



**Invitation to Bid (ITB) for Monitoring and Tank Vapor Control and Recovery System, Testing, Maintenance, and Repair Services**

<b>Solicitation Number:</b>	ITB No. 10090097-24-R
<b>Solicitation Issue Date:</b>	February 27, 2024
<b>Questions and Comments Due:</b>	March 7, 2024 @ 12:00 p.m.
<b>Response Due Date and Time ("Closing Date"):</b>	March 26, 2024 @ 3:00 p.m.
<b>Contract Terms:</b>	Five (5) years from Effective Date, as defined in Article I, Section 1.2 of the City's General Contract Terms and Provisions.
<b>City Contact:</b>	Rene Lelevier, Senior Procurement Contracting Officer Rlelevier@sandiego.gov (619)-236-5923
<b>Submissions:</b>	Bidder is required to provide one (1) original hard copy and one (1) electronic copy (e.g., thumb drive or CD), <b>or</b> an electronic proposal via PlanetBids, of their response as described herein.  <b>Completed and signed ITB signature page is required, with most recent addendum listed as acknowledgement of all addenda issued.</b>  <b>Note: Emailed submissions will not be accepted. Instructions for electronic submissions are provided as an attachment in PlanetBids.</b>

**CONTRACT RESULTING FROM INVITATION TO BID NUMBER 10090097-24-R Monitoring and Tank Vapor Control and Recovery System, Testing, Maintenance and Repair Services**

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) # 10090097-24-R Monitoring and Tank Vapor Control and Recovery System, Testing, Maintenance and Repair Services (Contractor).

**RECITALS**

On or about 2/27/2024, City issued an ITB to prospective Bidders on Monitoring and Tank Vapor Control and Recovery System Testing, Maintenance and Repair 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 Monitoring and Tank Vapor Control and Recovery System Testing, Maintenance and Repair Services, as further described in the Scope of Work, attached hereto as Exhibit B. (Services).

City wishes to retain Contractor to perform the Services

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

**ARTICLE I  
CONTRACTOR SERVICES**

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

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

**ARTICLE II  
DURATION OF CONTRACT**

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

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

**ARTICLE III  
COMPENSATION**

**3.1 Amount of Compensation.** City shall pay Contractor for performance of all Services rendered in accordance with this Contract in an amount not to exceed \$349,470.00 JRW (Initials).

**ARTICLE IV  
WAGE REQUIREMENTS**

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

**ARTICLE V  
CONTRACT DOCUMENTS**

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

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

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

- 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.

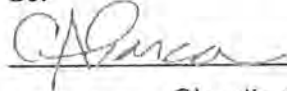
CONTRACTOR

CITY OF SAN DIEGO  
A Municipal Corporation

Jenal Engineering Corporation

Contractor

BY:



7959 Lemon Grove Way  
Street Address

Print Name: Claudia C. Abarca

Director

Lemon Grove  
City

Purchasing & Contracting Department

June 18, 2024

619-697-2200  
Telephone No.

Date Signed

Jenalinc@cox.net  
E-Mail

BY:

  
Signature of Contractor's Authorized Representative

Jennifer Westermeyer  
Print Name

President  
Title


Approved as to form this 20 day of

June, 2024.

MARA W. ELLIOTT, City Attorney

3/20/2024  
Date

BY:

  
Deputy City Attorney  
William Smith



**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 P&C located at 1200 Third Avenue, Suite 200, San Diego, CA 92101. The Solicitation Number and Closing Date must be referenced in the lower left-hand corner of the outside of the envelope. Faxed bids will not be accepted.

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

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

**1.4.1 Reserved.**

**1.5 Questions and Comments.** Written questions and comments must be submitted electronically via the eBidding System no later than the date specified on the eBidding System. Only written communications relative to the procurement shall be considered. The City's eBidding System is the only acceptable method for submission of questions. All questions will be answered in writing. The City will distribute questions and answers without identification of the inquirer(s) to all those submitting bids (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** Reserved.

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

**2.9** Reserved

**2.10** Reserved

**2.11** Reserved

**2.12** Proof of completed training as required in Exhibit B, Section C, item 2.

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

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

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

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

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

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

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

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

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

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



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

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

## **B. PRICING**

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

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

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

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

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

D. **EVALUATION OF BIDS**

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

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

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

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

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

E. **ANNOUNCEMENT OF AWARD**

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

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

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

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

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

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

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

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

4. **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**

**SCOPE OF WORK**

Furnish testing, maintenance, and as-needed repair services, including parts and labor, for tank vapor control and recovery systems located at various City fueling facilities, in accordance with State of California Air Resources Board (ARB) and County of San Diego Air Pollution Control District (APCD) requirements.

**B. DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION NUMBER.**

	Registration No.	Expiration Date	Name
DIR Registration No.	1000001842	6/30/2026	Jenal Engineering Corporation

**C. LICENSES**

To perform the work described in this solicitation, Contractors must hold at least one of the following current licenses issued by the State of California Contractors State License Board:

- Class A, General Engineering Contractor License
- C-10, Electrical Contractor License
- C-34, Pipeline Contractor License
- C-36, Plumbing Contractor License
- C-61 (D40), Limited Specialty Service Station Equipment and Maintenance Contractor License

	License Number	Expiration Date	Name
Class A, General Engineering Contractor License	Class: A & B, & Haz No.: 602806	9/30/2024	Jenal Engineering Corporation
C-10 Electrical Contractor License	Class: No.:		
C-34 Pipeline Contractor License	Class: No.:		
C-36 Plumbing Contractor License	Class: No.:		

C-61 (D40), Limited Specialty Service Station Equipment and Maintenance Contractor License	Class: No.:		
---	----------------	--	--

\*\*\* Note: Contractor to provide copies of a current license from list above.

Any Contractor holding a different license who feels qualified to bid on this work must notify the City's Procurement Contracting Officer in writing at least seven (7) days prior to the bid closing. After a thorough review of the proposed license substitution, the City will inform the bidder, in writing, of its decision prior to the bid closing. The City's decision is final.

**D. SERVICE LOCATIONS**

1. The listing of City facilities where annual testing will be required is provided in Table 1. This listing provides details of the Underground Storage Tank (UST) and Aboveground Storage Tank (AST) system(s) at each location along with APCD permit expiration dates.

**E. CONTRACTOR QUALIFICATIONS AND REQUIREMENTS**

1. The Contractor shall perform an annual pre-test, an annual permit-specified compliance test, maintenance, and any as-needed repairs on tank vapor control and recovery systems located at the City facilities listed in Table 1 under this Contract. The Contractor or any representative of the Contractor performing such testing shall be experienced in conducting the specific type of test being requested for the particular facility. In accordance with APCD Permit to Operate requirements, the following conditions must be met by the Contractor or any representative of the Contractor prior to performing such testing:
  - a. Any person conducting testing shall have completed the South Coast Air Quality Management District's orientation class for testing, the manufacturer's training applicable to the Phase I and Phase II vapor control equipment, and any refresher training required by the manufacturer;
  - b. Any person installing, modifying, or repairing any Phase I or Phase II vapor recovery system or component, including removal and installation of such components in the course of any required test event, shall have successfully completed the manufacturer's training program and any refresher training; and
  - c. Any person installing, repairing, or testing any vapor recovery system component shall have successfully completed the International Code

Council's (ICC) certification program for Vapor Recovery System Installation and Repair (ICC Certification Category VI).

- d. Training documents required, including: South Coast Air Quality Management District classroom training; Manufacturing training certificates and refreshers (Healy, OPW, Phil Title, etc.); and ICC certifications (Vapor Recovery System Installer and Repair, UST System Installer, and UST System Technician).
2. In accordance with the California Code of Regulations, Title 23 CCR 2715(d), the Contractor or any representative of the Contractor installing UST systems or components shall be certified or licensed by the Contractors State License Board.
  3. In accordance with the California Code of Regulations, Title 23 CCR 2715(e), the Contractor or any representative of the Contractor installing UST system components shall meet the following requirements, or work under the direct and personal supervision of an individual physically present at the work site who meets the following requirements:
    - a. The Contractor or any representative of the Contractor shall possess a certificate of training issued by the manufacturer(s) of the UST system components and possesses evidence of refresher training at the time interval recommended by the manufacturer, or every 36 months, whichever is shorter; and
    - b. The Contractor or any representative of the Contractor shall possess a current UST system installer certificate from the ICC.
  4. In accordance with the California Code of Regulations, Title 23 CCR 2715(f), the Contractor or any representative of the Contractor shall meet the following requirements prior to performing the work of a service technician:
    - a. Possess, or be employed by a person who possesses, a current Class "A" General Engineering Contractor License, C-10 Electrical Contractor License, C-34 Pipeline Contractor License, C-36 Plumbing Contractor License, or C-61 (D40) Limited Specialty Service Station Equipment and Maintenance Contractor License issued by the Contractors State License Board;
    - b. Be trained and certified by the manufacturer of the equipment as follows:
      - For service technicians conducting secondary containment testing, training and certification may be obtained through the manufacturer of the secondary containment system being tested or through the developer of the testing equipment or test method being used;



- For service technicians performing work on monitoring equipment, training and certification shall be obtained from the manufacturer of the monitoring equipment;
  - For service technicians conducting spill container testing, training and certification may be obtained through the manufacturer of the spill container being tested or through the developer of the testing equipment or test method being used; and
  - For service technicians conducting overfill prevention equipment inspections, training and certification may be obtained through the manufacturer of the overfill prevention equipment being inspected or through the developer of the inspection method being used.
- c. Renew all training and certifications issued by the manufacturer through completion of a manufacturer's refresher course at the time interval recommended by the manufacturer, or every 36 months, whichever is shorter; and
  - d. Possess, or work under the direct personal supervision of an individual physically present at the work site and who possesses, a current certificate from the ICC, indicating the individual has passed the California UST Service Technician exam.
5. Vehicles used by the Contractor's representatives on City sites shall be clearly marked with the Contractor's company name. Representatives of the Contractor working on City sites shall carry company business cards and wear identification badges in clear view at all times.
  6. Representatives of the Contractor assigned to this Contract may be required to clear a security background check administered by the San Diego Police Department for any work performed at City Police Facilities.

**F. TEST STANDARDS**

1. The Contractor shall ensure that test procedures used in performing testing for Tank Vapor Control and Recovery Systems located at City facilities under this Contract comply with the following:
  - a. Testing specifications prescribed by the equipment Manufacturer.
  - b. ARB Vapor Recovery Test Procedure for the designated test method.
  - c. Should any discrepancies exist between the testing specifications prescribed by the Manufacturer and the ARB Vapor Recovery Test Procedure, the Contractor shall adhere to the more stringent requirements.

## **G. PRE-START CONFERENCE**

1. Prior to commencing the Scope of Work under this Contract the Contractor shall meet with the Department Representative to review specifications, conditions, and work requirements.

## **H. SCHEDULING**

1. The Contractor shall perform annual testing for each City facility noted in Table 1 fifteen (15) to forty-five (45) calendar days prior to the first day of the APCD permit expiration month. Permit expiration months are listed in Table 1. The Contractor shall propose facility test dates to the Department Representative and the Department Representative must approve the test dates prior to the Contractor formally scheduling the test dates with the APCD. In accordance with APCD requirements, the Contractor shall provide written notice to the APCD fifteen (15) calendar days prior to conducting the required annual tests for each City facility noted in Table 1. The Contractor shall include the date and the time of the test in the written notice, in a format approved by the APCD Compliance Division. The Contractor shall concurrently provide an e-mailed pdf copy of the APCD notice to the Department Representative so the Department Representative may provide notification of the scheduled testing to the particular City facility.
2. The Contractor shall perform a Pre-Test Inspection at each City facility noted in Table 1 three (3) to seven (7) calendar days prior to the annual testing event for the purposes of verifying that each tank vapor control and recovery system meets integrity standards established by the ARB for the component and/or system being tested and to ensure that necessary adjustments and repairs are identified and can be made by the Contractor ahead of the annual testing event.
3. In the event of a failed annual test, the Contractor shall re-schedule the test for the tank vapor control and recovery system and re-test the tank vapor control and recovery system within seven (7) calendar days of the failed test. The Contractor shall immediately advise the Department Representative of any failed test and provide an estimate of the scope and cost of any necessary repairs to the vapor control system. In the event that the Department Representative cannot be reached, the Contractor shall perform minor repairs and replacement of parts for the tank vapor control and recovery system, in an amount of five hundred dollars (\$500.00) or less. The Contractor shall not proceed with any repair action in excess of five hundred dollars (\$500.00) without obtaining the prior written approval of the Department Representative. Correspondence/acceptance via e-mail will satisfy this requirement.
4. The Contractor shall perform all testing, maintenance, and as-needed repair work during each City facility's normal working hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, unless otherwise agreed to, in writing, between the Contractor and Department Representative. Certain City facilities are only accessible through

secured gated perimeter fencing and may require prior scheduling with facility managers during normal working hours due to limited access. The Department Representative will assist the Contractor in arranging for facility access as needed.

5. The Contractor shall respond to all as-needed service requests within two (2) working days of receiving the request. If the fueling system is shut down at the City facility, the Contractor shall respond to as-needed service requests within six (6) hours of receiving a service request. For the purposes of this callout, the term “respond” shall imply that a service technician has arrived on site and is in progress with troubleshooting and/or repair of the system in question.
6. Table 1 provides relevant information on the tanks and equipment to be tested. The Pricing Schedules (Section R) contain callouts related to the test methodologies to be utilized for the tank vapor control and recovery systems present at the City facilities. There may be instances where installed equipment and/or issued permits deviate from what is contained in this ITB. In the event a discrepancy is identified in the field, the Contractor shall immediately alert the Department Representative and perform any required testing consistent with actual installed equipment and permit requirements.

#### **I. REPORT REQUIREMENTS**

1. The Contractor shall submit test reports for each City facility listed in Table 1 directly to the APCD Compliance Division within fifteen (15) calendar days of conducting the tests. The Contractor shall submit the test reports on APCD Compliance Division-approved forms. The Contractor shall provide the Department Representative with a printed copy of all test reports with all billings for the corresponding testing.
2. The Contractor shall prepare service reports to document all repair work performed by the Contractor under this Contract for each City facility listed in Table 1. The Contractor shall submit printed copies of all service reports to the Department Representative with all billings for the corresponding service work.
3. At the time of system testing or repair work, the Contractor shall prepare a brief written report detailing the condition of the tank vapor control and recovery system and ancillary equipment as determined by the Contractor, repair work completed by the Contractor at the time of the site visit, and any work required to be performed by the Contractor under this Contract which could not be completed at the time of the site visit. The Contractor shall submit these reports to the Department Representative with all billings and/or test reports.
4. At the time of pre-test inspection events, the Contractor shall prepare an “Attachment J – Annual Inspection Checklist” form and an annual maintenance record form for Phase I and Phase II tank vapor control and recovery system

equipment. The Contractor shall submit a copy of each of these forms to the facility supervisor at the time of the inspection / maintenance event and to the Department Representative with the corresponding pre-test inspection invoicing.

5. In conjunction with the annual testing events, the Contractor shall complete a "Start-Up / New Installation / Warranty / Annual Testing Form" document for all City Facility sites equipped with Healy Phase II EVR systems. The Contractor shall submit a copy of each of these forms to the facility supervisor at the time of the annual test event and to the Department Representative with the corresponding annual test invoicing.

#### **J. APCD RE-INSPECTION FEES**

1. The APCD may assess upon the City a) fee if a scheduled annual APCD testing event starts later than the designated time of day, or if the test needs to be rescheduled due to a no-show or late arrival by the Contractor. The Contractor shall arrive at the job site to permit adequate time to set-up for the test without delays. Requirements for the pre-test inspection are detailed in Section K (Pre-Test Inspection). The Contractor shall pay, at their own expense, any APCD late test or re-inspection fees assessed upon the City that result from the Contractor's failure to initiate testing at the designated time of day.

#### **K. PRE-TEST INSPECTION**

1. The Contractor shall perform a pre-test inspection of each City facility three (3) to seven (7) days prior to the scheduled APCD test date for the purposes of testing the integrity of the tank vapor control and recovery system, identifying deficient components, and making necessary repairs.
2. The Contractor shall carry a full stock of common vapor control system parts (i.e., Healy nozzles, Hoses, Breakaways, P/V Vent Caps, etc.) in their service vehicle and shall make necessary repairs and adjustments to the tank system at the time of the pre-test inspection in accordance with Section L (Repair Work and Materials).
3. At the time of the pre-test inspection, the Contractor shall perform the Annual Inspection required by APCD. The Contractor shall document the inspection on an APCD "Attachment J - Annual Inspection Checklist" form. The Contractor shall submit a completed copy of the Annual Inspection Checklist to the City facility supervisor on site and shall submit a duplicate copy to the Department Representative with the corresponding pre-test inspection invoicing.



4. At the time of the pre-test inspection, the Contractor shall perform all annual inspection and maintenance tasks prescribed by the manufacturer of Phase I and Phase II tank vapor control and recovery system components installed at the City facility and complete an "Annual Maintenance Record" form. The Contractor shall submit a copy of the Annual Maintenance Record Form to the City facility supervisor and shall submit a duplicate copy to the Department Representative with the corresponding pre-test inspection invoicing.

#### **L. REPAIR WORK AND MATERIALS**

The Contractor shall perform repairs or provide materials as follows:

1. The Contractor shall correct minor problems identified during the APCD pre-test and annual testing process. "Minor problems" are those that cost five hundred dollars (\$500.00) or less.
2. When requested by the Department Representative, the Contractor shall perform major repairs or service on an as-needed basis. These services include repair, replacement, installation, or removal of tank vapor control and recovery system components in excess of five hundred dollars (\$500.00).
3. Conditional upon the prior written approval of the Department Representative, the Contractor will be reimbursed for work outside the scope of quoted unit price testing or certification on a labor and materials basis at the hourly rate provided in Contractor's Bid plus a mark-up rate of not more than fifteen percent (15%) for other materials and costs. Subcontractor costs may be marked-up no more than ten percent (10%).
4. Materials and labor used by the Contractor to perform minor repairs shall not exceed a cost of five hundred dollars (\$500.00) without the Contractor obtaining prior written approval from the Department Representative.
5. The Contractor shall obtain prior written approval from the Department Representative for repairs which require piping to be cut or replaced as these are considered major repairs.
6. The Contractor shall take charges for incidental consumable materials reasonably expected to be required for performance of work under this Contract into consideration when calculating the Contractor's hourly labor or per-test rates. The City will not pay such charges to the Contractor.
7. The Contractor shall consider charges for field vehicles, test equipment, hand-held or small power tools, compressed gas cylinders, transfer pumps, health and safety, and other non-consumable supplies or equipment into consideration when calculating the Contractor's hourly labor or line-item test rates. The City will not pay such charges to the Contractor.

8. To control costs, the Contractor shall minimize the number of employees assigned to perform maintenance and as-needed repair activities under this Contract. The City reserves the right to deny payment to the Contractor for billings where the City deems an excessive number of employees have been assigned to a specific maintenance or as-needed repair activity.

#### **M. REASSEMBLY OF DISTURBED EQUIPMENT**

1. The Contractor shall properly reassemble all tank vapor control and recovery systems and appurtenant equipment prior to leaving the City facility. The Contractor shall ensure that all tank vapor control and recovery systems and appurtenant equipment are in working order prior to leaving the City facility.

#### **N. LABOR CHARGES**

1. **The Contractor shall not apply labor charges for annual testing events.** The Contractor shall provide quoted rates for annual testing events that include provision of all labor, testing equipment, travel time, setup, system reassembly and operational verification, and report preparation.
2. **For pre-test inspection events, the Contractor shall recover their testing costs solely through the application of labor charges.** The Contractor shall charge labor at the quoted rates for travel time to and from the City facility site and for time on site to perform all required testing activities. The Contractor shall not charge the City for individual test procedures performed at the pre-test inspection event.

#### **O. DAMAGE TO PROPERTY**

1. The Contractor is responsible for all damage that occurs as a result of the Contractor's fault or negligence or that of the Contractor's employees, agents, or representatives in connection with the performance of this Contract. The Contractor shall immediately report any such damage to people and/or property to the Department Representative.
2. If the Contractor causes any damage to the equipment being serviced, which results in the existing warranty being voided, the Contractor shall be liable for all costs of repairs to the equipment, or the costs of replacing the equipment in-kind.

## **P. INVOICING**

1. Invoicing shall be submitted to the Department Representative in electronic and hard-copy format. At a minimum, invoicing must be broken down on a site-specific basis. The Contractor may choose to submit a single invoice covering the pre-test and annual-test events or, if preferred, may choose to issue a separate invoice for the pre-test and annual-test events. As-needed service requests shall be invoiced on an individual event-by-event basis.
2. The Contractor shall document work performed under this Contract with all invoices submitted to the City. Invoices will not be processed by the City without the Contractor's submission of all necessary supporting documentation. The Contractor shall reference a valid City purchase order number on all invoices submitted to the City. The Contractor shall submit purchase receipts with all invoices for material and equipment component expenditures under this Contract. The Contractor shall submit Subcontractor invoices with all invoices submitted to the City that include subcontract expenditures.
3. Work activities performed by the Contractor at the pre-test inspection will be paid by the City on a time and materials basis based upon the established labor and materials rates of the Contract. Vapor recovery system testing will not be paid as a separate line item (i.e. the City **will not** pay a test rate). The Contractor shall include charges for any testing performed at the pre-test inspection in the Contractor's labor charge rate.

## **Q. DEPARTMENT REPRESENTATIVE**

The Department Representative for any contract resulting from this ITB will be identified in the notice to proceed and will provide daily oversight of the contract to ensure compliance to the terms and conditions of this ITB. The Department 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 shall be responsible for all contractual matters and is the only individual authorized to made changes of any kind to the Contract. The Contractor shall not rely upon any oral change from anyone, or a written request for change from someone other than the Purchasing Agent. All changes must be in writing, signed by the Purchasing Agent.

**TABLE 1  
CITY FACILITIES REQUIRING ANNUAL APCD TESTING**

Item No.	APCD Permit to Operate No.	Site	Site Address	APCD Permit Expire Month	Capacity (Gallons)	Description	Vapor System Manifested (Yes/No)	No. of Dispenser Nozzles	Phase I System	Phase II System
1.	901315	Lifeguard Headquarters	2581 Quivira Court, 92109	Jan	4,000	1 Gas AST	N/A	1	Standing Loss + E.O. VR-401-X E.O. VR-402-X	None (Exempt)
2.	870519	Northeastern PD	13396 Salmon River Road, 92129	Feb	10,000 x 2	2 Gas USTs	No	2	Phil Tite E.O. VR-101-C	None (Exempt)
3.	861013	Eastern PD	9225 Aero Drive, 92123	Feb	10,000 x 2	2 Gas USTs	No	2	Phil Tite E.O. VR-101-C	None (Exempt)
4.	880307	Torrey Pines Golf Course	11480 N Torrey Pines Road, 92121	Mar	1,000	1 Gas AST	N/A	1	Standing Loss + E.O. VR-401-X E.O. VR-402-X	None (Exempt)
5.	900962	Qualcomm Stadium	9449 Friars Road, 92108	Mar	500	1 Gas AST	N/A	1	N/A (Standing Loss)	N/A
6.	960078	Mid City PD	4310 Landis Street, 92105	April	10,000 x 2	2 Gas USTs	Yes	4	OPW E.O. VR-102-E	None (Exempt)
7.	870690	Rose Canyon Ops	3775 Morena Boulevard, 92117	April	20,000	1 Gas UST	N/A	4	OPW E.O. VR-102-E	Healy E.O. VR-201-G
8.	950782	Mission Bay Golf Course	2702 N. Mission Bay Drive, 92109	April	500	1 Gas AST	N/A	1	N/A (Standing Loss)	N/A
9.	981235	Central PD VMF	3940 Federal Boulevard, 92102	May	20,000	1 Gas UST	N/A	4	OPW E.O. VR-102-D	None (Exempt)
10.	900042	Chollas Ops	2740 Caminito Chollas, 92115	May	20,000 x 2	2 Gas USTs	Yes	6	OPW E.O. VR-102-E	Healy E.O. VR-201-E
11.	984265	Northwestern PD	12610 El Camino Real, 92130	May	20,000	1 Gas UST	N/A	4	OPW E.O. VR-102-E	None (Exempt)
12.	973917	ESD Ops	8353 Miramar Place, 92121	July	12,000	1 Gas UST	N/A	2	OPW E.O. VR-102-E	None (Exempt)
13.	920199	Southern PD	1120 27 <sup>th</sup> Street, 92154	Oct	10,000 x 2	2 Gas USTs	No	2	OPW E.O. VR-102-E	None (Exempt)
14.	007378	Southeastern PD	7222 Skyline Drive, 92114	Nov	12,000 x 2	2 Gas USTs	No	4	OPW E.O. VR-102-E	None (Exempt)



Item No.	APCD Permit to Operate No.	Site	Site Address	APCD Permit Expire Month	Capacity (Gallons)	Description	Vapor System Manifested (Yes/No)	No. of Dispenser Nozzles	Phase I System	Phase II System
15.	020030	Central Ops	1970 B Street, 92102	Nov	20,000	1 Gas UST	N/A	4	OPW E.O. VR-102-E	Healy E.O. VR-201-G
16.	972054	Mt. Hope Cemetery	3751 Market Street, 92102	Nov	500	1 Gas AST	N/A	1	N/A (Standing Loss)	N/A
17.	005069	Fire Repair Facility	3870 Kearny Villa Road, 92123	Dec	1,000	1 Gas UST	N/A	2	OPW E.O. VR-102-E	None (Exempt)
18.	007458	Northern PD	4275 Eastgate Mall, 92037	Dec	12,000 x 2	2 Gas USTs	Yes	4	OPW E.O. VR-102-E	None (Exempt)
19.	007460	Western PD	5215 Gaines Street, 92110	Dec	10,000 x 2	2 Gas USTs	No	4	OPW E.O. VR-102-E	None (Exempt)
20.	Pending	Balboa Golf Course	2600 Golf Course Drive, 92102	TBD	250	1 Gas AST	N/A	1	N/A (Standing Loss)	N/A

**R. CONTRACTOR'S PRICING PAGE**

Quantities listed in the Pricing Schedules are estimates based on the City's current inventory of UST and AST gasoline dispensing systems. Actual quantities of services and testing required will change during the contract period as the City's tank inventory and equipment configurations change. The City intends to award one contract to the lowest responsible and responsive bidder.

**SCHEDULE 1 - ANNUAL TESTS FOR UNDERGROUND STORAGE TANK SYSTEMS**

Item No.	Est. Qty.	U/M	Description	Unit Cost	Extension
1.	3	EA	Clean Air Separator Vapor Integrity Test in accordance with Exhibit 4 of ARB E.O. VR-201-##, consistent with AC or Permit to Operate. (Price Per Site)	\$ 100	\$ 300
2.	22	EA	Static Torque Test on rotatable Phase I product and vapor adaptors in accordance with ARB test procedure TP-201.B. (Price Per Tank)	\$ 40	\$ 880
3.	22	EA	Pressure Integrity Test of the drop tube / drain valve assembly in accordance with ARB test procedure TP-201.1.## (Price Per Tank)	\$ 60	\$ 1320
4.	14	EA	Leak Rate and Cracking Pressure Test of P/V vent valve in accordance with ARB test procedure TP-201.1.## (Price Per Valve)	\$ 50	\$ 700
5.	19	EA	Pressure Decay/Leak Test of the entire vapor control system in accordance with ARB test procedure TP-201.3 and Exhibit 8 of ARB E.O. VR-201-## or District test procedure TP-96-1 and Exhibit 8 of ARB E.O. VR-201-##, whichever is applicable. (for sites with Phase II EVR)(Price Per Tank) (Manifold System = 1 Tank).	\$ 250	\$ 4,750
6.	7	EA	Dispenser Vapor Line Integrity Test, Dispensing Vacuum Test, and Audible Increase Test on each dispenser in accordance with B-3, B-5, and B-6, respectively of the Start-Up / New Installation / Warranty / Annual Testing Form located in the ARB approved Installation, Operation, and Maintenance Manual for VR-201-##, whichever is applicable. (Price Per Dispenser)	\$ 100	\$ 700
7.	14	EA	Vapor to Liquid Ratio (V/L) Test in accordance with Exhibit 5 of ARB E.O. VR-201-## or an equivalent ARB approved test method (Price Per Nozzle)	\$ 30	\$ 420
8.	14	EA	Vapor Valve Integrity Test in accordance with Exhibit 7 of ARB E.O. VR-201-## or ARB Test Procedure TP-201.2.B. (Price Per Nozzle)	\$ 30	\$ 420
<b>TOTAL FOR SCHEDULE 1:</b>					<b>\$ 9490.00</b>

**SCHEDULE 2 – ANNUAL TESTS FOR ABOVE GROUND STORAGE TANK SYSTEMS**

Item No.	Est. Qty.	U/M	Description	Unit Cost	Extension
1.	6	EA	Pressure Decay/Leak Test of the Tank's Vapor Control System including Nozzle/Check Valve and Tank in accordance with Air Resources Board Test Procedure TP-206.3 or TP-96-1 (Price Per Tank).	\$ 300	\$ 1,800
2.	6	EA	Leak Rate and Cracking Pressure Tests of the Pressure/Vacuum Relief Vent Valve for both Positive and Negative Pressures in accordance with the Test Procedure specified in Executive Order VR-102-A, Exhibit 6 (Verify Proper Operation Of The P/V Vent Relief Valve) (Price Per Valve).	\$ 50	\$ 300
3.	6	EA	Maximum and Minimum Dispensing Flow Rate Determination for every Nozzle for each Gasoline Product (Price Per Nozzle Per Grade). (NOTE: The City has no Dual Grade Nozzles.)	\$ 10	\$ 60
4.	2	EA	Static Torque Test on rotatable Phase I product and vapor adaptors in accordance with ARB test procedure TP-201.B. (Price Per Tank)	\$ 22	\$ 44
<b>TOTAL FOR SCHEDULE 2:</b>					\$ 2,204.00

**SCHEDULE 3 – PRE-TEST INSPECTIONS, MAINTENANCE AND AS-NEEDED REPAIRS**

Item No.	Est. Qty.	U/M	Description	Unit Cost	Extension
1.	350	HR	Cost per Hour for Performance of Pre-Test Inspections and for Providing Maintenance and As-Needed Repairs	\$ 72	\$ 25,200.00
<b>TOTAL FOR SCHEDULE 3:</b>					\$ 25,200.00

**SCHEDULE 4 - VARIOUS AS-NEEDED REPAIR PARTS FOR THE TANK VAPOR CONTROL AND RECOVERY SYSTEM**

Item No.	Description	Annual Estimated Usage	Percent (%) Mark-Up Above Cost for Parts		Extension
1.	Repair Parts	\$30,000.00	+	10 %	= \$ 33,000
<b>TOTAL FOR SCHEDULE 4:</b>					<b>\$ 33,000.00</b>

**TOTAL ALL SCHEDULES:**

Schedule 1: \$ 9,490 \_\_\_\_\_  
 Schedule 2: \$ 2,204 \_\_\_\_\_  
 Schedule 3: \$ 25,200 \_\_\_\_\_  
 Schedule 4: \$ 33,000 \_\_\_\_\_  
**TOTAL:** \$ 69,894.00 \_\_\_\_\_  
 (x) 5 Years = \$ 349,470.00 \_\_\_\_\_





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

**ARTICLE I**  
**SCOPE AND TERM OF CONTRACT**

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

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

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

**ARTICLE II**  
**CONTRACT ADMINISTRATOR**

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

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

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

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

### ARTICLE III COMPENSATION

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

**3.2 Invoices.**

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

## **ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS**

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE VI INTELLECTUAL PROPERTY RIGHTS

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

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



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

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

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

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

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

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

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

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

## **ARTICLE VII INDEMNIFICATION AND INSURANCE**

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

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

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

Contractor shall provide, at a minimum, the following:

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE VIII BONDS**

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE XI DISPUTE RESOLUTION**

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

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

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

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

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

## **ARTICLE XII MANDATORY ASSISTANCE**

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



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

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

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

### **ARTICLE XIII MISCELLANEOUS**

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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



## EXHIBIT D

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

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

**A. PREVAILING WAGES.** Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Contract is subject to State prevailing wage laws. For construction work performed under this Contract cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Contract cumulatively exceeding \$15,000, Bidder and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below. This requirement is in addition to the requirement to pay Living Wage pursuant to San Diego Municipal Code Chapter 2, Article 2, Division 4.2. Bidder must determine which per diem rate is highest for each classification of work (i.e. Prevailing Wage Rate or Living Wage Rate), and pay the highest of the two rates to their employees. Living Wage applies to workers who are not subject to Prevailing Wage Rates.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

**City of San Diego**  
**CONTRACTOR STANDARDS**  
**Pledge of Compliance**

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

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

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

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

**A. BID/PROPOSAL/SOLICITATION TITLE:**

ITB NO. 10090097-24-R

Monitoring and Tank Vapor Control and Recovery System,  
Testing, Maintenance, and Repair Services

**B. BIDDER/PROPOSER INFORMATION:**

Jenal Engineering Corporation

Legal Name	<u>Lemon Grove</u>	DBA	
<u>7959 Lemon Grove Way</u>		<u>CA</u>	<u>91945</u>
Street Address	City	State	Zip
<u>Jennifer Westermeyer</u>	<u>(619) 697-2200</u>	<u>(619) 697-2400</u>	
Contact Person, Title	Phone	Fax	

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

\* The precise nature of the interest includes:

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

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

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

<b>Jennifer Westermeyer</b>	<b>President</b>
Name	Title/Position
<b>La Mesa, CA</b>	
City and State of Residence	Employer (if different than Bidder/Proposer)
<b>57%</b>	
Interest in the transaction	

<b>Alan Westermeyer</b>	<b>Vice President</b>
Name	Title/Position
<b>La Mesa, CA</b>	
City and State of Residence	Employer (if different than Bidder/Proposer)
<b>43%</b>	
Interest in the transaction	

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

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

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

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

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

**C. OWNERSHIP AND NAME CHANGES:**

1. In the past five (5) years, has your firm changed its name?  
 Yes       No

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

2. Is your firm a non-profit?  
 Yes       No

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

3. In the past five (5) years, has a firm owner, partner, or officer operated a similar business?  
 Yes       No

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

**D. BUSINESS ORGANIZATION/STRUCTURE:**

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

**Corporation** Date incorporated: 03/19/1990 State of incorporation: California

List corporation's current officers: President: Jennifer Westermeyer  
Vice Pres: Alan Westermeyer  
Secretary: Molly Nowak  
Treasurer: Jennifer Westermeyer

Type of corporation: C  Subchapter S

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

If **Yes**, after what date: 03/19/1990



Is your firm a publicly traded corporation?  Yes  No

If Yes, how and where is the stock traded? \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

If Yes, please use Attachment A to disclose.

Please list the following:	Authorized	Issued	Outstanding
a. Number of voting shares:	_____	_____	_____
b. Number of nonvoting shares:	_____	_____	_____
c. Number of shareholders:			_____
d. Value per share of common stock:		Par	\$ _____
		Book	\$ _____
		Market	\$ _____

**Limited Liability Company** Date formed: \_\_\_\_\_ State of formation: \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Partnership** Date formed: \_\_\_\_\_ State of formation: \_\_\_\_\_

List names of all firm partners:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Sole Proprietorship** Date started: \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Joint Venture** Date formed: \_\_\_\_\_

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

---

---

---

---

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

**E. FINANCIAL RESOURCES AND RESPONSIBILITY:**

1. Is your firm preparing to be sold, in the process of being sold, or in negotiations to be sold?  
 **Yes**       **No**

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

2. In the past five (5) years, has your firm been denied bonding?  
 **Yes**       **No**

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

3. In the past five (5) years, has a bonding company made any payments to satisfy claims made against a bond issued on your firm's behalf or a firm where you were the principal?  
 **Yes**       **No**

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

4. In the past five (5) years, has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?  
 **Yes**       **No**

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

5. Within the last five years, has your firm filed a voluntary petition in bankruptcy, been adjudicated bankrupt, or made a general assignment for the benefit of creditors?  
 **Yes**       **No**

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

6. Are there any claims, liens or judgements that are outstanding against your firm?  
 **Yes**       **No**

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

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

Name of Bank: U.S. Bank

Point of Contact: Business Banking Department

Address: 9760 Mission Gorge Road, Santee, CA 92071

Phone Number: (619) 212-7832

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

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

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

Business Tax Certificate No.: B2003002891 Year Issued: 8/31/24

**F. PERFORMANCE HISTORY:**

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

Yes  No

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

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

Yes  No

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

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

Yes  No

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

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

Yes  No

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

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

Yes  No

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

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

Yes  No

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

7. Performance References:

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

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

Company Name: City of San Diego

Contact Name and Phone Number: Craig Fergusson, 858-627-3311  
Contact Email: cfergusson@sandiego.gov  
Address: 9601 Ridgehaven Ct., San Diego CA 92123-1676  
Contract Date: 2019-2024 - #10089558-19-G  
Contract Amount: 5 Years, \$212,955.00  
Requirements of Contract: Monitoring and Tank Vapor Control and Recovery System, Testing, Maintenance, & Repair Services

Company Name: 7-Eleven, Inc.  
Contact Name and Phone Number: Roger Shadowen, 858-780-6529  
Contact Email: roger.shadowen2@7-11.com  
Address: 12596 Sundance Ave., San Diego 92120  
Contract Date: Annual, 2020-2023 (four years)  
Contract Amount: Multiple Contracts, \$9,585,861.00  
Requirements of Contract: Per bid spec's multiple contracts

Company Name: United Pacific  
Contact Name and Phone Number: Tom Robins, 310-323-3992, X-2012  
Contact Email: tom.robins@unitedpacific.com  
Address: 4130 Cover Street, Long Beach, CA 90808  
Contract Date: Annual, 2020-2023 (four years)  
Contract Amount: \$902,656.00  
Requirements of Contract: Testing, Maintenance, and Repair Services

**G. COMPLIANCE:**

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

Yes  No

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

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

Yes  No



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

#### H. BUSINESS INTEGRITY:

1. In the past five (5) years, has your firm been convicted of or found liable in a civil suit for making a false claim or material misrepresentation to a private or public entity?

Yes  No

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

2. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a crime, including misdemeanors, or been found liable in a civil suit involving the bidding, awarding, or performance of a government contract?

Yes  No

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

3. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a federal, state, or local crime of fraud, theft, or any other act of dishonesty?

Yes  No

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

4. Do any of the Principals of your firm have relatives that are either currently employed by the City or were employed by the City in the past five (5) years?

Yes  No

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

#### I. BUSINESS REPRESENTATION:

1. Are you a local business with a physical address within the County of San Diego?

Yes  No

2. Are you a certified Small and Local Business Enterprise certified by the City of San Diego?

Yes  No

Certification # 12JE0735

3. Are you certified as any of the following:

a. Disabled Veteran Business Enterprise Certification # \_\_\_\_\_

b. Woman or Minority Owned Business Enterprise Certification # \_\_\_\_\_

c. Disadvantaged Business Enterprise Certification # \_\_\_\_\_

#### J. WAGE COMPLIANCE:

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

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

**K. STATEMENT OF SUBCONTRACTORS & SUPPLIERS:**

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

Company Name: Shields, Harper & Co.

Address: 4591 Pacheco Blvd., Martinez, CA 94553

Contact Name: Tim Roth Phone: (714) 381-7761 Email: troth@shieldsharper.com

Contractor License No.: \_\_\_\_\_ DIR Registration No.: \_\_\_\_\_

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

Scope of work subcontractor will perform: Parts supplier, as needed

Identify whether company is a subcontractor or supplier: Supplier only

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

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

Company Name: N/A

Address: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Contractor License No.: \_\_\_\_\_ DIR Registration No.: \_\_\_\_\_

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

Scope of work subcontractor will perform: \_\_\_\_\_

Identify whether company is a subcontractor or supplier: \_\_\_\_\_

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

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

**L. STATEMENT OF AVAILABLE EQUIPMENT:**

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

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

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

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

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

**Complete all questions and sign below.**

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

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

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

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

Jennifer Westermeyer, President

Name and Title



Signature

3/20/2024

Date



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

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

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

Jennifer Westermeyer, President

Print Name, Title



Signature

3/20/2024

Date

**EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)  
GOODS AND SERVICES CONTRACTOR REQUIREMENTS**

**I. City's Equal Opportunity Contracting Commitment.**

The City of San Diego (City) promotes equal employment and subcontracting opportunities. The City is committed to ensuring that taxpayer dollars spent on public contracts are not paid to businesses that practice discrimination in employment or subcontracting. The City encourages all companies seeking to do business with the City to share this commitment. Contractors are encouraged to take positive steps to diversify and expand their subcontractor and supplier solicitation base and to offer opportunities to all eligible business firms.

*Contractors must submit the required EOCP documentation indicated below with their bids. Contractors who fail to provide the required EOCP documentation are considered non-responsive.*

**II. Definitions.**

**Commercially Useful Function:** a Small Local Business Enterprise or Emerging Local Business Enterprise (SLBE/ELBE) performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the SLBE/ELBE shall also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

To determine whether a SLBE/ELBE is performing a commercially useful function, an evaluation will be performed of the amount of work subcontracted, normal industry practices, whether the amount the SLBE/ELBE firm is to be paid under the contract is commensurate with the work it is actually performing and the SLBE/ELBE credit claimed for its performance of the work, and other relevant factors. Specifically, a SLBE/ELBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of meaningful and useful SLBE/ELBE participation, when in similar transactions in which SLBE/ELBE firms do not participate, there is no such role performed.

**Disadvantaged Business Enterprise (DBE):** a certified business that is (1) at least fifty-one (51%) owned by socially and economically Disadvantaged Individuals, or, in the case of a publicly owned business at least fifty-one percent (51%) of the stock is owned by one or more socially and economically Disadvantaged Individuals; and (2) whose daily business operations are managed and directed by one or more socially and economically disadvantaged owners. Disadvantaged Individuals include Black Americans, Hispanic Americans, Asian Americans, and other minorities, or individual found to be disadvantaged by the Small Business Administration pursuant to Section 8 of the Small Business Reauthorization Act.

**Disabled Veteran: Disabled Veteran Business Enterprise (DVBE):** a certified business that is (1) at least fifty-one percent (51%) owned by one or more Disabled Veterans; and (2) business operations must be managed and controlled by one or more Disabled Veterans. A Disabled Veteran is a veteran of the U.S. military, naval, or air service who resides in California and has a service-connected disability of at least 10% or more. The firm shall be certified by the State of California's Department of General Services, Office of Small and Minority Business.

**Emerging Business Enterprise (EBE):** a business whose gross annual receipts do not exceed the amount set by the City Manager, and which meets all other criteria set forth in regulations implementing the City's Small and Local Business Preference Program. The City Manager shall review the threshold amount for EBEs on an annual basis, and adjust as necessary to reflect changes in the marketplace.

**Emerging Local Business Enterprise (ELBE):** a Local Business Enterprise that is also an Emerging Business Enterprise.

**Local Business Enterprise (LBE):** a business that has both a principle place of business and a significant employment presence in the County of San Diego, and that has been in operation for twelve (12) consecutive months.

**Minority Business Enterprise (MBE):** a certified business that is (1) at least fifty-one percent (51%) owned by one or more minority individuals, or, in the case of a publicly owned business at least fifty-one percent (51%) of the stock is owned by one or more minority individuals; and (2) whose daily business operations are managed and directed by one or more minorities owners. Minorities include the groups with the following ethnic origins: African, Asian Pacific, Asian Subcontinent, Hispanic, Native Alaskan, Native American, and Native Hawaiian.

**Other Business Enterprise (OBE):** any business which does not otherwise qualify as Minority, Woman, Disadvantaged, or Disabled Veteran Business Enterprise.

**Principle Place of Business:** a location wherein a business maintains a physical office and through which it obtains no less than fifty percent (50%) of its gross annual receipts.

**Significant Employee Presence:** no less than twenty-five percent (25%) of a business's total number of employees.

**Small Business Enterprise (SBE):** a business whose gross annual receipts do not exceed the amount set by the City Manager, and that meets all other criteria set forth in regulations implementing the City's Small and Local Business Preference Program. The City Manager shall review the threshold amount for SBEs on an annual basis, and adjust as necessary to reflect changes in the marketplace. A business certified as a DVBE by the State of California, and that has provided proof of such certification to the City Manager, shall be deemed to be an SBE.

**Small Local Business Enterprise (SLBE):** a Local Business Enterprise that is also a Small Business Enterprise.

**Women Business Enterprise (WBE):** a certified business that is (1) at least fifty-one percent (51 %) owned by a woman or women, or, in the case of a publicly owned business at least fifty-one percent (51%) of the stock is owned by one or more women; and (2) whose daily business operations are managed and directed by one or more women owners.

### **III. Disclosure of Discrimination Complaints.**

As part of its bid, Contractor shall provide to the City a list of all instances within the past ten (10) years where a complaint was filed or pending against Contractor in a legal or administrative proceeding alleging that Contractor discriminated against its employees, subcontractors, vendors, or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken. (Attachment AA).

### **IV. Workforce Report and Equal Opportunity Outreach Plan.**

- A. Work Force Report. Contractors shall submit with their bid a Work Force Report (WFR) for approval by the City. (Attachment BB). If the City determines that there are under representations when compared to County Labor Force Availability data, then the Contractor will also be required to submit an Equal Employment Opportunity Plan (EEOP) to the City for approval. Questions regarding the WFR should be directed to the Equal Opportunity Contracting Department.
- B. Duty to Comply with Equal Opportunity Outreach Plan. A Contractor for whom an EEOP has been approved by the City shall use best efforts to comply with that EEOP.

### **V. Small and Local Business Program Requirements.**

The City has adopted a Small and Local Business Preference Program for goods and services contracts. The SLBE requirements are set forth in **San Diego Municipal Code Division 36**. For goods, services, and consultant contracts in which the Purchasing Agent is required to advertise for sealed bids in the City's official newspaper:

- A. The City shall apply a bid discount in the way of:
  - a. Five percent (5%) discount off the bid price for SLBE or ELBE prime contractors; or
  - b. Five percent (5%) discount off the bid price for prime contractors achieving the voluntary goal of twenty percent (20%) for SLBE or ELBE subcontractor participation set forth in Subsection B below.

The discount will not apply if an award to the discounted bidder would result in a total contract cost of \$50,000 in excess of the low, non-discounted bid. In the event of a tie between a discounted bidder and non-



discounted bidder, the discounted bidder will be awarded the contract. The discount shall be taken off the total contract value, including contract option years.

- B. Include a voluntary subcontractor participation requirement of 20% of the total bid price for SLBE or ELBEs.

#### **VI. Maintaining Participation Levels.**

- A. Bid discounts are based on the bidder's level of participation proposed prior to the award of the goods, services, or consultant contract. Bidders are required to achieve and maintain the SLBE or ELBE participation levels throughout the duration of the goods, services, or consultant contract.
- B. If the City modifies the original specifications, the bidder shall make reasonable efforts to maintain the SLBE or ELBE participation for which the bid discount was awarded. The City must approve in writing a reduction in SLBE or ELBE participation levels.
- C. Bidder shall notify and obtain written approval from the City in advance of any reduction in subcontract scope, termination, or substitution for a designated SLBE or ELBE subcontractor.
- D. Bidder's failure to maintain SLBE or ELBE participation levels as specified in the goods, services, or consultant contract shall constitute a default and grounds for debarment under Chapter 2, Article 2, Division 8, of the San Diego Municipal Code.
- E. The remedies available to the City under **San Diego Municipal Code Division 36** are cumulative to all other rights and remedies available to the City.

#### **VII. Certifications.**

The City accepts certifications of MBE, WBE, DBE, or DVBE from the following certifying agencies:

- A. Current certification by the State of California Department of Transportation (CALTRANS) as DBE.
- B. Current MBE or WBE certification from the California Public Utilities Commission.
- C. DVBE certification is received from the State of California's Department of General Services, Office of Small and Minority Business.
- D. Current certification by the City of Los Angeles as DBE, WBE, or MBE.

Subcontractors' valid proof of certification status e.g., copy of MBE, WBE, DBE, or DVBE certification must be submitted with the ITB. MBE, WBE, DBE, or DVBE certifications are listed for informational purposes only.

**VIII. List of Attachments.**

- AA. Contractors Certification of Pending Actions
- BB. Work Force Report

**AA. CONTRACTORS CERTIFICATION OF PENDING ACTIONS**

As part of this Contract, the Contractor must provide to the City a list of all instances within the past 10 years where a complaint was filed or pending against the Contractor in a legal or administrative proceeding alleging that Contractor discriminated against its employees, subcontractors, vendors or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.


CHECK ONE BOX ONLY.

- The undersigned certifies that within the past 10 years the Contractor has NOT been the subject of a complaint or pending action in a legal administrative proceeding alleging that Contractor discriminated against its employees, subcontractors, vendors or suppliers.
  
- The undersigned certifies that within the past 10 years the Contractor has been the subject of a complaint or pending action in a legal administrative proceeding alleging that Contractor discriminated against its employees, subcontractors, vendors or suppliers. A description of the status or resolution of that complaint, including any remedial action taken and the applicable dates is as follows:

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

Contractor Name: Jenal Engineering Corporation

Certified By Jennifer Westermeyer Title President  
Name

 Date 3/20/2024  
Signature



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

**BB. WORK FORCE REPORT**

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

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

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

Name of Company: Jenal Engineering Corporation

ADA/DBA: \_\_\_\_\_

Address (Corporate Headquarters, where applicable): 7959 Lemon Grove Way

City: Lemon Grove County: San Diego State: CA Zip: 91945

Telephone Number: 619-697-2200 Fax Number: 619-697-2444

Name of Company CEO: Jennifer Westermeyer

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

Address: \_\_\_\_\_

City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Email: \_\_\_\_\_

Type of Business: Petroleum Construction, Service, Maintenanc Type of License: A&B, & Hazardous Materials

The Company has appointed: Jennifer Westermeyer

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

Address: 7959 Lemon Grove Way, Lemon Grove, CA 91945

Telephone Number: 619-697-2200 Fax Number: 619-697-2400 Email: jenalinc@cox.net

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

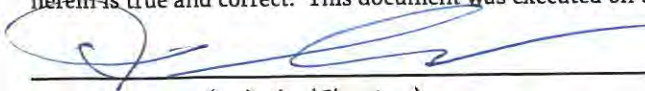
Check the box above that applies to this WFR.

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

I, the undersigned representative of Jenal Engineering Corporation  
(Firm Name)

San Diego, California hereby certify that information provided  
(County) (State)

herein is true and correct. This document was executed on this 20th day of March, 2024

  
\_\_\_\_\_  
(Authorized Signature)

Jennifer Westermeyer  
(Print Authorized Signature Name)



**WORK FORCE REPORT – Page 2**

NAME OF FIRM: Jenal Engineering Corporation

DATE: 3/20/2024

OFFICE(S) or BRANCH(ES): 7959 Lemon Grove Way, Lemon Grove, CA 91945

COUNTY: San Diego

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

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

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

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

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

Totals Each Column												2	3		
--------------------	--	--	--	--	--	--	--	--	--	--	--	---	---	--	--

Grand Total All Employees 5

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

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

Non-Profit Organizations Only:

Board of Directors															
Volunteers															
Artists															

**WORK FORCE REPORT – Page 3**

NAME OF FIRM: Jenal Engineering Corporation

DATE: 3/20/2024

OFFICE(S) or BRANCH(ES): 7959 Lemon Grove Way, Lemon Grove, CA 91945

COUNTY: San Diego

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

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

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

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

Totals Each Column			8						1		6			
--------------------	--	--	---	--	--	--	--	--	---	--	---	--	--	--

**Grand Total All Employees** 15

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

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



## Work Force Report

### **HISTORY**

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

### **WORK FORCE & BRANCH WORK FORCE REPORTS**

When submitting a WFR, especially if the WFR is for a specific project or activity, we would like to have information about the firm's work force that is actually participating in the project or activity. That is, if the project is in San Diego and the work force is from San Diego, we want a San Diego County Work Force Report<sup>1</sup>. By the same token, if the project is in San Diego, but the work force is from another county, such as Orange or Riverside County, we want a Work Force Report from that county<sup>2</sup>. If participation in a San Diego project is by work forces from San Diego County and, for example, from Los Angeles County and from Sacramento County, we ask for separate Work Force Reports representing your firm from each of the three counties.

### **MANAGING OFFICE WORK FORCE**

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

### **TYPES OF WORK FORCE REPORTS:**

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

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

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

### **RACE/ETHNICITY CATEGORIES**

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

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

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

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

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

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

---

---

## Exhibit A: Work Force Report Job Categories – Administration

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

### Management & Financial

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

### Professional

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

### Architecture & Engineering, Science, Computer

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

### Technical

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

### Sales

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

### Administrative Support

Financial Clerks  
Information and Record Clerks  
Legal Support Workers

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

### Services

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

### Crafts

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



Installers, and Repairers  
Woodworkers

**Operative Workers**

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

**Transportation**

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

**Laborers**

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

**Exhibit B: Work Force Report Job Categories-Trade**

**Brick, Block or Stone Masons**  
Brickmasons and Blockmasons  
Stonemasons

**Carpenters**

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

**Cement Masons, Concrete Finishers**  
Cement Masons and Concrete Finishers  
Terrazzo Workers and Finishers

**Construction Laborers**

**Drywall Installers, Ceiling Tile Inst**  
Drywall and Ceiling Tile Installers  
Tapers

**Electricians**

**Elevator Installers and Repairers**

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

**Glaziers**

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

**Millwrights**

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

**Misc. Const. Equipment Operators**

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

**Painters, Const. Maintenance**

Painters, Construction and Maintenance  
Paperhangers

**Pipelayers and Plumbers**

Pipelayers  
Plumbers, Pipefitters and Steamfitters

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

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

**Workers, Extractive Crafts, Miners**

Scheduled Maintenance Notice: On Saturday, April 6th, 2024, at 8am PT, PlanetBids will be conducting valuable server upgrades to continue future-proofing your services. [Learn more](#)

# Monitoring and Tank Vapor Control and Recovery System, Testing, Maintenance, and Repair Services 10090097-24-R

- [Bid Information](#)
- [Line Items](#)
- [Documents](#)
- [Addenda/Emails](#)
- [Q&A](#)
- [Prospective Bidders](#)
- [Bid Results](#)
- [Awards](#)

Addenda

None

Email History

None

REMAINING  
4 days

You do not have an eBid in Progress [Place eBid](#)