

**CONTRACT RESULTING FROM REQUEST FOR PROPOSAL NUMBER 10089879-24-C,  
DigAlert Positive Response Ticket Management Solution**

This Contract (Contract) is entered into by and between the City of San Diego, a municipal corporation (City), and the successful proposer to Request for Proposal (RFP) # 10089879-24-C, DigAlert Positive Response Ticket Management Solution (Contractor).

**RECITALS**

On or about 8/18/2023, City issued an RFP to prospective proposers on services to be provided to the City. The RFP and any addenda and exhibits thereto are collectively referred to as the "RFP." The RFP is attached hereto as Exhibit A.

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

City wishes to retain Contractor to provide consulting services as further described in the Scope of Work, attached hereto as Exhibit B. (Services).

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

**ARTICLE I  
CONTRACTOR SERVICES**

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

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

**1.3 Contract Administrator.** The Department of Information Technology (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:

Clyde Parsons, Information Systems Analyst IV  
9192 Topaz Way,  
San Diego, CA 92123  
858-614-4076  
CAParsons@sandiego.gov

**ARTICLE II  
DURATION OF CONTRACT**

**2.1 Term.** This Contract shall be for a period of five (5) years beginning on the Effective Date. The term of this Contract shall not exceed five (5) years unless approved by the City Council by ordinance.

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

**ARTICLE III  
COMPENSATION**

**3.1 Amount of Compensation.** City shall pay Contractor for performance of all Services rendered in accordance with this Contract in an amount not to exceed \$800,000. (The not to exceed amount will be added in this final Contract prior to the final execution of the Contract by the City, with the Contractor's initials indicating acceptance.)

**ARTICLE IV  
WAGE REQUIREMENTS**

**4.1 Reserved.**

**ARTICLE V  
CONTRACT DOCUMENTS**

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

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

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

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

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

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

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

**CONTRACTOR**

KorTerra, Inc.

\_\_\_\_\_  
Proposer

1851 Lake Drive W

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

Chanhassen, MN

\_\_\_\_\_  
City

952-368-1911

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

legal@korterra.com

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

CITY OF SAN DIEGO  
A Municipal Corporation

BY:



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

Claudia C. Abarca

\_\_\_\_\_  
Director, Purchasing & Contracting  
Department

September 30, 2024

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

BY: Signed by:



4AC817A60CB44E8...  
\_\_\_\_\_  
Signature of

Proposer's Authorized  
Representative

Mitch Stendal

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

President

\_\_\_\_\_  
Title

Sept. 26, 2024

\_\_\_\_\_  
Date

Approved as to form this \_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_.

MARA W. ELLIOTT, City Attorney

BY: \_\_\_\_\_

Deputy City Attorney

CONTRACTOR

CITY OF SAN DIEGO  
A Municipal Corporation

\_\_\_\_\_  
Bidder

BY:

\_\_\_\_\_

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

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

\_\_\_\_\_  
City

\_\_\_\_\_  
Title

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

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

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

BY:

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

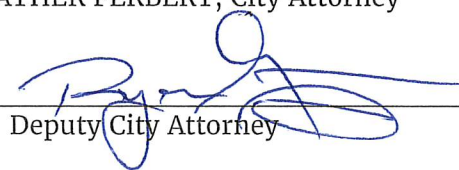
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Approved as to form this 25 day of

FEBRUARY, 20 25.  
HEATHER FERBERT, City Attorney

BY:   
Deputy City Attorney

**KORTERRA SOFTWARE**  
Goods and Services ITB  
Revised: August 30, 2019  
OCA Document No. 879132\_3

**EXHIBIT A  
PROPOSAL SUBMISSION AND REQUIREMENTS**

**A. PROPOSAL SUBMISSION**

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

**1.1 Reserved.**

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

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

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

**1.4.1 Reserved.**

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

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

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

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

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

**2.2 Exceptions requested by proposer, if any.** The proposer must present written factual or legal justification for any exception requested to the Scope of Work, the Contract, or the Exhibits thereto. Any exceptions to the Contract that have not been accepted

by the City in writing are deemed rejected. The City, in its sole discretion, may accept some or all of proposer's exceptions, reject proposer's exceptions, and deem the proposal non-responsive, or award the Contract without proposer's proposed exceptions. The City will not consider exceptions addressed elsewhere in the proposal.

**2.3** The Contractor Standards Pledge of Compliance Form.

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

**2.5** Reserved.

**2.6** Reserved.

**2.7** Reserved.

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

**2.9** Reserved.

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

**2.10** A title page.

**2.11** A table of contents.

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

**2.13** Proposer's response to the RFP, including the following exhibits:

**2.13.1** Exhibit D Technical Requirements

**2.13.2** Exhibit F Functional Requirements

**Tab C - Cost/Price Proposal (Exhibit C).** Proposers shall submit a cost proposal in the form and format described herein. Failure to provide cost(s) in the form and format requested shall result in proposal being declared non-responsive and rejected.

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

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

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

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

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

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

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

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

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

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

**9. Public Records.** By submitting a proposal, the proposer acknowledges that any information submitted in response to this RFP is a public record subject to disclosure unless the City determines that a specific exemption in the California Public Records Act (CPRA)

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

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

**B. PRICING**

**1. Fixed Price.** All prices shall be firm, fixed, fully burdened, FOB destination, and include any applicable delivery or freight charges, and any other costs required to provide the requirements as specified in this RFP. The lowest total estimated contract price of all the proposals that meet the requirements of this RFP will receive the maximum assigned points to this category as set forth in this RFP. The other price schedules will be scored based on how much higher their total estimated contract prices compare with the lowest:

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

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

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



or any portion of the City sales tax returned to the City will be considered in the evaluation of proposals.

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

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

### **C. EVALUATION OF PROPOSALS**

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

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

#### **3. Evaluation Process.**

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

#### **3.2 Reserved.**

**3.3 Mandatory Interview/Oral Presentation/Demonstration.** The City will require proposers to interview and/or make an oral presentation/demonstration if they are the highest score or one or more proposals score within ten (10) points or less of the proposal with the highest score. Only the proposer with the highest scoring proposal and those proposers scoring within ten (10) points or less of the highest scoring proposal will be asked to interview and/or make an oral presentation/demonstration. Interviews and/or oral presentations/demonstrations will be made to the Evaluation Committee in order to demonstrate the solution, clarify the proposals, and to answer any questions. The interviews and/or oral presentations/demonstrations will be scored as part of the selection process. Additionally, the Evaluation Committee may require proposer's key personnel to interview.

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

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

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

	MAXIMUM EVALUATION POINTS
<b>A. Responsiveness to the RFP.</b>	<b>20</b>
<ul style="list-style-type: none"> <li>1. Requested information included and thoroughness of response</li> <li>2. Adherence to the City’s terms and Conditions</li> <li>3. Clarity of the proposed technical solution</li> <li>4. Compliance with environmental, health and safety guidelines</li> </ul>	
<b>B. Firm's Capability, Experience and Qualifications.</b>	<b>20</b>
<ul style="list-style-type: none"> <li>1. Relevant experience of the proposers in providing similar work in size and scope</li> <li>2. Qualifications of key personnel involved</li> <li>3. Clearly defined Roles/Responsibilities of personnel</li> <li>4. Successful track record of completing projects of similar complexity and scale</li> <li>5. Evidence of customer satisfaction, timely delivery and successful implementation</li> <li>6. Specific experience on Multi-Protocol Label Switching (MPLS) networks</li> <li>7. Capacity/Capability to meet the City of San Diego’s needs in a timely manner</li> <li>8. References</li> </ul>	
<b>C. Technical Approach and Solution</b>	<b>35</b>
<ul style="list-style-type: none"> <li>1. Understanding of project requirements and scope</li> <li>2. Proposed system’s capability to detect and alert underground utilities accurately</li> <li>3. Reliability and robustness of the system to operate under various conditions</li> <li>4. Clarity and feasibility of the proposed technical solution</li> <li>5. Innovation and creativity in addressing potential challenges or unique aspects of the project</li> <li>6. Comprehensive project plan detailing milestones, timelines and deliverables</li> <li>7. Adequate resource allocation and project management approach to ensure timely implementation</li> <li>8. Proposed maintenance, technical support and system updates</li> <li>9. Warranty and guarantees offered</li> </ul>	
<b>D. Price.</b>	<b>10</b>
<b>E. Mandatory Demonstration/Presentation.</b>	<b>15</b>
<ul style="list-style-type: none"> <li>1. Equipment</li> <li>2. Software</li> <li>3. Support Model</li> <li>4. Real Time Operation</li> </ul>	

	MAXIMUM EVALUATION POINTS
5. Thoroughness and Clarity of Presentation	
SUB TOTAL MAXIMUM EVALUATION POINTS:	<b>100</b>
<b>F. Participation by Small Local Business Enterprise (SLBE) or Emerging Local Business Enterprise (ELBE) Firms*</b>	<b>12</b>
FINAL MAXIMUM EVALUATION POINTS INCLUDING SLBE/ELBE:	<b>112</b>

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

**D. ANNOUNCEMENT OF AWARD**

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

**2. Obtaining Proposal Results.** No solicitation results can be obtained until the City announces the proposal or proposals best meeting the City’s requirements. Proposal results may be obtained by: (1) e-mailing a request to the City Contact identified on the eBidding System or (2) visiting the P&C eBidding System to review the proposal results. To ensure an accurate response, requests should reference the Solicitation Number. Proposal results will not be released over the phone.

**3. Multiple Awards.** City may award more than one contract by awarding separate items or groups of items to various proposers. Awards will be made for items, or combinations of items, which result in the lowest aggregate price and/or best meet the City’s requirements. The additional administrative costs associated with awarding more than one Contract will be considered in the determination.

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

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

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

**2. Taxpayer Identification Number.** Internal Revenue Service (IRS) regulations require the City to have the correct name, address, and Taxpayer Identification Number (TIN) or Social Security Number (SSN) on file for businesses or persons who provide goods or

services to the City. This information is necessary to complete Form 1099 at the end of each tax year. To comply with IRS regulations, the City requires each Contractor to provide a Form W-9 prior to the award of a Contract.

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

**4. Reserved.**

**5. Reserved.**

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

**EXHIBIT B  
SCOPE OF WORK**

**A. INTRODUCTION**

The City of San Diego (City), Transportation, Stormwater and Public Utilities Department seeks qualified Proposers for the provision, installation, configuration, and workflow integration of a comprehensive commercial off-the shelf (COTS) Electronic Positive Response (EPR) solution.

The City of San Diego Departments of Transportation, Stormwater and Public Utilities perform location services of underground City owned assets and must comply with California State law for Electronic Positive Response (EPR). Electronic Positive Response (+Response or EPR) is communication from the utility member (contract locator) to the excavator regarding the status of a DigAlert ticket.

**B. REQUIREMENTS BACKGROUND**

The City is looking for a comprehensive Electronic Positive Response (EPR) solution/application for Transportation, Stormwater and Public Utilities Departments. The successful Proposer shall have experience implementing an EPR solution/application with large municipalities.

The EPR solution can drive many benefits for the City, primarily:

1. Compliance with State of California mandate to respond timely to DigAlert tickets.
2. Manage DigAlert tickets by geographical area, assignment to locator and priority of ticket.
3. Allowing locator to schedule and assign location services with excavator.
4. Allowing locator to access data and work the case in the field.
5. Allowing locator, supervisor, and management to search and generate ad-hoc reports.

Through the implementation of a modern and comprehensive EPR solution, the City seeks to accomplish the following project objectives:

1. Effectively and efficiently manage DigAlert tickets, assign and scheduled locating services.
2. Clear communication plan between vendor and City regarding increased ticket visibility, data sharing and collaboration among city departments.
3. The solution should work on common platforms, including desktop computers, laptops, iPads, and cellular phones for Locators/staff, while being mobile and cloud-based.
4. Incorporate new technology such as geolocation to search, guide, and document ticket processing.
5. Flexible and easily configurable system to meet new State mandated regulations and reports specific to the requirements of are configurable each participating City department's individual requirements without customization.
6. Support and integrate with City ESRI map services to correct asset information that are missing or misaligned.
7. Provide Active Directory (AD) authentication using Security Assertion Markup Language (SAML) or similar authentication method.
8. Mobile solution with ability to buffer/store input in areas with little to no cellular coverage and allow sync when coverage is restored.
9. Address limited reporting capabilities by enhancing enterprise-wide data sharing.

10. Provide business intelligent reporting tool to develop executive-level reports that contain actionable, real-time data and dashboards.
11. Re-tool business processes to be streamlined and promote internal efficiencies.

The selected EPR solution will help the City address and resolve the following issues:

1. Limit of current system of desktop/GIS direct connection which is slow and inefficient.
- a. Limited integration with web-based systems that comply with City standard security protocols.
2. No feature services or map services for GIS connections.
3. No mobility system for field locator.
4. No real-time interaction between field officer and back-office database.

### **C. OBJECTIVE**

The City of San Diego seeks a comprehensive, turn-key solution whereby all aspects, required functions, and modules of the proposed system are operable by the time implementation is completed (go-live). The City will coordinate with the selected Proposer to determine an appropriate deployment schedule, based on factors such as:

1. Alignment with other City of San Diego technology initiatives.
2. Change management impacts to City employees.
3. Coordination with participating City departments.

### **D. ADA COMPLIANCE**

The content on all website and web applications created, bought, leased, or otherwise employed by the City of San Diego for public use shall meet the Web Content Accessibility Guidelines (WCAG) 2.0 Level AA and any successive WCAG guidelines most current at the time of application.

### **E. EPR INNOVATIONS**

The City is very focused on leveraging EPR system to drive innovations in enforcing regulatory mandates. In the technical response, the Proposer should describe how the City can take advantage of the following innovative functionality to manage DigAlert tickets and setup scheduled routine inspection:

1. Use of Google and ESRI map from SANDAG, County Assessor, and the City of San Diego.
2. Use of mobile device to process a ticket and communicate with back office in real-time.
3. Real-time, in-field collaboration.
4. Personalized advice/smart routing.
5. Use of business intelligence reporting tool to quickly, and easily create ad-hoc reports and dashboards.

### **F. SPECIFICATIONS**

The City of San Diego will consider Proposals for implementation of an EPR software solution that is vendor hosted, subscription-based Software as a Service (“SaaS”) Solution.

Proposers are encouraged to identify in their proposals which characteristics of, and why their solution is best suited to the needs of the City’s Transportation, Stormwater and Public Utilities Departments.

## 1. Responsiveness to the RFP

- a. Requested information included and thoroughness of response.
  - i. The proposal must be a complete document and include everything outlined in Exhibit A. Proposal Submission and Requirements, Exhibit B. Scope of Work, Exhibit C. Price Proposal, Exhibit D. Technical Requirements, Exhibit E. City of San Diego Electronic Positive Response As-Is Workflow (please provide proposed workflow), Exhibit F. Functional Requirements.
  - ii. Must include a staffing plan, qualifications submittal, draft implementation plan, draft implementation schedule, and draft, outline documents that are all further explained in this section. These can be included in the response or provided as attachments.
- b. Understanding of the project and ability to deliver as exhibited in the Executive Summary.
  - i. Executive summary should demonstrate knowledge and experience with mandates for California's DigAlert Underground Service Alert Southern California. Provide a short summary of the implementation plan and schedule. Describe how the proposed EPR solution will allow the City to meet its requirements in the State of California.
- c. Software performance history.
  - i. Sample cases of software in use to achieve similar workflow and results.
  - ii. The Proposer will provide at least two (2) case studies of the proposed software in use by a municipality for a EPR in the State of California.
  - iii. Sample cases are required to show the workflow used by the other municipality and to give statistics on response times, and number of tickets processed among other statistics such as municipality size etc.
- d. Clear and thorough cost proposal via Exhibit C. Price Proposal.

## 2. Qualifications, Experience, and Staffing Plan

- a. A staffing plan and a submittal of qualifications will be required in the response. The staffing plan and submittal of qualifications are subject to the following:
  - i. **Company Overview:** The Proposer must include a company summary including company history, office location(s), company size (how many personnel are part of the software development team, implementation team, and support team), financial statements, and statement of technical areas of expertise. The Proposer must be able to substantiate to the satisfaction of the City of San Diego that the Proposer has sufficient resources to complete the project. (If Proposer is not the software provider then Proposer must submit this for both their company and the company of the software they are proposing to implement.)

- ii. Experience: The Proposer must describe their previous experience with recent EPR software implementation projects for public sector organizations. Implementations involving more than 500,000 residents that have been deployed within the last five (5) years is strongly preferred. Experience will not be considered unless complete reference data is provided. A minimum of three (3) references are required.
- iii. References: Please provide three (3) references from clients who have had similar scopes of work and requirements. References must be within last five (5) years. Whenever possible, an alternative point of contact for each reference should be listed with phone number and email address. References must include the following information:
  - Reference #
  - Name of Organization
  - Address
  - Contact Name
  - Contact Telephone Number
  - Email address
  - Date Work Undertaken
  - Nature of Assignment
  - Business Benefits Realized
  - Environmental Benefits Accrued (optional)
  - User-focused design experience/industry awards

References will be verified as part of the standard City procurement process.

If contact with referenced contact person or an alternative that has knowledge of the Proposer is not made, after reasonable attempts during the designated evaluation period, the reference will be classified as unsatisfactory. All attempts to contact a referenced client will be documented, including the date and time of the attempt.

All client reference information must be supported and verified. Reference contacts must be aware that they are being used and agreeable to being contacted by the City. The City may solicit feedback from previous clients, including project and/or staff from the City of San Diego.

Proposers will not be disqualified for not having three reference with similar scope in the last five years. The most applicable three references available to the Proposer will suffice at the cost of points in the section.

- iv. Availability/Geographical location of personnel for required tasks. The Staffing plan will also indicate hours staff may be reached and their method of contact and level of effort for them to come to the site, if applicable.

## **G. Project Team**

1. The proposal will include clearly defined Roles/Responsibilities of personnel with clear organization structure.



2. The Proposer must identify a single point of contact for all contract management activities. The Proposer's Project Manager's name and resume must be submitted with the proposal. The successful Proposer must not change the Project Manager without written City of San Diego approval.
3. The Proposer's Organization Chart must be included with all proposed personnel, including the supervisor level, functional responsibilities, key personnel, and other staff members who will be involved in the project and percentage of time dedicated to project. Proposers should describe their commitment to ensuring the composition of the project team will remain consistent throughout the course of the implementation phase. Project team cannot be substituted, or staff added without prior notice and acceptance by the City.
4. **Summary of Key Personnel.** Proposer must provide a summary of the key personnel who will be dedicated to provide the services described in this solicitation. At a minimum, the Proposer must identify the Project Manager, Lead Business Analyst(s), Training Manager, Quality Assurance Manager, Integration Lead, Information Architect, and GIS Lead. A User-Experience (UX) Interface Design Lead is highly recommended. For each person identified, describe the following information:
  - a. Their title and reporting responsibility.
  - b. Their proposed role in this project, including the functions and tasks for which they will have prime responsibility (also indicate areas of secondary responsibility if appropriate).
  - c. Their pertinent areas of expertise and experience (particularly for EPR implementation projects).
  - d. The location where they will provide the services (local or remote). (Please see the "On-Shore Provisions," under section L-Implementation, for more information.)
5. **Project Team Resumes.** The Proposer must include brief resumes for key personnel that will be assigned to the project. The project manager would ideally have experience implementing a similar solution for other large municipalities. Each project team resume should be formatted in a similar manner and contain the following content:
  - a. Brief overview of their professional career
  - b. Professional background highlighting relevant projects that have been completed and their role(s) in each project
  - c. Educational background
  - d. Publications (if applicable)
  - e. Professional activities and certifications

## H. PROCESS MAPPING/CHANGE MANAGEMENT

Please describe the approach you would take to support the City in the following two processes:

1. **Process Mapping.** A key component of a successful EPR system is information sharing and collaboration among City underground utility locators. Working in conjunction with City Departments, the Proposer would perform business process mapping and document gaps and blind spots, identify overlap and redundancy, and recommend best practices. This will include specific steps and tactics to achieve collaboration and best practices using the new EPR solution.
2. **Change Management.** Employees have been using existing processes for many years. The City understands the importance of change management services to the successful implementation of the EPR solution. The City has assigned internal personnel to support its change

management efforts. However, to support these resources, the City may desire the Proposer to become involved in the overall change management planning.

**I. SCOPE OF SERVICES**

The EPR project is designed to deliver a transformative solution for the City Departments that perform location services of underground City owned assets. This section details the scope of the project, including software and implementation services. The specific submittal requirements to demonstrate the Proposer’s ability to meet these expectations are contained in Exhibit A-Proposal Submission and Requirements.

1. **Functional Requirements.** The City has created a list of functional requirements for the solution in the following categories:
  - a. User Interface (UI)
  - b. GIS
  - c. Ticket Intake
  - d. Workflow
  - e. Report
  - f. Platform
  - g. Integration
  - h. Data Migration
  
2. **Detailed Requirements.** The detailed requirements are included as Exhibit F-Functional Requirements to this RFP. The City does not expect or require that a single solution meet all the requirements. The Proposer is required to indicate whether their solution meets the requirements out of the box, meets the with modification, meets with a third-party solution, meet with customization, will meet the requirements in a future release, or does not meet the requirements. *Table 4-Requirements Responses* (below), which is contained in Exhibit F-Functional Requirements to this solicitation, provides the approach on how the Proposer should respond to each requirement.

**Table 4: Requirements Responses**

<b>SUP</b>	Supported as delivered “out-of-the-box”
<b>CONF</b>	Supported through configuration only with no source code changes (screen configurations, reports, UI tailoring, etc., 20 hrs. or less)
<b>3<sup>RD</sup></b>	Supported via a third-party solution
<b>CST</b>	Supported via customization (changes to source code, more than 20 hrs.)
<b>FUT</b>	Will be supported in a future release
<b>NS</b>	Not supported

3. **Technical Requirements.**  
 Please see Exhibit D – Technical Requirements. The proposer is required to indicate whether their solution is “Compliant”, “Non-Compliant”, or “N/A”. If not compliant or N/A applies, proposer must provide comments as to why.

- Software License Counts.** The City seeks to procure the following number of licenses. Please use these amounts in developing the Cost Proposal submission in Exhibit C. Price Proposal. Refer to Section J.5. Training Requirements, for a detailed description of the user types and their expected responsibilities.

*Table 5: Estimated License Counts*

User Type	Named Users	Concurrent Users
End-User	25	25
Super-User	10	10
Functional System Administrative User	5	5
<b>Total:</b>	<b>40</b>	<b>40</b>

- Interfaces and Integration.** The selected Proposer will be responsible for building integrations with the incumbent City applications described in *Table 6: Required Integrations with Other City Applications (below)* and Exhibit F- Functional Requirements to this solicitation.

*Table 6: Required Integrations with Other City Applications*

#	Application	Application Type	Vendor	Department	Directionality
1	ESRI	ArcGIS Server	ESRI	Transportation, Stormwater, Public Utilities	Read-only access to ArcGIS asset feature classes with periodic data download
2	DigAlert	Generic File Format	DigAlert	Transportation, Stormwater, Public Utilities	Import data DigAlert 811 system

## J. IMPLEMENTATION SERVICES

This section outlines the City’s parameters and expectations around these implementation services and is in no way meant to delineate all the tasks expected to complete the implementation. Proposers should consider all factors when developing their approach, implementation plan, and cost proposal. Specific detailed examples that include a coherent methodology for aligning these services with EPR software deployment is a critical success factor. The Proposer should include responses to the following components in their description of their implementation approach.

- Project Management Approach.** The City requires that the primary (or prime) Proposer take responsibility for providing extensive project management for the implementation of the EPR solution. The prime Proposer is expected to guarantee the successful, timely completion of those aspects of the project over which it has control. Proposers must provide a project plan for achieving the objectives of the project including an explanation of the role of all partners, the role of the City’s staff (including time commitment), and an overall project timeline. A description of a recommended team structure (including an organizational team chart), listing key personnel functions, staffing profiles and responsibilities to cover the software and implementation, training, and support should also be included. The detailed plan must

thoroughly discuss how the Proposer will successfully implement the EPR requirements. Please include a copy of a plan utilizing *Microsoft Project*, or equivalent, software.

2. **The Proposer’s Project Manager Responsibilities.** The prime Proposer shall provide a qualified Project Manager (PM) who will be responsible for overseeing all aspects of the services to be provided to implement EPR solution, and who serves as the Proposer’s primary contact for management and administration of the project. The PM shall not be replaced by the Proposer without prior written approval by the City. The primary duties of the PM include, but are not limited to:

a. Create and provide a project management plan and a master project schedule with identified milestones as well as a work breakdown structure of deliverables. Key components include:

- 1) Hardware (if applicable) and software installation
- 2) Configuration, business process, and workflow analysis
- 3) System design
- 4) Quality management plan
- 5) Risk management plan
- 6) Communication plan
- 7) Required modifications, third party add-ons, and customizations
- 8) Required system integrations
  - i. Descriptions of Interfaces
  - ii. Tasks
  - iii. Roles and Responsibilities
  - iv. Data Formats
  - v. Resources required
  - vi. Templates
- 9) Data migration and cutover
- 10) Software testing planning and execution
- 11) Quality assurance
- 12) Training development and delivery
- 13) Executive-level communications
- 14) System acceptance
- 15) Facilitate communication among project team members – City and Proposer
- 16) Make commitments and decisions on behalf of the Proposer team
- 17) Implement changes to the project plan/statement of work
- 18) Manage project progress, including issues and potential schedule changes
- 19) Attend and participate in review meetings
- 20) Provide weekly status reports

3. **City Geographic Information Systems (GIS).** There are many GIS layers that the City has identified as being useful for identifying the asset, identifying the appropriate service request and provider, pinpointing the exact location of a service request, providing information for customer status reports, and providing useful information to work crews for more efficient fulfillment. Not every layer is appropriate or necessary for all service types. The Proposer will be expected to work with the City’s subject matter experts to determine what layers should be turned on and off for various service types/inquiries to facilitate effective intake and fulfillment. As a sample, the list of layers will include, but is not limited to:

- a. Stormwater Monitoring Sites
- b. Storm Drain Infrastructure (pumps, structures, conveyance)

- c. Water/Sewer Infrastructure
- d. Department-specific “Work Areas” and “Storm Patrol” Areas
- e. Zip Codes
- f. Community Planning Areas
- g. Police-defined Neighborhoods
- h. Council Districts
- i. Parcels and Property Ownership Information
- j. City Buildings/Grounds and Parks

The solution must be able to automatically associate GIS information with a particular service request to allow for reporting capabilities.

4. **Configuration, Testing, and Acceptance.** The Proposer will be required to detail for the City the potential configuration options that are available to meet the requirements. In addition, the Proposer will be required to produce a configuration document as a project deliverable prior to the system’s final configuration. The configurations are sited in Exhibit F – Functional Requirements to this solicitation and throughout the solicitation.

The Proposer will be required to configure all necessary proposed functionality for the City and is expected to work closely with the City’s functional experts to finalize the configurations and transfer knowledge. The Proposer will also be required to provide a testing strategy and plan (including scripts) as a project deliverable to the City. The final testing plan must be approved by the City in writing prior to the execution of tests.

The Proposer should provide three system environments: development/configuration, testing/training, and production, and the selected Proposer will work with the City to ensure that at the time of cutover, the system is functioning with the appropriate level of performance.

5. **Training Requirements.** The Proposer shall provide the City with a comprehensive training program that includes instructor-led training to facilitate successful implementation and knowledge transfer of the proposed EPR solution.

The City is interested in training services that use employee time efficiently and effectively transfers practical knowledge about the use of the new EPR solution. The Proposer shall propose an approach that includes significant opportunity for knowledge transfer throughout implementation and enhanced system understanding by the use and development of “in-house trainers”. The training requirements should correspond to the user amounts included in the Exhibit C - Price Proposal. Application manuals and procedures manuals must be provided to the City in an electronic format. The manuals must be routinely updated as policies or programs are changed. In addition, the City would like both an electronic version and one set of hard copies of the training manuals and/or materials that the selected Proposer delivers. In addition to the instructor-led training program, please provide a comprehensive training program that leverages a train-the trainer methodology for comparative purposes.

The Proposer shall provide trained and experienced instructor(s) and ensure that they do not perform other duties during the training period that will interfere with instruction. Instructors will provide a survey to trainees to evaluate presentation and course materials for effective feedback to the City.

6. **Instructor-Led Training.** The selected Proposer shall provide thorough training in each of the following areas for the designated number of people. Proposer shall specify duration for each of these training sessions:

- a. **End-User Training** (Up to 50 staff City-wide). End-user training will be focused on functional positions and workflow processes. All personnel comprising a specific functional position in a department will be trained on the system's use specific to their needs. Each department will rely on end users to work directly with the system each day. To ensure that end users are qualified to use the proposed solution, the Proposer shall develop on-site training classes during which an instructor shall use software and training guides to teach end users how to use the solution, including, at a minimum:
  - i. Assigning tickets to locator by geographical boundary or other parameters
  - ii. Accepting tickets, completing, editing, committing to EPR
  - iii. Scheduling ticket based on defined business rules from DigAlert
  - iv. Creating rules for auto or manual assignment or reassignment of ticket to a different locator
  - v. Resolving/closing tickets
  - vi. Querying
  - vii. Creating and modifying queries and reports
  - viii. Accessing scripts
  - ix. Accessing troubleshooting/help guides
  
- b. **Super-User Training** (Up to 20 staff City-wide). Each department will need staff capable of performing day-to-day administrative tasks. These Super-Users will not be called upon to perform enterprise-wide tasks but will oversee many aspects of their department's implementation and continuing support. At a minimum, the selected Proposer shall ensure that these Super Users are proficient in each of the following:
  - i. Ticket intake forms configuration and modification
  - ii. Scripting and workflow configurations
  - iii. Report creation and dashboard configuration
  
- c. **Functional System Administrator Training** (Up to 10 staff City-wide). Above the level of Super User, there is a group of individuals will be responsible for system administration, configuration, and security management for the City as a whole. In addition to proficiency at the Super User level, they will need to know:
  - i. User and group management
  - ii. Permissions and security management
  - iii. Adjusting login procedures
  - iv. Intrusion detection
  - v. Disaster Recovery and Business Continuity options
  - vi. Integration buildouts
  - vii. Enterprise-wide configuration settings
  - viii. Data backups
  
- d. **Train the Trainer Training** (Up to 5 staff City-wide). The City will be responsible for training new hires and new departments that adopt the EPR solution after the initial go-live. The Proposer shall conduct on-site training classes for in-house training staff who will lead, facilitate, and deliver the instructor-led portions of the training on the EPR system. This training shall include the trainer's role and responsibilities, the planning and teaching process, EPR system knowledge, and exams that will test learning. This course will provide City personnel with all the required tools, templates, etc. to deliver the training to their colleagues.

- e. **Other Training Considerations.** Training should be conducted in the City environment using City data, configuration settings, terminology, business processes, and scenarios. This training should be provided on a just in time basis to minimize knowledge loss from the date of training until go live. If the scheduled Go-live date is delayed for more than three (3) months due to the Bidder actions or faults, any repeat training sessions as determined by the City must be performed at no cost to the City. The training plan must also consider shift work as many field personnel will be required to be trained on the EPR system. Supplemental training and help tools should include:
  - i. On-line and mobile content
  - ii. Video instruction
  - iii. Interactive classes

**7. Training Evaluation and Materials.**

- a. The Proposer’s training shall include evaluation of trainees to ensure that they have learned the course content and can perform all necessary functions on the system.
- b. The Proposer shall notify the City of any employees that need additional training and provide them additional training as required.
- c. The Proposer shall record the training sessions and provide a copy of the recordings at no additional cost so that City employees may review the training material as needed.
- d. The Proposer shall provide trainees with workbooks, training aids, and functional or technical system manuals prior (on-line or hard copy) to or during the training session at no additional cost.
- e. The Proposer shall provide a detailed outline of each training session’s objectives and content at least two (2) weeks prior to the training session for the City to review, comment, and finalize.

- 8. **Data Migration.** The sources of the data that need to be migrated into the selected CRM solution include, but are not limited to the following in *Table 7 -Data Sources* and Exhibit F – Functional Requirements to this RFP:

*Table 7: Date Sources*

Data Source	Description of Data	Projected Volume
MS SQL	DigAlert tickets	522,721

- 9. **Software Support and Warranty.** The City is exclusively interested in implementing a SaaS solution. Maintenance and support shall be included in the contract between the selected Proposer and the City. Maintenance support will not commence until the application has been placed in production and accepted by the City in writing. Maintenance support must provide ongoing system support and maintenance, including upgrades, bug fixes, and patches, and other technical support necessary for City staff to operate the solution, including help desk support on general system use, configuration settings, reporting, etc.

The Proposer shall warranty the entire solution/system for a period of one year from the date the system is fully accepted by the City.

- 10. **“On-Shore” Provisions.** The Proposer shall not utilize resources or facilities located outside the (50) fifty states comprising the United States or any of the territories or possessions of the United States, to perform the services identified as part of this solution, without prior written consent of the City. Except where the Proposer obtains the City’s prior written approval, the

Proposer shall perform all the services only from or at locations within the geographic boundaries of the United States. Any City approval for the performance of services outside of the geographic boundaries of the United States shall be limited to the specific instance and scope of such written approval, including the types of services and locations involved.

11. **Software Maintenance.** The Proposer's software maintenance and support plan should include the following components:
- a. Procedures to resolve critical system problem
  - b. Regular Business Hours: 6:00 a.m. – 7:00 p.m. Mon – Fri (Pacific Time) support, excluding City-observed holidays (to match DigAlert Business Hours)
  - c. Non-Standard Business Hours Support: Requirement for call center support during non-standard business hours and holidays
  - d. Estimated service level agreements to repair standard system problems
  - e. Frequency of software updates and new software releases (i.e., patches and major revision levels) for the solution
  - f. Policy regarding future enhancements and upgrades
  - g. Availability of tiered support options to handle potential escalations
  - h. A description of extended agreements if they are available
  - i. Hourly cost per on-site technicians that may be required
  - j. Anticipated life cycle of the software being proposed
  - k. Description of system availability during periods of scheduled maintenance

Technical and maintenance support shall be provided through an annual maintenance agreement between the successful Proposer and the City. The successful Proposer must include a sample of their annual maintenance agreement in the proposal and provide guaranteed annual pricing for five (5) years. The Proposer shall indicate the information technology staff required to support the system.

The maintenance support will not commence until the application has been placed in production and accepted by the City in writing. The maintenance support must provide ongoing system support and maintenance, including upgrades, bug fixes and patches, and other technical support necessary for City staff to operate the solution. The successful Proposer must provide information on the frequency of software updates and new software releases (i.e. bug fixes and major revision levels) for the system and the anticipated life cycle of the software being proposed.

#### **K. SOFTWARE/SYSTEM DOCUMENTATION**

The selected Proposer will provide detailed system and user documentation to City staff responsible for the operation and support of the system. The selected Proposer shall provide digital, searchable technical and user manuals to the City. Additionally, the selected Proposer will also provide the City with complete digital, searchable system implementation documentation concerning installation, configuration, testing, interfaces, and data conversion. The selected Proposer shall also provide PDF copies of all relevant documentation and unlimited downloads of updated copies of the information.

The selected Proposer shall provide, no later than the go-live date, system documents that describe all software in sufficient technical and functional detail, so that this information can be used by City personnel to maintain the system and resolve identified problems.



**L. STANDARDS FOR CITY ACCEPTANCE OF DELIVERABLES**

The system will be expected to meet industry performance standards that will be agreed to by both parties. The Proposer should provide documentation of their standard Service Level Agreements (SLA) as part of their response.

In the event the selected Proposer does not meet the contractual performance requirements; the selected Proposer will pay the City of San Diego damages. The liquidated damages for failing to adhere to defined SLA may be defined during contract negotiations.

The following standards will be utilized to govern the acceptance of deliverables:

1. Proposer should define all deliverables and scheduled completion dates.
2. All deliverables shall be subject to City review and approval prior to acceptance and payment.
3. The City will have fifteen (15) business days to review each deliverable document.
4. The City is responsible for reviewing and approving each deliverable with an agreed upon turnaround time as included in the project plan. If the City requires revisions, the Proposer will receive written notification of the changes and have eight (8) business days to implement the changes.
5. Proposer shall not change a deliverable that has been accepted by the City without written approval of the City.
6. Each deliverable should conform to the solicitation, the Proposer’s proposal, and/or any subsequent agreements.
7. A process for identifying and correcting errors shall be included in the response.
8. No payments will be made for deliverables not fully accepted by the City.
9. The City and Proposer will develop a formal deliverable sign-off approach which will govern the payment schedule.
10. Incident Management. Provider provides Incident Management support for all application services covered by this Agreement. City will direct issues encountered with the services provided in this Agreement to an Incident Management or Customer Support contact as identified by Provider. Incidents will be assigned a priority level by the City based on the following criteria, and Provider shall use all commercially reasonable efforts to meet or exceed the following Service Level standards:

Level	Description
Priority Level 1 (P1)	Mission critical City business process(s) unable to function - the Electronic Positive Response (EPR) solution is not functioning and there is no workaround that is acceptable to the City, thereby preventing a department or workgroup from performing a mission critical business function(s).
Priority Level 2 (P2)	Significant impact to Mission Critical City business process(s) – a major problem impedes the ability to perform mission critical business function(s) due to major functionality not working. A temporary workaround that is acceptable to the City is available.
Priority Level 3 (P3)	Not able to accomplish all functions - minor function(s) not working causing non-critical work to back up.
Priority Level 4 (P4)	Inconvenience – the Electronic Positive Response (EPR) solution is causing a minor disruption in the way tasks are performed but does not stop workflow. Able to accomplish all functions, but not as efficiently as normal. May include cosmetic issues – especially in constituent facing applications.

Level	Time to Respond	Response Credit	Time to Resolve	Resolution Credit
P1	100% responded to within 4 hours	10% of prorated monthly Service Fees	100% resolved within 24 hours	15% of prorated monthly Service Fees
P2	100% responded to within 8 hours	5% of prorated monthly Service Fees	100% resolved within 48 hours	10% of prorated monthly Service Fees
P2	100% responded to within 24 hours	3% of prorated monthly Service Fees	100% resolved within 5 Business Days	7% of prorated monthly Service Fees
P4	100% responded to within 72 hours	2% of prorated monthly Service Fees	100% resolved within 15 Business Days	5% of prorated monthly Service Fees

11. **Periodic Reporting.** Proposer will monitor and document its performance against the agreed Service Levels and provide to the City a quarterly report demonstrating its performance against the agreed Service Level Requirements metrics, highlighting where any targets have been missed and providing to the City a Service Credit to the applicable value agreed when necessary.
12. **Termination for Default.** For the avoidance of doubt, if Proposer fails to meet its Service Level on three (3) consecutive monthly reporting periods, or fails to meet its Service Levels on four (4) monthly reporting periods through the course of a rolling twelve (12) month period, then City will consider that Propose is failing to satisfactorily perform its Service Levels and may exercise its right to terminate the Contract for default.
13. **Uptime Availability.** Proposer warrants that the Solution will be available to be accessed by the City at least 99.9% (Uptime Availability) of each calendar month during the Service Period.
14. **Uptime Availability Remuneration.** Where Proposer fails to meet the Uptime Availability Service Level, then City is entitled to claim the following prorated Service Credits against the annual Subscription Fee:
  - ≥ 99.7% but <99.9% = 10% of prorated monthly Subscription Fee.
  - ≥ 99.5% but <99.7% = 15% of prorated monthly Subscription Fee.
  - < 99.7% = 25% of prorated monthly Subscription Fee.
15. **Service Credits Calculation.** Uptime Availability will be calculated monthly by Proposer and such calculation will be deemed binding on the parties in absence of manifest error. Uptime availability is calculated based on the following formula:

$UA = (T - M - D) / (T - M) \times 100\%$  where UA = Uptime Availability, T = Total Monthly Minutes, M = Schedule Maintenance Minutes, and D = Downtime Minutes. When calculating any service level, any failure to meet the Service Level that is directly or indirectly caused by any one or more of the following items shall not constitute a failure of the Service Level:

- (a) Scheduled Maintenance:
- (b) Any of City’s Content and Software:
- (c) Any unlawful, negligent or willful act or omission by City, City’s Agents, contractors or invitees or any other person, and
- (d) Any Force Majeure event.

## M. FINAL SYSTEM ACCEPTANCE

There will be an acceptance test after the complete project implementation. These tests will confirm system operations and ensure that the system meets all the functional requirements as outlined Exhibit F–Functional Requirements to this solicitation and any subsequent agreements. The test, depending on the type of functionality being tested, will run for up to 30 days after the Proposer has determined that the system is operational. A second 30–day period is reserved for fixing discrepancies.

System performance shall match the sample speeds as shown by vendor demonstrations. Discrepancies that are fixed will be retested. The acceptance test must be completed within 60 days from the start of the test. If by fault of the Proposer, the testing, fixing, and retesting is not completed and accepted within 60 days, the system may be deemed unacceptable and the Proposer may be disqualified from the project. The Proposer will not be held responsible for delay caused by the City. In either case, such delay must be documented and agreed to by both parties.

## N. DATA SECURITY

**Contractor Certification.** Contractor certifies that it will implement and at all times comply with the most current City of San Diego Data Security Standards. Contractor will immediately notify the City if it undergoes, or has reason to believe that it will undergo, an adverse change resulting in the loss of compliance with the City’s Data Security Standards.

**Notification Requirements.** Contractor shall immediately notify the City’s Chief Information Security Officer of any breach of the City’s Data Security Standards. All notifications and required compliance documents regarding Data Security Standards shall be sent to:

Chief Information Security Officer  
1010 2<sup>nd</sup> Avenue, Suite 500  
San Diego, CA 92101  
[Cybersecurity@sandiego.gov](mailto:Cybersecurity@sandiego.gov)  
619-533-4840

**Indemnity.** Contractor shall indemnify and hold harmless the City, its officers, and employees from and against any claims, loss, damages, or other harm related to a data security breach or Contractor’s failure to maintain compliance with City of San Diego data security standards.

## O. DEPARTMENT REPRESENTATIVE

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

## P. ADDITIONAL INSURANCE

**1. Cyber Liability Insurance.** Contractor shall provide a copy of all System User software license agreements that they will be requesting the City to execute. In addition to the requirements of the City of San Diego’s General Contract Terms and Provisions Applicable to Goods, Services, and Consultant Contracts Article VII, Contractor shall provide, at its sole cost and expense, evidence of Cyber Liability insurance with limits of not less than \$1,000,000 for each occurrence and an annual aggregate of

\$2,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private

information, alteration of electronic information, extortion and network security. Such coverage is required only if any products and/or services related to information technology (including hardware and/or software) are provided to Insured and for claims involving any professional services for which Contractor is engaged with Insured for such length of time as necessary to cover any and all claims.

**2. Professional Liability.** Contractor shall obtain Professional Liability coverage with limits of at least \$1,000,000 per occurrence and \$2,000,000 aggregate, covering the risk of errors and omissions, negligent acts and costs of claims/litigation, including investigation and court costs. If the coverage is written on a "claims-made" form, Contractor must ensure that the policy retroactive date is before the date of the contract is awarded, that coverage is maintained during the duration of performance of the contract or the contract period (whichever is longer) and the policy has a reporting period or run-off provision of at least three (3) years following completion or termination of the performance of professional services under this Contract.

#### **Q. DEFINITIONS FOR PROPOSAL PURPOSES.**

Please note the following definitions of terms used herein:

1. **Cloud-Hosted.** A web hosting infrastructure provided by an outside vendor that consists of a network of external physical servers
2. **Concurrent User.** Actual simultaneous use of the Mobile Work Management Solution by a System User, application or system component.
3. **Effective Date.** The date that the Contract is signed by the last party and approved by the City Attorney, in accordance with Charter section 40. A Contract term cannot exceed five (5) years unless approved by the City Council by ordinance.
4. **Low Network Latency.** Less than 100ms for a packet of data to get from the proposed Cloud Host to System Users located in San Diego.
5. **Named User.** A specific person licensed for exclusive use of the Mobile Work Management Solution.
6. **On-Premise.** A server infrastructure provided by the City of San Diego in which the Mobile Work Management Solution may be installed and hosted.
7. **Public User.** A member of the public that interacts with the Mobile Work Management Solution for a single document or process.
8. **Scheduled Maintenance.** The time periods described in Section 7 of Exhibit D
  - IT Standards of the RFP as times for system maintenance.
8. **Service Credit.** The percentage of prorated fees paid or payable for the Service that is awarded to City for a validated claim associated with the Service related to breach of the applicable Service Level during that month.
  - a. **Response Credit.** The percentage of prorated fees paid or payable for the Service that is awarded to City for a validated claim associated with the Service related to breach of the applicable Time to Respond during that month.

- b. **Resolution Credit.** The percentage of prorated fees paid or payable for the Service that is awarded to City for a validated claim associated with the Service related to breach of the applicable Time to Resolve during that month.
- 10. **Service Level.** The minimum acceptable level of service or performance for a particular task, activity, or Service performed by Proposer.
- 11. **System User.** A City user that interacts directly with the Mobile Work Management Solution.
- 12. **Subscription Fee.** The annual subscription fee specified in the Price Proposal of this RFP.
- 13. **Transaction.** An electronic document of up to 50MB in size, and up to 999 pages in totality that may be accessed or uploaded to the City's document management solution (OpenText) and may not be subject to an expiration except through the natural expiry or termination of an existing Master Services Agreement for the Work Management Solution.
- 14. **Unscheduled Maintenance.** All maintenance activity in a calendar month that City did not approve in advance or that occurs outside of Scheduled Downtime and for which Proposer has made commercially reasonable efforts to notify City of the anticipated maintenance activity.
- 15. **Uptime Availability.** The percentage of time that a given Service or System is fully operational and available when its resources are called upon at a random point in time. Availability represents a measure of the fraction of time (expressed as a percentage) during a defined period when the Service or System is deemed to be equal to or better than the prescribed Service Level.

## R. ACRONYMS

- ADA Americans with Disabilities Act
- API Application Program Interface
- CSA Cloud Security Alliance
- ERP Enterprise Resource Platform
- LDAP Lightweight Directory Access Protocol Network Operating System
- OS Operating System
- PCI DSS Payment Card Industry Data Security Standards
- RDMS Relational Database Management Systems
- REST Representational State Transfer
- RFP Request for Proposal
- SAML Security Assertion Markup Language
- SCCM Service Center Configuration Manager
- SSO Single Sign-on

UETA Uniform Electronic Transactions Act

WCAG Web Content Accessibility Guidelines

**S. PRICE SCHEDULE**

1. Please complete Exhibit C. Pricing Proposal

**Exhibits C, D, and F are Excel files; they are posted in PlanetBids and must be filled out in its entirety.**

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<b>EXHIBIT C: Price Proposal</b>						
	One-Time	Year 1	Year 2	Year 3	Year 4	Year 5
<b>Section 1: Licensing and Maintenance Costs</b>						
<b>Transaction Based Pricing</b>						
License Fees		\$87,000.00	\$87,000.00	\$87,000.00	\$87,000.00	\$87,000.00
Number of Tickets Included		290,000	290,000	290,000	290,000	290,000
<b>Total Costs</b>		<b>\$87,000.00</b>	<b>\$87,000.00</b>	<b>\$87,000.00</b>	<b>\$87,000.00</b>	<b>\$87,000.00</b>
Overage Rate Ticket Cost (EA)		\$0.30	\$0.30	\$0.30	\$0.30	\$0.30
<b>Section 2: Implementation and Training Costs</b>						
<b>Implementation and Transition Costs (see list below)</b>						
Cost	\$8,500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Total Implementation and Training Costs</b>	<b>\$8,500.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Total Cost</b>	<b>\$8,500.00</b>	<b>\$87,000.00</b>	<b>\$87,000.00</b>	<b>\$87,000.00</b>	<b>\$87,000.00</b>	<b>\$87,000.00</b>
<b>Total Contract Cost of Ownership</b>						
						<b>\$443,500.00</b>

# EXHIBIT D: TECHNICAL REQUIREMENTS

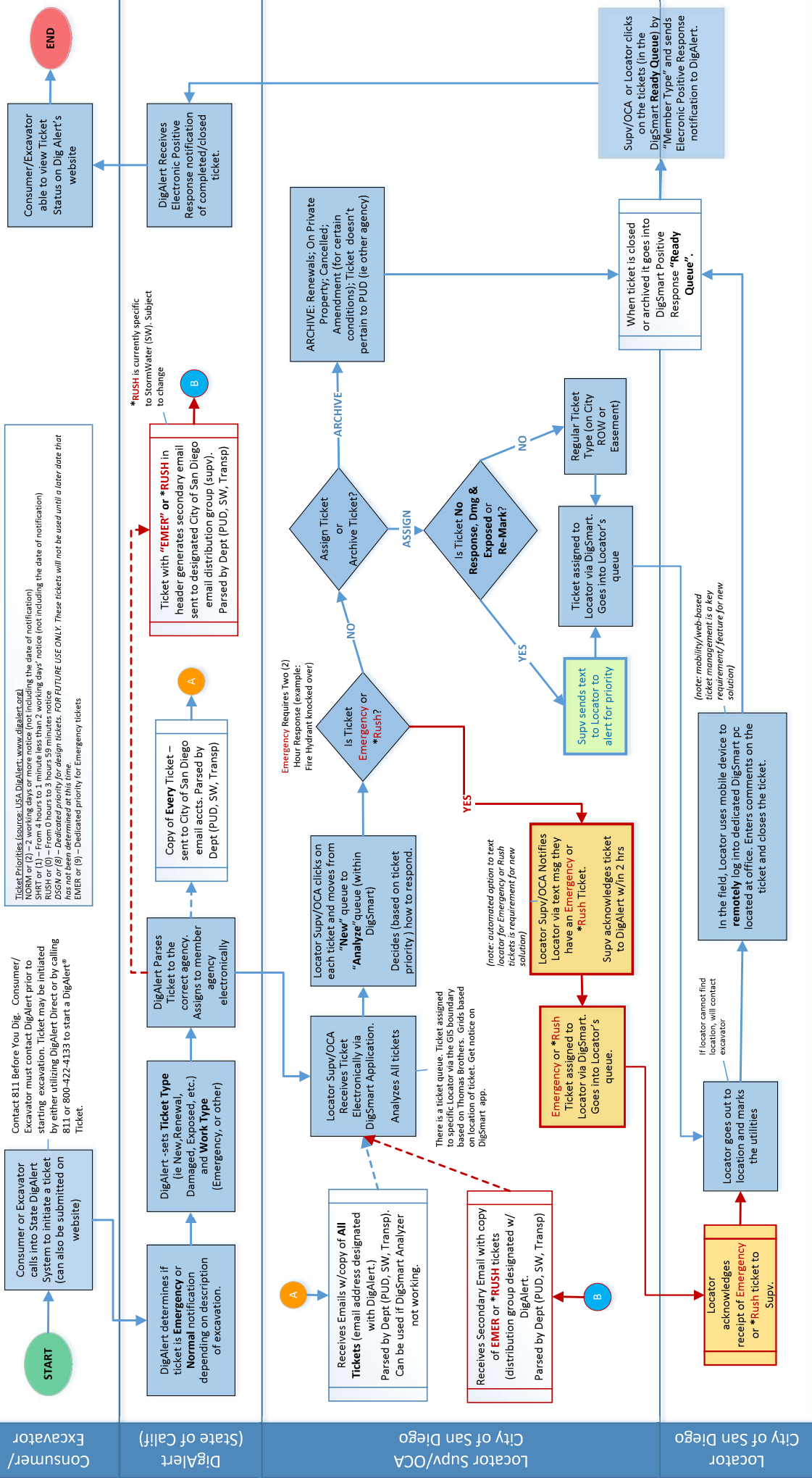
Questions	Required Responses	Guidance/Instructions	Discipline
Who is the Department Lead at the City of San Diego?	Public Utilities, Transportation, Stormwater		General
What is the criticality of this application during an emergency such as an earthquake (Mission Critical (High), Business Critical (Medium), or Standard Business Operational (Low))?	High		General
Who are the users and/or groups accessing the system?	Supervisors, Asset Locators, Utility Workers, Traffic Signal Technicians, Electricians		General
Is there any equipment being installed?	No	If so, please include any network, infrastructure, or appliances equipment (including manufacture model, servers, etc.).	General
Will City need to receive GIS data?	No	If <b>yes</b> , vendor will need to provide metadata to GIS team. For more information, please contact <a href="mailto:DoITEnterpriseGIS@SanDiego.gov">DoITEnterpriseGIS@SanDiego.gov</a>	General
Who will be administrator of the application-vendor or City?	Application-vendor will administer infrastructure and data; City will administer users and system con	If application is hosted, a City Department of IT Security Team Member must be included as one of the administrators.	Information and Data Security
Who owns the data in the system?	State of California		Information and Data Security
Will this solution have the capability to accept credit card information now or in the future?	No	If <b>yes</b> , an approval will be required by DoIT PCI team. Please contact <a href="mailto:PCI@sandiego.gov">PCI@sandiego.gov</a> for compliance requirements	Information and Data Security
Will any protected data be stored in the system (PCI, HIPAA, Financial, PII)?	No	For PCI data, please contact DoIT PCI team at <a href="mailto:PCI@sandiego.gov">PCI@sandiego.gov</a> for compliance requirements	Information and Data Security
Will any protected data be stored OUTSIDE the City's network or datacenter (PCI, HIPAA, Financial, PII)?	No		Information and Data Security
Will the vendor or application need access to the City's internal systems to do development or for operational use of the new system?	No.		Information and Data Security
Does the application have any connections to systems outside of the City's firewall?	Yes. The application is connected to the KorTerra-hosted cloud solution		Information and Data Security
If hosted outside of the City's internal network, does the application need a connection inside of our firewall?	KorTerra may request IP address whitelisting, depending on feature set, configurations, and functionality.	If yes, we will need the source and destination IP addresses and ports.	Information and Data Security
How will the system be kept current with patches and upgrades?	KorTerra manages all system patches and upgrades through our fully hosted solution.	If the solution is hosted, the contract needs to state the upgrade and patch processes.	Information and Data Security
Does the system utilize Generative Artificial Intelligence (AI)? If so, what LLM or technology is used (ChatGBT, Bard, etc.?)	KorTerra Ticket Management does not leverage AI; Our security systems and cloud administrative tools leverage AI as part of our system scans; No LLM technology is used.	If yes, please explain what input data will be used, is it publicly accessible and what acceptable use and data loss protection policies are applied.	Information and Data Security
Is the solution: on premise, hosted solution, software as a service (SaaS), or hybrid?	SaaS		Data Center
If the solution is hosted, who is subcontracted to host the data (e.g. AWS, GCP, or Microsoft Azure)?	Microsoft Azure		Data Center
If the solution is hosted, where will the City's data reside geographically?	Geo redundant locations via Microsoft Azure regions		Data Center
If the solution is hosted, what type of disaster recovery policy or plan does the vendor who is hosting the data have?	Disaster recovering planning by KorTerra personnel includes leveraging Microsoft Azure redundancy offerings for database, file, and infrastructure recovery. We are using both zone and geo redundancy within Microsoft Azure to ensure data preservation and service continuity		Data Center
If the solution is hosted, what is the back up policy in place by the vendor?	KorTerra uses Microsoft Azure retention mechanisms to manage backup retention		Data Center
If the solution is hosted, what access rights does the City have to the data through the course of the subscription? In what format will the data be provided to the City?	City will own all data. Data is managed by KorTerra personnel and would be made available to City via database backup upon written request and according to terms of service agreement.		Data Center
If the solution is on premise, how many IP addresses and network connections will be needed?	NA		Data Center
If the solution is on premise: How many servers are required?	NA		Data Center
If the solution is on premise, what are the source and destination IP addresses and ports?	NA		Network
If the solution is on premise, how will it physically connect to the internal network?	NA	If this is not clearly outlined in the architecture diagram, please explain and include any relevant hardware required (i.e. switches, routers, etc.).	Network
What are the hours of support of the application?	KorTerra offers 24/7 support		Service Desk
Who does the user call if they have a problem with the system?	our support staff located in our Twin Cities home office		Service Desk
Can SCCM (System Center Configuration Manager) be used to push the required desktop components?	No.		Service Desk
What other services does the product integrate with?	KorTerra offers public APIs for third party integration.		Service Desk
What software is required on the desktop?	KorTerra Ticket Management uses modern web browsers on the desktop (Google Chrome, Microsoft Edge, iOS)		Service Desk
Is the system ADA Compliant (WCAG 2.0 as a guideline)? Vpat?	While KorTerra offerings do not meet the criteria requiring ADA compliance and seek to meet these accessibility requirements in the future		Service Desk



# Exhibit E – City of San Diego Electronic Positive Response (EPR) As-Is Work Flow

Public Utilities Dept; StormWater Dept; Transportaton Dept

01/25/2022



**EXHIBIT F - FUNCTIONAL REQUIREMENTS**

**POSITIVE RESPONSE APPLICATION REPLACEMENT**

**User Interface/Mobility Requirements**

ID	Requirement Description	Response	Weight	Comment
1	Provide responsive web for all UI displaying 811 tickets in both tabular and geospatial formats.	SUP	4	Yes-KorTerra Locate Management has a responsive UI for display of 811 tickets in a tabular and geospatial format.
2	Provide a domain drop down for Positive Response codes. Configurable by admin/vendor to match state standardized codes	SUP	3	Yes-KorTerra Locate Management provides a drop down field to path the correct Positive Response Code to the Call Center when completing tickets. This can be maintained within the maintenance section of the KorTerra Software by our client Admins.
3	Works on all Windows based PC, laptops, and tablets (please list minimum system requirement spec)	SUP	4	Yes-KorTerra Locate Management works on all Windows based devices as well as Apple and Android devices of all types. There is no minimum spec for compatibility.
4	Works on various mobile devices running on IOS or Android (please list minimum system requirement spec)	SUP	3	Yes-KorTerra Locate Management works on all Windows based devices as well as Apple and Android devices of all types. There is no minimum spec for compatibility.
5	Works with Chromium Edge, Google Chrome, and Safari (please list minimum required versioning)	SUP	4	Yes-KorTerra Locate Management is compatible with all browsers including Edge, Chrome, Firefox, Safari etc.
6	Provide capability to work offline and auto sync when connect to a network	SUP	4	Yes-The KorTerra Mobile Field App has the ability to work fully offline when needed and reconciles all data automatically when coming back online.
7	Provide capability to quickly and easily add/change/hide display available data fields through application configuration with no custom coding	SUP	3	Yes-KorTerra Locate Management has the capability to quickly and easily add/change/hide display available data fields through application configuration with no custom coding
8	Provide the capability to quickly and easily change display data fields format or characteristic like "MM/DD/YYYY", drop down list, check box, etc.	SUP	2	Yes-KorTerra Locate Management has the capability to quickly and easily change display data fields format or characteristic like "MM/DD/YYYY", drop down list, check box, etc.
9	Serve up only UI that are relevant to users' role as defined in their profile, i.e. a locator should only see UI relevant to them	SUP	4	Yes-KorTerra Locate Management has the ability to Serve up only UI that are relevant to users' role as defined in their profile, i.e. a locator should only see UI relevant to them.
10	Provide ability to photograph mark out in the field and attach to ticket	SUP	3	Yes-KorTerra Locate Management has the ability to provide ability to photograph mark out in the field and attach to ticket. This can be done online or offline and through a multi-pic taking
11	Provide capability to automatically auto assign tickets based on location/zone	SUP	3	Yes-KorTerra Locate Management has the capability to automatically auto assign tickets based on location/zone through the Map Based Routing feature in the software.
12	Provide spell checker to automatically check long text field like Description	SUP	2	Yes-KorTerra Locate Management has the ability for a spell checker to automatically check long text field like Description
13	Provide ability for to comply with Single-Sign On	SUP	4	Yes-KorTerra Locate Management is compatible with SSO.

**EXHIBIT F - FUNCTIONAL REQUIREMENTS**

**POSITIVE RESPONSE APPLICATION REPLACEMENT**

**GIS Requirements**

ID	Requirement Description	Response	Weight	Comment
1	Work interactively with the City ESRI ArcGIS Server ver 10.x and above, and map services	CONF	4	Yes-KorTerra Locate Management supports this. This is configured during the implementation process when the map service URL and read-only credentials are provided if needed. Feature services supportability is in a near-future release
2	Works interactively with Google map services	SUP	2	Yes-KorTerra Locate Management has the ability to integrate client GIS data to overlay within the mapping contained in the KorTerra Software. A preferred base layer such as Google can be consumed with the rest of the facility data to be available for users to choose as their preferred base layer to use.
3	Provide the capability to view Google street view of any submitted/created cases	SUP	2	Yes-KorTerra Locate Management has the ability to integrate client GIS data to overlay within the mapping contained in the KorTerra Software. A preferred base layer such as Google can be consumed with the rest of the facility data to be available for users to choose as their preferred base layer to use.
4	Provide basic map navigations such as drop pin, panning, and zooming	SUP	3	Yes-KorTerra Locate Management supports basic map navigations such as drop pin, panning, and zooming.
5	Provide address search, auto complete address within the County of San Diego boundary and zoom to address location	SUP	2	Yes-KorTerra Locate Management provides the ability to address search, auto complete address within the County of San Diego boundary and zoom to address location.
6	Provide capability to selectively turn on/off ESRI map layers	CONF	4	Yes-KorTerra Locate Management supports this.-This is part of the implementation process as described in GIS question #1.
7	Provide capability to configure default asset layers based on stages	CONF	3	Yes-KorTerra Locate Management provides the capability to configure default asset layers based on stages.
8	Provide query base on other GIS attributes such as parcel number, responsible party, property owner, etc.	SUP	3	Yes-KorTerra Locate Management provides the ability to query based on other GIS attributes such as parcel number, responsible party, property owner, etc.
9	Provide the ability to display active USA tickets and surrounding buffer zone on map	SUP	4	Yes-KorTerra Locate Management provides the ability to display active USA tickets and surrounding buffer zone on map.
10	Provide the ability to select, open, USA ticket request on the map	SUP	4	Yes-KorTerra Locate Management provides the ability to select, open, USA ticket request on the map.
11	Provide the ability for users to modify scale, size, and print maps	SUP	3	Yes-KorTerra Locate Management provides the ability for users to modify scale, size, and print maps.
12	Provide the ability to search by proximity	SUP	3	Yes-KorTerra Locate Management provides the ability to search by proximity.
13	Provide the ability to obtain a list of all assets within ticket buffer zone	SUP	2	Yes-KorTerra Locate Management provides the ability to obtain a list of all assets within ticket buffer zone.
14	Provide the ability to consume web services from the City	CONF	4	Yes-KorTerra Locate Management provides the ability to consume web services from the City.
15	Provide the ability to standardize GIS symbology by attribute like asset type (sewer water main, storm drain), public safety risk, etc.	SUP	3	Yes-KorTerra Locate Management provides the ability to standardize GIS symbology by attribute like asset type (sewer water main, storm drain), public safety risk, etc.

**EXHIBIT F - FUNCTIONAL REQUIREMENTS**

**POSITIVE RESPONSE APPLICATION REPLACEMENT**

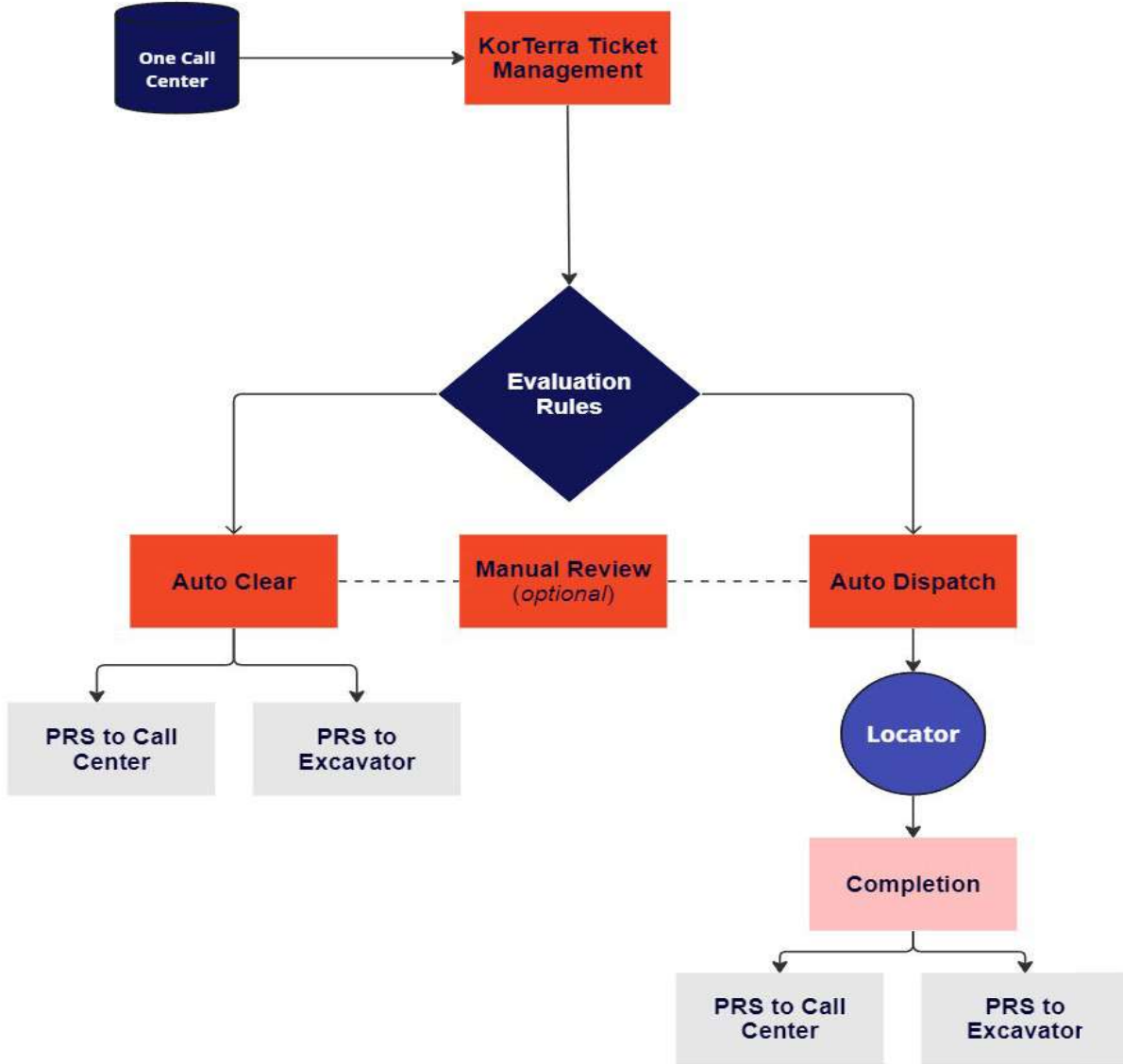
**Case Intake/Closure Requirements**

ID	Requirement Description	Response	Weight	Comment
1	Provide the ability to auto detect, batch tickets for assets within the same locate of potential duplicate Positive Response tickets	SUP	3	Yes-KorTerra Locate Management provides the ability to auto detect, batch tickets for assets within the same locate of potential duplicate Positive Response tickets.
2	Provide the capability to automatically or manually detect, flag, and notify user when there are tickets assigned to user	SUP	2	Yes-KorTerra Locate Management provides the capability to automatically or manually detect, flag, and notify user when there are tickets assigned to user.
3	Provide the capability for supervisor to manually re-assign and add comments to ticket	SUP	3	Yes-KorTerra Locate Management provides the capability for supervisor to manually re-assign and add comments to a ticket.
4	Provide the capability to create alerts to be sent to supervisors for emergency tickets	SUP	4	Yes-KorTerra Locate Management provides the capability to create alerts to be sent to supervisors for emergency tickets. This is accomplished through the maintenance functionality within the Administrator's point of view.
#REF!	Provide the capability to attach document, photo, or video	SUP	4	Yes-KorTerra Locate Management provides the capability to attach document, photo, or video to any ticket at any time.
#REF!	Provide the capability to manually compress large photo before attachment	SUP	1	Yes-KorTerra Locate Management provides the capability to manually compress large photo as the attachment is being attached to a agreed upon size to maximize cloud data storage.
#REF!	Provide the capability to preview attachments	SUP	2	Yes-KorTerra Locate Management provides the capability to preview attachments within the ticket via a thumbnail format.
#REF!	Provide auto save capabilities (cache) for remote devices	SUP	3	Yes-KorTerra Locate Management provides for a fully offline experience where needed. The user in the field when offline, has the full capabilities of the software. Everything is reconciled when the user comes back online and it is completely seamless.
#REF!	Provide editing capability after saving prior to committing to Positive Response	SUP	3	Yes-KorTerra Locate Management provides editing capability after saving prior to committing to Positive Response.
#REF!	Provide the capability to create rules for auto or manual assign/reassign a case to another employee or work group if the primary assignor is not available	SUP	2	Yes-KorTerra Locate Management provides the capability to create rules for auto or manual assign/reassign a case to another employee or work group if the primary assignor is not available through the Map Based Routing Feature.
#REF!	Provide the capability to assign a ticket to locator by zip code, watershed, council district, Neighborhood, or other arrangements	SUP	3	Yes-KorTerra Locate Management provides the capability to assign a ticket to locator by zip code, watershed, council district, Neighborhood, or other arrangements within the Business Rules Routing Feature.
#REF!	Capability to override ticket assignment to locator by availability or nearest locator in the area	SUP	1	Yes-KorTerra Locate Management provides the capability to override ticket assignment to locator by availability or nearest locator in the area within the Business Rules Routing Feature.
#REF!	Provide the capability to schedule ticket assignment based on defined business rules from DigAlert	SUP	3	Yes-KorTerra Locate Management provides the capability to schedule ticket assignment based on defined business rules from DigAlert within the Business Rules Routing Feature.
#REF!	Provide the capability to calculate efficient routes	SUP	1	Yes-KorTerra Locate Management/Field Application provides the capability to calculate efficient routes using turn by turn directions.
#REF!	Provide the ability to auto send reminder of upcoming or past due cases	SUP	3	Yes-KorTerra Locate Management provides the ability to auto send reminder of upcoming or past due cases utilizing Near Locate Ticket Messaging Features.
#REF!	Provide the capability to search by excavator, locator, ticket number, locate address	SUP	4	Yes-KorTerra Locate Management provides the capability to search by excavator, locator, ticket number, locate address utilizing the Advanced Searching capabilities.
#REF!	Provide the capability to print a ticket and all associated documents	SUP	4	Yes-KorTerra Locate Management provides the capability to print a ticket and all associated documents including the mapping whenever needed.
#REF!	Provide the capability to record all transactions done on a case in an audit log	SUP	3	Yes-KorTerra Locate Management provides the capability to record all transactions done on a ticket in an audit log that tracks every major action taken on a ticket from the time it was received until closed and responded to.
#REF!	Provide the capability to record all transactions done on a case in an audit log and print audit log per case, by date range, or other parameters	SUP	3	Yes-KorTerra Locate Management provides the capability to record all transactions done on a ticket in an audit log and print audit log per case, by date range, or other parameters.
#REF!	Provide the capability to automatically process Renewals and auto-archive	SUP	3	Yes-KorTerra Locate Management provides the capability to automatically process Renewal Tickets and auto-archive those as needed.

EXHIBIT F - FUNCTIONAL REQUIREMENTS

POSITIVE RESPONSE APPLICATION REPLACEMENT

Workflows Requirements



**EXHIBIT F - FUNCTIONAL REQUIREMENTS**

**POSITIVE RESPONSE APPLICATION REPLACEMENT**

**Report/Form/Dashboard Requirements**

ID	Requirement Description	Response	Weight	Comment
1	Provide reporting tool for supervisor to easily "drag and drop" to create, edit, filter, sort, and print reports	SUP	4	Yes-KorTerra Locate Management Provide reporting tool for supervisors to easily create, edit, filter, sort, and print reports as needed. KorTerra leverages the Microsoft Power BI Platform embedded within the KorTerra software for reporting and dashboard needs.
2	Provide tool for user to easily "drag and drop" to create, edit dashboards based on a set of key performance indicators	SUP	4	Yes-KorTerra Locate Management-KorTerra leverages the Microsoft Power BI Platform embedded within the KorTerra Locate Management software for reporting and dashboard needs. This allows for customizable dashboard and reporting capabilities.
3	Provide the ability to drill down on data contained in the dashboards	SUP	3	Yes-KorTerra Locate Management Power BI Reporting Capabilities provides the ability to drill down on data contained in the dashboards.
4	Provide the capability to define and create custom fields and calculated fields within reports	SUP	3	Yes-KorTerra Locate Management Power BI Reporting Capabilities provides the capability to define and create custom fields and calculated fields within reports.
5	Provide the capability to generate "hot-spot" reporting for geographic areas in pre-defined zones (e.g., zip code, census tract, etc.) or user-defined areas.	SUP	2	Yes-KorTerra Locate Management Power BI Reporting Capabilities provides the capability to generate "hot-spot" reporting for geographic areas in pre-defined zones (e.g., zip code, census tract, etc.) or user-defined areas.
6	Provide the capability to do print preview	SUP	3	Yes-KorTerra Locate Management Power BI Reporting Capabilities provides the capability to do print preview.
7	Provide the capability to incorporate pictures and maps into a report		3	Yes-KorTerra Locate Management Power BI Reporting Capabilities provides the ability to incorporate pictures and maps into a report.
8	Provide the capability to create and export query and report to various file formats such as csv, DOC, PDF, Excel, etc.	SUP	3	Yes-KorTerra Locate Management Power BI Reporting Capabilities provides the capability to create and export any query and report to various file formats such as csv, DOC, PDF, Excel, etc.
9	Provide mechanism to schedule reports to be run on a predefine frequency like daily/weekly/monthly	SUP	3	Yes-KorTerra Locate Management Power BI Reporting Capabilities provides mechanisms to schedule reports to be run on a predefined frequency like daily/weekly/monthly.
10	Provide canned productivity reports by group, individual, and time period	SUP	2	Yes-KorTerra Locate Management Power BI Reporting Capabilities provides canned productivity reports by group, individual, and time period to name a few.
11	Provide canned case escalation report/dashboard	SUP	2	Yes-KorTerra Locate Management Power BI Reporting Capabilities provides canned case escalation reports/dashboards.
12	Provide canned case audit tracking a ticket from start to completion report	SUP	2	Yes-KorTerra Locate Management Power BI Reporting Capabilities provides canned case audit tracking a ticket from start to completion in a report desired.
13	Provide capability to search and display or export a ticket history and other historical data related to the tickets in chronological order	SUP	3	Yes-KorTerra Locate Management Power BI Reporting Capabilities provides the ability to search, display or export a ticket history and other historical data related to the tickets in chronological order.
13	Provide the capability to retrieve and display or export history of violations on a location, an address, property owner, and company	SUP	4	Yes-KorTerra Locate Management Power BI Reporting Capabilities provides the ability to retrieve and display or export history of violations on a location, an address, property owner, and company.
14	Provide canned case report/dashboard by council district, zip code, and other geographic boundaries	SUP	2	Yes-KorTerra Locate Management Power BI Reporting Capabilities provides canned case reports/dashboards by council district, zip code, and other geographic boundaries.

**EXHIBIT F - FUNCTIONAL REQUIREMENTS**

**POSITIVE RESPONSE APPLICATION REPLACEMENT**

**System Platform Requirements**

ID	Requirement Description	Response	Weight	Comment
1	Must provide multi-tenant, SaaS or PaaS	SUP	4	Yes-KorTerra Locate Management provides multi-tenant, SaaS or PaaS capabilities and integration flexibility.

**EXHIBIT F - FUNCTIONAL REQUIREMENTS**

**POSITIVE RESPONSE APPLICATION REPLACEMENT**

**System Integration Requirements**

*\*\*Note: For each integration listed below, please provide a brief description of the integration solution and an example of a successful integration, if any, in the Comment column.*

ID	Requirement Description	Response	Weight	Comment
1	Ability to integrate or process e-mail notifications from the Underground Service Alert of Southern California	SUP	4	Yes-KorTerra Locate Management has the ability ability to integrate or process e-mail notifications from the Underground Service Alert of Southern California.
2	Provide the capability to integrate with ESRI GIS system. Read-only access to ESRI repository or periodic data download.	SUP	4	Yes-KorTerra Locate Management provides the capability to integrate with ESRI GIS system.



**EXHIBIT F - FUNCTIONAL REQUIREMENTS**

**POSITIVE RESPONSE APPLICATION REPLACEMENT**

**Data Migration**

ID	Requirement Description	Response	Weight	Comment
1	Solution should provide the ability to migrate ticket data from 2016 to present. The data is stored in a SQL system, stored on a file server. There are about 523,000 records that needed to be migrated to the new system.	CONF	4	Yes-KorTerra will work to develop a logical migratory plan for the historical data after Phase 31 Core Ticket Management software is implemented.

**EXHIBIT G**



**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%, whichever is less, during the preceding one year term. If the CPI-U is a negative number, then the unit prices shall not be adjusted for that option year (the unit prices will not be decreased). A negative CPI-U shall be counted against any subsequent increases in the CPI-U when calculating the unit prices for later option years. Contractor must provide such written request and justification no less than sixty days before the date in which City may exercise the option to renew the contract, or sixty days before the anniversary date of the Contract. Justification in support of the written request must include a description of the basis for the adjustment, the proposed effective date and reasons for said date, and the amount of the adjustment requested with documentation to support the requested change (e.g. CPI-U or 5.0%, whichever is less). City's approval of this request must be in writing.

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS**

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE VI INTELLECTUAL PROPERTY RIGHTS**

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

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

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

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

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

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

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

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

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

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

## **ARTICLE VII INDEMNIFICATION AND INSURANCE**

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

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

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

Contractor shall provide, at a minimum, the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE VIII BONDS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE XI DISPUTE RESOLUTION**

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

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

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

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

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

## **ARTICLE XII MANDATORY ASSISTANCE**

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

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

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

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

### **ARTICLE XIII MISCELLANEOUS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## EXHIBIT H

### KORTERRA SOFTWARE-AS-A-SERVICE REQUIREMENTS

#### 1. Definitions.

“**Contract**” means this contract between KorTerra and the City of San Diego.

“**Effective Date**” means the same as in Article 2, Section 2.2 of the Contract.

“**KorTerra**” “**we**”, “**us**” and “**our**” means KorTerra, Inc. which is referred to as “**Contractor**” in the Contract.

“**One Call Center**” means a designated notification center that individuals and entities contact prior to commencing an excavation in or on the ground which is intended to provide registered parties having underground infrastructure of pipes, mains and lines for producing, storing, conveying, transmitting or distributing communications, electricity, power, light, heat, gas, oil, petroleum products, water, steam, sewage, and other commodities and services with advanced notification of such excavation.

“**Order Form**” means an ordering document signed by you and us that references this Exhibit H and specifies, in part, the SaaS Services to be provided by us to you under this Contract. A sample copy of an Order Form is attached as Exhibit I.

“**SaaS Service(s)**” means the software-as-a-service offering to which you have subscribed via an Order Form, as well as its related components, platform, and any ancillary online or offline applications, products and services provided by us for your access and use of our SaaS Services.

“**SaaS Service Fee(s)**” means the fees you are to pay us for your access to and use of the SaaS Services as well as for any Professional Services provided by us to you. This may also include any ancillary fees associated with the provision of the SaaS Services.

“**Statement of Work**” means a document in the Contract or a document signed by you and us that references this Exhibit H and describes certain Professional Services (if any) purchased by you under this Contract and/or pursuant to an Order Form.

“**Professional Services**” means any consulting, implementation, configuration or other services provided by us to you pursuant to a Contract, Statement of Work, or an Order Form.

“**Ticket**” means (i) any transmission to the SaaS Services from a One Call Center or other third-party in relation to you or your customer; (ii) a ticket generated by you; and (iii) a ticket generated by system configuration in the SaaS Services.

“**Ticket Volume**” means the aggregate number of Tickets for a specific time frame. Ticket Volume may be used as a basis of any SaaS Service Fees charged to you.

“You” and “your” means the City of San Diego which is referred to as “the City” or “City” in the Contract.

## 2. SaaS Services.

**2.1 Access and Use of the SaaS Services.** Subject to and conditioned upon your payment of SaaS Service Fees and compliance with all terms and conditions of the Contract, we grant you a non-exclusive, non-transferable (except in compliance with Section 19.3) right to access and use the SaaS Services during the term stated in the applicable Order Form solely for your internal use in accordance with the terms and conditions of this Contract and the applicable Order Form.

**2.2 Restrictions.** You shall not use the SaaS Services for any purpose beyond the scope of the access granted in the Contract. You shall not and will not permit any third party to: (i) use the SaaS Services for any unlawful purpose or in any manner not permitted by the Contract; (ii) use the SaaS Services in any manner which could damage, disable, overburden or impair the SaaS Services or interfere with any other party’s use and enjoyment of the SaaS Services; (iii) modify or change the SaaS Services; (iv) reverse engineer, decompile, decrypt, hack, emulate, exploit, disassemble or make any attempt to discover the source code relevant to the SaaS Services; (v) circumvent or bypass any technological protection measures in or relating to the SaaS Services; or (vi) publish, copy, rent, lease, sell, license, sublicense, assign, transfer, export, import, distribute, or lend or otherwise make the SaaS Services available to any third party not previously approved by us in writing; (vii) access, monitor or copy any content or information of the SaaS Services, or use any “robot”, “spider”, “deep link”, “scraper” or other automated means, methodology, algorithm or device or any manual process on the SaaS Services for any purpose; (v) obtain or attempt to obtain any materials, documents or information through any means not purposely made available through the SaaS Services, unless we expressly authorize you to do so; (vi) remove any proprietary notices from the SaaS Services; (vii) use the SaaS Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any third party; or (viii) access or use the SaaS Services for purposes of competitive analysis of the SaaS Services, the development, provision, or use of a competing software service or product or any other purpose that is to our detriment or commercial disadvantage.

You shall not perform penetration or vulnerability testing (“**Penetration Tests**”) of the SaaS Services. Penetration Tests include any effort to identify design, and/or functionality, issues in the infrastructure of our systems, or of the networks connected to our systems which probe for weaknesses in the network perimeters or other infrastructure elements as well as weaknesses in process or technical countermeasures relating to our systems that could be exploited by a malicious party.

You shall not cause harm to the SaaS Services or to any hardware, servers, operating software, or network components used in connection with furnishing the SaaS Services, and you shall not introduce malicious code. Malicious code includes, without limitation, any virus, malware or undocumented or hidden functionality or performance capability contained within electronic files, Your Data, or software.



You shall not utilize software designed or modified to be run, without authorization from us, on our computers or network-capable devices, that performs either: (i) the unauthorized extraction of data or information from a computer or network-capable device, or modification of system user data; (ii) the modification of the SaaS Services or user data to facilitate the avoidance of fees incurred on a computer or network-capable device by parties other than parties authorized by us.

**2.3 Maintenance and Support.** During the term of the applicable Order Form we will provide standard maintenance and support of the SaaS Services. We may make commercially reasonable updates to the SaaS Services from time to time including improvements, corrections of substantial defects in the SaaS Services, periodic maintenance releases, and technical support regarding the use of the SaaS Services or response to errors in the SaaS Services. Technical support not involving the SaaS Services, custom programming, on-site installation and/or maintenance, training, and hardware issues are not included in the SaaS Services and if requested, will be billed at our then current rate. Our standard support hours are Monday - Friday, 4:00 A.M Pacific Time – 7:00 P.M. Pacific Time excluding holidays. 24x7 support is available for any emergency scenarios, where tickets are not able to be received or be processed by the system. Additionally, the City will be assigned a named Customer Success Manager, who will provide their direct contact information to the City to serve as a liaison for any key concerns beyond common break/fix support issues. Upon detection of any error in the SaaS Services by you, we may request you to provide us a listing of all output and any other data, some of which may be proprietary or contain confidential information, in order for us to reproduce operating conditions similar to those present when the error occurred. We agree to treat such information as Confidential Information pursuant to Section 6.

**2.4 Availability.** Subject to Section 2.6, the SaaS Services shall be accessible to you except for (i) scheduled maintenance and required repairs; and (ii) any interruption due to causes beyond our control or which are not reasonably foreseeable by us, including, but not limited to, interruption or failure of telecommunication or digital transmission links and internet slow-downs or failures or other Force Majeure events.

**2.5 Backup Procedures and Emergency Tickets.** We strive to keep the SaaS Services up and running, however, all online services suffer occasionally from disruptions and outages, and we are not liable for any disruption or loss you may suffer as a result. Because of the possibility of online service disruption, as a condition of obtaining the SaaS Services, you agree to establish and maintain manual business operating procedures to be used if the SaaS Services become unavailable (“**Backup Procedures**”). These Backup Procedures must permit you to operate your business without access to the SaaS Services for as long as necessary until such SaaS Services are restored. Because of the nature of the SaaS Services being provided to you, there may be events which require you to receive tickets from a One Call Center that require urgent attention (“**Emergency Tickets**”). In addition to receiving Tickets through the SaaS Services, you must arrange to be notified by every sender of Emergency Tickets via a mechanism outside of the SaaS Services.

**2.6 Suspension of SaaS Services.** Notwithstanding anything to the contrary in this Contract or any Order Form, we may temporarily suspend your access to any portion or all of the SaaS Services: (i) if we reasonably determine that (A) there is a threat or attack on the SaaS Services;

(B) your use of the SaaS Services disrupts or poses a security risk to the SaaS Services or to any of our other customers or vendors; (C) you are using the SaaS Services for fraudulent or illegal activities; (D) subject to applicable law, you have ceased to continue your business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) our provision of the SaaS Services to you is prohibited by applicable law; (ii) if any of our vendors have suspended or terminated our access to or use of any third-party services or products required to enable you to access the SaaS Services; or (iii) in accordance with subsection (iii) of Section 5 (any such suspension described in subsection (i), (ii), or (iii), a “**SaaS Services Suspension**”). We shall use commercially reasonable efforts to provide written notice of any SaaS Services Suspension to you and to provide updates regarding resumption of access to the SaaS Services following any SaaS Services Suspension. We shall use commercially reasonable efforts to resume providing access to the SaaS Services as soon as reasonably possible after the event giving rise to the SaaS Services Suspension is cured. We will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that you or and third party may incur as a result of a SaaS Services Suspension.

**2.7 Beta SaaS Services.** From time to time, we may offer you access to Beta SaaS Services in exchange for your feedback about your experience using the Beta SaaS Services. You may choose to participate in the evaluation of Beta SaaS Services at your sole discretion. Access to and use of the Beta SaaS Services is solely for your internal evaluation purposes and may be subject to additional rules or restrictions that we may place on their use. We make no representation that the Beta SaaS Services will ever be made generally available and we reserve the right to terminate your access to the Beta SaaS Services at any time, at which time, you agree to cease use of the Beta SaaS Services. Beta SaaS Services are provided AS IS, may contain bugs, errors or other defects, and your use of the Beta SaaS Services is at your sole risk. Beta SaaS Services are excluded from our support, warranty, and service level commitments. We may use information about your use of the Beta SaaS Services for improving and developing our services. Non-public information about the Beta SaaS Services is deemed to be our Confidential Information.

**2.8 Professional Services.** We will perform Professional Services as set forth in each applicable Contract or Order Form, subject to the terms of the Contract.

### **3. Your Obligations.**

**3.1** You are responsible for and must provide all required computer hardware, software and other services necessary to access the SaaS Services, unless otherwise provided for in the Contract

**3.2** You agree to secure and protect the SaaS Services in a manner consistent with the maintenance of our rights and cause no harm to us or third-party equipment, software, or processes used in connection with furnishing the SaaS Services and any entities from whom we obtain network or web services. In addition to constituting a default under this Contract, any breach of the terms and conditions of this Contract may also result in civil and/or criminal penalties pursuant to applicable local, state and federal law.

**3.3** The SaaS Services may require you to obtain a user identification and password for access and use, and certain specific SaaS Services may require additional codes. You shall use reasonable endeavors, including reasonable security measures relating to access, to ensure that no unauthorized person, including any employee or contractor for any parent, subsidiaries, affiliated entities or third parties, gains access to the SaaS Services without our prior written consent. You are solely responsible for maintaining the confidentiality of the user identification, passwords and codes (collectively, “**User Information**”) assigned to you for any activity that occurs under your account as a result of your failing to keep User Information secure and confidential. You shall promptly inform us in writing of any need to deactivate or replace any User Information due to security concerns. We are not liable for any harm related to theft of your User Information, your disclosure of your User Information, or your authorization to allow another person or entity to access and use the SaaS Services using your User Information. You agree to notify us immediately as soon as you become aware of any unauthorized use of your User Information. You may not use anyone else’s User Information at any time without the express permission and consent of the holder of that User Information and us.

**3.4** You agree to identify your support staff who, to the maximum extent practicable, will be the primary source of communications from you to us.

#### **4. Intellectual Property.**

**4.1 Your Data.** All information provided by you, including, any technology, intellectual property, data, information, or material provided or submitted by you in the course of your use of the SaaS Services shall be referred to as “**Your Data**”. Subject to Section 4.2, all right, title, and interest in and to Your Data and results from processing Your Data are and shall remain your property and no right, title, or interest in and to Your Data or the results from processing Your Data shall vest in us. You hereby irrevocably grant all such rights and permissions in or relating to Your Data as are necessary for us to exercise our rights and perform our obligations hereunder. We will maintain technical and security measures designed to prevent unauthorized disclosure of Your Data and shall comply with all applicable federal, state, and local, laws, regulations, and industry standards, in the performance of the SaaS Services. We shall notify you of any unauthorized use of Your Data, breach of security, or loss or theft of Your Data promptly upon discovery of such unauthorized use, breach, loss, or theft and shall take all commercially reasonable action for the protection of personal data and to mitigate such breach, loss, theft or unauthorized use.

**4.2 Statistical Data and Anonymized Data.** We track and collect certain information about how users interact with the SaaS Services and we use the information collected to obtain general statistics regarding the use of the SaaS Services and to evaluate how users use and navigate the SaaS Services (collectively, “**Statistical Data**”). We may use Statistical Data for our internal analytical purposes, including the improvement and enhancement of the SaaS Services and our other offerings. At times, we may review the Statistical Data of multiple customers and may combine, in a non-personally-identifiable format, the Statistical Data with Statistical Data derived from other customers and users to create aggregate, anonymized data regarding usage history and statistics (collectively, “**Anonymized Data**”). Anonymized Data will not contain information that identifies or could be used to identify you or other users. You agree that Anonymized Data is not

your Confidential Information and we may use Anonymized Data to create reports that we may use and disclose for our commercial or other purposes.

**4.3 KorTerra Intellectual Property.** At all times, the SaaS Services, including without limitation, the text, images, graphics, method of display and presentation, visual interfaces, user interfaces, photographs, copyrights, patents, trademarks, trade secrets, logos, sounds, music, artwork, computer code, and associated material and functionality contained therein (collectively “**Intellectual Property**”), shall remain the property of KorTerra. You acknowledge that the SaaS Services constitute commercially valuable, proprietary products, the design and development of which reflect the effort of skilled development experts and the investment of considerable time and money. You further acknowledge that we shall retain all right, title and interest in the Intellectual Property (including application development, business and technical methodologies, and implementation and business processes, used by us to develop or provide the SaaS Services), and any and all updates, enhancements, customizations, revisions, modifications, future releases and any other changes relating to the foregoing. Except for limited access and use rights granted pursuant to this Contract, you do not acquire any interest in the SaaS Services. With respect to any Third-Party Services, the applicable third-party providers own all right, title, and interest, including all intellectual property rights, in and to the Third-Party Services. We reserve all rights not expressly granted to you in this Contract. Except for the limited rights expressly granted under this Contract, nothing in this Contract grants, by implication, waiver, estoppel, or otherwise, to you or any third party, any intellectual property rights or other right, title, or interest in or to the SaaS Services.

**4.4 Feedback.** You agree that any suggestions, enhancements requests, feedback, recommendations or other information provided by you, or any of your employees relating to the SaaS Services and Beta SaaS Services may be used by us without restriction or obligation to you.

**5. Reserved.**

**6. Confidential Information.**

**6.1** From time to time during the term of this Contract, either you or we (as the “**Discloser**”) may disclose or make available to the other (as the “**Recipient**”) proprietary or confidential information including, but not limited to, information about the Discloser’s business affairs, products/services, intellectual property, trade secrets, third-party confidential information and other sensitive or proprietary information, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential” (collectively, “**Confidential Information**”). Your Confidential Information includes Your Data; our Confidential Information includes the SaaS Services and the terms and conditions of this Contract and all Order Forms and Statements of Work (including pricing). Subject to the last sentence in this Section, the Recipient shall not disclose Confidential Information to any third party without the prior written consent of the Discloser and shall restrict dissemination of Confidential Information within its own organization to those employees who have a need to have access to the Confidential Information. The Recipient agrees to protect Confidential Information by using at least the same degree of care as it would use to protect its own information of like importance, but in no case less than reasonable care. You and we shall take appropriate measures, and in no event

less than reasonable measures, by instruction and written agreement, with confidentiality terms no less stringent than those herein, prior to disclosure to such employees to protect against unauthorized use or disclosure. Notwithstanding the foregoing, we may disclose your Confidential Information to our subcontractors and providers who have signed confidentiality agreements with us containing protections not materially less protective of the Confidential Information than those herein, to the extent necessary for us to perform our obligations under this Contract.

**6.2 Exceptions.** The obligations in Section 6.1 do not apply to Confidential Information which: (a) was rightfully in possession of or known to the Recipient without any obligation of confidentiality prior to receiving it from the Discloser, as evidenced by the Recipient's records; (b) is or becomes publicly available without breach of this Contract by the Recipient; (c) becomes known or available to the Recipient from a source other than the Discloser without a restriction on use or disclosure of such Confidential Information; or (d) is independently developed by the Recipient without use of or reference to the Discloser's Confidential Information.

**6.3 Compelled Disclosure.** If the Recipient is required by applicable law or legal process to disclose any Confidential Information, it shall, if permitted, prior to making such disclosure, use commercially reasonable efforts to notify the Discloser of such requirements to afford the Discloser the opportunity to seek, at the Discloser's sole cost and expense, a protective order or other remedy.

**6.4 Equitable Relief.** You and we acknowledge that the unauthorized use or disclosure of Confidential Information may cause irreparable harm to the Discloser. Accordingly, you and we agree that the Discloser shall be entitled to seek equitable relief, including injunctive relief, in addition to all other remedies available at law for any threatened or actual breach of this Contract with respect to Confidential Information.

## **7. Term and Termination.**

**7.1 Term.** The term of this Agreement shall align with the Contract.

**7.2 Reserved.**

**7.3 Reserved.**

**7.4 Effect of Termination.** Termination or expiration of an individual Order Form or Statement of Work will not be deemed a termination of this Contract so long as the Contract remains in effect. Termination of this Contract will, however, terminate all outstanding Order Forms and Statements of Work.

**7.5 Survival.** Sections 1 (Definitions), 2 (Restrictions), 4 (Intellectual Property), 6 (Confidential Information), 7.4 (Effect of Termination), 7.5 (Survival), 8.2 (Warranty Disclaimer), 10 (Limitations of Liability), 11 (Third-Party Services), 12 (Mapping Limitations), 13 (Risk Scoring), 17 (Employee Non-Solicitation), and 19 (General Provisions) will survive termination or expiration of this Agreement.

## **8. Limited Warranties and Warranty Disclaimer.**

**8.1 Limited Warranties.** We warrant that (i) the SaaS Services shall operate substantially in accordance with the documentation provided by us when accessed and used in accordance with such documentation; and (ii) any Professional Services will be provided by us in a professional and workmanlike manner and substantially in accordance with the Contract.

**8.2 Warranty Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTIONS 8.11 OF EXHIBIT H AND 5.7 OF EXHIBIT G, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, KORTERRA HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND WHETHER, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OR AS TO THE QUALITY, UTILITY OR PERFORMANCE OF THE SAAS SERVICES, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED. KORTERRA FURTHER MAKES NO WARRANTY THAT (i) THE SAAS SERVICES WILL MEET YOUR REQUIREMENTS, (ii) THE SAAS SERVICES WILL BE AVAILABLE, UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SAAS SERVICES WILL BE ACCURATE OR RELIABLE, OR (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL ACCESSED BY YOU THROUGH THE SAAS SERVICES WILL MEET YOUR EXPECTATIONS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM KORTERRA SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. THE WARRANTIES IN SECTIONS 8.1 OF EXHIBIT H AND 5.7 OF EXHIBIT G DO NOT APPLY, AND KORTERRA STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY SERVICES. BETA SAAS SERVICES ARE PROVIDED BY US ON AN “AS IS” AND “AS AVAILABLE” BASIS, EXCLUSIVE OF ANY WARRANTY WHATSOEVER.

## **9. Reserved,**

**10. Limitations of Liability.** IN NO EVENT WILL KORTERRA BE LIABLE UNDER OR IN CONNECTION WITH THIS CONTRACT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (i) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (ii) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (iii) LOSS OF GOODWILL OR REPUTATION; (iv) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (v) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER KORTERRA WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL KORTERRA’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE

AMOUNTS ACTUALLY PAID TO KORTERRA UNDER THE ORDER FORM, STATEMENT OF WORK, OR CONTRACT FOR THE SAAS SERVICES OR PROFESSIONAL SERVICES GIVING RISE TO THE LIABILITY FOR A -TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE.

**11. Third-Party Services.** Through the SaaS Services, you may have access to third-party applications, databases, directories, information, maps, networks, products, programs, servers, services, software, systems, or websites, (collectively, “**Third-Party Services**”). We have no control over such Third-Party Services and we disclaim any and all responsibility and liability for the content, operation, or use of such Third-Party Services. All Third-Party Services are provided on an “as-is” basis, with no warranties of any kind.

**12. Mapping Limitations.** All maps are provided for REFERENCE AND INFORMATIONAL PURPOSES ONLY. All map features contained therein are APPROXIMATIONS, and are not accurate to surveying or engineering standards. We make no representation, warranty or guarantee as to the content contained on any map (which may have been derived from third party sources), regarding accuracy, timeliness, or completeness of any of the data provided therein, and assume no legal responsibility or liability for the information contained on any map. Any use of any map with respect to accuracy and precision shall be your sole responsibility and you should not act, or abstain from acting, based upon mapping information obtained from the SaaS Services.

**13. Risk Scoring.** All excavations carry the risk of an excavator causing damage to a buried facility. The use of KorTerra’s Risk Scoring functionality is intended to assist in identifying Tickets which may have an elevated level of risk to enable our customers to make informed decisions and best mitigate the risk of damage. A decision to perform or not perform a locate should not be based on the results of a risk score.

**14. Data Archival, Accessibility, and Retrieval.** All data stored in the SaaS Services as a result of your direct interactions with and use of the SaaS Services (“**Transactional Data**”) will be retained by us and accessible to you during the term of the Contract. Transactional Data not created or modified within the prior 24 months may be moved to and accessible through an archival site. For reporting made available through KorTerra Business Insights, Transactional Data will be available for a lookback period of 36 months. Notwithstanding the foregoing, we are not obligated to retain Your Data (of which Transactional Data is a subset) after the effective date of termination of the Contract. Upon contract expiration or termination of the contract, the Contractor will immediately provide to the designated Contract Administrator electronic copies of the data collected and recorded. Data format will be agreed upon by both City and Contractor, but at a minimum, data records will be provided in ASCII comma, separated value (CSV) format (or is as appropriate per data volume requirements), with binary images in TIFF, JPG or PDF format (or format with which it is received by Contractor). If requested by you prior to the effective date of termination of this Agreement, we will provide to you, as a Professional Service, an export of the then most recent Transactional Data maintained by us, provided that all outstanding SaaS Service Fees and any amounts payable as a result of such termination have been paid. Pricing for such Professional Service will be provided based on our then-current rates and the volume of data requested for extraction.

**15. Storage Limits and Additional Storage.** KorTerra Visual Evidence includes storage of up to 1 TB, unless otherwise specified in the Contract, for all photos, sketches, and other files uploaded by you through your use of the SaaS Service. Additional storage can be purchased if needed by contacting KorTerra. You are responsible for monitoring your storage usage and ensuring you do not exceed your allotted storage capacity. If you exceed your allotted storage capacity, we reserve the right to invoice you, and you agree to pay, for such additional storage usage. In the event you do not purchase additional storage capacity, we reserve the right to restrict your upload of additional files through your use of the SaaS Service. You may request up to once per quarter for aging attachment data to be removed from the SaaS Service. Upon request, data can be bulk offloaded and provided to you via physical removable media for an additional fee.

To increase the efficiency of attachment storage usage, images of compatible file types such as JPEGs may be compressed and resized when uploaded to the SaaS Service. Images are stored with the original aspect ratio maintained but may be resized to a maximum height or width of 1080 pixels and compressed using 70% JPEG image compression. We are not liable for any loss in image resolution or quality resulting from the compression and resizing process. You may request to disable image compression and resizing for your account by contacting KorTerra Support, however, this will result in larger file sizes and increased storage utilization, which may in turn result in additional fees. We are not liable for any loss or corruption of files stored via the SaaS Service.

**16. Facility Mapping.** Facility Mapping in KorTerra Ticket Management includes configuration of up to 10 facility layers. More layers can be made available to you for an additional fee. If you choose to make your maps available to us via a WMS endpoint hosted by you, you are responsible for ensuring that the endpoint is accessible and functional. Alternatively, KorTerra can host your facility maps on your behalf by you providing GIS files in the shapefile (SHP) format. Updated copies of each shapefile may be provided up to quarterly, with more frequent updates being available for an additional fee.

**17. Reserved.**

**18. Notices.** Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (i) the delivery date if delivered personally; (ii) one (1) business day after deposit with a nationally recognized overnight carrier, with written verification of receipt, (iii) five (5) business days after the mailing date whether or not actually received, if sent by U.S. certified mail, return receipt requested, postage and charges pre-paid or any other means of rapid mail delivery for which a receipt is available; or (iv) the day of sending by email. Notices to KorTerra must be sent to: KorTerra, Inc., Attn: President, 1851 Lake Drive West, Chanhassen, MN 55317, or [legalnotices@korterra.com](mailto:legalnotices@korterra.com); notices to you will be sent to the physical address set forth above or provided via email to \_\_\_\_\_. Either party may update its address by giving notice to the other party in accordance with this Section.

**19. General Provisions.**

**19.1 Reserved.**



**19.2 Reserved.**

**19.3 Successors and Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld, conditioned or delayed). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms and Statements of Work), without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party, provided that the assignee will meet all existing obligations of the Agreement, including pricing. Each party shall promptly provide notice of any such assignment. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this Section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**19.4 Reserved.**

**19.5 Reserved.**

**19.6 Reserved.**

**19.7 Reserved.**

**19.8 Reserved.**

**19.9 Reserved.**

**19.10 Relationship.** The sole relationship between you and us is that of independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary relationship, or employment relationship between the parties.

**19.11 Reserved.**

**19.12 Reserved.**

**19.13 Reserved.**



## EXHIBIT I, KorTerra Order Form

City of San Diego agrees to purchase the KorTerra Services listed below. Support and maintenance are included in the fees listed below. This Order Form is effective [DATE] (the “Order Form Effective Date”). Subscribed Ticket Volume: 290,000

Services	Overage Rate	Service Fee
KorTerra Locate Management Plus, KorTerra Productivity Standard, KorTerra Risk Management Standard	\$0.30 per Ticket	\$87,000 per year
<b>KorTerra Package Includes:</b>		
KorTerra Business Insights		
1 TB Storage		
		<b>Total Recurring Fees: \$87,000</b>

KorTerra One-Time Setup Fees	
KorTerra One-Time Setup Fees	\$7,600
Virtual Training -Half Day	\$900
<b>Total One-Time Fees</b>	<b>\$8,500</b>

This Order Form incorporates by reference and is governed by the terms and conditions of the Contract signed by the parties with an effective date of [SERVICE AGREEMENT EFFECTIVE DATE] (the “City Contract”). Capitalized terms used but not defined herein have the meaning set forth in the City Contract, in Exhibit H “Korterra Software-as-a-Service Requirements.”.

The initial term of this Order Form begins on the Order Form Effective Date set forth above and, unless terminated earlier pursuant to the City Contract’s express provisions, will continue in effect for a period of Sixty (60) months from such date (the “Initial Order Form Term”).

*Billing for the Services will begin on the Order Form Effective Date. All pricing is in US Dollars and is valid for 30 days. All invoices are due and payable net 30 days from the invoice date. If you fail to make any payment when due, without limiting our other rights and remedies, we may take the actions set forth in the City Contract,*

Please e-mail the signed Order Form to [sales@korterra.com](mailto:sales@korterra.com).

Billing Contact Information:	
Contact Name: _____  Title: _____  E-mail: _____  Street: _____  City, State Zip: _____	Phone Number: _____ Will payment be submitted via wire?* _____  Special Billing Instructions: _____  Sales Tax Exempt (Y/N)    If Y, please include exemption certificate _____ PO Required (Y/N)    PO Number: _____ <small>*Please note any payment received via wire will incur a \$40 service charge.</small>

ACCEPTED AND AGREED:	
<b>City of San Diego:</b>  Signed: _____ Print Name: _____  Title: _____	<b>KorTerra, Inc.:</b>  Signed: _____ Print Name: _____  Title: _____



**Purchasing & Contracting Department**

September 26, 2024

VIA EMAIL TO: [john.hanlon@korterra.com](mailto:john.hanlon@korterra.com)

Mr. John Hanlon, National Account Executive  
KorTerra Inc.  
1851 Lake Dr. West  
Chanhassen, MN 55317

Reference: Request for Proposal (RFP) 10089879-24-C, DigAlert Positive Response Ticket Management Solution

Dear Mr. Hanlon:

Subject: Exceptions

This letter confirms our agreement to modify the terms of the above-referenced solicitation and the Contract relating to the above-referenced solicitation. The Parties agree to the following Exceptions as follows:

1. The City agrees to add 5.1.1 Contract Exhibit List to the Contract, Article V as follows:

**5.1.1 Contract Exhibit List.** The following exhibits are included in the Contract Documents and are incorporated by reference:

- A. Proposal Submission and Requirements
- B. Scope of Work
- C. Price Proposal
- D. Technical Requirements
- E. City of San Diego Electronic Positive Response (EPR) As-Is Workflow
- F. Functional Requirements
- G. City of San Diego General Contract Terms and Provisions
- H. KorTerra Software-as-a-Service (SaaS) Requirements
- I. KorTerra Order Form

September 26, 2024

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2. The City agrees to modify Exhibit G, City's General Contract Terms and Conditions, 1.1 Scope of Contract as follows:

**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, which are defined in Article V of the Contract.

3. The City agrees to modify Exhibit G, City's General Contract Terms and Conditions, 1.3 Contract Extension as follows:

**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 for a subsequent term equal to the initial term. In addition, the City may, in its sole discretion, unilaterally extend the Contract on a year-to-year basis following contract expiration if authorized under Charter section 99 and the Contract Documents. In the event that the City intends to exercise an option to renew the Contract, the City will provide Contractor with at least 60 days notice prior to renewal. Contractor shall not increase its pricing in excess of the percentage increase described in the Contract.

4. The City agrees to modify Exhibit G, City's General Contract Terms and Conditions, 2.1.1 Contractor Performance Evaluations as follows:

**2.1.1 Contractor Performance Evaluation.** The Contract Administrator will evaluate Contractor's performance 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.

5. The City agrees to modify Exhibit G, City's General Contract Terms and Conditions, 2.2 Notices as follows:

**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

Mr. John Hanlon, National Account Executive  
September 26, 2024  
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Notices to KorTerra must be sent to: KorTerra, Inc., Attn: President, 1851 Lake Drive West, Chanhassen, MN 55317, or legalnotices@korterra.com. Either party may update its address by giving notice to the other party in accordance with this Section.

6. The City agrees to modify Exhibit G, City's General Contract Terms and Conditions, 3.1 Manner of Payment as follows:

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

7. The City agrees to modify Exhibit G, City's General Contract Terms and Conditions, 3.2.6.1 Monthly Employment Utilization Reports as follows:

**3.2.6.1 Reserved.**

8. The City agrees to modify Exhibit G, City's General Contract Terms and Conditions, 3.2.6.2 Monthly Invoicing and Payments as follows:

**3.2.6.2 Monthly Invoicing and Payments.** Contractor and Contractor's subcontractors and suppliers must submit Annual Invoicing and Payment Reports by the fifth (5<sup>th</sup>) day of the subsequent month. The Services will be invoiced in advance of each year of the Order Form Term and the Service Fee will remain fixed during the Initial Order Form Term unless the City exceeds its Subscribed Ticket Volume or other applicable limits. If in any given year of the Order Term ("Billing Period") the actual Ticket Volume is greater than the Subscribed Ticket Volume, an Overage Fee will be assessed equal to the excess Ticket Volume multiplied by the aggregate Overage Rate, and the actual Ticket Volume from the Billing Period will be used as the Subscribed Ticket Volume for subsequent Billing Periods. The Contractor will set the City up with reports that will enable the City to understand their annual ticket volume at any point in time so they can identify any overages in Ticket Volume that may be incurred prior to receiving an Overage Fee. The Service Fee for subsequent Billing Periods will be increased by the amount of any Overage Fee(s). For any additional overages such as storage amount usage, Facility Mapping related updates, these would be invoiced as part of the annual invoicing process as outlined in Sections 15 & 16 of Exhibit H. Any additional services beyond these areas where additional costs were to be incurred would be documented and agreed upon in writing by the parties in an Order Form (Exhibit I of the original contract).

9. The City agrees to add Exhibit G, City's General Contract Terms and Conditions, 3.2.6.3 Taxes and Late Payment as follows:

**3.2.6.3 Taxes and Late Payment.** City shall pay us the SaaS Service Fees as set forth in an Order Form (Exhibit I) or Statement of Work. In addition to the SaaS Service Fees, City shall pay all sales, use, value added or other taxes, federal, state, local, or otherwise,

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however designated, which are levied or imposed by reason of the transactions contemplated by this Agreement excluding taxes based on Contractor's net income, property or employees. Payment obligations are non-cancelable and all amounts paid are non-refundable. If City fails to make any payment when due (Net 30 Days) without limiting Contractor's other rights and remedies: (i) City agrees that Contractor may charge and City will pay a late fee of one and one-half percent (1 1/2 %) per month (18% APR) on all outstanding balances; (ii) if such failure continues for 10 days or more, Contractor may suspend City's access to any portion or all of the SaaS Services until such amounts are paid in full.

10. The City agrees to modify Exhibit G, City's General Contract Terms and Conditions, 3.4 Price Adjustments as follows:

**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, during the preceding one year term. If the CPI-U is a negative number, then the unit prices shall not be adjusted for that option year (the unit prices will not be decreased). A negative CPI-U shall be counted against any subsequent increases in the CPI-U when calculating the unit prices for later option years. Contractor must provide such written request and justification no less than sixty days before the date in which City may exercise the option to renew the contract, or sixty days before the anniversary date of the Contract. Justification in support of the written request must include a description of the basis for the adjustment, the proposed effective date and reasons for said date, and the amount of the adjustment requested with documentation to support the requested change (e.g. CPI-U). City's approval of this request must be in writing.

11. The City agrees to modify Exhibit G, City's General Contract Terms and Conditions, 4.1 City's Right to Suspend for Convenience as follows:

**4.1 Reserved.**

12. The City agrees to modify Exhibit G, City's General Contract Terms and Conditions, 4.2 City's Right to Terminate for Convenience as follows:

**4.2 Reserved.**

13. The City agrees to modify Exhibit G, City's General Contract Terms and Conditions, 4.3.1 City's Right to Terminate for Default as follows:

**4.3.1** If Contractor fails to satisfactorily cure a default within thirty (30) calendar days of receiving written notice from City specifying the nature of the default, City may

Mr. John Hanlon, National Account Executive  
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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.

14. The City agrees to modify Exhibit G, City's General Contract Terms and Conditions, 4.3.2 City's Right to Terminate for Default as follows:

**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. Contractor shall also continue performance to the extent not terminated.

15. The City agrees to modify Exhibit G, City's General Contract Terms and Conditions, 4.5.1 Termination for Convenience as follows:

**4.5.1 Reserved.**

16. The City agrees to modify Exhibit G, City's General Contract Terms and Conditions, 4.5.2 Termination for Default as follows:

**4.5.2 Termination for Default.** 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.

17. The City agrees to modify Exhibit G, City's General Contract Terms and Conditions, 5.3 Responsibility for Damages as follows:

**5.3 Reserved.**

18. The City agrees to modify Exhibit G, City's General Contract Terms and Conditions, 5.9 Records Retention and Examination as follows:

**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 provide or 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 make the records electronically available to the City at no cost. Failure to make requested records available for inspection, copying, or other

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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, except for subcontracts with subcontractors or suppliers whose obligations are limited to providing commercially available off the shelf software subscriptions (“COTS”) or data hosting services under this Contract.

19. The City agrees to modify Exhibit G, City’s General Contract Terms and Conditions, 5.13 Project Personnel as follows:

**5.13 Reserved.**

20. The City agrees to modify Exhibit G, City’s General Contract Terms and Conditions, 5.13.1 Criminal Background Certification as follows:

**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. The parties agree that this requirement will not flow-down to the subcontractor(s) whose obligations are limited to providing commercial-off-the-shelf software subscriptions or data hosting services.

21. The City agrees to reserve Exhibit G, City’s General Contract Terms and Conditions, Article VI Intellectual Property Rights in its entirety.

22. The City agrees to modify Exhibit G, City’s General Contract Terms and Conditions, 7.1 Indemnification as follows:

**7.1 Indemnification.** Contractor agrees to indemnify City and its elected officials, officers, employees, agents, and representatives (the “Indemnified Parties”) from losses, damages, liabilities, costs and expenses (including reasonable attorneys’ fees) and defend the Indemnified Parties from and against any third-party claim, suit, demand, action, or proceeding (a “Third-Party Claim”) that the SaaS Services, in the form provided by Contractor, or any use of the SaaS Services by the City as expressly permitted by this Contract, infringe or misappropriate such third party’s intellectual property rights, provided that the Indemnified Parties promptly notify Contractor in writing of the Third-Party Claim, cooperate with Contractor, and allow Contractor sole authority to control the defense and settlement of such Third-Party Claim, provided that no City funds are involved in such a settlement. If such a Third-Party Claim is made or reasonably appears possible, City agrees to permit Contractor, at Contractor’s sole discretion, to (i) modify or replace the SaaS Services, or portion thereof, to make the SaaS Services non-infringing, or (ii) obtain the right for City to continue to use the SaaS Services. If Contractor determines that neither of these alternatives is reasonably available, Contractor may terminate this Contract and City’s right to use the SaaS Services, in their entirety or with respect to the affected portion of the SaaS Services, effective immediately on written



Mr. John Hanlon, National Account Executive  
September 26, 2024  
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notice to City, and provide a pro rata refund of any prepaid and unused subscription fees for such infringing SaaS Services or portion thereof. The foregoing indemnification obligation will not apply to the extent that the alleged infringement arises from: (i) use of the SaaS Services in combination with data, software, hardware, or technology not provided by Contractor or authorized by Contractor in writing; (ii) modifications to the SaaS Services not made by Contractor; (iii) use of the SaaS Services other than in accordance with the Documentation or as expressly permitted by this Contract; or (iv) third-party applications, databases, directories, information, maps, networks, products, programs, servers, services, software, systems, or websites. 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.

23. The City agrees to modify Exhibit G, City's General Contract Terms and Conditions, 7.2 Insurance as follows:

**7.2 Insurance.** Contractor shall procure and maintain the following insurance coverage for the duration of the contract:

24. The City agrees to modify Exhibit G, City's General Contract Terms and Conditions, 7.2.5.5 Claims Made Policies (applicable only to professional liability) as follows:

**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 one (1) year after completion of the contract of work. If coverage is canceled or nonrenewed, 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 one (1) year after completion of work.

25. The City agrees to modify Exhibit G, City's General Contract Terms and Conditions, 7.6 Special Risks or Circumstances as follows:

**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. Any modifications related to this would be made an agreed upon by the City and Contractor in writing.

26. The City agrees to modify Exhibit G, City's General Contract Terms and Conditions, 7.9 Subcontractors as follows:

**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

September 26, 2024

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20 38 04 13 endorsement. The parties agree that this requirement will not flow-down to the subcontractor(s) whose obligations are limited to providing commercial-off-the-shelf software subscriptions or data hosting services.

27. The City agrees to reserve Exhibit G, City's General Contract Terms and Provisions, Article VIII Bonds in its entirety.

28. The City agrees to modify Exhibit G, City's General Contract Terms and Conditions, 9.1. Contractor Certification of Compliance as follows:

**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. The parties agree that any reference to "subcontractors" in this Article IX shall not apply to subcontractors whose obligations are limited to providing commercial-off-the-shelf software subscriptions or data hosting services.

29. The City agrees to modify Exhibit G, City's General Contract Terms and Conditions, 9.1.1 Drug-Free Workplace Certification as follows:

**9.1.1 Drug-Free Workplace Certification.** Contractor will certify to the City that its drug free workplace policies are sufficient to meet the requirements of Council Policy 100-17.

30. The City agrees to modify Exhibit G, City's General Contract Terms and Conditions, 13.2 Non-Assignment as follows:

**13.2 Reserved.**

31. The City agrees to modify Exhibit G, City's General Contract Terms and Conditions, 13.6 Compliance with Controlling Law as follows:

**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, Contractor may be subject to suspension, debarment, or both.

32. The City agrees to add Exhibit H, KorTerra Software-As-A-Service Requirements.

33. The City agrees to add Exhibit I, KorTerra Order Form.

Please indicate your agreement with the above by signing the bottom of this letter. Thank you for your assistance.

Mr. John Hanlon, National Account Executive  
September 26, 2024  
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Sincerely,



Taylor Cox  
Senior Procurement Contracting Officer, Purchasing & Contracting

This Letter is executed by the City and Contractor acting by and through their authorized officers.

KorTech, Inc.

By: Mitch Stendal  
4AC817A59CB14E8

Name: Mitch Stendal

Title: President

Date: Sept. 24, 2024

THE CITY OF SAN DIEGO

By: CAbarca

Name: Claudia C. Abarca

Title: Director, Purchasing & Contracting

Date: September 30, 2024

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

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

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

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

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

**A. BID/PROPOSAL/SOLICITATION TITLE:** [KorTerra One Call Ticket Management RFP Response](#)

**B. BIDDER/PROPOSER INFORMATION:**

Legal Name: KorTerra Inc. DBA

[1851 Lake Dr West](#) [Chanhassen](#) [MN](#) [55317](#)

Street Address	City	State	Zip
<a href="#">John Hanlon-National Account Executive</a>	<a href="#">952-697-4287</a>	<a href="#">John.hanlon@korterra.com</a>	
Contact Person, Title	Phone	Fax	

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

\* The precise nature of the interest includes:

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

Page

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

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

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

Interest in the transaction

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

Interest in the transaction

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

Interest in the transaction

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

Interest in the transaction

Name	Title/Position
------	----------------

**OWNERSHIP AND NAME CHANGES:**

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

Yes                      No  X

If **yes**, use Attachment A to list all prior legal and DBA names, addresses, and dates each firm name was used. Explain the specific reasons for each name change. 2. Is your firm a non-profit?

Yes                       No  X

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

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

Yes                      No  X

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

**C. BUSINESS ORGANIZATION/STRUCTURE:**

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

**Corporation** Date incorporated: 12/27/2002 State of incorporation: Minnesota

List corporation's current officers: CEO: Chris Stendal President: Mitch Stendal

Type of corporation: C                      Subchapter S  X

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

If **Yes**, after what date: 12/27/2002

Is your firm a publicly traded corporation? **Yes** **No X**  
If **Yes**, how and where is the stock traded?

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

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

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

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

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

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

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

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

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

\_\_\_\_\_ List names of all firm partners:

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

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

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

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

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

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

**E. FINANCIAL RESOURCES AND RESPONSIBILITY:**

1. Is your firm preparing to be sold, in the process of being sold, or in negotiations to be sold?  
**Yes**                      **No X**  
If **Yes**, use Attachment A to explain the circumstances, including the buyer's name and principal contact information.
  
2. In the past five (5) years, has your firm been denied bonding?  
**Yes**                      **No X**  
If **Yes**, use Attachment A to explain specific circumstances; include bonding company name.
  
3. In the past five (5) years, has a bonding company made any payments to satisfy claims made against a bond issued on your firm's behalf or a firm where you were the principal?  
**Yes**                      **No X**  
If **Yes**, use Attachment A to explain specific circumstances.
  
4. In the past five (5) years, has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?  
**Yes**                      **No X**  
If **Yes**, use Attachment A to explain specific circumstances.



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

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

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

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

- 7. Please provide the name of your principal financial institution for financial reference. By submitting a response to this Solicitation Contractor authorizes a release of credit information for verification of financial responsibility. **KorTerra is a Privately held company. Due to this, KorTerra does not share financial or banking information.**

Name \_\_\_\_\_ of \_\_\_\_\_ Bank:

\_\_\_\_\_

Point of Contact: \_\_\_\_\_ of \_\_\_\_\_

\_\_\_\_\_

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

Phone Number: \_\_\_\_\_  
\_\_\_\_\_

- 8. By submitting a response to a City solicitation, Contractor certifies that he or she has sufficient operating capital and/or financial reserves to properly fund the requirements identified in the solicitation. At City's request, Contractor will promptly provide to City a copy of Contractor's most recent balance sheet and/or other necessary financial statements to substantiate financial ability to perform. **KorTerra is a Privately held company. Due to this, KorTerra does not share financial or banking information.**

- 9. In order to do business in the City of San Diego, a current Business Tax Certificate is required. Business Tax Certificates are issued by the City Treasurer's Office. If you do not have one at the time of submission, one must be obtained prior to award. Business Tax Certificate No.: \_\_\_\_\_  
Year Issued: \_\_\_\_\_

**\*\*KorTerra does not currently have a Business Tax Certificate with the city. KorTerra plans on obtaining one if awarded the bid.**

**F. PERFORMANCE HISTORY:**

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

Yes            No X

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

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

Yes            No X

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

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

Yes            No X

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

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

Yes            No X

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

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

Yes            No X

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

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

Yes            No X

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

7. Performance References:

Please provide a minimum of three (3) references familiar with work performed by your firm which was of a similar size and nature to the subject solicitation within the last five (5) years. [Please see the provided References within Reference Section contained on page #13 in KorTerra's RFP Response Proposal document.](#)

**G. COMPLIANCE:**

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

Yes            No X

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

- 2. In the past five (5) years, has your firm been determined to be non-responsible by a public entity?  
**Yes**                      **No X**

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

**H. BUSINESS INTEGRITY:**

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

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

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

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

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

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

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

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

**I. BUSINESS REPRESENTATION:**

- 1. Are you a local business with a physical address within the County of San Diego?  
**Yes**                      **No X**
- 2. Are you a certified Small and Local Business Enterprise certified by the City of San Diego?  
**Yes**                      **No X**

Certification # \_\_\_\_\_

- 3. Are you certified as any of the following:

- a. Disabled Veteran Business Enterprise Certification # \_\_\_\_\_
- b. Woman or Minority Owned Business Enterprise Certification # \_\_\_\_\_
- c. Disadvantaged Business Enterprise Certification # \_\_\_\_\_

**J. WAGE COMPLIANCE:**

In the past five (5) years, has your firm been required to pay back wages or penalties for failure to comply with the federal, state or local prevailing, minimum, or living wage laws? Yes No **X**

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

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

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

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

Company Name: **Not Applicable**

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

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

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

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

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

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

Certification type (check all that apply): DBE DVBE ELBE MBE SLBE WBE

Not Certified Contractor must provide valid proof of certification with the response to the bid or proposal to receive participation credit.

Company \_\_\_\_\_ Name: \_\_\_\_\_

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

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

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

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

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

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

Certification type (check all that apply): DBE DVBE ELBE MBE SLBE WBE

Not Certified Contractor must provide valid proof of certification with the response to the bid or proposal to receive participation credit.

**L. STATEMENT OF AVAILABLE EQUIPMENT:**

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

By signing and submitting this form, the Contractor certifies that all required equipment included in this bid or proposal will be made available one week (7 days) before work shall commence. In instances where the required equipment is not owned by the Contractor, Contractor shall explain how the equipment will be made available before the commencement of work. The City of San Diego reserves the right to reject any response, in its opinion, if the Contractor has not demonstrated he or she will be properly equipped to perform the work in an efficient, effective matter for the duration of the contract period.

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

- Initial submission of *Contractor Standards Pledge of Compliance*
- Initial submission of *Contractor Standards Pledge of Compliance* as part of a Cooperative agreement
- Initial submission of *Contractor Standards Pledge of Compliance* as part of a Sole Source agreement
- Update of prior *Contractor Standards Pledge of Compliance* dated [KorTerra has worked with Sole Source Processes prior and can do so with the city on the date of the award of the bid as needed.](#)

**Complete all questions and sign below.**

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

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

(a) I and my firm will comply with all applicable local, State and Federal laws, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.

(b) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of receiving notice that a government agency has begun an investigation of me or my firm that may result in a finding that I or my firm is or was not in compliance with laws stated in paragraph (a).

(c) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of a finding by a government agency or court of competent jurisdiction of a violation by the Contractor of laws stated in paragraph (a).

(d) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of becoming aware of an investigation or finding by a government agency or court of competent jurisdiction of a violation by a subcontractor of laws stated in paragraph (a).

(e) I and my firm will cooperate fully with the City during any investigation and to respond to a request for information within ten (10) working days.

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

Name: Mitch Stendal  
Title : President

  
Signature

Page

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

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

**No additional information needed.**

## EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)

### GOODS AND SERVICES CONTRACTOR REQUIREMENTS

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

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

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

#### II. Definitions.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

**III. Disclosure of Discrimination Complaints.**

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

**IV. Work Force Report and Equal Opportunity Outreach Plan.**

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

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

The City has adopted a Small and Local Business Enterprise program for goods, services, and consultant contracts. The SLBE requirements are set forth in San Diego Municipal Code Division 36. For contracts in which the Purchasing Agent is required to advertise for sealed proposals in the City's official newspaper or consultant contracts valued over \$50,000, the City shall:

- A. Apply a maximum of an additional 12% of the total possible evaluation points to the Contractor's final score for SLBE or ELBE participation. Additional points will be awarded as follows:
  - a. If the Contractor achieves 20% participation, apply 5% of the total possible evaluation points to the Contractor's score; or
  - b. If the Contractor achieves 25% participation, apply 10% of the total possible evaluation points to the Contractor's score; or

- c. If the prime contractor is a SLBE or an ELBE, apply 12% of the total possible evaluation points to the Contractor's score.

**VI. Maintaining Participation Levels.**

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

**VII. Certifications.**

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

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

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

**VIII. List of Attachments.**

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

**AA. CONTRACTORS CERTIFICATION OF PENDING ACTIONS**

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

CHECK ONE BOX ONLY.

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

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

Contractor Name: KorTerra, Inc.

Certified By Mitch Stendal Title President

Signed by: Mitch Stendal Name  
 Date Sept, 24, 2024

Signature



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

BB. WORK FORCE REPORT

The objective of the Equal Employment Opportunity Outreach Program, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law.

NO OTHER FORMS WILL BE ACCEPTED
CONTRACTOR IDENTIFICATION

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

Name of Company: Kor Terra, Inc.

ADA/DBA: Kor Terra

Address (Corporate Headquarters, where applicable): 1551 Lake Dr W

City: Chanhassen County: Carver State: MN Zip: 55317

Telephone Number: 952-368-1911 Fax Number:

Name of Company CEO: Chris Stendal

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

Address:

City: County: State: Zip:

Telephone Number: Fax Number: Email:

Type of Business: SaaS Provider Type of License:

The Company has appointed: Rebecca Bakke

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

Address:

Telephone Number: 952-900-6817 Fax Number: N/A Email: rbakke@korterra.com

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

Check the box above that applies to this WFR.

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

I, the undersigned representative of Kor Terra Inc. (Firm Name)

Carver Minnesota hereby certify that information provided (County) (State)

herein is true and correct. This document was executed on this 18 day of September, 2023

(Authorized Signature)

Mitch Stendal (Print Authorized Signature Name)

**WORK FORCE REPORT – Page 2**

NAME OF FIRM: \_\_\_\_\_ DATE: \_\_\_\_\_

OFFICE(S) or BRANCH(ES): \_\_\_\_\_ COUNTY: \_\_\_\_\_

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

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

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

ADMINISTRATION OCCUPATIONAL CATEGORY	(1) Black or African American		(2) Hispanic or Latino		(3) Asian		(4) American Indian/ Nat. Alaskan		(5) Pacific Islander		(6) White		(7) Other Race/ Ethnicity		
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	
Management & Financial				1	1							12	3		
Professional	1											3	2		
A&E, Science, Computer			1		2	2						12	5	2	
Technical	1											6	3		
Sales												5	2		
Administrative Support													1		
Services															
Crafts															
Operative Workers															
<del>Transportation</del>															
<del>Laborers*</del>															

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





N/A

**WORK FORCE REPORT – Page 3**

NAME OF FIRM: \_\_\_\_\_ DATE: \_\_\_\_\_

OFFICE(S) or BRANCH(ES): \_\_\_\_\_ COUNTY: \_\_\_\_\_

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

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

N/A

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

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

<b>Grand Total All Employees</b>	[ ]														
Indicate By Gender and Ethnicity the Number of Above Employees Who Are Disabled:															
Disabled															