

**AGREEMENT**

**BETWEEN THE**

**CITY OF SAN DIEGO**



**AND**

**TREEBEARD LANDSCAPE, INC.**

**TO PROVIDE LANDSCAPE MAINTENANCE SERVICES  
IN THE CALLE CRISTOBAL MAINTENANCE  
ASSESSMENT DISTRICT (MAD)**

## AGREEMENT

This Agreement (Agreement) is entered into by and between the City of San Diego, a municipal corporation (City), and Treebeard Landscape, Inc., a corporation. (Contractor).

### RECITALS

- A. City wishes to retain Contractor to provide landscape maintenance services for the Calle Cristobal Maintenance Assessment District, as further described in the Scope of Work, attached to this Agreement as Exhibit A (Services).
- B. Contractor has the expertise, experience, and personnel necessary to provide the Services.
- C. City and Contractor (collectively, the "Parties") wish to enter into an agreement whereby City will retain Contractor to provide the Services.
- D. This Agreement is exempt from competitive bidding requirements pursuant to San Diego Municipal Code (SDMC) section 22.3208(d) because the Purchasing Agent has certified that the award of a sole source contract number 20000059-24-L is necessary under SDMC section 22.3016(a).]

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

### ARTICLE 1 CONTRACTOR SERVICES

- 1.1 Scope of Services.** Contractor will provide the Services to the City as described in Exhibit A, Scope of Work, which is incorporated into this Agreement by reference.
- 1.2 Contract Administrator.** The Parks and Recreation (Department) is the Contract Administrator for this Agreement. Contractor shall provide the Services under the direction of a designated representative of the Department as follows:

Monica Honoré  
District Manager  
9485 Aero Drive  
San Diego, CA 92123  
(619) 685-1325  
MHonore@sandiego.gov

**1.3 General Contract Terms and Provisions.** This Agreement incorporates by reference the City's General Contract Terms and Provisions, attached to this Agreement as Exhibit B.

**1.4 Submittals Required with the Agreement.** Contractor is required to submit all forms and information delineated in Exhibit C attached to this Agreement before the Agreement is signed.

## **ARTICLE 2 DURATION OF AGREEMENT**

**2.1 Term.** This Agreement shall be for an initial term of one (1) year beginning on the Effective Date and extending through March 28, 2025. City may, in its sole discretion, extend this Agreement for one (1) additional one (1) year period. The term of this Agreement will not exceed five years unless approved by the City Council by ordinance.

**2.2 Effective Date.** This Agreement will be effective March 29, 2024, after it is signed by the last Party to sign the Agreement and approved by the City Attorney in accordance with San Diego Charter Section 40 (Effective Date).

## **ARTICLE 3 COMPENSATION**

**3.1 Amount of Compensation.** City will pay Contractor for all Services rendered in accordance with this Agreement in an amount not to exceed \$415,000.

## **ARTICLE 4 WAGE REQUIREMENTS**

**4.1 Wage Requirements.** This Contract incorporates by reference the City's Wage Requirements, attached to this Agreement as Exhibit D.

## **ARTICLE 5 CONTRACT DOCUMENTS**

**5.1 Contract Documents.** This Agreement and its exhibits completely describes the Services to be provided under this Agreement.

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

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

CONTRACTOR  
Treebeard Landscape, Inc.

CITY OF SAN DIEGO  
A Municipal Corporation

By: *Diane Patterson*  
Diane Patterson (Aug 7, 2024 10:16 PDT)

By: *C Abarca*

Name: Diane Patterson

Name: Claudia Abarca

Title: General Manager

Director, Purchasing & Contracting

Date: Aug 7, 2024

Date: Aug 15, 2024

Approved as to form this 15<sup>th</sup> day of  
August, 2024  
MARA W. ELLIOTT, City Attorney

By: *Julie Inman*  
Julie Inman (Aug 15, 2024 11:17 PDT)

Deputy City Attorney

Julie Inman

Print Name

EXHIBIT A

CITY OF SAN DIEGO
PARK AND RECREATION DEPARTMENT
MAINTENANCE ASSESSMENT DISTRICT

REQUEST FOR QUOTE

QUOTE DUE DATE: June 21st 2024 @ 5:00 PM

Furnish the City of San Diego with complete landscape maintenance of the designated Medians, Rights-of-Way, and Areas within the Calle Cristobal Maintenance Assessment District and provide/furnish The City of San Diego with: 15 Routine Landscape Maintenance per the provided scope of work, for the term of March 29, 2024 through June, 30 2025, or until 5 year contract process is complete.

Name of MAD: CALLE CRISTOBAL MAINTENANCE ASSESSMENT DISTRICT, for a period of 15-Months .
OTHER SPECIAL REQUIREMENTS(Licenses): See page 1 of scope of work

For further information concerning this quote, please contact:

NAME/TITLE: Frank Carriedo, Grounds Maintenance Manager, Open Space Division
Email: fjcarriedo@sandiego.gov

SECTION BELOW TO BE COMPLETED BY VENDOR SUBMITTING QUOTE

Table with 4 columns: SUMMARY OF OVERALL SERVICE, Monthly Cost (if monthly on-going service) OR Hourly Rate (if one-time or as-needed), Quantity (# of months or hours), Sub-Total. Includes example rows for Monthly Service Cost and Extra Labor Hours, and a TOTAL QUOTE AMOUNT of \$15,000.

VENDOR TO COMPLETE TABLE BELOW AND ATTACH ALL DETAILED BACK-UP (AS APPROPRIATE):

Table with 4 columns: SUMMARY OF OVERALL SERVICE, Monthly Cost (if monthly on-going service) OR Hourly Rate (if one-time or as-needed), Quantity (# of months or hours), Sub-Total. Includes rows for Monthly Service, Extraordinary Labor, Materials, Monthly total, Extra labor, Total, and a TOTAL QUOTE AMOUNT of \$218,169.84.

COMPANY NAME Treebeard Landscape
STREET ADDRESS 9917 Campo Rd.
CITY Spring Valley STATE CA ZIP 91977
NAME of COMPANY REPRESENTATIVE (PRINT) Diane Patterson
AUTHORIZED SIGNATURE\* [Signature]
TITLE General Manager DATE 6 / 18 / 24
TEL NO. 619-697-8302 FAX NO. N/a EMAIL info@treebeardlandscape.com

AUTHORIZED SIGNATURE: THE SIGNER DECLARES UNDER PENALTY OF PERJURY THAT HE/SHE IS AUTHORIZED TO SIGN THIS DOCUMENT AND BIND THE COMPANY OR ORGANIZATION TO THE TERMS OF THIS QUOTE.

**EXHIBIT A**  
**SPECIFICATIONS**

**A. SPECIFICATIONS**

**1. Landscape Maintenance Specifications.** Contractor shall perform complete landscape maintenance and improvements of all contract areas identified in **Paragraph N** of these specifications (Contract Sites) within the Calle Cristobal Maintenance Assessment District (MAD) , including, but not limited to, the following: irrigation, pruning, shaping and training of trees, shrubs, turf, and groundcover plants; fertilization; litter control; weed control; control of all plant diseases and pests; mowing; edging; renovation and aeration; sweeping; irrigation; and all other maintenance required to maintain the Contract Sites included in this Contract in a safe, attractive and useable condition and to maintain the plant material in good condition with horticulturally acceptable growth and color.

During the entire term of the Contract, Contractor shall ensure that all plant material be in a healthy, growing condition. The Contractor shall provide all equipment, labor, and materials necessary for performing landscape maintenance and irrigation services according to the following specifications.

**2. Improvements and Activities.** Contractor shall install and maintain certain improvements including, but not limited to the following: irrigation; plant material; and planting areas. All services performed by Contractor related to improvements and activities, as set forth in this Exhibit A, including any extraordinary labor, shall be consistent with Improvements and Activities as authorized pursuant to the Assessment Engineer’s Report for the Calle Cristobal Maintenance Assessment District (MAD)

**B. DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION NUMBER: CONTRACTOR IS REQUIRED TO HOLD AND MAINTAIN (DIR) REGISTRATION THROUGHOUT THE TERM OF THE CONTRACT. PLEASE PROVIDE NUMBER AND DETAILS IN CHART BELOW.**

	Registration No.	Expiration Date	Name
DIR Registration No.	#1000030259	6/30/25	Treebeard Landscape
Subcontractor’s DIR Registration No.	N/A		

**C. LICENSES**

To perform the work described in these Specifications, the Contractor must hold a C-27 State of California Contractors License. Any Contractor holding a different license who feels qualified to submit a proposal on this work must notify the City Contact in writing at least seven days prior to the proposal due date. After a thorough review of the proposed license substitution, the City will inform the Contractor, in writing, of its decision prior to the proposal closing. The City’s decision is final.

Any person supervising the use of herbicides, insecticides and rodenticides must possess a valid Qualified Applicator’s Certificate for Category B. The Contractor must also hold a Pest Control Business License, must retain the services of a licensed Pest Control Advisor (PCA), and must be registered with the County Agriculture Commissioner. The Contractor must possess the below licenses prior to submitting their proposal. Please provide numbers and details in chart below.

	License Number	Expiration Date	Name
State of California Contractors License	Class:C-27 No.: 388579	4/30/26	Tim Hillman
Qualified Applicator Certificate	#101044	12/31/24	Tim Hillman
Pest Control Business License	#38808	12/31/24	Treebeard Landscape
Pest Control Advisor	#75356	12/31/24	Tim Faucet
Recycled Water Site Supervisor Certificate	#6041	07/20/26	Alvaro Lopez

**D. SCHEDULING OF WORK**

The Contractor shall establish an annual schedule of work (Work Schedule) to be followed in the performance of this Contract. In addition, the Contractor shall provide the Technical Representative (as defined in Exhibit A, **Paragraph G** of this Contract) with a list(s) of exact start dates for fertilization, renovation, aeration, and other infrequent operations at each of the Contract Sites at least ten working days in advance of performing any of these operations.

Unless otherwise specified, the Contractor shall accomplish all normal landscape maintenance required under this Contract between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday, excluding holidays (normal working hours). If a specific task falls on a holiday, Contractor must complete the task on the following business day, or on an acceptable alternate date as authorized by the Technical Representative in writing. The Technical Representative may grant, on an individual basis, permission to perform contract maintenance at other hours where the public’s use

of the Contract Sites is too great to allow for proper maintenance during normal working hours. Maintenance functions that generate excess noise, which would cause unreasonable annoyance to residents of the area, e.g., operations of power equipment, shall not commence before 8:00 a.m.

The Work Schedule, provided by the Contractor, must be completed and submitted to the Technical Representative prior to the commencement of work on this contract. Any changes in scheduling shall be reported, in writing, to the Technical Representative immediately. This Work Schedule shall include routine work as well as infrequent operations such as fertilization and pruning.

The Contractor shall conduct the work at all times in a manner which will not unreasonably interfere with pedestrian traffic on adjacent sidewalks or vehicular traffic on adjacent streets.

In performing periodic operations required in this Contract, the Contractor shall continue routine grounds maintenance services within all Contract Sites without interruption.

## **E. QUALITY OF WORK**

The Contractor shall perform all work in accordance with the best landscape maintenance practices and in keeping with the high aesthetic level of the Contract Sites being maintained. The Technical Representative shall periodically inspect all maintenance operations and approve or reject the work performed and methods or materials used.

## **F. CONTRACTOR'S RESPONSIBILITIES**

**1. Company Representative.** A company representative, authorized to discuss matters related to this Contract, must be available during normal working hours, Monday through Friday between 6:00a.m. and 6:00 p.m. All calls from the Technical Representative shall be returned within a one-hour period.

**2. Emergency Calls.** The Contractor shall have the capability to receive and to respond immediately to calls of an emergency nature during normal working hours and outside of normal working hours. Calls of an emergency nature received by the Technical Representative shall be referred to the Contractor for immediate disposition.

Emergency calls relating to irrigation shall be referred to the Contractor. A 24-hour emergency telephone number shall be provided by the Contractor for this purpose.

**3. Reporting of Damages.** Upon finding any hazard, damage, defect, leak, power outage, or other issue or situation that poses a threat to safety of the public or employees, or a loss of City assets (including water), the Contractor shall notify the Technical Representative immediately. Safety problems must be reported by calling the Technical Representative during the City's normal business hours, Monday through Friday between 7:00a.m. and 4:00p.m. (City's normal business hours). If these problems are encountered outside of the City's normal business hours, Contractor shall call (619) 527-7500 and email the Technical Representative and provide the name and address of the Contract Site and a description of the problem.



Other hazards, damages, defects, other problems or irregularities, or maintenance issues must be reported to the Technical Representative within 24 hours of discovery.

#### **4. Staffing**

##### **a. Supervision**

The Contractor shall furnish sufficient supervisory and working personnel capable of promptly accomplishing on schedule, and to the satisfaction of the Technical Representative, all work required under this Contract during the regular and prescribed hours.

i. Contractor shall provide a minimum of one qualified working field supervisor (Field Supervisor) who shall be at the Contract Sites at all times work is being performed by the Contractor. The Field Supervisor shall provide the necessary supervision to ensure work is completed as specified under the Contract. The Field Supervisor(s) must have at least three years of experience overseeing, implementing, and maintaining landscape enhancement projects and personnel, on a site of comparable acreage and plant material. It is desirable that the Field Supervisor have over three years of qualifying experience and highly desirable for the Field Supervisor to have over five years of qualifying experience. Contractor must submit a resume of the assigned Field Supervisor(s) with the proposal. The Field Supervisor will be interviewed by the Technical Representative prior to acceptance. Payroll records may be utilized to verify experience. The Field Supervisor(s) must be employed by the successful Contractor at the time this Contract is awarded. Any changes in Field Supervisor(s) must be submitted in writing to the Technical Representative.

In addition, the Field Supervisor shall inspect all Contract Sites a minimum of once per week. These inspections shall include a written punch list (to be completed by the Field Supervisor) of deficient items and dates of correction. Punch lists are to be given to the Technical Representative on a weekly basis. Date and time will be determined by the Technical Representative upon approval.

##### **b. Adequate Personnel**

The Contractor shall maintain a sufficient number of full-time employees for each project/assignment during working hours/days specified, Monday through Friday. Staffing for this Contract requires a total minimum of three full-time employees, including the Non-Working Supervisor as described in further detail in Exhibit A, Subsection U.

All landscape maintenance workers, also referred to as laborers, in this document must have at least one year of fulltime paid experience in performing all aspects of landscape maintenance. It is desirable that all landscape maintenance workers/laborers have more than one year of fulltime paid experience, and highly desirable for all landscape maintenance workers/laborers to have more than four years of fulltime paid experience. Qualifying paid experience must include all of the following: maintaining lawns, shrubs, trees, and ground covers; fertilizing plant material, cultivating, pruning shrubs and trees, mowing lawn areas, edging lawn areas, edging ground covers; operating and maintaining Irrigation systems, and performing minor irrigation repairs

such as repairing/replacing broken or damaged irrigation heads and risers; and proper operation of landscape equipment.

**c. Ability to Perform Work**

Contractor must have the staffing, equipment knowledge and financial resources to perform landscape maintenance projects in a timely manner with a quality end product. The plant material(s) on this site require uncommon maintenance practices. Contractor must have experience implementing and maintaining similar projects and personnel and overseeing all phases of landscape maintenance and personnel for a site of comparable square footage, scope of work and plant materials. This includes, but is not limited to, implementing, and maintaining landscape enhancement projects and personnel on a site of comparable acreage and plant material. All personnel shall be physically able to do their assigned work.

Contractor shall provide all of the following with the proposal:

- References for work completed by Contractor for a similar scope of work and size with similar dollar value as it compares to this RFP.

Proposer is required to state all subcontractors to be used in the performance of the proposed contract, and what portion of work will be assigned to each Subcontractor on the form attached to this RFP.

- A purchase order, contract, or other document that demonstrates Contractor’s previous or existing responsibilities for work of a similar scope and size as it compares to this RFP.
- Examples and references for work completed as it relates to enhanced and native Open Space habitat, sports turf, field renovation, large irrigation systems, smart controllers, hardscaped surfaces including gutters, parking lots, sidewalks, concrete brow ditches and storm drains, landscaped and hardscaped medians, landscaped and undeveloped rights-of-ways, and community events.
- References and resumes for the working Field Supervisor(s) and Irrigation Specialist(s) proposed for work on this Contract and currently employed by Contractor. Resumes should include description of working knowledge of sports turf, smart controllers, and related software.
- A statement demonstrating the capacity and capability to provide enhanced service to the Calle Cristobal MAD as it relates to Exhibit A and the associated frequencies in a timely manner.
- A proposed work schedule that demonstrates the fulfillment of the established frequencies.
- References and resumes of landscape maintenance workers/laborers proposed to work on this Contract and are currently employed by the Contractor. Resumes should include a description of the work experience and type of landscape maintenance performed.

Some priority projects may need to be performed immediately. In the event Contractor is awarded Extraordinary Work (as described in Exhibit A, **Paragraph X** of this Contract), the Contractor shall provide a separate specific work crew to accomplish projects as may be required.

**d. Proper Conduct**

The Contractor, Contractor's employees, and Subcontractors shall conduct themselves in a proper and efficient manner and shall cause the least possible annoyance to the public.

**e. Uniforms**

The Contractor's staff and Subcontractors shall work in neat and clean uniforms. The Contractor shall furnish Contractor's employees with a shirt, or some other type of upper body wear, bearing the company's identification (a safety vest with the company identification on back will be considered as an adequate company identifier). Appropriate uniform shall be worn at all times, while on the job site. Failure to do so may result in termination of the Contract.

**f. Removal of Employee**

The Technical Representative may require the Contractor to remove from any of the Contract Sites any employee(s) if the Technical Representative reasonably determines the employee(s) to be: (a) careless or incompetent, (b) unable to fulfill any of Contractor's material obligations under this Contract, or (c) has engaged in acts or omissions contrary to public health, safety, welfare, or morals.

**g. Communication Skills**

The Contractor shall ensure that all on-site supervisors and Field Supervisor(s) can communicate in English both verbally and in writing. The on-site supervisor and Field Supervisor(s) shall be capable of completing, in English, legible written forms and shall be capable of understanding oral and/or written instructions in English.

**h. Repairs to Existing Facilities and Irrigation Systems**

**a. Damage or Alteration Resulting from Contract Performance**

i. The Contractor shall be responsible, at no cost to the City, for the repair or replacement of all portions of existing structures or facilities, including irrigation systems, which are damaged or altered in any way as a result of the performance of this Contract. Contractor shall immediately, in writing, report all damages and alterations to the Technical Representative. Damages and alternations shall be repaired or replaced in kind, as approved by the Technical Representative.

ii. Unless otherwise directed, Contractor shall make repairs to facilities immediately after damage or alteration occurs as a result of Contractor's performance of work under this Contract. A comprehensive testing and check of all irrigation systems shall be made approximately thirty (30) days prior to the end of the Contract, and any repairs deemed the responsibility of the Contractor shall be made by the Contractor prior to the end of the Contract.

If repairs are not made by the Contractor to the satisfaction of the Technical Representative, deductions shall be made from the final payment in the amount to cover the cost of repairs, as determined by the Technical Representative. Any difference of cost shall be paid by the Contractor.

b. Other Damage or Alteration

i. All portions of existing structures or facilities, including irrigation systems, which require repair must be pre-approved by the Technical Representative. All work will be repaired or replaced in kind, unless otherwise approved by the Technical Representative. Compensation for labor and materials associated with irrigation systems repair shall be in accordance with the terms identified in Exhibit A, **Paragraph X** of this Contract.

**i. Maintenance of Controller Cabinets and Battery Numbers**

At no cost to the City, the Contractor shall be responsible for maintaining the painted surfaces of irrigation and lighting controller cabinets as well as the corresponding automatic irrigation battery numbers on the lids of the automatic control valve boxes and light bulb replacements in controller cabinets, as necessary.

**j. Operation of Automatic Irrigation Controllers**

Where the operation of automatic irrigation controllers is required as part of this Contract the Contractor shall:

a. Not duplicate any coded City key furnished by the City of access and operation of the controller.

b. Surrender all keys furnished by the City, promptly at the end of the Contract Term, or at any time deemed necessary by the Technical Representative to prevent serious loss to the City of San Diego.

c. Protect the security of the City's property by keeping controller cabinet and building doors locked at all times.

d. Refrain from using premises behind locked doors for storage of materials, supplies, or tools except as approved by the Technical Representative.

**k. Safety Requirements**

All work under this Contract shall be performed in such manner as to provide maximum safety to the public and, where applicable, to comply safety standards required by the federal Occupational Safety and Health Administration (OSHA) and the State of California's Division of Occupational Safety and Health (Cal/OSHA). The Technical Representative reserves the right to issue restraint or cease and desist orders to the Contractor when unsafe or harmful acts are observed or reported relative to the performance of the work under this Contract.

**l. Hazardous Conditions**

The Contractor shall maintain all Contract Sites free of hazards to persons and property resulting from Contractor's operations. Contractor shall immediately report to the Technical Representative any hazardous conditions, within or affecting a Contract Site, noted by the Contractor which are not a result of the Contractor's operations.

During and after periods of rain, Contractor shall immediately address hazardous conditions resulting from rain, and shall maintain all Contract Sites in a safe condition, free from fallen branches and trees, plants, trash, and soil debris from gutters, storm drain inlets, and brow ditches.

#### **m. Hazardous Wastes Disposal Procedure**

In all areas covered by this Contract the Contractor and/or Contractor's subordinate staff, upon finding illegally dumped debris which might reasonably be considered hazardous to the health and/or safety of Contractor's staff, the public, the landscape environment and/or adjacent properties, shall adhere to the following procedures:

- a. Cordon off the area where the material has been found, to the extent possible.
- b. Immediately call 911 (Fire Department) and provide all relevant information possible:
  - i. Finder's name and company.
  - ii. Specific location of material.
  - iii. Try to determine:
    - (1) Number, size, and types of containers
    - (2) Description of labels
    - (3) Spillage to soil, pavement, water
    - (4) Description: solid, liquid, color
    - (5) Any danger to public
- c. Inform the appropriate supervisor and the City Technical Representative as soon as possible.
- d. Remain at site until the Fire Department arrives.
- e. Do not move, touch, or sniff any of the material.

#### **n. Use of Chemicals**

The Contractor shall submit sample labels and Safety Data Sheets for all chemical herbicides, insecticides, and rodenticides proposed for use under this Contract for approval by the Technical Representative. Materials included shall be limited to chemicals approved by the State of California Department of Agriculture. The use of any chemical shall be based on the recommendations of a licensed PCA. Annual PCA Pesticide Recommendations are required for each pesticide proposed to be used under this Contract for this specific site and shall be submitted

to the Technical Representative. The use of chemicals shall conform to the current San Diego County Department of Agriculture regulations. No chemical herbicides, insecticides, or rodenticides shall be applied until its use is approved, in writing, by the Technical Representative as appropriate for the purpose and area proposed.

A Monthly Pesticide Use Report shall be submitted monthly with the Contractor's invoices for payment. This report shall include a statement of all applications of herbicides, insecticides, and rodenticides, detailing the chemical used, undiluted quantity, rate of application, are in which used, applicator's name and the date and purpose of the application. For months in which no pesticides are applied, state "No Pesticide Used" on the Monthly Pesticide Use Report.

**o. Litter**

**a. Contractor Generated Trash**

The Contractor shall promptly remove all debris generated by Contractor's pruning, trimming, weeding, edging, and other work required in the Specifications of this Contract. Immediately after working in areas of public streets and park walks, gutters, driveways, and paved areas, the Contractor shall clean them with suitable equipment. A green waste tonnage report is required at the end of each calendar year.

**b. Litter Pick-Up**

In all Contract Sites, litter, including bottles, glass, cans, paper, cardboard, fecal matter, leaves, branches (any type and regardless of size), metallic items, cigarette butts, and other debris, shall be removed as shown in the Service Frequencies Schedule. The Contractor shall be responsible for paying all fees associated with the disposal of debris or trash accumulated during the performance of routine maintenance activities described above.

**c. Hazardous Litter**

Hazardous litter, including but not limited to wire, broken glass, jagged metal, and similar kinds of litter, shall be immediately picked up and removed from the site by the Contractor upon notice or observation thereof.

**G. CONTRACT ADMINISTRATION**

The Technical Representative for this Contract is the City Parks and Recreation Department's designee specified on Notice to Proceed letter issued under this Contract. The Technical Representative will provide daily oversight of this Contract to ensure compliance to the scope of work and/or performance to Contract Specifications. The Technical Representative, or designee, is also responsible for oversight of all invoice payments and billing questions for Purchase Orders issued under this Contract. Additionally, the Technical Representative shall serve as the "Contract Administrator" for purposes of the following provisions of the City of San Diego General Terms and Provisions, attached as Exhibit B to this Contract: Section 2.1.1; Section 3.2.5; Section 5.3; Section 5.10; and Section 13.17.

The Purchasing Agent shall be responsible for all contractual matters and is the only individual authorized to make 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.

**H. FAILURE TO PERFORM SATISFACTORILY**

It is agreed and understood that if the Contractor fails to perform the work as specified herein, the City will pay only for the amount of service actually received, as determined by the Technical Representative, with an appropriate downward adjustment in Contract price. Such adjustments may be in accordance with the Pricing Page or the Schedule of Task Costs provided herein by the Contractor.

The City shall perform inspections of the Contract Sites to ensure that staffing and maintenance is adequate and that all work complies with these Specifications. Discrepancies and deficiencies will be noted on Field Inspection Notices (FIN) and shall be corrected within the time frame specified. If the Contractor fails to take corrective action within the noted time frame on the FIN, the City may withhold payment and/or proceed with termination of the contract. If City finds, upon inspection, that staffing on a Contract Site does not meet Contract Specifications, Technical Representative may withhold payment for charges associated with the staffing deficiency. Billing adjustments for unsatisfactory service shall be a permanent retention of the estimated monthly cost for work that is incomplete or deficient as stated herein.

When negligence on the part of the Contractor results in excessive use or waste of irrigation water, the estimated cost of this water shall be deducted from the Contract payment. Any monetary fines or other damages assessed to the City for failure to follow water conservation regulations imposed by the State of California, the County Water Authority, or other legal entity will be the responsibility of the Contractor unless cause to the contrary is substantiated to the satisfaction of the Technical Representative.

**I. PAYMENTS WITHHELD**

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

1. Work required in the Specifications which is defective, incomplete, or not performed.
2. Staffing not provided as required under the Specifications or as proposed by Contractor.
3. Claims filed against the City for damage caused by the Contractor's acts or omissions, or reasonable evidence indicating probable filing of such claims.
4. Failure of the Contractor to make payments properly to Sub-Contractors for materials or labor.
5. A reasonable doubt that the Contract can be completed for the balance then unpaid.

**J. INVOICING PROCEDURES**

The Contractor shall be paid in accordance with Article III of the City's General Contract Terms and Provisions for work performed satisfactorily. The Contractor shall be paid monthly, in arrears, for work performed satisfactorily. Billing shall be in accordance with the current Purchasing Contract, allowing for City approved adjustments if any. Invoices shall be submitted to the Technical Representative or designee, at the address specified on the Purchase Order(s).

The Contractor shall submit an invoice to the Technical Representative by the tenth of the following month in which work was performed. The invoice shall reference the purchase order number, include a description of the work performed in each maintenance category outlined in the Contract, and correspond with the Pricing Agreement provided by Purchasing and Contracting Department.

Any invoices for payment related to Extraordinary Labor and/or Extraordinary Work shall include the location the work was performed and attached written authorization from the Technical Representative approving Extraordinary Labor and/or Extraordinary Work. Failure to do so will result in payment being withheld for such services. Compensation for materials associated with Extraordinary Labor shall be the wholesale cost of the items involved plus 10 percent for the Contractor's cost of handling.

A Monthly Pesticide Use Report shall also be submitted in accordance with Exhibit A, Paragraph F, Subsection 4n, **Use of Chemicals**. This report shall accompany the above invoice.

#### **K. WATER CONSERVATION**

Water conservation shall be diligently practiced. Irrigation shall be done in a manner to minimize run-off or other wastage. Failure to properly manage and conserve water resources may result in deductions or other penalties. The Contractor shall turn off irrigation systems during periods of rainfall and at such other times when suspension of irrigation is desirable to conserve water and to remain within the guidelines of good horticulturally acceptable landscape maintenance practices. Irrigation run times shall be adjusted weekly to compensate for current weather conditions (unless/until a weather-based controller is installed).

#### **RECLAIMED WATER:**

Reclaimed water is used to irrigate the landscaped areas in this contract. The Contractor is required to adhere to all rules and regulations for reclaimed water use in the City.

In accordance with the Regional Water Quality Control Board, the on-site Field Supervisor must have a Recycled Water Site Supervisor Certification. In addition, the City requires the Irrigation Specialist to possess the same certification. Proof of the above certification must be provided to the Technical Representative at time of award.

The County Department of Health conducts quarterly inspections of all faucets and sprinkler heads and checks for compliance with recycled water regulations.

#### **L. IRRIGATION WATER - COSTS**



The City of San Diego shall bear all the costs for water used by Contractor at the Contract Sites in accordance with the Scope of Work with the exception of negligent water waste, including failure to comply with Paragraph K. Water Conservation, which will be charged to the Contractor.

## **M. METHOD OF PERFORMING WORK**

### **1. Irrigation**

Irrigation shall be done by the use of automatic, mechanical sprinkler systems where available and operable; however, failure of the existing irrigation system to provide full and proper coverage shall not relieve the Contractor of the responsibility to provide adequate irrigation with full and proper coverage to all areas.

In those areas where a manual sprinkler system (including drip) is installed, the Contractor shall once a week, thoroughly inspect the operation of the system for any malfunction. The Contractor shall advise the Technical Representative within 24 hours of those malfunctions.

The Contractor shall maintain all sprinkler systems in such a way as to guarantee proper coverage and full working capability and shall make whatever adjustments may be necessary to prevent excessive run-off into street rights-of-way or other areas not meant to be irrigated.

All areas not adequately covered by a sprinkler system shall be irrigated by a portable irrigation method. The Contractor shall furnish all hoses, nozzles, sprinklers, etc. necessary to accomplish this supplementary irrigation. Care shall be exercised to prevent water waste, erosion, and/or detrimental seepage into existing underground improvements or structures. The cost of wasted water may be charged to Contractor as explained in Exhibit A, **Paragraphs K-M**.

Irrigation shall be accomplished as follows:

a. Landscaped improved banks and slopes shall be irrigated Monday through Thursday as required to maintain horticulturally acceptable growth and color, and to encourage deep rooting.

b. Shrub beds shall be irrigated as required to maintain horticulturally acceptable growth and color, and to promote deep rooting. Shrub areas shall be irrigated at a rate which keeps surface runoff to a minimum. The irrigation rate shall be adjusted to the needs of shrub types, seasons, and weather conditions.

c. Newly Planted Trees, Shrubs, and Groundcover shall receive special attention until these plants are established. Adequate water and fertilizer shall be applied to promote normal, healthy growth. Proper berms or basins shall be maintained during the establishment period.

The Contractor shall comply with the current level of the Emergency Water Regulations (see San Diego Municipal Code section 67.38) and any adopted City policies or procedures with respect to water usage and /or irrigation, as amended from time to time. The Contractor must obtain prior written approval from the Technical Representative before exceeding any applicable water regulations.

When excessive use or waste of irrigation water results from the Contractor's or any Sub-Contractor's performance under this Contract, the estimated cost of such water shall be deducted from the City's payment. The Contractor shall also pay any monetary fines or other damages assessed to the City for failure to follow water conservation regulations imposed by the State of California, The County Water Authority, or other legal entity arising out of performance of this Contract.

## **2. Pruning Shrubs and Groundcover Plants**

All shrubs and groundcover plants growing in the work areas shall be pruned as required to maintain plants in a healthy, growing condition; to maintain plant growth within reasonable bounds; and to prevent encroachment of passageways, walks, streets, or view of signs; or encroachment in any manner deemed objectionable by the Technical Representative. Dead or damaged limbs shall be removed with sharp pruning tools, with no stubs remaining. Pruning shall be done to permit plants to grow naturally in accordance with their normal growth characteristics except where box hedging is required by the Technical Representative. Shearing, hedging or severe pruning of plants, unless authorized by the Technical Representative, shall not be permitted. Contractor shall perform all corrective pruning methods to all plant materials as directed by the Technical Representative. This includes but is not limited to the pruning of plants which have been hedge pruned in the past in order to return them to their natural growth characteristics. Contractor shall perform all such pruning including the removal of pruned materials at no additional cost to the City. Growth regulators shall not be used.

## **3. Tree Maintenance**

a. All trees shall be maintained in their natural shapes. Pruning shall be performed in such a manner as to promote the best growth habits, appearance, and health of the tree, and to prevent encroachment which blocks vision or is in any manner deemed undesirable by the Technical Representative. The Contractor shall, as part of this Contract be responsible for tree pruning that can be accomplished with a 12' pole saw by a worker standing on the ground. Trees shall not be topped. The Contractor shall bring to the attention of the Technical Representative within 24 hours any tree that shows signs of root heaving or leaning or is in any manner a safety hazard.

The Contractor shall be responsible for the complete removal and replacement of those trees lost due to Contractor's faulty maintenance or negligence, as determined by the Technical Representative. Replacement shall be made by the Contractor in the kind and size of tree determined by the Technical Representative. Where there is a difference in value between the tree lost and the replacement tree, the difference will be deducted from the Contract payment. In all cases, the value of the tree lost shall be determined by the Technical Representative, using the latest International Society of Arboriculture (I.S.A.) guidelines for value determination.

b. All newly planted trees shall be securely staked with two "lodge pole" type stakes placed on opposite sides of the tree, outside the root ball, and secured to the tree with at least two flexible rubber tree ties.

c. Tree ties shall be inspected regularly to ensure against girdling and abrasion.

d. Trees and shrubs that are uprooted and/or broken due to storms, regardless of size, shall be up righted immediately, if possible. If this is not possible, they shall be removed immediately (including roots) and the holes must be filled. The Contractor shall be responsible for paying all fees associated with the disposal of tree debris under the terms of this contract.

#### **4. Fertilization**

The Contractor shall inform the Technical Representative at least 48 hours before beginning any fertilization and shall have previously submitted a Safety Data Sheet (SDS), schedule of application showing the site, date, and approximate time of application of the fertilizer. Submission of the fertilizer schedule does not release the Contractor from any of the other obligations described in this Subsection 4 or any other provisions. The fertilization schedule, regardless of its intensity, timing, or the number of sites covered daily or weekly, shall not excuse the Contractor from performing any other work regularly required under this contract.

Fertilizer shall be delivered to the site only in the original unopened containers bearing the manufacturer's guaranteed analysis. Damaged packages will not be accepted. The Contractor shall furnish the Technical Representative with duplicate signed and legible copies of all certificates and invoices for all fertilizer to be used in this contract. The invoices must state the grade, amount, and quantity received. Both the copy and invoice to be retained by the City and the Contractor's copy must be signed by the Technical Representative, on site, before any material may be used.

The Contractor may not begin the actual application until the obligations in the preceding paragraph have been complied with.

Fertilizers shall be applied at the rates specified below:

- One pound of actual nitrogen per 1,000 square feet of planted area shall be applied to turf, shrubs, vines, groundcovers, and trees as specified
- Acceptable complete fertilizers include but are not limited to:  
Best Turf Supreme 16-6-8, Best Triple Pro 15-15-15, Best Super Iron 9-9-9 with 11% Iron, Best Landscape Color 14-14-14. Acceptable organic fertilizers include but are not limited to Milorganite or Gro-Power Plus 5-3-1, which have been processed to remove excess levels of salt.
- Contractors shall include material costs for the following specified fertilizer products in 50 lb. bags:
  - Best Turf Supreme 16-6-8
  - Best Triple Pro 15-15-15
  - Best Super Iron with 11% Iron
  - Best Landscape Color 14-14-14
  - Milorganite or Gro-Power Plus 5-3-1 Organic Fertilizers

The Contractor's materials costs in their proposal shall reflect these specified fertilizers. The Technical Representative reserves the right and authority to specify alternative fertilizer materials. No changes in fertilizer materials shall be utilized without written approval from the Technical Representative prior to the fertilizer application. The Contractor shall provide cost per bag with proposal submittal.

As deemed necessary by the Technical Representative to achieve required results, other materials including, but not limited to, iron chelate, soil sulfur, gypsum, surfactant enzymes such as Sarvon or Naiad, etc., may be needed and shall be applied as necessary at the Contractor's expense.

Adequate irrigation shall immediately follow the application of fertilizers and/or amendments to force fertilizer material to rest directly on the soil surface. Drip irrigated areas shall be adequately hand watered using quick coupler valves and hoses to dissolve fertilizer.

Fertilization must occur in prescribed months and shall be accomplished in a manner so as to achieve an even green. If fertilization results are patchy, remedial fertilizer must be applied immediately.

## **5. Weed Control**

Weeds shall be removed from all shrub and groundcover beds, planters, tree wells, cracks in paved areas, including sidewalks, and areas covered with ornamental rocks, as shown in Service Frequencies Schedule.

This means complete removal of all weed growth. For the purpose of this specification, a weed will be considered "any undesirable or misplaced plant". Weeds shall be controlled by manual, mechanical, or chemical methods.

The Technical Representative may restrict the use of chemical weed control in certain areas.

Center Island maintenance shall include the removal of weeds growing in all paved or unpaved surfaces of the Center Island.

## **6. Disease and Pest Control**

The Contractor shall regularly inspect all landscaped areas for presence of disease, insect, or rodent infestation. The Contractor shall advise the Technical Representative within four days if disease, insect, or rodent infestation is found; Contractor shall identify the disease, insect, or rodent and specify control measures to be taken. Upon approval of the Technical Representative, the Contractor shall implement the approved control measures, exercising extreme caution in the application of all sprays, dusts, or other materials utilized. Approved control measures shall be continued until the disease, insect or rodent is controlled to the satisfaction of the Technical Representative. The Contractor shall utilize all safeguards necessary during disease, insect, or rodent control operations to ensure safety of the public and the employees of the Contractor, in accordance with current standard practices accepted by the State of California Department of Food and Agriculture. If Contractor is unable to control the pest or disease, a pest control company will be hired, and the billing will be deducted from Contractor's monthly payment.

All individuals who supervise the mixing and application of herbicides, insecticides, and rodenticides shall possess valid Qualified Applicators Certificate for Category B issued to them by the California Department of Pesticide Regulation and submit to the Technical Representative within 30 days of expiration a copy of the valid certificate.

### **7. Replacement of Plant Material**

The Contractor shall notify the Technical Representative within four days of the loss of plant material due to any cause.

a. The Contractor shall supply, at its own expense, the labor, and all materials to replace any tree, shrub, groundcover, or other plant which is damaged or lost as a result of Contractor's faulty maintenance or negligence, to include water and nutrients for the period of one (1) year establishment period. The size and species of replacement plant materials shall be as directed by the Technical Representative.

b. To ensure maximum healthy growth and overall aesthetic appearance of planting in the work area, it may be desirable to replace certain plants. The necessity or desirability of such plant replacement shall be determined by the Technical Representative. If for any reason, such plant replacements are deemed necessary, the City will pay for labor at the Contractor's extraordinary labor rate in accordance with rates quoted for Extraordinary Labor. For plantings, plant material shall be reimbursed to the Contractor at the wholesale cost of the plants required plus 10 percent for the Contractor's cost of handling.

### **8. Groundcovers**

Groundcovers are low growing plants that grow in colonies to form a solid mat over the surface of the ground. They spread by rhizomes, by stolon's or by roots which form at the nodes of trailing branches that come in contact with the soil. The plants give a flat or two-dimensional effect to the landscape; such plants include, but are not limited to: arctotheca, osteospermum, trailing gazania and lantana, ivy, trachelospermum, baccharis, and varieties of ice plant and myoporum.

#### **a. Irrigation**

All areas planted with groundcovers shall be adequately irrigated and fertilized to maintain the planting in a healthy condition. Frequent, light irrigations shall be avoided.

#### **b. Edging**

Groundcover beds shall be maintained within their intended bounds and shall not be permitted to encroach into lawns, shrub beds, sidewalks, or adjacent areas, or to encroach in any manner deemed undesirable by the Technical Representative. Edging is to be completed as specified in the Service Frequencies and shall include all fixtures (e.g., fire hydrants, manhole covers, meter boxes, valve boxes, quick couplers, gate valves). All edging must have a clean cut with the cut perpendicular to the hard surface and not removed from it. Chemical edging is unacceptable.

#### **c. Pruning**

All groundcover plantings shall be thinned and pruned as necessary to maintain them within their intended bounds, and at such other times as directed by the Technical Representative for the health of the planting and the appearance of the site.

d. Replanting

Replanting will be required to maintain the continuity of the groundcover area, and replacements shall be as approved by the Technical Representative, according to Exhibit A, Paragraph M, Subsection 7, **Replacement of Plant Material**.

e. Cultivation

The open soil between plants shall be cultivated where the planting permits.

**9. Facility Maintenance**

a. Sidewalks and Paved Areas (Including Paved Center Islands)

All sidewalks and other paved surfaces shall be maintained in a safe, non-hazardous, and useable condition. The Contractor shall remove fecal matter, stones, glass, paper, leaves, twigs, wood chips, sand, all other debris from paved areas. Any damage or repairs required shall be reported within 24 hours to the Technical Representative. See Service Frequencies Schedule. Contractor shall notify Technical Representative immediately of any potential hazards.

b. Repair of Damage or Malfunction

Damage to or malfunction of any facility not specifically provided for shall be reported within 24 hours to the Technical Representative. Contractor shall notify Technical Representative immediately of any potential hazards.

c. Storm Drain Inspection & Cleaning

All storm drains at Contract Sites are to be periodically inspected and cleaned according to the Service Frequencies schedule. Contract Site maps will be provided by the Technical Representative. The following Storm Drain BMP's are to be followed: Inlets/Drains. Keep all inlets/drains free of debris and sediment at the entrance or grate of drain. Contractors are not expected to lift the grate, but if debris can be reached with a pickup stick that is allowed. Remove sediment build up. Contractor shall notify Technical Representative immediately of any potential hazards.

**10. Inspection**

The Contractor shall provide comprehensive ongoing inspection of the Contract Sites. This inspection shall be performed by the Field Supervisor as well as a Non-Working Supervisor who shall provide the Technical Representative with a written punch list each week of items requiring remedial action or attention together with dates when the required work will be performed. Failure to provide such a punch list will indicate that no remedial action is required and that all work has been performed in accordance with the Contract Specifications.

The City shall provide continuing inspection of the work area to ensure that maintenance is adequate and that all work complies with these Specifications. Discrepancies and deficiencies will be noted on FIN and shall be corrected within the time frame specified. If the Contractor fails to take corrective action within the noted time frame on the FIN, the City may withhold payment and/or proceed with termination of the contract.

### **11. Site Inspection and Turnover**

a. Approximately 30 days prior to the end of the Contract Term, the Technical Representative will inspect the Contract Sites with the current Contractor to ensure that Contract Sites are turned over at the end of the Contract Term in a condition that conforms to the Contract Specifications. If a new Contractor is to perform thereafter, the new Contractor shall be a part of the inspection party. Any deficiencies found in the specified maintenance level shall be noted and presented to the current Contractor in writing. The City shall be the sole judge as to what constitutes a deficiency. The current Contractor shall correct all deficiencies noted by the end of the Contract Term. If the current Contractor fails to correct the noted deficiencies and turns over the Contract Sites in an unacceptable condition, as determined by the Technical Representative, the City will correct the deficiencies that remain. All costs incurred by the City to correct deficiencies will be deducted from the current Contractor's final payment. The City shall be the sole judge as to what constitutes a reasonable cost for work authorized.

b. Approximately ten days after commencing work, the Contractor shall tour Contract Sites with the Technical Representative. The Technical Representative may authorize a mutually agreed upon one-time payment to the Contractor for correcting any identified and agreed upon deficiencies. If payment and work are authorized, the Contractor shall bring the Contract Sites into compliance with these Contract Specifications and thereafter maintain them at that level.

### **12. Traffic Control Plans**

On those occasions when the requested work requires a street, sidewalk, alley, or bikeway to be blocked, wholly or partially, the Contractor is to comply with the traffic control plans as prescribed in Chapter 5 of the Caltrans Traffic Manual Traffic Control for Construction and Maintenance Work Zones. Information and the required written notices shall be obtained from the City of San Diego Traffic Engineering Division, Plan Check Counter, 1222 First Avenue, San Diego, CA 92101, phone (619) 446-5284. The required written notice must be filed prior to commencing work in the impacted area.

### **13. Turf Maintenance**

#### **a. Mowing**

Turf shall be mowed in accordance with the Service Frequencies.

The Contractor shall mow all turf grass in the Contract Sites so that no more than 1/3 of the grass blade is removed during each mowing in returning the grass to the accepted height for the species of grass being mowed in inclement weather may preclude adherence to the frequency schedule; the Contractor may request that the Technical Representative alter mowing frequency because of

rain or prolonged cold. A missed mowing cannot be “made up” by mowing twice in the subsequent week(s).

Mowing must be done in a neat pattern. Mowing patterns are to be alternated to avoid compaction of soil. Contractor shall immediately clean all sidewalks after mowing. Cuttings shall be removed from all hardscape and turf areas and not blown into the street or shrub beds. Contractor shall report wet soggy areas in turf due to over watering or leaks to the Field Supervisor immediately.

Mowing Equipment shall be maintained to provide a smooth, even cut without tearing. The blade adjustment shall provide a uniform, level cut without ridges or depressions. The mower blades shall be kept sharp. Equipment shall not be allowed to create ruts or depressions in the turf. If Equipment creates ruts or depressions. The Contractor shall supply its own expense, the labor, and all materials to replace turf.

b. Edging

All turf shall be edged in accordance with the Service Frequencies.

The Contractor shall edge all turf areas in the Contract Sites that are adjacent to improved surfaces. Where no improved surfaces exist, turf edges shall be maintained if the turf area abuts a shrub bed or property line or any other area where turf delineation is required by the Technical Representative. All edging must have a clean cut with the cut perpendicular to the hard surface and not removed from it. Contractor shall edge all fixtures (e.g., fire hydrants, manhole covers, meter boxes, valve boxes, quick couplers, gate valves). Chemical edging is unacceptable.

c. Renovation

Renovation shall be the operation approved by the Technical Representative that removes accumulated thatch from turf areas. A schedule of equipment to be utilized by the Contractor shall be submitted to the Technical Representative at least ten days prior to beginning work. Refuse generated from renovation shall be removed from the Contract Site no later than the day following renovation. Thatch and other debris left on the site overnight shall be completely contained in bags or burlap sheets so that it does not migrate to adjacent areas. A Work Schedule shall also be submitted showing the site, date, and time the actual operation is to be performed, and the Contractor shall not begin the actual renovation until approval is given by the Technical Representative for the type of equipment and Work Schedule. The Technical Representative may delete the renovation requirement from a particular site

d. Aeration

The Contractor shall aerate all turf areas in the Contract Sites by core removal to a depth of two inches in accordance with the Service Frequencies. Under adverse conditions or where turf is suffering from compaction due to high use, aeration may be necessary at more frequent intervals. The frequency interval shall be as required to promote healthy, vigorous growth. Contractor shall inform Technical Representative if, for any of these reasons, Contractor deems aeration beyond the frequencies listed in the Service Frequencies as necessary. Aeration beyond the frequencies



listed in the Service Frequencies shall be considered Extraordinary Work and is subject to Exhibit A, **Paragraph X** of this Contract.

A schedule of aeration equipment to be used shall be submitted to the Technical Representative ten days prior to beginning work.

In performing periodic operations as required herein, routine grounds maintenance services at the same Contract Site such as, but not limited to, litter control, weed control, and irrigation shall continue without interruption.

## **N. CONTRACT SITES**

The sites to be maintained under the terms of this Contract, as identified in this Section N and collectively referred to as the “Contract Sites,” are located within the Calle Cristobal MAD and are described in further detail below:

### **Calle Cristobal MAD - Category II: Street Medians Landscaped with Trees, Shrubs and Groundcover:**

- Calle Cristobal: Camino Ruiz to Avenida Del Gato, Thomas Hays to Prairie Wood Drive, Prairie Wood Drive to Windy Ridge Way, Windy Ridge Way to Caminito LaBar, Caminito LaBar to Camino Miranda, Camino Miranda to (670') past Brenner Springs.
- Sorrento Valley Blvd: Winward Ridge to Lopez Ridge, Sunny Mesa Road to Jasmine Crest Drive, Jasmine Crest Drive to Greenshade, Greenshade to Juniper Park Lane.

### **Calle Cristobal MAD – Category III: Street Medians Hardscaped (Stamped Concrete):**

- Camino Ruiz: South of Calle Cristobal, North of Calle Cristobal
- Calle Cristobal: Camino Ruiz to Avenida Del Gato, Thomas Hays Lane to Prairie Wood Drive, Prairie Wood Drive to Windy Ridge Way, Windy Ridge Way to Caminito LaBar, Caminito LaBar to Camino Miranda, Camino Miranda (670') past Brenner Springs, Brenner Springs to Caminito Propico, Caminito Propico to Camino Santa Fe.
- Sorrento Valley Blvd: Camino Santa Fe to Sunny Mesa Road, Sunny Mesa Road to Jasmine Crest Drive, Jasmine Crest Drive to Greenshade, Greenshade to Juniper Park Lane, West of Sea Mist Way.

### **Calle Cristobal MAD – Category V: Rights-of-Way and Areas Adjacent to Rights-of-Way Landscaped with Trees, Shrubs, Groundcover and Hardscape:**

- Camino Ruiz: East side of Aquarius Drive to North of Calle Cristobal, West side Aquarius Drive to North of Calle Cristobal. East side of Calle Cristobal North 134', West side from Calle Cristobal North 134'.
- Calle Cristobal: North side Camino Ruiz to Lorirae Place, North side of Lorirae Place to Avenida Del Gato, North side Avenida Del Gato to Thomas Hays Lane, North side Thomas Hays Lane to Prairie Wood Drive, North side of Prairie Wood Drive to Acama Court, North side of Acama Court to Windy Ridge Way, North side of Windy Ridge Way to Frames Port, North side of Frames Port to Camino Miranda, North side of Camino Miranda to end of wall; South side of Camino Ruiz to Lorirae Place, South side Lorirae Place to Avenida Del Gato, South side Avenida Del Gato to Corley Court, South side of Corley Court to Prairie Wood Drive, South side of Prairie Wood Drive to Acama Court, South side Acama Court to Windy Ridge Way South side Windy Ridge Way to (370') East of Caminito LaBar, South side of Caminito LaBar to Camino Miranda, South side Camino Miranda to Brenner Springs, South side of Brenner Springs (West 370')

**Calle Cristobal MAD - Category X(a): Mini Park Landscaped with Turf, Trees, Shrubs and Groundcover:**

- Calle Cristobal: Turf area on South side of Calle Cristobal West of Acama Court

**Calle Cristobal MAD - Category X(b): Calle Cristobal Overlook Landscaped with Trees, Shrubs and Groundcover (Approximately 40,720 square feet):**

Calle Cristobal (Approximately 640' West of Camino Miranda)

**Calle Cristobal MAD - Category XI: Gutters (Approximately 51,944 linear feet):**

- Camino Ruiz: East side, Aquarius Drive to North of Calle Cristobal. West side, Aquarius Drive to North of Calle Cristobal. East side, from Calle Cristobal to end of road. West side, from Calle Cristobal to end of road. Median, North of Aquarius Drive. Median, South of Calle Cristobal.
- Calle Cristobal: North side, Camino Ruiz to Lorirae Place. North side, Lorirae Place to Avenida Del Gato. North side, Avenida Del Gato to Thomas Hayes Lane. North side, Thomas Hays Lane to Prairie Wood Drive. North side Prairie Wood Drive to Acama Court. North side, Acama Court to Windy Ridge Way. North side, Windy Ridge Way to Frames Port Place. North side, Frames Port Place to Camino Miranda. North side, Camino Miranda to end of fence. South side, Camino Ruiz to Lorirae Place. South side, Lorirae Place to Avenida Del Gato. South side, Avenida Del Gato to Corley Court. South side, Corley Court to Prairie Wood Drive. South side, Prairie Wood Drive to Acama Court. South side Acama Court to Windy Ridge Way. South side, Windy Ridge Way to Caminito LaBar.

- Calle Cristobal – continued: Median, Camino Ruiz to Avenida Del Gato. Median, Avenida Del Gato to Thomas Hays Lane. Median, Thomas Hays Lane to Prairie Wood Drive. Median, Prairie Wood Drive to Windy Ridge Way. Median, Windy Ridge Way to Caminito LaBar. Median, Caminito LaBar to Camino Miranda. Median, Camino Miranda to (West 670’) past Brenner Springs. 3 Medians, West to Camino Santa Fe. Medians, on Sorrento Valley Blvd, from Camino Santa Fe to Sea Mist Way.

**O. SERVICE FREQUENCIES**

**Calle Cristobal MAD - Category II: Street Medians Landscaped with Trees, Shrubs and Groundcover.**

Supervisor Inspection	One (1) time per week the non-working supervisor shall inspect all areas under the contract and submit a written punch list of all deficiencies. Contractor must report all major problems to the Technical Representative within twenty-four (24) hours of discovery.
Irrigation Inspection	Two (2) times per month, all systems including drip are to be thoroughly inspected to ensure complete electronic/battery operation and proper distribution of water. An irrigation checklist shall be completed as each system is inspected. Inspection checklists must be submitted to the Technical Representative within three (3) business days of completion. Inspection checklists will be provided.
Litter Removal	One (1) time per week; on Tuesday before 12:00 p.m. to keep all areas litter free and as required for specific situations including but not limited to vandalism, illegal dumping of debris and vehicle accident debris.
Weed Removal	Two (2) times per month, to maintain areas in a weed free condition.
Edging	One (1) time per month, edge curbs, paved areas, around sprinkler heads, and fixtures (e.g. valve boxes, quick couplers, gate valves, walls, lights etc.). The cut must be adjacent and perpendicular to the hard surface and not removed from it. Chemical edging is unacceptable.

Pruning – Trees, Shrubs and Groundcover	Six (6) times per year, February, April, June, August, October, and December, to shape, train, and prevent encroachment into public thoroughfare/sidewalk or into other plant material and to ensure clear visibility of all street signs and traffic signals, and to prevent blockage of irrigation system components and patterns. All shrubs are to be maintained at a height no greater than 36” in height and groundcovers not to exceed 18” in height. All sucker growth is to be removed as it appears. Prune to correct hazards and to remove all dead, diseased, or damaged limbs. Shrubs must maintain their natural shape and appearance
Fertilization-Complete	Two (2) times per year to promote healthy plant growth: in March and September

**Calle Cristobal MAD – Category III: Street Medians Hardscaped (Stamped Concrete).**

Supervisor Inspection	One (1) time per week the non-working supervisor shall inspect all areas under the contract and submit a written punch list of all deficiencies. Contractor must report all major problems to the Technical Representative within twenty-four (24) hours of discovery.
Litter Removal	One (1) time per week; on Tuesday before 12:00 p.m. to keep all areas litter free and as required for specific situations including but not limited to vandalism, illegal dumping of debris and vehicle accident debris.
Weed Removal	Two (2) times per month, to maintain areas in a weed free condition.
Sweeping-Hardscape	Two (2) times per year in January and July, to keep all areas free of sand, dirt, and other debris. All debris must be removed from site. Blowers may be used if operated in a responsible manner.

**Calle Cristobal MAD – Category V: Rights-of-Way and Areas Adjacent to Rights-of-Way Landscaped with Trees, Shrubs, Groundcover and Hardscape.**

Supervisor Inspection	One (1) time per week the non-working supervisor shall inspect all areas under the contract and submit a written punch list of all deficiencies. Contractor must
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	report all major problems to the Technical Representative within twenty-four (24) hours of discovery.
Irrigation Inspection	Two (2) times per month, all systems including drip are to be thoroughly inspected to ensure complete electronic/battery operation and proper distribution of water. An irrigation checklist shall be completed as each system is inspected. Inspection checklists must be submitted to the Technical Representative within three (3) business days of completion. Inspection checklists will be provided.
Litter Removal	One (1) time per week; on Tuesday before 12:00 p.m. to keep all areas litter free and as required for specific situations including but not limited to vandalism, illegal dumping of debris and vehicle accident debris.
Weed Removal	Two (2) times per month, to maintain areas in a weed free condition.
Edging	One (1) time per month, edge curbs, paved areas, around sprinkler heads, and fixtures (e.g. valve boxes, quick couplers, gate valves, walls, lights etc.). The cut must be adjacent and perpendicular to the hard surface and not removed from it. Chemical edging is unacceptable.
Pruning – Trees, Shrubs and Groundcover	Six (6) times per year, February, April, June, August, October, and December, prune trees, shrubs, and groundcover to prevent encroachment into public thoroughfare/sidewalk or into other plant material and to ensure clear visibility of all street signs and traffic signals. All sucker growth is to be removed as it appears. Prune to correct hazards and to remove all dead, diseased, or damaged limbs.  All shrubs are to be maintained at a height that does not obstruct visibility. Shrubs must maintain their natural shape and appearance.
Fertilization - Complete	Two (2) times per year to promote healthy plant growth: in March and September.
Sweeping - Sidewalks	One (1) time per week, to keep all sidewalk areas free of sand, dirt, and other debris. All debris must be

	removed from the site. Blowers may be used if operated in a responsible manner.
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**Calle Cristobal MAD – Category X(a): Mini Park Landscaped with Turf, Trees, Shrubs, and Groundcover.**

Supervisor Inspection	One (1) time per week the non-working supervisor shall inspect all areas under the contract and submit a written punch list of all deficiencies. Contractor must report all major problems to the Technical Representative within twenty-four (24) hours of discovery.
Irrigation Inspection	Two (2) times per month, all systems including drip are to be thoroughly inspected to ensure complete electronic/battery operation and proper distribution of water. An irrigation checklist shall be completed as each system is inspected. Inspection checklists must be submitted to the Technical Representative within three (3) business days of completion. Inspection checklists will be provided.
Litter Removal	One (1) time per week; on Tuesday before 12:00 p.m. to keep all areas litter free and as required for specific situations including but not limited to vandalism, illegal dumping of debris and vehicle accident debris.
Weed Removal	Two (2) times per month, to maintain areas in a weed free condition.
Mowing	One (1) time per week, on Tuesday. Removal of clipping shall be done every mowing. Sidewalks shall be swept in conjunction to mowing. Blowers may be used if operated in a responsible manner.
Edging - Turf	One (1) time per week, on Tuesday. Edge curbs, paved areas, around sprinkler heads, and fixtures (e.g. valve boxes, quick couplers, gate valves, walls, lights etc.). The cut must be adjacent and perpendicular to the hard surface and not removed from it. Chemical edging is unacceptable.
Edging - Groundcover	One (1) time per month, edge curbs, paved areas, around sprinkler heads, and fixtures (e.g. valve boxes, quick couplers, gate valves, walls, lights etc.). The cut must be adjacent and perpendicular to the hard surface

	and not removed from it. Chemical edging is unacceptable.
Pruning – Trees, Shrubs and Groundcover	Six (6) times per year, February, April, June, August, October, and December, prune trees, shrubs, and groundcover to prevent encroachment into public thoroughfare/sidewalk or into other plant material and to ensure clear visibility of all street signs and traffic signals. All sucker growth is to be removed as it appears. Prune to correct hazards and to remove all dead, diseased, or damaged limbs.  All shrubs are to be maintained at a height that does not obstruct visibility. Shrubs must maintain their natural shape and appearance.
Fertilization - Turf	Three (3) times per year to promote healthy turf growth, in March, June and September.
Fertilization - Trees, Shrubs and Groundcover	Two (2) times per year to promote healthy plant growth: in March and September.
Sweeping - Sidewalk	One (1) time per week, to keep area free of grass, dirt, and other debris. All debris must be removed from site. Blowers may be used if operated in a responsible manner.
Renovation - Turf	One (1) time per year, in June, to ensure turf health. Renovation shall be accomplished in conjunction with fertilization.
Aerification - Turf	Two (2) times per year, in March and September, to promote healthy plant growth. Aerification shall be accomplished prior to fertilization.

**Calle Cristobal MAD – Category X(b) Calle Cristobal Overlook Landscaped with Trees, Shrubs, and Groundcover.**

Supervisor Inspection	One (1) time per week the non-working supervisor shall inspect all areas under the contract and submit a written punch list of all deficiencies. Contractor must report all major problems to the Technical Representative within twenty-four (24) hours of discovery.
Irrigation Inspection	Two (2) times per month, all systems including drip are to be thoroughly inspected to ensure complete

	<p>electronic/battery operation and proper distribution of water. An irrigation checklist shall be completed as each system is inspected. Inspection checklists must be submitted to the Technical Representative within three (3) business days of completion. Inspection checklists will be provided.</p>
Litter Removal	<p>One (1) time per week, on Tuesday before 12:00 p.m. to keep all areas litter free and as required for specific situations including but not limited to vandalism, illegal dumping of debris and vehicle accident debris.</p>
Weed Removal	<p>Two (2) times per month to maintain areas in a weed free condition.</p>
Pruning – Trees, Shrubs and Groundcover	<p>Six (6) times per year, February, April, June, August, October, and December, prune trees, shrubs, and groundcover to prevent encroachment into public thoroughfare/sidewalk or into other plant material and to ensure clear visibility of all street signs and traffic signals. All sucker growth is to be removed as it appears. Prune to correct hazards and to remove all dead, diseased, or damaged limbs.</p> <p>All shrubs are to be maintained at a height that does not obstruct visibility. Shrubs must maintain their natural shape and appearance.</p>
Fertilization - Trees, Shrubs and Groundcover	<p>Two (2) times per year to promote healthy plant growth: in March and September.</p>
Sweeping- Sidewalks/Curbs	<p>One (1) time per week, to keep sidewalks and curbs free of sand, dirt, leaves and other debris. All debris must be removed from the site. Blowers may be used if operated in a responsible manner.</p>

**Calle Cristobal MAD – Category XI: Gutters**

Supervisor Inspection:	<p>One (1) time per week the non-working supervisor shall inspect all areas under the contract and submit a written punch list of all deficiencies. Contractor must report all major problems to the Technical</p>
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	Representative within twenty-four (24) hours of discovery.
Litter Removal	One (1) time per week on Tuesdays before 12pm to keep all areas litter free and as required for specific situations including but not limited to vandalism, illegal dumping of debris and vehicle accident debris.
Weed Removal	Two (2) times per month, to maintain areas in a weed free condition.
Sweeping - Gutters	One (1) time per month, to keep gutters free of dirt, leaves and other debris. All debris must be removed from the site. Blowers may be used if operated in a responsible manner.

**P. ESTIMATED HOURS**

City staff estimates over 5,954 annual hours are required to fulfill all routine task frequencies required by this contract. The hours and material costs listed in **Section P** and **Section Q** are estimates required to accomplish tasks in a satisfactory manner. Contractor shall recognize that all hours listed on Schedules of Task Costs are based on historical data and observation by City staff.

**Q. MATERIALS**

Contractor must be able to verify all material costs and quantities listed in its proposal. Upon request, Contractor shall provide information for material(s) identifying and verifying various vendors, (company name, address, phone number and contact person), along with cost quotes for each individual material submitted for consideration.

The Technical Representative shall evaluate all material costs associated with tasks specified under this contract and may reject any proposal that under or overestimates the material costs associated with task requirements. It is recommended that contractor consider all factors including project square footage, task frequencies, and specifications impacting material costs.

**Calle Cristobal MAD**

City staff estimates over \$ 6,750.00 in annual material costs, (inclusive of approximately \$3750.00 in fertilizer costs), will be required by the Contractor to fulfill all routine task frequencies under in contract, in accordance with market pricing at time of award of contract. City’s estimate is based on current market pricing. It is recommended that the Contractor include all material costs including irrigation, weed control, litter control, fertilization, dumping, etc., on the Schedule of Task Costs pages.

## **R. FERTILIZATION**

Fertilizer shall be hand watered in using quick coupler valves and hoses on those areas with drip irrigation systems. The Technical Representative shall specify which complete and organic fertilizers shall be applied. Specific fertilizer type/brand and application rates are specified in proposal Specifications herein.

In accordance with Specifications including square footage specified, Contractors are required to provide the following materials. Fertilizers listed are 50-pound bags/each:

### **Calle Cristobal MAD**

- **Best Turf Supreme 16-6-8**
- **Best Triple Pro 15-15-15**
- **Best Super Iron with 11% Iron**
- **Best Landscape Color 14-14-14**
- **Milorganite or Gro-Power Plus 5-3-1 Organic Fertilizers**

## **S. PLANT MATERIAL MAINTENANCE**

All groundcovers, including those which are planted at the top of slopes adjacent to private limits/boundaries, and adjacent to other shrubs, groundcovers or turf shall be maintained to keep plant growth within reasonable bounds. They shall be maintained to prevent encroachment of passageways, walks, streets, or view signs or encroachment in any manner deemed objectionable by the Technical Representative. Contractor is required to mechanically or chemically control this groundcover to prevent encroachment onto private lots.

Contractor is required to prevent encroachment of plant materials from private lots or open space into areas maintained under this contract. Care shall be taken to ensure that plant material(s) inside fences on private lots is not injured or damaged by Contractor's actions. Plant materials within the District shall be maintained to prevent encroachment onto private walls, fences, etc.

Shrub pruning along major streets shall be completed within ten calendar days of its inception. Shrub pruning must be performed so as to maintain their natural appearance. Any mechanical hedging must be approved by the Technical Representative.

Technical Representative shall provide direction for performing maintenance of any/all pruning throughout the Calle Cristobal MAD at any time at no additional cost to the City.

## **T. PEST CONTROL**

Pest control is a maintenance function of this contract and shall be required (as needed). Pests that have been encountered and abated in this area previously include:

- a. Scale on Ceanothus, Lantana, Olive and Pine trees.
- b. Snails throughout areas in the District.
- c. Gophers and ground squirrels throughout areas in the District. All gopher mounds shall be brought back to grade when the area has been treated. Excessive soil or rocks may require removal.
- d. Rats have been found nesting in plant material.
- e. Bees nesting in valve boxes.
- f. Ants nesting in valve boxes and irrigation controllers.
- g. Snakes.
- h. Mildew
- i. Fungus, Root Rot
- j. Sooty Mold
- k. Aphids, Oleander

The use of “Merit” has been instrumental in controlling the lantana scale and other hard to kill scales. Olive scale may require traffic control to properly spray trees. Utilization of pesticides may be used where the Contractor has a pesticide recommendation from a qualified pesticide advisor.

#### **U. STAFFING REQUIREMENTS**

In addition to the requirements described in Paragraph F, subsection 4, **Staffing** this Contract requires the following:

- a. Staffing
  - i. At least 25 percent of an annual position (.25) for the Irrigation Specialists,
  - ii. At least three (3) FTE annual positions for Field Labor Crew.

#### **b. Supervision**

At least One (1) working Field Supervisor shall be on duty eight hours per day, four days per week, Monday, Tuesday, Thursday, and Friday. Work hours shall be between 6:00 a.m. to 6:00 p.m. with a half hour lunch break.

The Irrigation Specialist(s) work onsite as needed for repairs, upgrades, and new installations, and shall be employed by the successful Contractor at the time this Contract is awarded.

Additionally, Field Supervisors and Irrigation Specialists are subject to the following requirements:

- i. Field Supervisor(s)

Contractor shall have on the job site at all times when performing work under this Contract, competent Supervisors (may be working Field Supervisors) capable of discussing all matters pertaining to this Contract with the Technical Representative.

The working Field Supervisor must have all of the following: A minimum of three years of experience overseeing all phases of landscape maintenance and personnel for a site of comparable square footage, scope of work and plant materials; verifiable experience (knowledge, skills and abilities) in the identification of and maintenance practices for ornamental trees, shrubs and groundcover, exotic weeds and plants as required for proper maintenance of all areas; and, ability to communicate effectively (orally and in writing) with the Technical Representative and with public citizens. It is desirable that the Field Supervisor have over three (3) years of qualifying experience and highly desirable for the field supervisor to have over five (5) years qualifying experience.

The onsite working Field Supervisor shall have a cell phone in their possession for communication with the Technical Representative. A minimum of one qualified working Field Supervisor shall be on the job at all times work is being performed to provide the necessary supervision to ensure work is completed as specified by this Contract.

A resume of the assigned working Field Supervisor must be submitted with proposal. Failure to do so may result in considering your proposal submittal as non-responsive.

The working Field Supervisor(s) shall be interviewed by the Technical Representative and acceptance is subject to the Technical Representative's approval. Payroll records may be utilized to verify experience. The working Field Supervisor must be employed by the successful Contractor at the time this Contract is awarded. Any changes in working Field Supervisor personnel must be submitted in writing to the Technical Representative and is subject to approval based on compliance with Paragraph F and Paragraph U of this Contract.

ii. Irrigation Specialist(s)

Irrigation Specialist(s) must have all of the following: at least three years of experience with all aspects of irrigation system installation and maintenance to assure that all components are maintained in operable condition at all times; verifiable (resume) experience and will be interviewed for acceptance by the Technical Representative; ability to communicate effectively (orally and in writing) with the Technical Representative and with public citizens; knowledge and experience in programming controllers and irrigating plant material in addition to knowledge and experience in troubleshooting and repairing all irrigation components utilized in the district; and, must have completed approved training and has all certifications to work with reclaimed/recycled water. It is desirable that the Irrigation Specialist have over three (3) years of qualifying experience and highly desirable that the Irrigation Specialist have over five (5) years of qualifying experience.

iii. Adequate Personnel

The Contractor must have knowledge and personnel with experience having performed on projects of similar size and plant pallets. The plant material(s) on this site require uncommon maintenance practices.

All the landscape maintenance workers/laborers that make up the crew shall have at least one year of fulltime paid experience in performing all aspects of landscape maintenance. It is desirable that all the landscape maintenance workers/laborers have more than one (1) year of fulltime paid experience and it is highly desirable for all of the landscape maintenance workers/laborers to have more than four (4) years of fulltime paid experience.

Adequate personnel must be assigned full time to this Contract Monday, Tuesday, Thursday, and Friday, excluding holidays, as well as including an on-site working Field Supervisor, Irrigation Specialist, and a crew to perform all other work.

The Monday, Tuesday, Thursday, and Friday full-time crew shall not be taken away from their routine Work Schedule to complete Extraordinary Labor assignments for miscellaneous projects. Exceptions include illegal dump pick-up, planting replacement plants (Contractor neglect) or specific litter situations beyond the routine litter or maintenance requirements of this contract. If Contractor has questions, Contractor shall contact the Technical Representative.

The Contractor shall maintain a minimum of 3.25 full-time employees on site in the Calle Cristobal MAD (excluding Non-Working Supervisor) during the normal working hours/days specified in this contract (Monday, Tuesday, Thursday, and Friday). The Technical Representative will evaluate each Contractor's time submitted with respect to each individual proposal task and overall. throughout each category. The Contractor shall ensure that these time elements meet the Technical Representative requirements for full-time labor.

A minimum of one Field Supervisor and one laborer must be able to communicate in English, orally and in writing. These staff members must be part of the Monday, Tuesday, Thursday, and Friday full-time staff.

An Irrigation Specialist serving as the Field Supervisor must fulfill all job duties required of both the Irrigations Specialist and Field Supervisor described in this Exhibit A.

Upon award of this Contract, Contractor shall submit, to the Technical Representative, a complete list to include the full names of employees assigned to the job site. Contractor shall replace any missing crew members with other fully competent employees for the same workday. There will be no exceptions, unless approved by the Technical Representative.

## **V. EQUIPMENT**

The following equipment is required, (list on the "Contractor's Statement of Available Equipment" form):

- Mowing equipment, adequate for efficient and timely mowing of turf area. Must pick-up grass clippings.
- One (1) large ride on mower
- One (1) Turf Aerifier (core extractor)
- One (1) pull behind Fertilizer Spreader
- Adequate number of trucks/trailers available for daily use in the Calle Cristobal MAD
- One (1) Chain Saw
- A minimum of one (1) smart phone.
- Numerous Power and Manual Tools including: Edger's, Blowers. Weed Whips, Backpack Sprayers, Small Fertilizer Spreaders, Pruning Tools, and all other hand tools necessary to accomplish the maintenance requirements.

At the time of the proposal, Contractor must either: a) own all required equipment; or b) have access to all required equipment.

As part of the proposal, Contractor must list all required equipment on the “Contractor’s Statement of Available Equipment” If Contractor does not own all required equipment, Contractor must submit leases or agreements that demonstrate that Contractor has access and rights to use the required equipment, and that the allowed use is sufficient for Contractor to perform the specifications as described, including Service Frequencies, in this Contract. All such leases and agreements shall be subject to review and approval by the Technical Representative.

## **W. BLOWERS**

Unless specifically stated otherwise, blowers may be used at Contractor’s discretion. The Contractor will be held responsible for any damages incurred to persons or property related to use of subject blowers.

It is always a better choice to sweep where people and cars are present, especially when performing duties on the medians. Contractor must remove all dirt and debris from the site and must not blow dirt or debris into streets or adjoining properties.

## **X. EXTRAORDINARY LABOR**

The use of Extraordinary Labor for miscellaneous projects is estimated at approximately **600** hours annually. Contractor will utilize Extraordinary Labor for additional miscellaneous projects (Extraordinary Work) in the Calle Cristobal MAD The Contractor must have the staffing, expertise, and knowledge to perform projects in a timely manner with a quality finished product. Some priority projects may need to be done immediately. All Extraordinary Labor must be approved in writing by the Technical Representative prior to conducting the Extraordinary Work.

Contractor may rent equipment necessary to complete the Extraordinary Work. If the Contractor has the equipment to perform the Extraordinary Work, Contractor may charge a rental fee at the current market rate for the equipment usage. If Extraordinary Work requires the purchase of goods,

supplies, materials, or rental of equipment, the Contractor will be authorized to apply a 10 percent markup fee on those items. The 10 percent markup fee is not applicable to the Extraordinary Labor hourly rate. In addition, if the Contractor needs to use a Sub-Contractor for Extraordinary Work, the Contractor will be authorized to apply a ten percent markup fee for any and all Sub-Contractors services required. Only Sub-Contractors listed on the Contractor's Statement of Sub-Contractors, or Sub-Contractors formally added to the Contract and approved by Purchasing and Contracting Department may be used. Contractor or an approved Sub-Contractor will be compensated for additional debris removal resulting from Extraordinary Work, if approved by the Technical Representative.

Some examples of Extraordinary Work include, but are not limited to the following:

- Planting and replanting areas as needed.
- Installing and repairing irrigation systems as needed.
- A Registered Consulting Arborist (RCA) for various tree needs (e.g., vehicle accidents, etc.) for revenue cost recovery. RCA must be able to testify as an expert in a Court of Law. Contractor shall include RCA's current hourly rate on the Contractor's Statement of Sub-Contractors form.
- Bee nest removals (if not on Contractor's staff, he/she must be included in the Contractor's Statement of Sub-Contractors form.
- Locate and repair damaged irrigation services or electrical services for broken lines, cut wires to controllers and valves, etc.
- Clean-up of illegal dumps in parks, etc., or transient camps in canyons.
- Spread wood chips/mulch.
- Pour concrete pads, (if concrete Contractor is not on Contractor's staff, he/she must be included in the Contractor's Statement of Sub-Contractors form.
- Replace irrigation controllers and irrigation cabinets.
- Trail grading and clearance of brush.
- Brush Management/remove vegetation from behind private properties.
- Paint fixtures and signage
- Removal of non-native and/or evasive plant material

Extraordinary Labor shall be used for the following types of Extraordinary Work:

### **1. Extraordinary Labor Hours for Plantings**

Based on historical knowledge, practices, and observation of operations at the MAD, City estimates that additional planting hours will be utilized when planting needs arise. Contractor shall agree to perform any and all planting needs at the quantities and hours noted below during the Contract term. Estimated planting hours include all time required for complete plant installation,

including but not limited to, the following: excavation of plant hole, mixing and addition of soil/amendments/fertilizers, installation of tree stakes, staking and tying (as needed), open plant container, plant, construct plant berms, watering, clean up, etc.

The quantities and number of hours listed below are to be utilized for Extraordinary Labor planting needs:

Groundcover – Flat	4 flats/hr.
Shrub – 1 Gallon	10 plants/hr.
Shrub – 5 Gallon	4-5 plants/hr.
Shrub/Tree – 15 Gallon	2-3 plants/hr.
Tree/Shrub – 24" Box	4 hours/ea.
Tree /Shrub – 36" Box	12 hours/ea.
Tree/Shrub – 48" Box	24 Hours/ea.

All changes must be approved in advance and in writing by the Technical Representative.

## 2. Extraordinary Labor Hours for Irrigation Systems

Contractor shall provide for the minor repair or replacement of certain components of existing irrigation systems. Repair or replacement includes, but is not limited to: sprinkler system laterals (piping), sprinkler mains (pressure lines), vacuum breakers, sprinkler control valves, sprinkler controllers, sprinkler heads, sprinkler caps, sprinkler head risers, valve covers, boxes and lids (including electrical pull boxes and lids), valve sleeves and lids, quick coupler valves, and hose bibs. All replacement equipment must conform to the type and kind of existing system. Any compensation for irrigation parts or labor not in conformance with the existing system must be approved in writing by the Technical Representative.

Certain portions of the irrigation systems within the Contract Sites may be equipped with new Smart Controllers as existing systems require replacement, or as otherwise determined by the Technical Representative and subject to all applicable laws. Contractor may be required to provide a portable wireless device (smart phone or tablet) capable of accessing the internet and accessing the web based smart controller interfacing from off-site locations. In such case, irrigation system materials shall be provided by the City to Contractor. Compensation for labor shall be the estimated repair times specified below using the labor rate specified on the proposal form.

All repairs must be pre-approved by the Technical Representative. Except as described above in this **Paragraph X(2)**, compensation for irrigation systems materials shall be at the cost of the items involved plus 10 percent markup fee for the Contractor's cost of handling. Compensation for Extraordinary Labor shall be for the estimated repair times specified below using the labor rate specified on the proposal form. All repairs must be pre-approved by the Technical Representative.



<u>Repairs to Sprinkler Irrigation Systems and Water Lines</u>	<u>Estimated Repair Time</u>
Broken lateral sprinkler line (surface)	0.5 hour
Broken lateral sprinkler line (subsurface)	1.0 hour
Damaged auto-sprinkler valve	1.5 hours
Damaged gate valve, manual control, or quick coupler valve	0.5 hour
Replace sprinkler head and/or riser (if digging required) and subsurface sprinkler Does not include screw on shrub heads	0.25 hour
Replace solenoid or bleed plug	0.25 hour

### **3. Extraordinary Labor for Graffiti**

Contractor must notify the Technical Representative of any graffiti within the Contract Sites within 48 hours of discovery or otherwise receiving notice of the graffiti, whichever occurs first. Repairs necessary to correct damage due to graffiti may be performed by the City or by Contractor as Extraordinary Labor, subject to Technical Representative approval.

4.3.2. All graffiti-related repairs, which includes labor and the purchase of any job-specific materials required to remove the graffiti or restore the impacted surface, must be pre-approved by the Technical Representative.

4.3.3. Compensation for job-specific materials required to remove graffiti shall be actual cost plus a 10-percent markup fee for the Contractor's cost of handling. Compensation for graffiti removal shall be at the Extraordinary Labor Rate.

### **Y. SUBCONTRACTORS**

During the Contract Term, functions/tasks may arise which require the need for professional services associated with the maintenance of the Calle Cristobal MAD. These functions/tasks may require license(s), certification(s), permit(s), etc. The Contractor shall list any/all Sub-Contractors on the Contractor's Statement of Sub-Contractors form. Requests must be submitted in advance for changes or additions to the Sub-Contractor's list and must be approved and incorporated into the Contract by the Purchasing and Contracting Department. Copies may be required upon request. Sub-Contractors include but are not limited to the following:

- Pest Control Advisor

- A Registered Consulting Arborist (RCA) for various tree needs. RCA must be able to be utilized as an expert in a court of law.
- Concrete, masonry, and asphalt work required as needed.
- Certified Pest Control Operator for the removal/elimination of bee colonies/hives, vertebrates, and other pests.
- Any/all irrigation system repairs, including electrical.
- Motorized Street Sweeper required for gutter sweeping.

**Z. SCHEDULE OF TASK COSTS AND PRICING PAGES**

**1. Schedule of Task Costs and Instructions**

The Contractor shall submit a one-time total cost for labor and materials for each of the tasks to be performed in each of the Contract Sites under this Contract. The Contractor must enter an hourly labor rate, the time required to accomplish the specified task one time, and multiply to produce the Labor Cost, add the Materials Cost which will provide the total cost for performing the task one time.

Example of how Exhibit A, Schedule of Task Costs must be completed:

<b>Task</b>	<b>City's Hours per task</b>	<b>Labor Rate</b>	<b>Labor Costs</b>	<b>Material Cost</b>	<b>Total One-Time Cost</b>	<b>Annual Frequency</b>
Litter Removal	1	\$22.55	\$22.55	\$2.75	=\$25.30	x 52

Labor costs shall include all costs required to place and keep maintenance personnel on the job site, including but not limited to payroll and insurance costs. Material costs shall include the cost of materials plus any costs associated with transporting the materials to the job site. All material costs must be stated as such and shall not be included in the labor cost.

The Contractor may be required to justify its one-time cost based on the City's estimate of reasonable time to perform specific tasks and materials required. The City reserves the right to reject any proposal when, in its opinion, the Contractor cannot perform the contract in accordance with the specifications herein.

The information in Exhibit A, Schedule of Task Costs, may be used to determine amounts withheld for non-performance when inspections by the City indicate a specified task was not performed.

**SCHEDULE OF TASK COSTS**

**CALLE CRISTOBAL MAD**

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

**Category II: Street Medians, Landscaped with Trees, Shrubs and Groundcover. Approximately 62,497 sq. ft.**

TASK DESCRIPTION	CITY'S HOURS	LABOR RATE	LABOR COST	MATERIALS COST	TOTAL ONE (1) TIME COST	YEARLY FREQUENCY	YEARLY COST
CATEGORY II:			Hourly Rate X Time				
• Supervisory Inspection	1	\$32.00	\$32.00	\$0	\$32.00	52	\$ 1,664.00
• Irrigation Inspection	8	\$32.00	\$256.00	\$0	\$256.00	24	\$ 6,144.00
N/A							N/A
• Litter Removal	6	\$32.00	\$192.00	\$1.00	\$193.00	52	\$10,036.00
• Weed Removal	11	\$32.00	\$352.00	\$0	\$352.00	24	\$ 8,448.00
• Edging	13	\$32.00	\$416.00	\$0	\$416.00	12	\$4,992.00
• Pruning – Trees, Shrubs and Groundcover	80	\$32.00	\$2,560.00	\$0	\$2,560.00	6	\$ 15,360.00
• Fertilization	6	\$32.00	\$192.00	\$150.00	\$342.00	2	\$ 684.00
N/A							N/A
• N/A							N/A
• N/A							N/A

**TOTAL PRICE PER YEAR FOR CATEGORY II:**

\$ 47,328.00

**NOTE:** To determine the yearly task cost for each category, multiply the one (1) time task cost by the yearly service frequency for that particular task, then add all task totals together

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

**Category III: Street Medians Hardscaped (Stamped Concrete). Approximately 116,119 sq. ft.**

TASK DESCRIPTION CATEGORY III:	CITY'S HOURS	LABOR RATE	LABOR COST Hourly Rate X Time	MATERIALS COST	TOTAL ONE (1) TIME COST	YEARLY FREQUENCY	YEARLY COST
• Supervisory Inspection	0.5	\$32.00	\$16.00	\$0	\$16.00	52	\$ 832.00
• Litter Removal	1.5	\$32.00	\$48.00	\$1.00	\$49.00	52	\$ 2,548.00
• Weed Removal	8	\$32.00	\$256.00	\$0	\$256.00	24	\$ 6,144.00
• Sweeping – Hardscape	60	\$32.00	\$1,920.00	\$0	\$1,920.00	2	\$ 3,840.00

**TOTAL PRICE PER YEAR FOR CATEGORY III:**

\$ 13,364.00

**NOTE:** To determine the yearly task cost for each category, multiply the one (1) time task cost by the yearly service frequency for that particular task, then add all task totals together.

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

**Category V: Rights-of-Way and Areas Adjacent to Rights-of-Way Landscaped with Trees, Shrubs, Groundcover and Hardscape. Approximately 310,121 sq. ft.**

TASK DESCRIPTION	CITY'S HOURS	LABOR RATE	LABOR COST Hourly Rate X Time	MATERIALS COST	TOTAL ONE (1) TIME COST	YEARLY FREQUENCY	YEARLY COST
<b>CATEGORY V:</b>							
• Supervisory Inspection	1.5	\$32.00	\$48.00	\$0	\$48.00	52	\$ 2,496.00
• Irrigation Inspection	8	\$32.00	\$256.00	\$0	\$256.00	24	\$ 6,144.00
• N/A							N/A
• Litter Removal	9	\$32.00	\$288.00	\$1.00	\$289.00	52	\$ 15,028.00
• Weed Removal	18	\$32.00	\$576.00	\$0	\$576.00	24	\$13,824.00
• Edging	9	\$32.00	\$288.00	\$0	\$288.00	12	\$3,456.00
• Pruning – Trees, Shrubs and Groundcover	124	\$32.00	\$3,968.00	\$0	\$3,968.00	6	\$ 23,808.00
• Fertilization-Trees, Shrubs and Groundcover	8	\$32.00	\$256.00	\$360.00	\$616.00	2	\$ 1,232.00
• N/A							N/A
• N/A							N/A
• Sweeping – Sidewalks	12	\$32.00	\$384.00	\$0	\$384.00	52	\$19,968.00
• N/A							N/A

**TOTAL PRICE PER YEAR FOR CATEGORY V:** \$ 85,956.00

**NOTE:** To determine the yearly task cost for each category, multiply the one (1) time task cost by the yearly service frequency for that particular task, then add all task totals together.

All cells must be filled out. If no cost, enter a zero (0). Failure to complete all cells may be cause for rejection.  
**Category X(a): Mini Park Landscaped with Turf, Trees, Shrubs and Groundcover. Approximately 16,210 sq. ft.**

TASK DESCRIPTION	CITY'S HOURS	LABOR RATE	LABOR COST	MATERIALS COST	TOTAL ONE (1) TIME COST	YEARLY FREQUENCY	YEARLY COST
CATEGORY X(a):			Hourly Rate X Time				
• Supervisory Inspection	1	\$32.00	\$32.00	\$0	\$32.00	52	\$1,664.00
• Irrigation Inspection	2	\$32.00	\$64.00	\$0	\$64.00	24	\$ 1,536.00
• N/A							N/A
• Litter Removal	.5	\$32.00	\$16.00	\$1.00	\$17.00	52	\$ 884.00
• Weed Removal	1.5	\$32.00	\$48.00	\$0	\$48.00	24	\$ 1,152.00
• Mowing	2	\$32.00	\$64.00	\$0	\$64.00	52	\$ 3,328.00
• Edging Turf	1	\$32.00	\$32.00	\$0	\$32.00	52	\$ 1,664.00
• Edging Groundcover	1	\$32.00	\$32.00	\$0	\$32.00	12	\$ 384.00
• Pruning – Trees, Shrubs and Groundcover	20	\$32.00	\$640.00	\$0	\$640.00	6	\$ 3,840.00
• Fertilization Turf	1	\$32.00	\$32.00	\$60.00	\$92.00	3	\$ 276.00
• Fertilization – Trees, Shrubs and Groundcovers	1	\$32.00	\$32.00	\$0	\$32.00	2	\$ 64.00

TASK DESCRIPTION	CITY'S HOURS	LABOR RATE	LABOR COST	MATERIALS COST	TOTAL ONE (1) TIME COST	YEARLY FREQUENCY	YEARLY COST
• N/A							N/A
• N/A							N/A
• Sweeping – Sidewalks	0.5	\$32.00	\$16.00	\$0	\$16.00	52	\$ 832.00
• N/A							N/A
• Renovation - Turf	9	\$32.00	\$288.00	\$0	\$288.00	1	\$288.00
• Aerification - Turf	4	\$32.00	\$128.00	\$0	\$128.00	2	\$ 256.00

**TOTAL PRICE PER YEAR FOR CATEGORY X(a):**

\$16,168.00

**NOTE:** To determine the yearly task cost for each category, multiply the one (1) time task cost by the yearly service frequency for that particular task, then add all task totals together.

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

**Category X(b) Calle Cristobal Overlook Landscaped with Trees, Shrubs, and Groundcover. Approximately 40,720 sq. ft.**

TASK DESCRIPTION	CITY'S HOURS	LABOR RATE	LABOR COST	MATERIALS COST	TOTAL ONE (1) TIME COST	YEARLY FREQUENCY	YEARLY COST
<b>CATEGORY X(b):</b>			Hourly Rate X Time				
• Supervisory Inspection	1	\$32.00	\$32.00	\$0	\$32.00	52	\$1,664.00
• Irrigation Inspection	0.5	\$32.00	\$16.00	\$0	\$16.00	24	\$384.00



TASK DESCRIPTION	CITY'S HOURS	LABOR RATE	LABOR COST	MATERIALS COST	TOTAL ONE (1) TIME COST	YEARLY FREQUENCY	YEARLY COST
• N/A							N/A
• Litter Removal	1	\$32.00	\$32.00	\$1.00	\$33.00	52	\$ 1,716.00
• Weed Removal	3	\$32.00	\$96.00	\$0	\$96.00	24	\$ 2,304.00
• Pruning – Trees, Shrubs and Groundcover	4	\$32.00	\$128.00	\$0	\$128.00	6	\$ 768.000
• Fertilization – Trees, Shrubs and Groundcover	1	\$32.00	\$32.00	\$90.00	\$122.00	2	\$ 244.00
• N/A							N/A
• N/A							N/A
• Sweeping-Sidewalks/Curbs	0.5	\$32.00	\$16.00	\$0	\$16.00	52	\$ 832.00
• N/A							N/A

**TOTAL PRICE PER YEAR FOR CATEGORY X(b):**

\$ 7,912.00

**NOTE:** To determine the yearly task cost for each category, multiply the one (1) time task cost by the yearly service frequency for that particular task, then add all task totals together.

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

**Category XI: Gutters. Approximately 51,944 lin. ft.**

TASK DESCRIPTION	CITY'S HOURS	LABOR RATE	LABOR COST	MATERIALS COST	TOTAL ONE (1) TIME COST	YEARLY FREQUENCY	YEARLY COST
<b>CATEGORY XI:</b>			Hourly Rate X Time				
• Supervisory Inspection	0.5	\$32.00	\$16.00	\$0	\$16.00	52	\$ 832.00
• Litter Removal	5	\$32.00	\$160.00	\$1.00	\$161.00	52	\$ 8,372.00
• Weed Removal	6	\$32.00	\$192.00	\$0	\$192.00	24	\$ 4,608.00
• Sweeping – Gutters	20	\$32.00	\$640.00	\$0	\$640.00	12	\$ 7,680.00

**TOTAL PRICE PER YEAR FOR CATEGORY XI:**

\$ 21,492.00

**NOTE:** To determine the yearly task cost for each category, multiply the one (1) time task cost by the yearly service frequency for that particular task, then add all task totals together.

**I. CONTRACTOR'S PRICING**

**CALLE CRISTOBAL MA**

**A. CALLE CRISTOBAL MAD SUMMARY OF TASKS**

Category	Est. Qty.	U/M	Description	Total Cost Per Month	Total Cost Per Year
II	62,497	SQ FT	Street Medians - Landscaped with Trees, Shrubs and Groundcover	\$ 3,944.00	\$ 47,328.00
III	116,119	SQ FT	Street Medians - Hardscaped (Stamped Concrete)	\$ 1,113.66	\$ 13,363.92
V	310,121	SQ FT	Rights-of-Way and Areas Adjacent to Rights-of-Way Landscaped with Trees, Shrubs, Groundcover and Hardscape	\$ 7,163.00	\$85,956.00
X(a)	16,210	SQ FT	Mini Park Landscaped with Turf, Trees, Shrubs and Groundcover	\$1,347.33	\$ 16,167.96
X(b)	40,720	SQ FT	Calle Cristobal Overlook Landscaped with Trees, Shrubs, and Groundcover	\$659.33	\$ 7,911.96
XI	51,940	LIN FT	Gutters	\$1,791.00	\$21,492.00
TOTAL SECTION A:				\$16,018.32	\$192,219.84

**B. EXTRAORDINARY LABOR**

Qty.	U/M	Description	Cost Per Hour	Total Cost
600	HR	Extraordinary Labor	\$ 32.00	\$19,200.00
\$6750		Extraordinary Labor Materials	N/A	\$6,750.00

**TOTAL SECTION B: \$ 25,950.00**

**NOTE:** The cost of the six hundred (600) hours of extraordinary labor and materials will be added to the proposed price to determine the annual proposal amount.

**TOTAL SECTIONS A & B: \$ 218,169.84**

**EXHIBIT B**



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

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

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

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

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

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

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

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

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

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

### ARTICLE III COMPENSATION

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

**3.2 Invoices.**

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

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

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

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

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

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

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

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

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

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

## **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 C**  
**CITY REQUIRED FORMS**

Business Tax Certificate

Contractor Standards Pledge of Compliance

Equal Opportunity Contracting forms, including Contractors Certification of Pending Actions and Work Force Report

Insurance Certificates with all endorsements

Living Wage Certification Form, or Living Wage Exemption Form (if applicable)

Taxpayer Identification Form W-9 (if applicable)

## EXHIBIT D

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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







# Services Agreement\_SS 20000059\_Calle Cristobal\_Final

Final Audit Report

2024-08-07

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By:	Lisa Hoffmann (lhoffmann@sandiego.gov)
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# Services Agreement\_SS 20000059\_Calle Cristobal\_signed TB


Final Audit Report

2024-08-15


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-  Signer jinman@sandiego.gov entered name at signing as Julie Inman  
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 Document e-signed by Julie Inman (jinman@sandiego.gov)

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 Agreement completed.

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