No.	Estimated Annual Quantity	UOM	Description	Column A Will a Different Unit of Measure (UOM) be Utilized as an Equivalent? YES or NO	Proposed Alternate Unit of Measure (UOM) Provide a Response Only if Answer YES to Column A	Manufacturer	Bidder's Product Specifications <sup>(1)</sup> (List each component including percentages)	Unit Price (Example: \$xx/50 lb. bag)	Extension (Estimated Annual Quantity X Unit Price)
6.	100	25 lb. bag Each	13-0-44 High K (Soluble)			Frit Ind.		\$ 43 / 25 lb	\$ 4,300
7.	120	50 lb. bag Each	15.5-0-0 Calcium Nitrate (Soluble)			Yara		\$ 21 / 50 lb. bag	\$ 2,520
8.	924	Each	15.5-0-0 Calcium Nitrate / 50 lb. bag (Granular, Frwy grade)			Yara		\$ 16 / 50 lb. bag	\$ 14,784
9.	76	Each	17-0-17 Contac DG / 40 lb. bag (Greens grade)			Andersons		\$ 69.60 / 40 lb. bag	\$ 5,289.60
10.	160	Each	18-4-9 5% Fe frwy grade / 50 lb. bag (200 SGN Nitrate)			WECO		\$ 25.75 / 50 lb. bag	\$ 4,120

Item No.	Estimated Annual Quantity	UOM	Description	Column A Will a Different Unit of Measure (UOM) be Utilized as an Equivalent? YES or NO	Proposed Alternate Unit of Measure (UOM) Provide a Response Only if Answer YES to Column A	Manufacturer	Bidder's Product Specifications <sup>(1)</sup> (List each component including percentages)	Unit Price (Example: \$xx/50 lb. bag)	Extension (Estimated Annual Quantity X Unit Price)
11.	76	Each	18-9-18 Contac DG / 40 lb. bag (Greens grade)			Andersons		\$ 72 /40 lb. bag	\$ 5,472
12.	40	Each	20-20-20 Contac / 40 lb. bag (Greens grade)	NO		Andersons	14-7-14 30% slow MU .29 Fe .14 mn Contac DG.	\$ 70.20 /40 lb. bag	\$ 2,808
13.	210	Each	21-0-0 Ammonia Sulf. / 50 lb. bag (Granular, Frwy grade)			J.R. Simplot		\$ 13.91 /50 lb. bag	\$ 2,921.10
14.	40	Each	24-4-8 w/+3.5Fe frwy grade / 50 lb. bag (SGN, 50% slow)			WECO		\$ 28.52 /50 lb. bag	\$ 1,140.80
15.	110	Each	28-8-18 Bent Special / 25 lb. bag (Soluble)			Gr-more		\$ 22.00 /25 lb. bag	\$ 2,420
16.	520	Each	30-5-10 Frwy grade / 50 lb.			WECO		\$ 28.75	\$ 14,950

Item No.	Estimated Annual Quantity	UOM	Description	Column A Will a Different Unit of Measure (UOM) be Utilized as an Equivalent? YES or NO	Proposed Alternate Unit of Measure (UOM) Provide a Response Only if Answer YES to Column A	Manufacturer	Bidder's Product Specifications <sup>(1)</sup> (List each component including percentages)	Unit Price (Example: \$xx/50 lb. bag)	Extension (Estimated Annual Quantity X Unit Price)
			bag (SGN, 50% slow)					/50 lb. bag	
17.	160	Each	31% Iron / 50 lb. bag (Ferrous Sulfate)			Brandt		\$ 22.38 /50 lb. bag	\$ 3,580.80
18.	200	Each	41-0-0 / 50 lb. bag (Poly-On)	NO		weco	100% slow PCA 43-0-0 mini 4 month release	\$ 54.00 /50 lb. bag	\$ 10,800
19.	60	Each	46-0-0 / 50 lb. bag (Urea Soluble)			weco		\$ 19.75 /50 lb. bag	\$ 1,185
20.	3	Each	Aquaduct / 55-gal Drum (Wetting Agent)			Aquatrols		\$ 2,196 <del>/55 gal drum</del> (30 gal only)	\$ 6,588
21.	16	Each	Liquid Iron / 2.5 gal (Ferrous Sulfate)			weco		\$ 32.50 /2.5-gal each	\$ 520

Item No.	Estimated Annual Quantity	UOM	Description	Column A Will a Different Unit of Measure (UOM) be Utilized as an Equivalent? YES or NO	Proposed Alternate Unit of Measure (UOM) Provide a Response Only if Answer YES to Column A	Manufacturer	Bidder's Product Specifications <sup>(1)</sup> (List each component including percentages)	Unit Price (Example: \$xx/50 lb. bag)	Extension (Estimated Annual Quantity X Unit Price)
22.	40	Each	Magnesium / 50 lb. bag (Granular)			ECO Fusion.		\$ 21.50 /50 lb. bag	\$ 860
23.	37	Each	Magnesium 4% / 2.5 gal (Liquid)			WECO.		\$ 21.00 /2.5-gal each	\$ 777
24.	33	Each	Manganese 5% / 2.5 gal (Liquid)			WECO		\$ 35.00 /2.5-gal each	\$ 1,155
25.	120	Each	Manganese Sulfate / 50 lb. bag (Soluble)			Brandt.		\$ 29.00 /50 lb. bag	\$ 3,480
26.	3	Each	N Sure / 300-gal tote (Liquid)	NO		WECO	N-Demand 30-0-0 65% slow gran Triazine 2% mu.	\$ 2,475 /300 gal. tote	\$ 7,425
27.	15	Each	Phoenix (0-2-12) / 2.5 gal (Silica)	NO		Redox	Tur & RX Si 10% Calcium Silicate 0.75-3oz/1000 <sup>2</sup> /A.	\$ 222.13 /2.5-gal each	\$ 3,331.95
28.	1	Each	Tricure / 55 gal (Wetting Agent)	Yes	2.5 gal	WECO	100% AI wetting agent.	\$ 121.25 /55 gal. each 2.5 gal.	\$ 2,667.50 (801 55 gal)

Item No.	Estimated Annual Quantity	UOM	Description	Column A Will a Different Unit of Measure (UOM) be Utilized as an Equivalent?  YES or NO	Proposed Alternate Unit of Measure (UOM) Provide a Response  Only if Answer YES to Column A	Manufacturer	Bidder's Product Specifications <sup>(1)</sup> (List each component including percentages)	Unit Price (Example: \$xx/50 lb. bag)	Extension (Estimated Annual Quantity X Unit Price)
29.	120	Each	Tru Gyp / 50 lb. bag (Grns grade Gypsum)	NO		Andersons	DL Gypsum. 7556N 23Ca = 16S Calcium Sulfate Dihydrate	\$ 22.00 /50 lb. bag	\$ 2,640
30.	80	Each	Calprill / 2000 lb. Tote (Frwy grade Lime)	NO		Colambo River Carbonats	Microna Pro Lime Pro 36% Ca Limestone 18-19056N	\$ 405 /2,000 lb. tote	\$ 32,400
31.	20	Each	12-0-0 w/UMAXX/ 2.5-gal (Liquid)			WECO		\$ 27.50 /2.5-gal each	\$ 550
32.	40	Each	Uflexx 46-0-0/ 50 lb. bag			Koch Industries		\$ 38.00 /50 lb. bag	\$ 1,520
33.	5	Each	SoluBor/2.5-gal <del>wrong size</del> only in 5#			U.S. Borax		\$ 69.60 <del>1.5-gal each</del> 50 lb.	\$ 348
34.	10	Each	DeSal/2.5-gal			Ocean Organics		\$199.31 /2.5-gal each	\$ 1,993.10

Item No.	Estimated Annual Quantity	UOM	Description	Column A Will a Different Unit of Measure (UOM) be Utilized as an Equivalent? YES or NO	Proposed Alternate Unit of Measure (UOM) Provide a Response Only if Answer YES to Column A	Manufacturer	Bidder's Product Specifications (1) (List each component including percentages)	Unit Price (Example: \$xx/50 lb. bag)	Extension (Estimated Annual Quantity X Unit Price)
<del>35.</del>	<del>2</del>	Each	<del>Early Bird/2.5-gal</del>			Ocean Organics	Product Discontinued	\$ /2.5-gal each	No Bid. Discontinued.
36.	2	Each	Salt Rx/2.5-gal	NO		<del>Ocean Organics</del> Aquatrols	Desaltus 43% Polyacetic Acid 10% Surfactant.	\$ 119.38 /2.5-gal each	\$ 238.76
37.	2	Each	Endurant Perennial Rye/5-gal	Yes	2.5 Gal.	BASF Geoponics	Green Lawngr. - 3 month Green Turb Paint.	\$ 182.50 /5-gal each (2.5 Gal)	\$ 730 (10 Gal)
38.	2	Each	Endurant Fairway/5gal.	Yes	1 Gal.	BASF Geoponics	- Vision Pro - Concentrated Turb Pigment. 16-32oz/Acre.	\$ 120 /5-gal each (1 Gal)	\$ 1,200 (10 Gal)
39.	4	Each	Blast/2.5gal.			Aquatrols		\$ 215.75 /2.5-gal each	\$ 863
40.	2	Each	Caltrisal ST/5.9gal.			Aquatrols		\$ 212.40 /5.9-gal each	\$ 424.80
41.	2	Each	Aquaplex amino/2.5gal.			Aquatrols		\$ 94.05 /2.5-gal each	\$ 188.10

Item No.	Estimated Annual Quantity	UOM	Description	Column A Will a Different Unit of Measure (UOM) be Utilized as an Equivalent?  YES or NO	Proposed Alternate Unit of Measure (UOM) Provide a Response  Only if Answer YES to Column A	Manufacturer	Bidder's Product Specifications <sup>(1)</sup> (List each component including percentages)	Unit Price (Example: \$xx/50 lb. bag)	Extension (Estimated Annual Quantity X Unit Price)
42.	3	Each	Sixteen 90/30gal.			Aquatrols		\$ 2970 /30-gal each	\$ 6,210
43.	8	Each	Dispatch Sprayable/30gal			Aquatrols		\$ 3,211.50 /30-gal each	\$ 25,692
44.	2	Each	Revolution/2.5 gal.			Aquatrols		\$ 313.50 /2.5-gal each	\$ 627
45.	10	Each	Revolution/30gal.			Aquatrols		\$ 3,714 /30-gal each	\$ 37,140

TOTAL: \$ 253,756.21



EXHIBIT C



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

General Contract Terms and Provisions Revised:  
OCA Document No. 1685454\_2 – 10089987-24-G



## ARTICLE I SCOPE AND TERM OF CONTRACT

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

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

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

## ARTICLE II CONTRACT ADMINISTRATOR

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

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

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

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

### ARTICLE III COMPENSATION

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

**3.2 Invoices.**

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

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

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

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

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

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

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

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

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

**3.4 Price Adjustments.** Based on Contractor's written request and justification, the City may approve an increase in unit prices on Contractor's pricing pages consistent with the amount requested in the justification in an amount not to exceed the increase in the Consumer Price Index, San Diego Area, for All Urban Customers (CPI-U) as published by the Bureau of Labor Statistics, or 5.0%; or the City's annual Living Wage increase. 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, or the City's Living Wage increase). City's approval of this request must be in writing.

**3.5 Price Adjustment for Materials or Goods.** In the event the Contractor does not request a price increase at the time of the Contract renewal pursuant to Exhibit C, Article III, section 3.4, and the manufacturer(s) that are direct suppliers of raw materials or goods necessary for Contractor to provide the goods and services required under this Contract (Materials) subsequently announces a general increase in the price of their Materials, the Contractor may request an increase at that time. The Contractor must provide detailed supporting documentation from the manufacturer to support the requested increase. The requested increase shall not exceed the percentage increase indicated in section 3.4. The requested increase will be evaluated by the City, and the City reserves the right to accept or reject such request. In the event that a requested increase exceeds the amount allowed under section 3.4, the City reserves the right to accept or reject such request. Contractor shall not be entitled to an increase under section 3.4 as long as the Contractor is receiving compensation in accordance with section 3.5.1 below.

**3.5.1 Temporary Price increases for Materials or Goods.** Contractor shall provide written notice to City that the supplier that Contractor directly obtains Materials from for this Contract is increasing the cost for such Materials. The City shall review the notice provided and have the ability to reject or accept such a request for a cost increase for those goods with corresponding line items in the Contract for which the Materials are necessary. If approved, the Contractor shall provide to the City proof every 90 days of the actual amount paid to the supplier of the Materials, to justify their pricing for the next 90 days. The City has the option to request additional information at any time to confirm actual amounts paid by Contractor to supplier for the Materials purchased for this Contract. If approved City will pay Contractor the actual cost that supplier is charging Contractor for the Materials used to provide goods to the City under this Contract, so long as in doing so, it does not result in the amount paid by City exceeding

the amount authorized for compensation to Contractor listed in the Contract in Article III, section 3.1 Compensation. Contractor acknowledges that City cannot pay any amounts exceeding the amount in Article III, section 3.1 unless approved by the City Council.

**3.5.2 Cost Decrease for Materials or Goods.** If the cost of the Materials being charged by the supplier to the Contractor for this Contract decrease, then the City will receive the benefit of such price decrease and will only pay the actual price paid by Contractor to their supplier for such Materials. At no time though will the price paid by City to Contractor go below the amount listed in their original bid for this Contract.

**3.5.3 Documentation.** Contractor shall provide to City a true copy of suppliers' pricing sheets for the Materials every 90 days, for the next 90-day period. These pricing sheets will justify the price the City will pay Contractor for the goods received during that 90-day period (whether an increase in price, decrease in price, or no adjustment at all). Each 90-days, Contractor shall provide current suppliers' pricing sheets to the City. If pricing sheets are not provided timely, the City may withhold payments until the current 90-day pricing sheet is received.

**3.6 Markup.** In the event that City and Contractor are operating under section 3.5.1 Temporary Price Increases for Materials, Contractor will be entitled to a **5% markup** on invoices submitted in compliance with sections 3.5.1 through 3.5.3. If City is already paying a markup to Contractor, then this 5% will not be allowed. This markup shall apply only to the cost of the Materials supplied, and not on wages, taxes, or related benefits.

## **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.











# ITB No. 10089987-24-G, As-Needed Golf Fertilizer

Final Audit Report

2024-06-10

Created:	2024-06-06
By:	Jerry Gibbs (jggibbs@sandiego.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAAp-5uvqnyQVYv1nS1cQfaCynmgUHBgsx

## "ITB No. 10089987-24-G, As-Needed Golf Fertilizer" History

-  Document created by Jerry Gibbs (jggibbs@sandiego.gov)  
2024-06-06 - 6:55:21 PM GMT- IP address: 137.83.224.179
-  Document emailed to Claudia Abarca (CAbarca@sandiego.gov) for signature  
2024-06-06 - 7:11:52 PM GMT
-  Email viewed by Claudia Abarca (CAbarca@sandiego.gov)  
2024-06-06 - 9:12:04 PM GMT- IP address: 156.29.3.11
-  Document e-signed by Claudia Abarca (CAbarca@sandiego.gov)  
Signature Date: 2024-06-06 - 9:15:08 PM GMT - Time Source: server- IP address: 156.29.3.11
-  Document emailed to jboardman@sandiego.gov for signature  
2024-06-06 - 9:15:10 PM GMT
-  Email viewed by jboardman@sandiego.gov  
2024-06-08 - 11:39:20 AM GMT- IP address: 104.28.85.110
-  Email viewed by jboardman@sandiego.gov  
2024-06-09 - 3:01:02 AM GMT- IP address: 104.28.85.120
-  Signer jboardman@sandiego.gov entered name at signing as Jane M. Boardman  
2024-06-10 - 2:35:19 PM GMT- IP address: 156.29.5.190
-  Document e-signed by Jane M. Boardman (jboardman@sandiego.gov)  
Signature Date: 2024-06-10 - 2:35:21 PM GMT - Time Source: server- IP address: 156.29.5.190
-  Agreement completed.  
2024-06-10 - 2:35:21 PM GMT