



Request for Qualifications
*Temporary Public Art:
Artist Selection, Conceptual Design
and Completion of Artwork
Mural Projects in
Two Distinct Neighborhoods*

RFQ 22-02

Date Issued Tuesday, July 13, 2021

Due Tuesday, August 24, 2021 at 4 p.m.

Contact Tonya Rodzach
Public Art Coordinator
Library & Cultural Arts
City of Carlsbad
1775 Dove Lane
Carlsbad, CA 92011
760-602-2090
arts@carlsbadca.gov



The City of Carlsbad encourages the participation of minority and women-owned businesses.

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Request for Qualifications: Mural Project

The City of Carlsbad's Library & Cultural Arts Department seeks to qualify two separate artist or artist teams to enter into a design agreement, along with a fabrication contract to develop and complete a large-scale site-specific mural at two separate designated sites within the city. These murals will have a strong visual presence and will play a significant role in defining the character of each community while contributing to the aesthetic quality of a public space, bringing people together with the city as a leader in bringing innovative ideas to the community, partnering with local groups to create capacity within the creative sector and connecting across city departments and among city partners connecting our initiatives outlined in our city's Arts & Culture Master Plan.

Where

Each site is located in two very distinctive, but different areas of the city. There are two locations that have been identified:

- 1) An exterior west wall of the city-owned historic Bauer Lumber Building is adjacent to the North County Transit District's Carlsbad Village Coaster Station, just north of Christensen Way, Carlsbad, California. The historic lumber building houses long-term tenant, New Village Arts Theatre.
- 2) An exterior west wall of the Carlsbad City Library Learning Center, located at 3368 Eureka Place, Carlsbad, California.

What

Each ideal mural would:

- Capture the community's interest and be designed to create an exciting visual experience for the visitors
- Engage and aesthetically delight individuals of all ages and backgrounds
- Provide people a sense of place that's welcoming to this distinctive area
- Capture the spirit, energy and liveliness of Carlsbad's community
- Encourage an environment for artistic creativity and promote Carlsbad as a local, state and national leader in arts, culture and public art
- Increase awareness of Carlsbad's Art in Public Places strategy, along with the city's temporary public art initiatives, as an integral component for attracting business and tourism to Carlsbad

Each selected artist or artist team will agree to develop a conceptual design and once the final design is agreed upon, then complete the large-scale mural. All work entered must be suitable for outdoor public display for at least five to seven-year duration. The durability of the work and materials used will be a consideration for final selection. Artwork must withstand an outdoor marine environment, including occasionally rainy and humid conditions, for the duration of the exhibited work.

Artists or artists teams will be required to submit the following information:

- Artist vitae
- Selected references
- Statement of interest
- Examples of past mural projects
- Experience working with a municipality

Submitted materials will be reviewed, considered and evaluated by city staff, resulting a short-list of five to eight qualified artists. Once the short-list has been finalized, artists or artists teams are invited to participate in virtual (or if possible, in-person) interviews with a public art advisory panel. Artists and artist teams will

need to develop, display and describe their conceptual designs to the public art advisory committee. The city will offer a standard and reasonable payment to all participating artists and artists teams. The Request for Qualifications process does not involve that the artist or artist team prepare any specific ideas based on the limited information included in the Request for Qualifications, rather site-specific artistic proposals for the mural project are developed after learning more about the project through site visits and interactions with city staff, the design team and community stakeholders.

Project Description

Location 1: Village Mural Project

The City of Carlsbad Public Works Department recently made building enhancements to the city-owned historic Bauer Lumber Building located at 2787 State Street, Carlsbad. The historic lumber building houses long-term tenant, New Village Arts Theatre. The newly renovated west wall of the building has been identified as an ideal site for a temporary public art mural which has high visibility from the North County Transit District's Carlsbad Village Coaster Station parking lot.

Project Description

Location 2: Library Learning Center Mural Project

The Carlsbad Library Learning Center is located at 3368 Eureka Place, Carlsbad. The city's Library Learning Center is an important educational resource, meeting community members' needs for friendly, personalized and sensitive assistance with literacy and learning in English and Spanish. The Learning Center provides a comfortable and welcoming gathering place where library services and lifelong learning is provided for all ages. The west-facing wall of the building, along with a partial area of the sidewalk and parking lot crosswalk, has been identified as an ideal site for a temporary public art mural with high visibility from Holiday Park.

About the City of Carlsbad

Now a city of roughly 115,000, the city is still known as a "village by the sea" and prides itself on its small, coastal town feel. No longer reliant on agriculture as a sole economic engine, the City of Carlsbad is a popular tourist destination and home to a number of commercial and industrial enterprises. Its enviable location between San Diego and Los Angeles, striking coastline, fertile soil and temperate climate all ensure the city's attractiveness and growth into the 21st century.

Connection to the Village and Barrio Master Plan

The purpose of the project is to provide artistic enhancements as identified in the City of Carlsbad's [Village and Barrio Master Plan](#):

- Chapter 1, under “Placemaking”
 - B. Create magnetic public spaces for arts and culture, civic and other activities.
 4. Incorporate public art, including temporary public art, when feasible; it can play a significant role in defining the character of a community while contributing to the aesthetic quality of a public space and bringing people together.
- Chapter 4, under “Incorporate Arts and Culture Into the Streetscape”
 - C. Temporary Art Temporary public art is a highly effective tool for developing socially engaging, interactive art experiences in community settings. By its fresh and timely nature, temporary art fosters artistic exploration far beyond the traditional boundaries of public art, drawing residents and visitors to the area in anticipation of each new installation or activity. Temporary Projects can include such elements as temporary/rotating murals, community support arts in public parks, and pop-up galleries in temporarily vacant buildings.

Connection to Arts and Culture in Carlsbad

Arts and culture have long been an essential component of Carlsbad life. Founded in 1986, the city's [Cultural Arts Office](#) provides cultural services throughout the community and works with a host of partners to expand arts programming and deepen arts appreciation. Two of its most popular programs have been TGIF Concerts in the Parks, a free musical series offered each summer, and the William D. Cannon Art Gallery, presenting works by local, regional and international artists. Today, the city recognizes the value of a strong arts and culture community as an integral part of daily life, as well as the strong growth of the arts and creative economies within the region.

In June 2018, City Council approved the [Arts & Culture Master Plan](#) that supports the City of Carlsbad's commitment to these following core values:

- High-quality programs
- Dedicated resources
- History of partnership

The guiding principles outlined in the Arts & Culture Master Plan elevates the role of the Cultural Arts Office to expand from a provider of arts programming and funding into a broader set of new roles that allow the city to realize this vision of the arts and culture in everyday life while stimulating an expanding creative sector economy. This effort continues to build on its ability to bring residents together with the city as a leader in bringing innovative ideas to the community, partnering with local groups to create capacity within the creative sector and connecting across city departments and among city partners.

About the city's Art in Public Places Program

In 2016, the City of Carlsbad completed a [public art visioning process](#) with the goals to:

- Define broad citywide goals and priorities for public art
- Establish timelines for implementation of public art
- Educate the public of the value of public art in the community

The city's public art program has a prominent and significant history. The city's Art in Public Places Program integrates art and the vision of artists into the development of public settings by collaborating with local, regional and nationally-known artists to include the values and history of our community into their work.

The program goals are:

- To increase the understanding and appreciation of art in public places of Carlsbad residents and visitors.
- To acquire and commission quality and diverse works of art for community enrichment that is site-specific and environmentally responsive.
- To encourage the participation of diverse socioeconomic and ethnic groups in the art in public places program and process.
- To support and involve artists in developing, collaborating and implementing Carlsbad's public spaces and community development projects.
- To encourage collaboration between artists and architects, landscape architects and civil engineers for public projects.
- To encourage an environment for artistic creativity in Carlsbad and promote Carlsbad as a local, state and national leader in arts, culture and public art.
- To increase awareness of Carlsbad's art in public places activities as an integral component for attracting business and tourism to Carlsbad.

Like the city's Capital Improvement Program, public art is also created in the community's best interest and designed to create exciting new aesthetic experiences that will engage Carlsbad's growing community, as well as refresh its infrastructure.

For more information, visit the city's public art program and the city's permanent collection [webpage](#).

What to Expect with these Projects

The city's **temporary public art program** encompasses all the same goals of the city's Art in Public Places program while supporting a variety of visual arts experiences with the possibility of a performing arts elements. These pop-up arts experiences may range from a single experience to a short term of several days or a longer duration over multiple years. The overall goal is to provide a greater awareness of local and regional artists and heighten the visibility of artists and the arts in Carlsbad.

Creating thoughtful relationships between public space and art while preserving Carlsbad's distinct heritage and cultural identity is an ongoing priority. The city's public art program is created in the community's interest and designed to create exciting aesthetic experiences that engage Carlsbad's community, and give people a sense of place that's welcoming to this distinctive area. Ultimately, this project deepens the city's commitment to public art and the arts, in general, and broadens its value to the quality of life.

Inspiration and support for the development of new temporary public art installation is prompted by the City Council acceptance of the [Imagine the Possibilities](#) document in 2016 and designating funds each year towards this effort.

The Final Selected Works of Art should:

- Be an original, site-specific treatment to public space that creates a sense of place in the proposed outdoor location, and attracts and welcomes visitors to the City of Carlsbad from the north along the coast and surrounding communities
- Be engaging and aesthetically pleasing to individuals of all ages and backgrounds
- Be created using materials that can withstand the outdoor elements, up to seven years, and requires minimal maintenance
- Incorporate input from Carlsbad community, with a sensitivity to the environment, history, traditions, and iconography that uplift the proudest aspects of this community
- Embrace the community values identified through the [Envision Carlsbad](#) public outreach process:
 - Reflect the neighborhood
 - Protect open space and the natural environment
 - Celebrate our history, the arts and culture
 - Strive for sustainability
 - Promote high quality education and community services
 - Improve access to recreation and active, healthy lifestyles
 - Promote local economy, business diversity and tourism
 - Encourage neighborhood revitalization and livability
 - Enhance walking, biking, public transportation and connectivity
- Embrace each of the site-specific locations on the exterior façades

Prospective Site

See the attached Exhibits A and B.

Budget

The total budget for each mural **shall not-to-exceed \$50,000**.

A stipend for the development of the design concept **shall not-to-exceed \$850**.

The total budget for the artwork is not to exceed \$50,000 for each mural. The selected artist will receive a design agreement for \$10,000 to develop site-integrated artwork. When the design proposal is accepted, the artist will then receive a subsequent contract of up to \$40,000 to fabricate and complete the artwork. This is inclusive of the artist's time, travel, wall preparation, materials, final mural sealant, and crafting a maintenance plan. Artist is responsible for the maintenance for one year upon completion of the mural. Artist or artist team will be available to participate in any unveiling or opening event activities. Opportunities may exist for the artist or artist team to collaborate with city staff on community arts outreach events.

Eligibility and Selection Process

Eligibility

This Request for Qualifications is open to all artists who reside in California. At least two different artists or artist teams will be selected to complete each mural project. The city will not award both mural projects to the same artist or artist team.

To Submit

Artists or artists teams will be required to submit the following information:

- Artist vitae
- Selected references
- Statement of interest
- Examples of past mural projects
- Experience working with a municipality

Selection Process

City staff will select the top five (5) to eight (8) artists or artist teams to define a short-list of candidates for an interview and presentation to a public art advisory committee.

Selection Criteria

The artists or artist teams will be selected based on the following criteria:

- Previous large-scale mural experience
- Creativity of approach
- Ability to produce durable outdoor art
- Ability to complete work on time, on budget

Notification of Results

Artists or artist teams will be notified of the public art advisory committee's decision via email by October, 2021. Please note that the City of Carlsbad reserves the right not to select any of the artworks or refuse artwork if doesn't meet the proposed deliverables.

Request for Qualifications will go through an initial review and be ranked by city staff. Ranking will be based on a weighted scoring system.

Criteria	Weight
Statement of interest, artist vitae and references	30%
Creativity of approach, ability to produce outdoor art, on time and on budget	30%
Artist portfolio featuring previous large-scale mural experience	25%
Estimated materials costs and project schedule	10%
Value added offerings (if any)	5%

The short-list of five to eight artists will be invited to an interview prior to final selection. City staff will provide sufficient time for the short-list of artists or artist teams to prepare for the interview. Artists and artist teams will further develop and describe their public art designs to the public art advisory committee and be prepared to share their conceptual renderings. The public art advisory committee consists of city staff, Arts Commissioners and community stakeholders. The city will offer a payment \$850 to develop a design concept to all artists and artist teams who participate in person (or virtual) interview portion.

Health & Safety

During the COVID-19 health-related pandemic, all activities occurring at city facilities, all parties must adhere to the guidance from the state, county, and local authorities on health and safety protocols. City staff will inform artist(s) what the current guidelines are prior to their arrival and entering any city facility. Safety protocols may include, but are not limited to, hand washing, temperature testing, requiring face covering, maintaining physical distancing of six feet. The safety protocols may be modified at any time due to changing rules, regulations or circumstances.

Conflict of Interest

No person performing services for the city, in connection with the establishment of any agreements or any projects resulting from this solicitation, shall have a financial or other personal interest other than employment or retention by the city in any contract or subcontract in connection with this solicitation or any resulting project. No officer or employee of such person retained by the city shall have any financial or other personal interest in the resulting project, unless such interest is openly disclosed upon the public records of the city and such officer, employee, or person has not participated in the acquisition of such property for or on behalf of the city.

Project Schedule

Date	Task
July 13, 2021	Release Request for Qualifications
August 10, 2021	Questions due via email by 4 p.m. to arts@carlsbadca.gov
Monday, August 16, 2021	Responses to the questions will be posted by 4 p.m.
Deadline: Tuesday, August 24, 2021	Final submissions of Request for Qualifications are due by 4 p.m.
September, 2021	City staff to review and narrow entries to short-list of five (5) to eight (8) candidates. Artist or artist teams will be selected and be given a designated location to develop their design concept.
October, 2021	Artists or artist teams present conceptual drawings to the public art advisory committee who will make a recommendation of the preferred artist and concept per location.
January, 2022	Design agreement executed.
February, 2022	Public involvement process is initiated.
March, 2022	Fabrication contract initiated.
May, 2022	Artist begins work.
June, 2022	Artist finalizing finishing touches and creates and submits a maintenance plan.

Please review, Professional Services Agreement (Exhibit E) for the refinement of the design concept. The selected artists will enter into a design agreement with City of Carlsbad. The sample city agreement is attached for reference and the artist should be aware of the documentation requirements prior to submitting a response to this Request for Qualifications. Once selected artists refine their design concepts, the designs are shared broadly with the community and goes through a public involvement process. After the public involvement process closes, the artist or artist team will enter into a Public Works Fabrication Contract (Exhibit F). **The city’s agreement and contract process are dictated by many levels of review and may take several months to complete.** The design agreement and fabrication contract will not be subject to negotiations; therefore, if the artist is not able to comply with the terms of the agreement and contract, please do not submit a response to this Request for Qualifications.

Submittal Requirements

The submittal deadline is Tuesday, August 24, 2021 by 4 p.m.

The Professional Services Agreement will be established for a period of one (1) year. Depending on the performance of the artist or artist team, there is the opportunity to move into an additional fabrication contract. The award of a Public Works Fabrication Contract does not guarantee the selected firm will perform all or any portion of the services described in this Request for Qualifications, nor does it guarantee that the maximum amount will be expended. Please review Exhibits E and F of this Request for Qualifications, Professional Services Agreement (design) and Public Works Contract (fabrication). The form of this agreement and contract will not be subject to negotiations; therefore, if you are not able to comply with the terms of these agreements, do not submit a Request of Qualifications.

e - Bidding

The Request for Qualifications and price proposal is available on the city website through PlanetBids only. You must register as a document holder to receive updates and notices:

<https://www.planetbids.com/portal/portal.cfm?CompanyID=27970>

City of Carlsbad website:

<https://www.carlsbadca.gov/departments/finance/contracting-purchasing>

If you have questions regarding PlanetBids, please contact Associate Contract Administrator, Rosario Aranda, at rosario.aranda@carlsbadca.gov or 760-602-2792.

1. **Electronic Format Receipt and Opening of Request for Qualifications:**

Submittals will be received in electronic format (eBids) exclusively at the City of Carlsbad's electronic bidding (eBidding) site at [City of Carlsbad - Contracting & Purchasing](#) and are due by the date and time specified on the cover of the solicitation.

- 1.1. Proposers must be preregistered with the city's bidding system and possess a system-assigned Digital ID in order to submit and electronic proposal.

The city's proposal/electronic bidding (eBidding) system will automatically track information submitted to the site including IP addresses, browsers being used and the URLs from which information was submitted. In addition, the city's bidding system will keep a history of every login instance including the time of login, and other information about the user's computer configuration such as the operating system, browser type, version and more. Because of these security features, proposers who disable their browsers' cookies will not be able to log in and use the city's electronic bidding system.

Upon entry of their proposal, the system will ensure that all required fields are entered. **The system will not accept a proposal for which any required information is missing.** This includes all essential documentation and supporting materials and forms requested or contained in these solicitation documents

- 1.2. **Proposals remained sealed until the due date and time.** eBids and eProposal's are transmitted into the city's bidding system via hypertext transfer protocol secure (https) mechanism using SSL 128-256-bit security certificates issued from Verisign/Thawte which encrypts data being transferred from

client to server. Proposals submitted prior to the due date and time are not available for review by anyone other than the submitter, who will have until the due date and time to change, rescind or retrieve its proposal should they desire to do so.

1.3. **Proposals must be submitted by due date and time.** Once the deadline is reached, no further submissions are accepted into the system. Once the due date and time has passed, bidders, proposers, the general public, and city staff are able to immediately see the results online. City staff may then begin reviewing the submissions for responsiveness, compliance and other issues.

1.4. **Proposals may be withdrawn** by the proposer prior to, but not after, the time set as due date and time.

Important note: Submission of the electronic proposal into the system may not be instantaneous. Due to the speed and capabilities of the user's internet service provider, bandwidth, computer hardware and other variables, it may take time for the proposer's submission to upload and be received by the city's eBidding system. It is the proposer's sole responsibility to ensure their proposals are received on time by the city's eBidding system. The City of Carlsbad is not responsible for proposals that do not arrive by the due date and time.

2. **Electronic submissions carry full force and effect.** The proposer, by submitting their electronic proposal, agrees to and certifies under penalty of perjury under the laws of the State of California, that the certification, forms and affidavits submitted as part of this proposal are true and correct.
3. **Proposals are public records.** Upon receipt by the city, proposals shall become public records subject to public disclosure. It is the responsibility of the Proposer to clearly identify any confidential, proprietary, trade secret or otherwise legally privileged information contained within the proposal's general references to sections of the California Public Records Act will not suffice. If the proposer does not provide applicable case law that clearly establishes that the requested information is exempt from the disclosure requirements of the Public Records Act, the city shall be free to release the information when required in accordance with the Public Records Act, pursuant to any other applicable law, or by order of any court or government agency, and the proposer agrees to hold the city harmless for any such release of this information.

4. **Submission of Question**

All questions must be received prior to Tuesday, August 10, 2021 at 4 p.m.

All questions related to this solicitation shall be submitted via email to:

Library & Cultural Arts Department

Attention: Tonya Rodzach, Public Art Coordinator

Subject line: "Inquiry RFQ, Mural Project, (insert artist name)"

via email at: arts@carlsbadca.gov

Questions received after August 10, 2021 may not be considered.

Questions or clarifications deemed by the city to be material shall be answered via issuance of an addendum and posted to the city's online bidding service.

Only questions answered by formal written addenda shall be binding. Oral and other interpretations or clarifications shall be without legal effect. It is the proposer's responsibility to be

informed of any addenda that have been issued and to adjust its proposal accordingly.

5. Revisions to the Request for Qualifications

The city, at its option, may respond to any or all questions submitted in writing via the city's e-Bidding website or received via email in the form of an addendum. No other responses to questions, oral or written, shall be of any force or effect with respect to this solicitation.

Any changes to the contract documents through addendum are made effective as though originally issued with the Request for Qualifications. The proposer shall acknowledge the receipt of addenda at the time of proposal submission.

Submissions via email or fax will not be accepted.

Submittal Request for Qualifications shall be 8.5 x 11 inch, 11-point font or larger, 1.15 space between lines, and maximum ten (10) double-sided pages total in length bundled in a pdf format, and then submit up to five (5) works as jpegs of past work.

Any accepted work which differs from the images provided may be disqualified.

Notification of Results

Contractors will be notified of the public art advisory committee's decision by email.

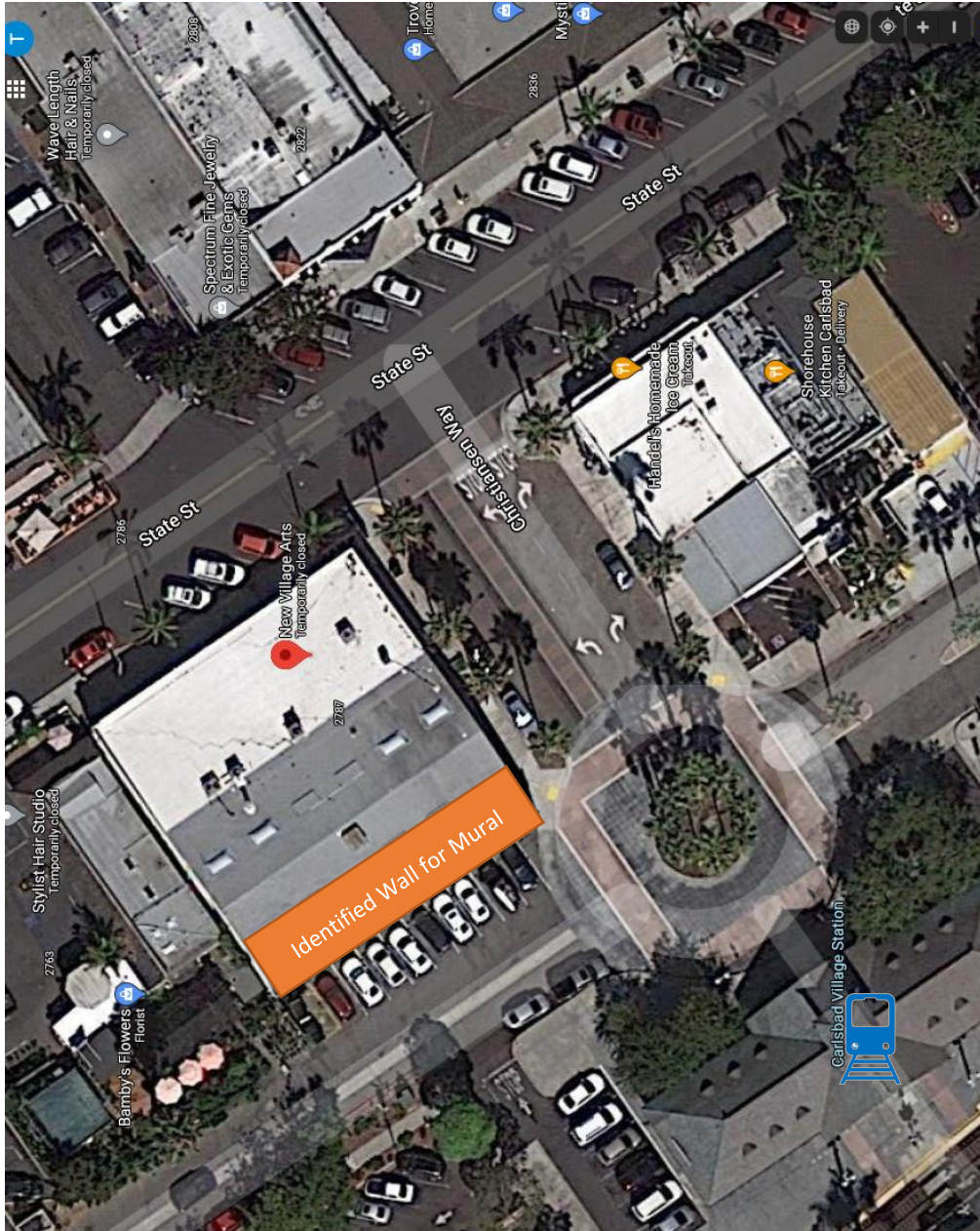
The City of Carlsbad reserves the right not to select any of the candidates.

We're here to help:

City of Carlsbad
Library & Cultural Arts Department
Tonya Rodzach, Public Art Coordinator
arts@carlsbadca.gov
760-602-2090

Deadline for submittals must be received by Tuesday, August 24, 2021 by 4 p.m.

Exhibit A – Site Map: Location 1, Village Mural Project




Key
 Wall identified for the mural

Exhibit C – Site Map: Location 2, Library Learning Center




Key	
	Wall and partial area of the sidewalk and cross walk in parking lot has been identified for the mural

Exhibit D –Location 2, Library Learning Center Wall and Dimensions



Dimensions

North end of west wall, approximately 30 feet wide and 27 feet high in varying heights and widths

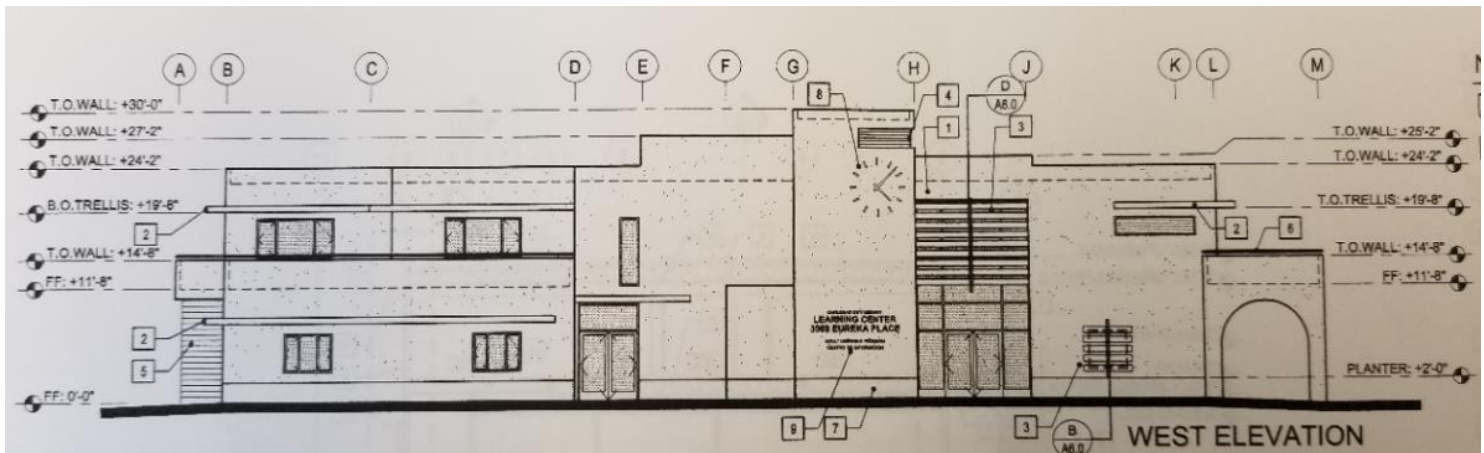


Exhibit E – Professional Services Agreement

SAMPLE – DO NOT COMPLETE AT THIS TIME

AGREEMENT FOR (INSERT TYPE OF PROFESSIONAL SERVICES) SERVICES (NAME OF CONTRACTOR)

THIS AGREEMENT is made and entered into as of the _____ day of _____, 20____, by and between the CITY OF CARLSBAD, a municipal corporation, ("City"), and _____, a _____, ("Contractor").

RECITALS

- A. City requires the professional services of an experienced Artist to design and paint a Mural on _____.
- B. Contractor has the necessary experience in providing professional services and advice related to _____.
- C. Contractor has submitted a proposal to City and has affirmed its willingness and ability to perform such work.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, City and Contractor agree as follows:

1. SCOPE OF WORK

City retains Contractor to perform, and Contractor agrees to render, those services (the "Services") that are defined in attached Exhibit "A", which is incorporated by this reference in accordance with this Agreement's terms and conditions.

2. STANDARD OF PERFORMANCE

While performing the Services, Contractor will exercise the reasonable professional care and skill customarily exercised by reputable members of Contractor's profession practicing in the Metropolitan Southern California Area, and will use reasonable diligence and best judgment while exercising its professional skill and expertise.

3. TERM

The term of this Agreement will be effective for a period of _____ from the date first above written. The City Manager may amend the Agreement to extend it for _____ additional _____ year periods or parts thereof. Extensions will be based upon a satisfactory review of Contractor's performance, City needs, and appropriation of funds by the City Council. The parties will prepare a written amendment indicating the effective date and length of the extended Agreement.

4. TIME IS OF THE ESSENCE

Time is of the essence for each and every provision of this Agreement.

5. COMPENSATION

The total fee payable for the Services to be performed during the initial Agreement term will be _____ dollars (\$_____). No other compensation for the Services will be allowed except for items covered by subsequent amendments to this Agreement. If the City elects to extend the Agreement, the amount shall not exceed _____ dollars (\$_____) per Agreement year. The City reserves the right to withhold a ten percent (10%) retention until City has accepted the work and/or Services specified in Exhibit "A".

Incremental payments, if applicable, should be made as outlined in attached Exhibit "A".

6. STATUS OF CONTRACTOR

Contractor will perform the Services in Contractor's own way as an independent contractor and in pursuit of Contractor's independent calling, and not as an employee of City. Contractor will be under control of City only as to the result to be accomplished, but will consult with City as necessary. The persons used by Contractor to provide services under this Agreement will not be considered employees of City for any purposes.

The payment made to Contractor pursuant to the Agreement will be the full and complete compensation to which Contractor is entitled. City will not make any federal or state tax withholdings on behalf of Contractor or its agents, employees or subcontractors. City will not be required to pay any workers' compensation insurance or unemployment contributions on behalf of Contractor or its employees or subcontractors. Contractor agrees to indemnify City within thirty (30) days for any tax, retirement contribution, social security, overtime payment, unemployment payment or workers' compensation payment which City may be required to make on behalf of Contractor or any agent, employee, or subcontractor of Contractor for work done under this Agreement. At the City's election, City may deduct the indemnification amount from any balance owing to Contractor.

7. SUBCONTRACTING

Contractor will not subcontract any portion of the Services without prior written approval of City. If Contractor subcontracts any of the Services, Contractor will be fully responsible to City for the acts and omissions of Contractor's subcontractor and of the persons either directly or indirectly employed by the subcontractor, as Contractor is for the acts and omissions of persons directly employed by Contractor. Nothing contained in this Agreement will create any contractual relationship between any subcontractor of Contractor and City. Contractor will be responsible for payment of subcontractors. Contractor will bind every subcontractor and every subcontractor of a subcontractor by the terms of this Agreement applicable to Contractor's work unless specifically noted to the contrary in the subcontract and approved in writing by City.

8. OTHER CONTRACTORS

The City reserves the right to employ other Contractors in connection with the Services.

9. INDEMNIFICATION

Contractor agrees to indemnify and hold harmless the City and its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses including attorneys fees arising out of the performance of the work described herein caused by any negligence, recklessness, or willful misconduct of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

Indemnification for Infringement. The Contractor also agrees to protect, defend, indemnify and hold the City harmless from any action, claim, suit or liability based on a claim that work performed under this Agreement by the Contractor or his/her agents constitutes an

infringement of any patent, copyright, trademark, trade name or other proprietary right of any party.

The parties expressly agree that any payment, attorney's fee, costs or expense City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

10. INSURANCE

Contractor will obtain and maintain for the duration of the Agreement and any and all amendments, insurance against claims for injuries to persons or damage to property which may arise out of or in connection with performance of the services by Contractor or Contractor's agents, representatives, employees or subcontractors. The insurance will be obtained from an insurance carrier admitted and authorized to do business in the State of California. The insurance carrier is required to have a current Best's Key Rating of not less than "A-VII"; **OR** with a surplus line insurer on the State of California's List of Approved Surplus Line Insurers (LASLI) with a rating in the latest Best's Key Rating Guide of at least "A:X"; **OR** an alien non-admitted insurer listed by the National Association of Insurance Commissioners (NAIC) latest quarterly listings report.

10.1 Coverage and Limits.

Contractor will maintain the types of coverage and minimum limits indicated below, unless the Risk Manager or City Manager approves a lower amount. These minimum amounts of coverage will not constitute any limitations or cap on Contractor's indemnification obligations under this Agreement. City, its officers, agents and employees make no representation that the limits of the insurance specified to be carried by Contractor pursuant to this Agreement are adequate to protect Contractor. If Contractor believes that any required insurance coverage is inadequate, Contractor will obtain such additional insurance coverage, as Contractor deems adequate, at Contractor's sole expense. The full limits available to the named insured shall also be available and applicable to the City as an additional insured.

10.1.1 Commercial General Liability (CGL) Insurance. Insurance written on an "occurrence" basis, including personal & advertising injury, with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

10.1.2 Automobile Liability. (if the use of an automobile is involved for Contractor's work for City). \$2,000,000 combined single-limit per accident for bodily injury and property damage.

10.1.3 Workers' Compensation and Employer's Liability. Workers' Compensation limits as required by the California Labor Code. Workers' Compensation will not be required if Contractor has no employees and provides, to City's satisfaction, a declaration stating this.

10.1.4 Professional Liability. Errors and omissions liability appropriate to Contractor's profession with limits of not less than \$1,000,000 per claim. Coverage must be maintained for a period of five years following the date of completion of the work.

10.2 Additional Provisions. Contractor will ensure that the policies of insurance required under this Agreement contain, or are endorsed to contain, the following provisions:

10.2.1 The City will be named as an additional insured on Commercial General Liability which shall provide primary coverage to the City.

10.2.2 Contractor will obtain occurrence coverage, excluding Professional Liability, which will be written as claims-made coverage.

10.2.3 This insurance will be in force during the life of the Agreement and any extensions of it and will not be canceled without thirty (30) days prior written notice to City sent by certified mail pursuant to the Notice provisions of this Agreement.

10.3 Providing Certificates of Insurance and Endorsements. Prior to City's execution of this Agreement, Contractor will furnish certificates of insurance and endorsements to City.

10.4 Failure to Maintain Coverage. If Contractor fails to maintain any of these insurance coverages, then City will have the option to declare Contractor in breach, or may purchase replacement insurance or pay the premiums that are due on existing policies in order to maintain the required coverages. Contractor is responsible for any payments made by City to obtain or maintain insurance and City may collect these payments from Contractor or deduct the amount paid from any sums due Contractor under this Agreement.

10.5 Submission of Insurance Policies. City reserves the right to require, at any time, complete and certified copies of any or all required insurance policies and endorsements.

11. BUSINESS LICENSE

Contractor will obtain and maintain a City of Carlsbad Business License for the term of the Agreement, as may be amended from time-to-time.

12. ACCOUNTING RECORDS

Contractor will maintain complete and accurate records with respect to costs incurred under this Agreement. All records will be clearly identifiable. Contractor will allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of records and any other documents created pursuant to this Agreement. Contractor will allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

13. OWNERSHIP OF THE ARTWORK

Title to the completed Artwork immediately vests in the City upon completion, along with all rights of ownership, possession and control. Prior to completion of the Artwork, City shall have the right, at its option, to claim ownership, possession and control of the uncompleted portions of the Artwork which are on site.

14. REPRODUCTION RIGHTS

Subject to the rights granted herein, Contractor retains all rights under the Copyright Act of 1976 (17 U.S.C. §101 et. seq.), as amended from time to time. The Contractor hereby grants the City, royalty free and irrevocable license to make, or cause to be made, photographs and other two-dimensional reproductions of the Mural for noncommercial purposes. For the purpose of this Agreement, the following are among those deemed to be permissible reproductions for the above cited purposes: reproductions used in City business, advertising, souvenirs, brochures and pamphlets pertaining to the City; reproductions in exhibition catalogues, books, slides, photographs, postcards, posters, calendars, art magazines, art books and art and news sections of newspapers; in general books and magazines not primarily devoted to art; slides and film strips; video; computer websites; and television; as well as in media that shall exist in the future. The City may not re-license the Artwork nor make a full scale exact duplicate of the Artwork nor alter Artwork by selecting portions without Contractor's consent. The City shall include the Contractor's copyright notice on any reproductions and the Contractor shall include the following words on any reproduction: "An original work commissioned by the City of Carlsbad, California."

15. COPYRIGHTS

The responsibility for registration of the copyright shall be the responsibility of the copyright holder under this Agreement.

16. WARRANTIES

1. Warranty of Title. The Contractor represents and warrants that:
 - (a) The Artwork is solely the result of the artistic effort of the Contractor.
 - (b) The Artwork is unique and original and does not infringe upon any copyright, trademark, service mark or other intellectual property right of any third party.
 - (c) The Artwork or a duplicate of the Artwork has not been sold elsewhere.
2. Warranty of Title. The Contractor represents and warrants that:
 - (d) The Artwork is solely the result of the artistic effort of the Contractor.
 - (e) The Artwork is unique and original and does not infringe upon any copyright, trademark, service mark or other intellectual property right of any third party.
 - (f) The Artwork or a duplicate of the Artwork has not been sold elsewhere.
3. Reasonable maintenance of the Artwork will not require procedures in excess of those described in the maintenance recommendations to be submitted by the Contractor to the City along with the design. The warranty of quality and condition shall survive for a period of one year after the final acceptance of the artwork. The City shall give notice to the Contractor of any observed breach with reasonable promptness. The Contractor shall at the request of the City, and at no cost to the City, cure reasonable and promptly the breach of any such warranty which is curable by the Contractor and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or refabrication of the Artwork.)

16. WAIVER OF RIGHTS

The Contractor and City acknowledge that the Contractor may have certain rights under the Federal Visual Artists Rights Act of 1990 ("VARA" 17 U.S.C. § 106A, et seq.). The Contractor acknowledges and understands that if fabrication is performed, the subsequent installation of the Artwork at the site may subject the Artwork to destruction, distortion, mutilation, or other modification due to its removal by the City or its officials, officers, employees, agents, or representatives.

The Contractor and City acknowledge that the Contractor may have certain rights under California Civil Code Section 987 which are not pre-empted by VARA. In consideration of the terms and conditions in this Agreement, the Contractor waives any rights which the Contractor or the Contractor's heirs, beneficiaries, devisees, or personal representatives may have under California Civil Code Section 987 to prevent the removal, destruction, distortion, mutilation, or other modification of the Artwork.

Any contracts or written agreements between the Contractor and his/her subcontractors or other artists contributing to the Artwork shall include a waiver of the Contractor's rights under this Agreement.

The Contractor agrees to waive the rights under VARA to prevent the destruction, distortion, mutilation, or other modification of the Artwork.

The Contractor's rights under this Agreement shall cease with the Contractor's death and do not extend to the Contractor's heirs, successors or assigns.

In addition, in the event that any element of the Artwork constitutes a public safety hazard, the City has the right to remove the element posing the public safety hazard.

The Contractor, his or her agents, heirs, successors and assigns further agree not to attempt to defeat this waiver by cooperating, encouraging or assisting any organization which seeks to bring an action under these Acts.

17. NOTICES

The name of the persons who are authorized to give written notice or to receive written notice on behalf of City and on behalf of Contractor under this Agreement.

For City

Name _____

Title _____

Department _____

City of Carlsbad

Address _____

Phone No. _____

For Contractor

Name _____

Title _____

Address _____

Phone No. _____

Email _____

Each party will notify the other immediately of any changes of address that would require any notice or delivery to be directed to another address.

18. CONFLICT OF INTEREST

Contractor shall file a Conflict of Interest Statement with the City Clerk in accordance with the requirements of the City of Carlsbad Conflict of Interest Code. The Contractor shall report investments or interests in all categories.

Yes No

19. GENERAL COMPLIANCE WITH LAWS

Contractor will keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Contractor, or in any way affect the performance of the Services by Contractor. Contractor will at all times observe and comply with these laws, ordinances, and regulations and will be responsible for the compliance of Contractor's services with all applicable laws, ordinances and regulations.

Contractor will be aware of the requirements of the Immigration Reform and Control Act of 1986 and will comply with those requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, subcontractors and consultants whose services are required by this Agreement.

20. DISCRIMINATION AND HARASSMENT PROHIBITED

Contractor will comply with all applicable local, state and federal laws and regulations prohibiting discrimination and harassment.

21. DISPUTE RESOLUTION

If a dispute should arise regarding the performance of the Services the following procedure will be used to resolve any questions of fact or interpretation not otherwise settled by agreement between the parties. Representatives of Contractor or City will reduce such questions, and their respective views, to writing. A copy of such documented dispute will be forwarded to both parties involved along with recommended methods of resolution, which would be of benefit to both parties. The representative receiving the letter will reply to the letter along with a recommended method of resolution within ten (10) business days. If the resolution thus obtained is unsatisfactory to the aggrieved party, a letter outlining the disputes will be forwarded to the City Manager. The City Manager will consider the facts and solutions recommended by each party and may then opt to direct a solution to the problem. In such cases, the action of the City Manager will be binding upon the parties involved, although nothing in this procedure will prohibit the parties from seeking remedies available to them at law.

22. TERMINATION

In the event of the Contractor's failure to prosecute, deliver, or perform the Services, City may terminate this Agreement for nonperformance by notifying Contractor by certified mail of the termination. If City decides to abandon or indefinitely postpone the work or services contemplated by this Agreement, City may terminate this Agreement upon written notice to Contractor. Upon notification of termination, Contractor has five (5) business days to deliver any documents owned by City and all work in progress to City address contained in this Agreement. City will make a determination of fact based upon the work product delivered to City and of the percentage of work that Contractor has performed which is usable and of worth to City in having the Agreement completed. Based upon that finding City will determine the final payment of the Agreement.

Either party upon tendering thirty (30) days written notice to the other party may terminate this Agreement. In this event and upon request of City, Contractor will assemble the work product and put it in order for proper filing and closing and deliver it to City. Contractor will be paid for work performed to the termination date; however, the total will not exceed the lump sum fee payable under this

Agreement. City will make the final determination as to the portions of tasks completed and the compensation to be made.

23. COVENANTS AGAINST CONTINGENT FEES

Contractor warrants that Contractor has not employed or retained any company or person, other than a bona fide employee working for Contractor, to solicit or secure this Agreement, and that Contractor has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, City will have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of the fee, commission, percentage, brokerage fees, gift, or contingent fee.

24. CLAIMS AND LAWSUITS

By signing this Agreement, Contractor agrees that any Agreement claim submitted to City must be asserted as part of the Agreement process as set forth in this Agreement and not in anticipation of litigation or in conjunction with litigation. Contractor acknowledges that if a false claim is submitted to City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that California Government Code sections 12650 *et seq.*, the False Claims Act applies to this Agreement and, provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of information. If City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorney's fees. Contractor acknowledges that the filing of a false claim may subject Contractor to an administrative debarment proceeding as the result of which Contractor may be prevented to act as a Contractor on any public work or improvement for a period of up to five (5) years. Contractor acknowledges debarment by another jurisdiction is grounds for City to terminate this Agreement.

26. JURISDICTION AND VENUE

Any action at law or in equity brought by either of the parties for the purpose of enforcing a right or rights provided for by this Agreement will be tried in a court of competent jurisdiction in the County of San Diego, State of California, and the parties waive all provisions of law providing for a change of venue in these proceedings to any other county.

27. SUCCESSORS AND ASSIGNS

It is mutually understood and agreed that this Agreement will be binding upon City and Contractor and their respective successors. Neither this Agreement nor any part of it nor any monies due or to become due under it may be assigned by Contractor without the prior consent of City, which shall not be unreasonably withheld.

28. ENTIRE AGREEMENT

This Agreement, together with any other written document referred to or contemplated by it, along with the purchase order for this Agreement and its provisions, embody the entire Agreement and understanding between the parties relating to the subject matter of it. In case of conflict, the terms of the Agreement supersede the purchase order. Neither this Agreement nor any of its provisions may be amended, modified, waived or discharged except in a writing signed by both parties.

29. AUTHORITY

The individuals executing this Agreement and the instruments referenced in it on behalf of Contractor each represent and warrant that they have the legal power, right and actual authority to bind Contractor to the terms and conditions of this Agreement.

CONTRACTOR

CITY OF CARLSBAD, a municipal corporation of the State of California

By:

By:

(sign here)

[INSERT TITLE OF PERSON
AUTHORIZED TO SIGN (City Manager or
Mayor or Division Director as authorized by
the City Manager)]

(print name/title)

ATTEST:

By:

(sign here)

BARBARA ENGLESON
City Clerk

(print name/title)

If required by City, proper notarial acknowledgment of execution by contractor must be attached. If a corporation, Agreement must be signed by one corporate officer from each of the following two groups.

Group A
Chairman,
President, **or**
Vice-President

Group B
Secretary,
Assistant Secretary,
CFO **or** Assistant Treasurer

Otherwise, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

APPROVED AS TO FORM:

CELIA A. BREWER, City Attorney

BY: _____
Assistant City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

Itemized List of what Contractor will do for City and at what price.

SAMPLE – DO NOT COMPLETE AT THIS TIME

Exhibit F – Public Works Fabrication Contract

SAMPLE – DO NOT COMPLETE AT THIS TIME

**NAME OF PROJECT
CONTRACT NNNN**

(REMOVE THIS TEXT BEFORE PRINTING THE SPECIFICATIONS)

INSTRUCTIONS TO BIDDERS AND BID REQUIREMENTS

This bid and the terms of the Contract Documents and General Provisions constitute an irrevocable offer that shall remain valid and in full force for a period of 90 days and such additional time as may be mutually agreed upon by the City of Carlsbad and the Bidder.

No bid will be received unless it is made on a proposal form furnished by the Purchasing Department. Each bid must be accompanied by security in a form and amount required by law. The bidder's security of the second and third next lowest responsive bidders may be withheld until the Contract has been fully executed. The security submitted by all other unsuccessful bidders shall be returned to them, or deemed void, within ten (10) days after the Contract is awarded. Pursuant to the provisions of law (Public Contract Code section 10263), appropriate securities may be substituted for any obligation required by this notice or for any monies withheld by the City to ensure performance under this Contract. Section 10263 of the Public Contract Code requires monies or securities to be deposited with the City or a state or federally chartered bank in California as the escrow agent. The escrow agent shall maintain insurance to cover negligent acts and omissions of the agent in connection with the handling of retentions under this section in an amount not less than \$100,000 per contract.

The City of Carlsbad may disqualify a contractor or subcontractor from participating in bidding when a contractor or subcontractor has been debarred by the City of Carlsbad or another jurisdiction in the State of California as an irresponsible bidder.

The work shall be performed in strict conformity with the plans, provisions, and specifications as approved by the City Council of the City of Carlsbad on file with the (Engineering) Department. The specifications for the work include City of Carlsbad Technical Specifications and the Standard Specifications for Public Works Construction, Parts 2 & 3, current edition at time of bid opening and the supplements thereto as published by the "Greenbook" Committee of Public Works Standards, Inc. (edit as needed; some projects may not be based on the Greenbook and have specific technical specifications) (REMOVE THIS TEXT BEFORE PRINTING), all hereinafter designated "SSPWC", as amended. Specification Reference is hereby made to the plans and specifications for full particulars and description of the work. The General Provisions (Part 1) to the SSPWC do not apply.

The City of Carlsbad encourages the participation of minority and women-owned businesses.

The City of Carlsbad encourages all bidders, suppliers, manufacturers, fabricators and contractors to utilize recycled and recyclable materials when available, appropriate and approved by the Engineer.

BID DOCUMENTS

The bid documents comprise the following documents which must be completed and properly executed including notarization, where indicated.

1. Contractor's Proposal
2. Bidder's Bond
3. Noncollusion Declaration
4. Designation of Subcontractor and Amount of Subcontractor's Bid
5. Bidder's Statement of Technical Ability and Experience
6. Acknowledgement of Addendum(a)
7. Certificate of Insurance. The riders covering the City, its officials, employees and volunteers may be omitted at the time of bid submittal but shall be provided by the Bidder prior to award of this contract.
8. Bidder's Statement Re Debarment
9. Bidder's Disclosure Of Discipline Record
10. Escrow Agreement for Security Deposits - (optional, must be completed if the Bidder wishes to use the Escrow Agreement for Security)

ENGINEER'S ESTIMATE:

All bids will be compared on the basis of the Engineer's Estimate. The estimated quantities are approximate and serve solely as a basis for the comparison of bids. The Engineer's Estimate is **\$NNN,NNN.NN (INSERT ENGINEER'S ESTIMATE AMOUNT) (REMOVE THIS TEXT BEFORE PRINTING THE SPECIFICATIONS)**

TIME OF COMPLETION:

The contractor shall complete the Work within the time set in the contract as defined in the General Provisions Section 6-7.

**SPECIALTY CONTRACTORS:
ACCEPTABLE LICENSE TYPES**

Except as provided herein a bid submitted to the City by a Contractor who is not licensed as a contractor pursuant to the Business and Professions Code shall be considered nonresponsive and shall be rejected by the City. In all contracts where federal funds are involved, no bid submitted shall be invalidated by the failure of the bidder to be licensed in accordance with California law. Where federal funds are involved the contractor shall be properly licensed at the time the contract is awarded. In all other cases the contractor shall state their license number, expiration date and classification in the proposal, under penalty of perjury. This invitation to bid **(does) (does not) SELECT ONE** involve federal funds. The following classifications are acceptable for this contract:

INSERT APPROPRIATE CLASSIFICATIONS AND DELETE THE FOLLOWING TABLE. CLASSIFICATIONS FOR CONTRACTORS ARE:

Classificatio n	Description	Classificatio n	Description
A	General Engineering	C50	Reinforcing Steel
ASB	Asbestos Removal Certification	C51	Structural Steel
B	General Building	C53	Swimming Pool
C-2	Insulation and Acoustical	C54	Ceramic and Mosaic Tile
C-4	Boiler, Hot Water Heating and Steam Fitting	C55	Water Conditioning

C-5	Framing and Rough Carpentry	C57	Water Well Drilling
C-6	Cabinet, Mill Work, and Finish Carpentry	C60	Welding
C-7	Low Voltage Communications and Wiring Systems	C61	Limited Specialty
C-8	Concrete	HAZ	Hazardous Substance Removal Certification
C-9	Drywall	D03	Awnings
C10	General Electrical	D04	Central Vacuum Systems
C11	Elevator Contractor	D06	Concrete Related Services
C12	Earthwork and Paving	D09	Drilling, Blasting and Oil Field Work
C13	Fencing	D10	Elevated Floors
C14	Metal Roofing Systems	D12	Synthetic Products
C15	Flooring and Floor Covering	D16	Hardware, Locks and Safes
C16	Fire Protection Contractor	D21	Machinery and Pumps
C17	Glazing	D24	Metal Products
C20	Warm-Air Heating, Ventilating and Air-Conditioning	D28	Doors, Gates and Activating Devices
C21	Building Moving / Demolition	D29	Paperhanging
C23	Ornamental Metals	D30	Pile Driving and Pressure Foundation Jacking
C26	Lathing	D31	Pole Installation and Maintenance
C27	Landscaping	D34	Prefabricated Equipment
C28	Lock and Security Equipment	D35	Pool and Spa Maintenance
C29	Masonry	D38	Sand and Water Blasting
C31	Construction Zone Traffic Control		
C32	Parking and Highway Improvement	D39	Scaffolding
C33	Painting and Decorating	D40	Service Station Equipment and Maintenance
C34	Pipeline	D41	Siding and Decking
C35	Lathing and Plastering	D42	Sign Installation
C36	Plumbing	D49	Tree Service
C38	Refrigeration	D50	Suspended Ceilings
C39	Roofing	D52	Window Coverings
C42	Sanitation Systems	D53	Wood Tanks
C43	Sheet Metal	D56	Trenching Only
C45	Electrical Signs	D59	Hydroseed Spraying
C46	Solar	D62	Air and Water Balancing
C47	Manufactured Housing	D63	Construction Clean-up
		D64	Non-specialized
		D65	Weatherization and Energy Conservation

(REMOVE THIS TEXT & TABLE BEFORE PRINTING THE SPECIFICATIONS)

ESCROW AGREEMENT

If the Contractor intends to utilize the escrow agreement included in the contract documents in lieu of the usual 5% retention from each payment, these documents must be completed and submitted with the signed contract. The escrow agreement may not be substituted at a later date.

OBTAINING PLANS AND SPECIFICATIONS

Sets of plans, various supplemental provisions, and Contract documents may be obtained at the Cashier's Counter of the Faraday Center located at 1635 Faraday Avenue, Carlsbad, California 92008-7314, for a non-refundable fee of \$ **(INSERT COST OF DUPLICATION OF PLANS & SPECS, ROUNDED TO THE NEAREST DOLLAR)** per set. If plans and specifications are to be mailed, the

cost for postage should be added.

INTENT OF PLANS AND SPECIFICATIONS

Any prospective bidder who is in doubt as to the intended meaning of any part of the drawings, specifications or other contract documents, or finds discrepancies in or omissions from the drawings and specifications may submit to the Engineer a written request for clarification or correction. Any response will be made only by a written addendum duly issued by the Engineer a copy of which will be mailed or delivered to each person receiving a set of the contract documents. No oral response will be made to such inquiry. **Prior to the award of the contract, no addition to, modification of or interpretation of any provision in the contract documents will be given by any agent, employee or contractor of the City of Carlsbad except as hereinbefore specified. No bidder may rely on directions given by any agent, employee or contractor of the City of Carlsbad except as hereinbefore specified.**

REJECTION OF BIDS

The City of Carlsbad reserves the right to reject any or all bids and to waive any minor irregularity or informality in such bids.

PREVAILING WAGE TO BE PAID

The general prevailing rate of wages for each craft or type of worker needed to execute the Contract shall be those as determined by the Director of Industrial Relations pursuant to the sections 1770, 1773, and 1773.1 of the Labor Code. Pursuant to section 1773.2 of the Labor Code, a current copy of applicable wage rates is on file in the Office of the City Engineer. The Contractor to whom the Contract is awarded shall not pay less than the said specified prevailing rates of wages to all workers employed by him or her in the execution of the Contract.

The Prime Contractor shall be responsible for insuring compliance with provisions of section 1777.5 of the Labor Code and section 4100 et seq. of the Public Contracts Code, "Subletting and Subcontracting Fair Practices Act." The City Engineer is the City's "duly authorized officer" for the purposes of section 4107 and 4107.5.

The provisions of Part 7, Chapter 1, of the Labor Code commencing with section 1720 shall apply to the Contract for work.

A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Section 1725.5. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

The Prime Contractor and all subcontractors shall comply with Section 1776 of the Labor Code, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Contractor shall require all subcontractors to comply with Section 1776.

PRE BID MEETING

A pre-bid meeting and tour of the project site will be held at (INSERT TIME, DATE AND LOCATION) OR, will not be held. (SELECT ONE) (REMOVE THIS TEXT BEFORE PRINTING THE SPECIFICATIONS)

UNIT PRICES AND COMPUTATION OF BIDS

All bids are to be computed on the basis of the given estimated quantities of work, as indicated in this proposal, times the unit price as submitted by the bidder. In case of a discrepancy between words and figures, the words shall prevail. In case of an error in the extension of a unit price, the corrected extension shall be calculated and the bids will be computed as indicated above and compared on the

basis of the corrected totals.

All prices must be in ink or typewritten. Changes or corrections may be crossed out and typed or written in with ink and must be initialed in ink by a person authorized to sign for the Contractor.

ADDENDUMS

Bidders are advised to verify the issuance of all addenda and receipt thereof one day prior to bidding. Submission of bids without acknowledgment of addenda may be cause of rejection of bid.

BOND AND INSURANCE REQUIREMENTS

The Contractor shall provide bonds to secure faithful performance and warranty of the work in an amount equal to one hundred percent (100%) of the Contract price on this project. The Contractor shall provide bonds to secure payment of laborers and materials suppliers, in an amount equal to one hundred percent (100%) of the total amount payable by the terms of the contract. These bonds shall be kept in full force and effect during the course of this project, and shall extend in full force and effect and be retained by the City until they are released as stated in the General Provisions section of this contract. All bonds are to be placed with a surety insurance carrier admitted and authorized to transact the business of insurance in California and whose assets exceed their liabilities in an amount equal to or in excess of the amount of the bond. The bonds are to be accompanied by the following documents:

- 1) An original, or a certified copy, of the unrevoked appointment, power of attorney, by laws, or other instrument entitling or authorizing the person who executed the bond to do so.
- 2) A certified copy of the certificate of authority of the insurer issued by the insurance commissioner.

If the bid is accepted, the City may require copies of the insurer's most recent annual statement and quarterly statement filed with the Department of Insurance pursuant to Article 10 (commencing with section 900) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, within 10 calendar days of the insurer's receipt of a request to submit the statements.

Insurance is to be placed with insurers that:

- 1) Have a rating in the most recent Best's Key Rating Guide of at least A-:VII
- 2) Are admitted and authorized to transact the business of insurance in the State of California by the Insurance Commissioner.

Auto policies offered to meet the specification of this contract must:

- 1) Meet the conditions stated above for all insurance companies.
- 2) Cover any vehicle used in the performance of the contract, used onsite or offsite, whether owned, non-owned or hired, and whether scheduled or non-scheduled.

Workers' compensation insurance required under this contract must be offered by a company meeting the above standards with the exception that the Best's rating condition is waived. The City does accept policies issued by the State Compensation Fund meeting the requirement for workers' compensation insurance.

The Contractor shall be required to maintain insurance as specified in the Contract. Any additional cost of said insurance shall be included in the bid price.

The award of the contract by the City Council is contingent upon the Contractor submitting the required bonds and insurance, as described in the contract, within twenty days of bid opening. If the Contractor fails to comply with these requirements, the City may award the contract to the second or third lowest bidder and the bid security of the lowest bidder may be forfeited.

BUSINESS LICENSE

The prime contractor and all subcontractors are required to have and maintain a valid City of Carlsbad Business License for the duration of the contract.

Approved by the City Council of the City of Carlsbad, California, by Resolution _____,
adopted on the _____ day of _____, 20_____.

Date

Deputy Clerk

(RESOLUTION NUMBER & DATE AND CITY CLERK SIGNATURE & DATE OF SIGNATURE ARE INSERTED BY THE PURCHASING DEPARTMENT) (REMOVE THIS TEXT BEFORE PRINTING THE SPECIFICATIONS)

CITY OF CARLSBAD

**NAME OF PROJECT
CONTRACT NNNN**

(insert contract number & name) (REMOVE THIS TEXT BEFORE PRINTING THE SPECIFICATIONS)

CONTRACTOR'S PROPOSAL

City Council
City of Carlsbad
1200 Carlsbad Village Drive
Carlsbad, California 92008

The undersigned declares he/she has carefully examined the location of the work, read the Notice Inviting Bids, examined the Plans, Specifications, General Provisions, Contract Documents, and addenda thereto, and hereby proposes to furnish all labor, materials, equipment, transportation, and services required to do all the work to complete Contract **NNNN (INSERT CONTRACT NUMBER) (REMOVE THIS TEXT BEFORE PRINTING THE SPECIFICATIONS)** in accordance with the Plans, Specifications, General Provisions, Contract Documents, and addenda thereto and that he/she will take in full payment therefore the following unit prices for each item complete, to wit:

NOTES TO THE PROJECT ENGINEER FOR THE BID ITEM LIST

The following list of bid items is not an all-inclusive list nor is it offered as the perfect example. It is only an example. The Project Engineer must generate a thorough understanding of how the project will be managed by City or consultant inspectors. The Design Engineer must provide the Engineer's Estimate with designations and units that will be appropriate for the bid list. Although the quantities may be only rough approximations the estimate should accompany the first submittal. The Project Engineer needs to specifically seek out the input of those reviewing the plans and mediate a consensus regarding the bid unit descriptions. Lump sum bid items should be used **ONLY** when it is possible for a bidding Contractor to determine the extent of work involved from the plans, specifications, soils data made available by the City and, to a lesser extent, observation of the site. If site observation is a factor being relied upon to justify the completeness of data for a lump sum bid the Project Engineer must have sufficient data, usually in the form of photographs, that show, when combined with the plans and specifications, it was possible for the Contractor to understand the extent of materials and labor involved in completing each lump sum bid item. The Project Engineer must be careful to rewrite the payment sections of each individual item that is included in the lump sum items so that individual items that would ordinarily be paid for at unit prices are specifically excluded from the unit price payment for those items. The example of bid items is set up as two schedules. Multiple schedules may be used when :

1. Construction of facilities for another agency is part of the contract and there is a need to completely separate costs of its construction, to allow multiple bid items of the same name or nature (e.g. mobilization, traffic control, etc.).

2. There is a need to provide a definition of extent of construction that is unequivocal and that cannot be otherwise distinguished from the remainder of the work.
3. Some flexibility in adding elements of work to fit the available budget is desired. In this case the method of determining the low bidder must be clearly defined. This procedure is fraught with possibilities for dispute in the identification of the lowest bidder. Do not select it without thorough discussion that includes a representative of the City Attorney. When including items in the bid list that are to be paid for from another agency's accounts segregate those bid items by grouping them consecutively and by prefacing them with a bold type heading that states the name of the agency, the name of the account the items are to be paid from and the item numbers of the bid items that the note pertains to.. **(REMOVE THIS TEXT BEFORE PRINTING THE SPECIFICATIONS)**

SCHEDULE "A" ROAD IMPROVEMENTS

Item	Description	Approximate Quantity And Unit	Unit Price (Figures)	Total Amount (Figures)
A-1	Mobilization at <hr/> (Price in Words)	Not to Exceed \$150,000	\$ _____	\$ _____
A-2	Clearing and Grubbing at <hr/> (Price in Words)	LS	\$ _____	\$ _____
A-3	Unclassified Excavation at <hr/> (Unit Price in Words)	73,400 CY	\$ _____	\$ _____
A-4	Construction schedule at <hr/> (Price in Words)	\$40,000 Stipulated Amount	\$40,000	\$40,000
A-5	Traffic Control Including Temporary Railing (Type K) and Crash Cushion Assemblies at <hr/> (Price in Words)	LS	\$ _____	\$ _____
A-6	Imported Borrow Material at <hr/> (Unit Price in Words)	26,300 CY	\$ _____	\$ _____

Item	Description	Approximate Quantity And Unit	Unit Price (Figures)	Total Amount (Figures)
A-7	Asphalt Pavement Removal (6" or 8" Thick) Complete at _____	217,000 SF	\$ _____	\$ _____
	(Unit Price in Words)			
A-8	Asphalt Concrete Pavement at _____	27,900 TON	\$ _____	\$ _____
	(Unit Price in Words)			
A-9	Curb and Gutter per SDRS G-2 at _____	16,667 LF	\$ _____	\$ _____
	(Unit Price in Words)			
A-10	Modified 8" Concrete Median Curb and Gutter as shown on the Plans at _____	4,436 LF	\$ _____	\$ _____
	(Unit Price in Words)			
A-11	Modified 8" Concrete Median Curb as shown on the Plans at _____	13,369 LF	\$ _____	\$ _____
	(Unit Price in Words)			
A-12	4" PCC Sidewalk per SDRS G-7 at _____	43,732 SF	\$ _____	\$ _____
	(Unit Price in Words)			
A-13	Pedestrian Access per SDRS G-27 Ramp at _____	3 EA	\$ _____	\$ _____
	(Unit Price in Words)			
A-14	4" Colored Concrete Police Ramp per Plans at	154 SF	\$ _____	\$ _____

Item	Description	Approximate Quantity And Unit	Unit Price (Figures)	Total Amount (Figures)
	(Unit Price in Words)			
A-15	7-1/2" Concrete Driveway per SDRS G-14A at	120 SF	\$ _____	\$ _____
	(Unit Price in Words)			
A-16	4" Stamped Colored Concrete Median Paving at	38,750 SF	\$ _____	\$ _____
	(Unit Price in Words)			
A-17	PCC Cross-Gutter per SDRS G-12 at	940 SF	_____	_____
	(Unit Price in Words)			
A-18	Street Survey Monument per SDRS M-10 at	14 EA	\$ _____	\$ _____
	(Unit Price in Words)			
A-19	Record of Survey, including Checking and Recording Fees at	LS	\$ _____	\$ _____
	(Price in Words)			
A-20	Wood Post, Metal Beam Guard Rail per SDRS M-34 at	189 LF	\$ _____	\$ _____
	(Unit Price in Words)			
A-21	24" RCP (2000-D) at	327 LF	\$ _____	\$ _____
	(Unit Price in Words)			
A-22	18" RCP (2000-D) at	160 LF	\$ _____	\$ _____
	(Unit Price in Words)			

Item	Description (Unit Price in Words)	Approximate Quantity And Unit	Unit Price (Figures)	Total Amount (Figures)
A-23	30" RCP (2000-D) at <hr/> (Unit Price in Words)	766 LF	\$ _____	\$ _____
A-24	42" RCP (1350-D) at <hr/> (Unit Price in Words)	10 LF	\$ _____	\$ _____
A-25	10' x 6' RC Box Culvert Extension and Modification per SDRS D-76A and D-76B Sta. 63 + 85.90 North and South Side Complete at <hr/> (Price in Words)	LS	\$ _____	\$ _____
A-26	12' x 8' RC Box Culvert per SDRS D-76A and D-76B Complete at <hr/> (Price in Words)	LS	\$ _____	\$ _____
A-27	Concrete Drainage Channel b=2', h=2' z=2) per SDRS D-70 at <hr/> (Unit Price in Words)	435 LF	\$ _____	\$ _____
A-28	Channel Cutoff Wall per SDRS D-72 at <hr/> (Unit Price in Words)	1 EA	\$ _____	\$ _____
A-29	5' Type "A" Curb Inlet per SDRS D-1 at	1 EA	\$ _____	\$ _____

Item	Description	Approximate Quantity And Unit	Unit Price (Figures)	Total Amount (Figures)
	(Unit Price in Words)			
A-30	5' Type "B" Curb Inlet per SDRS D-2 at	13 EA	\$ _____	\$ _____
	(Unit Price in Words)			
A-31	7' Type "B" Curb Inlet per SDRS D-2 at	3 EA	\$ _____	\$ _____
	(Unit Price in Words)			
A-32	8' Type "B" Curb Inlet per SDRS D-2 at	2 EA	\$ _____	\$ _____
	(Unit Price in Words)			
A-33	Type "A" Cleanout per SDRS D-9 at	3 EA	\$ _____	\$ _____
	(Unit Price in Words)			
A-34	Type "F" Catch Basin per SDRS D-7 at	2 EA	\$ _____	\$ _____
	(Unit Price in Words)			
A-35	Reverse Type "A" Curb Outlet per SDRS D-25 at	6 EA	\$ _____	\$ _____
	(Unit Price in Words)			
A-36	Pipe Collar per SDRS DS-5 at	7 EA	\$ _____	\$ _____
	(Unit Price in Words)			

<u>Item</u>	<u>Description</u>	<u>Approximate Quantity And Unit</u>	<u>Unit Price (Figures)</u>	<u>Total Amount (Figures)</u>
A-37	Type "A" Headwall per SDRS D-30 at	15 EA	\$ _____	\$ _____
	(Unit Price in Words)			
A-38	Wing Headwall per SDRS D-34 at	1 EA	\$ _____	\$ _____
	(Unit Price in Words)			
A-39	PCC Brow Ditch Type "B" per SDRS D-75 (All Depths) at	5,540 LF	\$ _____	\$ _____
	(Unit Price in Words)			
A-40	Rip-Rap Energy Dissipators Type 2 per SDRS D-40 at	LS	\$ _____	\$ _____
	(Price in Words)			
A-41	Reinforced Concrete Cribwall Complete In Place and Per Plans and Specs at	LS	\$ _____	\$ _____
	(Price in Words)			
A-42	Traffic Signal System at Saxony and La Costa Avenue Complete In Place at	LS	\$ _____	\$ _____
	(Price in Words)			
A-43	Street Lighs Complete In Place at	20 EA	\$ _____	\$ _____
	(Unit Price in Words)			
A-44	Traffic Striping, signing and	LS	\$ _____	\$ _____

Item	Description	Approximate Quantity And Unit	Unit Price (Figures)	Total Amount (Figures)
	Reflective pavement Markers Marking at _____ _____ (Price in Words)			
A-45	Landscaping Complete In Place at _____ _____ (Price in Words)	LS	\$ _____	\$ _____
A-46	Furnish and Install Portable Changeable Message Signs and Transfer Ownership to the City at _____ _____ (Unit Price in Words)	2 EA	\$ _____	\$ _____
A-47	Furnish and Install Project Signs at _____ _____ (Unit Price in Words)	2 EA	\$ _____	\$ _____
A-48	Irrigation Complete In Place at _____ _____ (Price in Words)	LS	\$ _____	\$ _____
A-49	Class A Field Office at _____ _____ Per Month	12 Months	\$ _____	\$ _____
A-50	Wingwall Type A per SDRS D-79A at _____ _____ (Unit Price in Words)	2 EA	\$ _____	\$ _____
A-51	Erosion control at _____ _____ (Unit Price in Words)	LS	\$ _____	\$ _____

Item	Description	Approximate Quantity And Unit	Unit Price (Figures)	Total Amount (Figures)
	(Price in Words)			
A-52	12" Median Mowing Strip per SDRS L-3 at	LS	\$ _____	\$ _____
	(Price in Words)			

Total amount of bid in words for Schedule "A": _____

Total amount of bid in numbers for Schedule "A": \$ _____

SCHEDULE "B" LEUCADIA SEWER LINE

<u>Item</u>	<u>Description</u>	<u>Approximate Quantity and Unit</u>	<u>Unit Price (Figures)</u>	<u>Total Amount (Figures)</u>
B-1	24" Ductile Iron Restrained Joint Pipe Class 50 with Polyurethane Coating and Coal Tar Epoxy Lining Complete In Place at	840 LF	\$ _____	\$ _____
	(Unit Price in Words)			
B-2	24" Ductile Iron Restrained Joint Pipe class 50 with Polyurethane Coating and Lining, Complete In Place at	240 LF	\$ _____	\$ _____
	(Unit Price in Words)			
B-3	24" Ductile Iron Restrained Joint Class 50, 45° Elbow Polyurethane Lined and Coated Complete in Place at	2 EA	\$ _____	\$ _____
	(Unit Price in Words)			
B-4	24" Ductile Iron Restrained Joint 22.5 Elbow Polyurethane Lined and Coated Complete in Place at	6 EA	\$ _____	\$ _____
	(Unit Price in Words)			
B-5	24" Ductile Iron Restrained Joint 11.25° Elbow Polyurethane Lined and Coated Complete In Place at	10 EA	\$ _____	\$ _____
	(Unit Price in Words)			
B-6	24" Polyvinyl Chloride Pipe SDR 18 Complete In Place at	7,335 LF	\$ _____	\$ _____
	(Unit Price in Words)			

Item	Description (Unit Price in Words)	Approximate Quantity and Unit	Unit Price (Figures)	Total Amount (Figures)
B-7	24" Eccentric Plug Valve Complete In Place at	4 EA	\$ _____	\$ _____
	(Unit Price in Words)			
B-8	16" Eccentric Plug Valve Complete In Place at	2 EA	\$ _____	\$ _____
	(Unit Price in Words)			
B-9	Modify and relocate existing 6" Blowoffs on the 24" Leucadia Force Main Complete at	3 EA	\$ _____	\$ _____
	(Unit Price in Words)			
B-10	Installation of New Sewage Combination Air Valve Assemblies on the existing Leucadia 24" force main Complete at	3 EA	\$ _____	\$ _____
	(Unit Price in Words)			
B-11	Abandonment of Existing Blowoffs and Air Release Valve Assemblies Complete at	11 EA	\$ _____	\$ _____
	(Unit Price in Words)			
B-12	Relocation of Corrosion Test Stations Complete at	7 EA	\$ _____	\$ _____
	(Unit Price in Words)			
B-13	Saxony Pump Station Connection Including bypass plan and all Piping Complete and In Place at	LS	\$ _____	\$ _____

Item	Description	Approximate Quantity and Unit	Unit Price (Figures)	Total Amount (Figures)
	(Price in Words)			
B-14	Modify and relocate existing 4" blowoffs on the Leucadia 12" Failsafe Force Main Complete at	2 EA	\$ _____	\$ _____
	(Unit Price in Words)			
B-15	Installation of new blowoffs on the new Leucadia Parallel 24" Force Main Complete at	4 EA	\$ _____	\$ _____
	(Unit Price in Words)			
B-16	Installation of new sewage combination Air Valve Assemblies on the Failsafe 12" Failsafe Force Main	3 EA	\$ _____	\$ _____
	(Unit Price in Words)			
B-17	Dewatering Including All Equipment, Permits and Labor at	LS	\$ _____	\$ _____
	(Price in Words)			
B-18	Installation of new sewage combination Air Valve assemblies on the new Leucadia Parallel 24" Force Main Complete at	4 EA	\$ _____	\$ _____
	(Unit Price In Words)			
B-19	Furnishing, installation and testing of cathodic protection system including corrosion test stations, anodes and bonding	LS	\$ _____	\$ _____

Item	Description	Approximate Quantity and Unit	Unit Price (Figures)	Total Amount (Figures)
	pipe complete and in place at			
	<hr/>			
	(Price in Words)			
B-20	Sheeting, shoring, and bracing, including all labor and equipment, submittals of structural design Complete at	LS	\$ _____	\$ _____
	<hr/>			
	(Price in Words)			
B-21	4 Crushed Rock for pipe bedding including materials and geotextile fabric Complete at	100 CY	\$ _____	\$ _____
	<hr/>			
	(Unit Price in Words)			
B-22	Hydrostatic testing, including all materials and personnel complete at	LS	\$ _____	\$ _____
	<hr/>			
	(Price in Words)			
B-23	Adjust Manhole Frame and Cover to Grade at	LS	\$ _____	\$ _____
	<hr/>			
	(Price in Words)			
B-24	All other work to be done to complete the project but not specifically listed in Bid Item A-1 through B-?	LS	\$ _____	\$ _____
	<hr/>			
	(Price in Words)			

Total amount of bid in words for Schedule "B": _____

Total amount of bid in numbers for Schedule "B": \$ _____

Total amount of bid in words including Schedule "A" and Schedule "B": _____

Total amount of bid in numbers including Schedule "A" and Schedule "B": \$ _____

The City shall determine the low bid based on Schedule "A" and Additive Alternative Schedule "B". After the low Bid has been determined, the City may, at its sole discretion, award the Contract for Schedule "A" alone or for Schedule "A" and Additive Alternative Schedule "B".

Price(s) given above are firm for 90 days after date of bid opening.

Addendum(a) No(s)._____ has/have been received and is/are included in this proposal.

The Undersigned has carefully checked all of the above figures and understands that the City will not be responsible for any error or omission on the part of the Undersigned in preparing this bid.

The Undersigned agrees that in case of default in executing the required Contract with necessary bonds and insurance policies within twenty (20) days from the date of award of Contract by the City Council of the City of Carlsbad, the City may administratively authorize award of the contract to the second or third lowest bidder and the bid security of the lowest bidder may be forfeited.

The Undersigned bidder declares, under penalty of perjury, that the undersigned is licensed to do business or act in the capacity of a contractor within the State of California, validly licensed under license number _____, classification _____ which expires on _____, and that this statement is true and correct and has the legal effect of an affidavit.

A bid submitted to the City by a Contractor who is not licensed as a contractor pursuant to the Business and Professions Code shall be considered nonresponsive and shall be rejected by the City § 7028.15(e). In all contracts where federal funds are involved, no bid submitted shall be invalidated by the failure of the bidder to be licensed in accordance with California law. However, at the time the contract is awarded, the contractor shall be properly licensed.

The Undersigned bidder hereby represents as follows:

1. That no Council member, officer agent, or employee of the City of Carlsbad is personally interested, directly or indirectly, in this Contract, or the compensation to be paid hereunder; that no representation, oral or in writing, of the City Council, its officers, agents, or employees has inducted him/her to enter into this Contract, excepting only those contained in this form of Contract and the papers made a part hereof by its terms; and
2. That this bid is made without connection with any person, firm, or corporation making a bid for the same work, and is in all respects fair and without collusion or fraud.

Accompanying this proposal is _____(Cash, Certified Check, Bond or Cashier's Check) for ten percent (10%) of the amount bid.

The Undersigned is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and agrees to comply with such provisions before commencing the performance of the work of this Contract and continue to comply until the contract is complete.

The Undersigned is aware of the provisions of the Labor Code, Part 7, Chapter 1, Article 2, relative to the general prevailing rate of wages for each craft or type of worker needed to execute the Contract and agrees to comply with its provisions.

IF A SOLE OWNER OR SOLE CONTRACTOR SIGN HERE:

- (1) Name under which business is conducted _____
- (2) Signature (given and surname) of proprietor _____
- (3) Place of Business _____
(Street and Number)
City and State _____
- (4) Zip Code _____ Telephone _____
- (5) E-Mail _____

IF A PARTNERSHIP, SIGN HERE:

- (1) Name under which business is conducted _____
- (2) Signature (given and surname and character of partner) (Note: Signature must be made by a general partner)

- (3) Place of Business _____
(Street and Number)
City and State _____
- (4) Zip Code _____ Telephone _____
- (5) E-Mail _____

IF A CORPORATION, SIGN HERE:

(1) Name under which business is conducted _____

(2) _____

(Signature)

(Title)

Impress Corporate Seal here

(3) Incorporated under the laws of the State of _____

(4) Place of Business _____

(Street and Number)

City and State _____

(5) Zip Code _____ Telephone _____

(6) E-Mail _____

NOTARIAL ACKNOWLEDGMENT OF EXECUTION BY ALL SIGNATORIES MUST BE ATTACHED

List below names of president, vice president, secretary and assistant secretary, if a corporation; if a partnership, list names of all general partners, and managing partners:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

BID SECURITY FORM

(Check to Accompany Bid)

NAME OF PROJECT
CONTRACT NNNN

(insert contract number & name) **(REMOVE THIS TEXT BEFORE PRINTING THE SPECIFICATIONS)**

(NOTE: The following form shall be used if check accompanies bid.)

Accompanying this proposal is a *Certified *Cashiers check payable to the order of CITY OF CARLSBAD, in the sum of _____

_____ dollars (\$_____),
this amount being ten percent (10%) of the total amount of the bid. The proceeds of this check shall become the property of the City provided this proposal shall be accepted by the City through action of its legally constituted contracting authorities and the undersigned shall fail to execute a contract and furnish the required Performance, Warranty and Payment Bonds and proof of insurance coverage within the stipulated time; otherwise, the check shall be returned to the undersigned. The proceeds of this check shall also become the property of the City if the undersigned shall withdraw his or her bid within the period of fifteen (15) days after the date set for the opening thereof, unless otherwise required by law, and notwithstanding the award of the contract to another bidder.

BIDDER

*Delete the inapplicable word.

(NOTE: If the Bidder desires to use a bond instead of check, the Bid Bond form on the following pages shall be executed--the sum of this bond shall be not less than ten percent (10%) of the total amount of the bid.)

BIDDER'S BOND TO ACCOMPANY PROPOSAL

NAME OF PROJECT
CONTRACT NNNN

(insert contract number & name) **(REMOVE THIS TEXT BEFORE PRINTING THE SPECIFICATIONS)**

KNOW ALL PERSONS BY THESE PRESENTS:

That we, _____, as Principal, and _____, as Surety are held and firmly bound unto the City of Carlsbad, California, in an amount as follows: (must be at least ten percent (10%) of the bid amount) _____ for which payment, well and truly made, we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH that if the proposal of the above-bounden Principal for:

NAME OF PROJECT
CONTRACT NNNN

(insert contract number & name) **(REMOVE THIS TEXT BEFORE PRINTING THE SPECIFICATIONS)**

in the City of Carlsbad, is accepted by the City Council, and if the Principal shall duly enter into and execute a Contract including required bonds and insurance policies within twenty (20) days from the date of award of Contract by the City Council of the City of Carlsbad, being duly notified of said award, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect, and the amount specified herein shall be forfeited to the said City.

In the event Principal executed this bond as an individual, it is agreed that the death of Principal shall not exonerate the Surety from its obligations under this bond.

SIGNED AND SEALED, this _____ day of _____, 20_____

_____(SEAL) _____(SEAL)
(Principal) (Surety)

By: _____ By: _____
(Signature) (Signature)

(Print Name/Title) (Print Name/Title)

(SEAL AND NOTARIAL ACKNOWLEDGEMENT OF SURETY – ATTACH ATTORNEY-IN-FACT CERTIFICATE)

APPROVED AS TO FORM:

CELIA A. BREWER
City Attorney

By: _____

Deputy City Attorney

GUIDE FOR COMPLETING THE “DESIGNATION OF SUBCONTRACTORS” FORM

REFERENCES Prior to preparation of the following “Subcontractor Disclosure Form” Bidders are urged to review the definitions in section 1-2 of the General Provisions to this Contract, especially, “Bid”, “Bidder”, “Contract”, “Contractor”, “Contract Price”, “Contract Unit Price”, “Engineer”, “Own Organization”, “Subcontractor”, and “Work”. Bidders are further urged to review sections 2-3 SUBCONTRACTS of the General Provisions.

CAUTIONS This form will be used by the Agency to determine the percentage of work that the Bidder proposes to perform. Bidders are cautioned that failure to provide complete and correct information may result in rejection of the bid as non-responsive. Any bid that proposes performance of more than 50 percent of the work by subcontractors or otherwise to be performed by forces other than the Bidder’s own organization will be rejected as non-responsive. Specialty items of work that may be so designated by the Engineer on the “Contractor’s Proposal” are not included in computing the percentage of work proposed to be performed by the Bidder.

INSTRUCTIONS The Bidder shall set forth the name and location of business of each and every subcontractor whom the Bidder proposes to perform work or labor or render service in or about the work or improvement, and every subcontractor licensed as a contractor by the State of California whom the Bidder proposes to specially fabricate and install any portion of the work or improvement according to detailed drawings contained in the plans and specifications in excess of one-half of one percent (0.5%) of the Bidder’s total bid or, in the case of bids or offers for the construction of streets and highways, including bridges, in excess of one-half of one percent (0.5%) or ten thousand dollars (\$10,000) whichever is greater. Said name(s) and location(s) of business of subcontractor(s) shall be set forth and included as an integral part of the bid offer.

The Designation of Subcontractors form must be submitted as a part of the Bidder’s sealed bid. Failure to provide complete and correct information may result in rejection of the bid as non-responsive.

Suppliers of materials from sources outside the limits of work are not subcontractors. The value of materials and transport of materials from sources outside the limits of work, as shown on the plans, shall be assigned to the Contractor or the Subcontractor as the case may be, that the Bidder proposes as installer of said materials. The value of material incorporated in any Subcontractor-installed bid item that is supplied by the Bidder shall be included as a part of the work that the Bidder proposes to be performed by the Subcontractor installing said item.

When a Subcontractor has a Carlsbad business license, the number must be entered on the proper form. If the Subcontractor does not have a valid business license, enter “NONE” in the appropriate space.

When the Bidder proposes using a Subcontractor to construct or install less than 100 percent of a bid item, the Bidder shall attach an explanation sheet to the Designation of Subcontractor form. The explanation sheet shall clearly apprise the City of the specific facts that show the Bidder proposes to perform no less than fifty percent (50%) of the work with its own forces.

Determination of the subcontract amounts for purposes of award of the contract shall be determined by the City Council in conformance with the provisions of the contract documents and the various supplemental provisions. The decision of the City Council shall be final.

Contractor is prohibited from performing any work on this project with a subcontractor who is ineligible to perform work on a public works project pursuant to Labor Code Sections 1771.1 or 1777.7.

Bidders shall make any additional copies of the disclosure forms as may be necessary to provide the required information. The page number and total number of additional form pages shall be entered in the location provided on each type of form so duplicated.

”

BIDDER'S CERTIFICATE OF INSURANCE FOR GENERAL LIABILITY, EMPLOYERS' LIABILITY, AUTOMOTIVE LIABILITY AND WORKERS' COMPENSATION

(To Accompany Proposal)

**NAME OF PROJECT
CONTRACT NNNN**

(insert contract number & name) **(REMOVE THIS TEXT BEFORE PRINTING THE SPECIFICATIONS)**

As a required part of the Bidder's proposal the Bidder must attach either of the following to this page.

1) Certificates of insurance showing conformance with the requirements herein for each of:

- Comprehensive General Liability
- Automobile Liability
- Workers Compensation
- Employer's Liability

2) Statement with an insurance carrier's notarized signature stating that the carrier can, and upon payment of fees and/or premiums by the Bidder, will issue to the Bidder Policies of insurance for Comprehensive General Liability, Automobile Liability, Workers Compensation and Employer's Liability in conformance with the requirements herein and Certificates of insurance to the Agency showing conformance with the requirements herein.

All certificates of insurance and statements of willingness to issue insurance for auto policies offered to meet the specification of this contract must:

- 1) Meet the conditions stated in The Notice Inviting Bids and the General Provisions for this project for each insurance company that the Contractor proposes.
- 2) Cover any vehicle used in the performance of the contract, used onsite or offsite, whether owned, non-owned or hired, and whether scheduled or non-scheduled.

BIDDER'S STATEMENT RE DEBARMENT

(To Accompany Proposal)

NAME OF PROJECT
CONTRACT NNNN

(insert contract number & name) **(REMOVE THIS TEXT BEFORE PRINTING THE SPECIFICATIONS)**

- 1) Have you or any of your subcontractors ever been debarred as an irresponsible bidder by another jurisdiction in the State of California?

_____ _____
yes no

- 2) If yes, what was/were the name(s) of the agency(ies) and what was/were the period(s) of debarment(s)? Attach additional copies of this page to accommodate more than two debarments.

_____ party debarred

_____ party debarred

_____ agency

_____ agency

_____ period of debarment

_____ period of debarment

BY CONTRACTOR:

(name of Contractor)

By: _____
(sign here)

(print name/title)

BIDDER'S DISCLOSURE OF DISCIPLINE RECORD

(To Accompany Proposal)

NAME OF PROJECT
CONTRACT NNNN

(insert contract number & name) **(REMOVE THIS TEXT BEFORE PRINTING THE SPECIFICATIONS)**

Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License board, P.O. Box 26000, Sacramento, California 95826.

- 1) Have you ever had your contractor's license suspended or revoked by the California Contractors' State license Board two or more times within an eight year period?

_____ _____
yes no

- 2) Has the suspension or revocation of your contractor's license ever been stayed?

_____ _____
yes no

- 3) Have any subcontractors that you propose to perform any portion of the Work ever had their contractor's license suspended or revoked by the California Contractors' State license Board two or more times within an eight year period?

_____ _____
yes no

- 4) Has the suspension or revocation of the license of any subcontractor's that you propose to perform any portion of the Work ever been stayed?

_____ _____
yes no

- 5) If the answer to either of 1. or 3. above is yes fully identify, in each and every case, the party disciplined, the date of and violation that the disciplinary action pertain to, describe the nature of the violation and the disciplinary action taken therefore.

(If needed attach additional sheets to provide full disclosure.)

Page _____ of _____ pages of this Disclosure of Discipline form

**NONCOLLUSION DECLARATION TO BE EXECUTED BY
BIDDER AND SUBMITTED WITH BID
PUBLIC CONTRACT CODE SECTION 7106**

**NAME OF PROJECT
CONTRACT NNNN**

(insert contract number & name) **(REMOVE THIS TEXT BEFORE PRINTING THE SPECIFICATIONS)**

The undersigned declares:

I am the _____ of _____, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____, 20____ at _____ [city], _____ [state].

Signature of Bidder

CONTRACT PUBLIC WORKS

This agreement is made this _____ day of _____, 20____, by and between the City of Carlsbad, California, a municipal corporation, (hereinafter called "City"), and _____ whose principal place of business is _____ (hereinafter called "Contractor").

City and Contractor agree as follows:

1. Description of Work. Contractor shall perform all work specified in the Contract documents for:

**NAME OF PROJECT
CONTRACT NNNN**

(insert contract number & name) **(REMOVE THIS TEXT BEFORE PRINTING THE SPECIFICATIONS)**

(hereinafter called "project")

2. Provisions of Labor and Materials. Contractor shall provide all labor, materials, tools, equipment, and personnel to perform the work specified by the Contract Documents.

3. Contract Documents. The Contract Documents consist of this Contract, Notice Inviting Bids, Contractor's Proposal, Bidder's Bond, Noncollusion Declaration, Designation of Subcontractors, Technical Ability and Experience, Bidder's Statement Re Debarment, Escrow Agreement, Release Form, the Plans and Specifications, the General Provisions, addendum(s) to said Plans and Specifications and General Provisions, and all proper amendments and changes made thereto in accordance with this Contract or the Plans and Specifications, and all bonds for the project; all of which are incorporated herein by this reference.

Contractor, her/his subcontractors, and materials suppliers shall provide and install the work as indicated, specified, and implied by the Contract Documents. Any items of work not indicated or specified, but which are essential to the completion of the work, shall be provided at the Contractor's expense to fulfill the intent of said documents. In all instances through the life of the Contract, the City will be the interpreter of the intent of the Contract Documents, and the City's decision relative to said intent will be final and binding. Failure of the Contractor to apprise subcontractors and materials suppliers of this condition of the Contract will not relieve responsibility of compliance.

4. Payment. For all compensation for Contractor's performance of work under this Contract, City shall make payment to the Contractor per section 9-3 PAYMENT of the General Provisions section of this contract. The Engineer will close the estimate of work completed for progress payments on the last working day of each month. The City shall withhold retention as required by Public Contract Code Section 9203.

5. Independent Investigation. Contractor has made an independent investigation of the jobsite, the soil conditions at the jobsite, and all other conditions that might affect the progress of the work, and is aware of those conditions. The Contract price includes payment for all work that may be done by Contractor, whether anticipated or not, in order to overcome underground conditions. Any information that may have been furnished to Contractor by City about underground conditions or other job conditions is for Contractor's convenience only, and City does not warrant that the conditions are as thus indicated. Contractor is satisfied with all job conditions, including underground conditions and has not relied on information furnished by City.

6. Hazardous Waste or Other Unusual Conditions. If the contract involves digging trenches or other excavations that extend deeper than four feet below the surface Contractor shall promptly, and before the following conditions are disturbed, notify City, in writing, of any:

A. Hazardous Waste. Material that Contractor believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

B. Differing Conditions. Subsurface or latent physical conditions at the site differing from those indicated.

C. Unknown Physical Conditions. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in contractor's costs of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in this contract.

In the event that a dispute arises between City and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the contractor's cost of, or time required for, performance of any part of the work, contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

7. Immigration Reform and Control Act. Contractor certifies it is aware of the requirements of the Immigration Reform and Control Act of 1986 (8 USC sections 1101-1525) and has complied and will comply with these requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, subcontractors, and consultants that are included in this Contract.

8. Prevailing Wage. Pursuant to the California Labor Code, the director of the Department of Industrial Relations has determined the general prevailing rate of per diem wages in accordance with California Labor Code, section 1773 and a copy of a schedule of said general prevailing wage rates is on file in the office of the City Engineer, and is incorporated by reference herein. Pursuant to California Labor Code, section 1775, Contractor shall pay prevailing wages. Contractor shall post copies of all applicable prevailing wages on the job site. Contractor shall comply with California Labor Code, section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Contractor shall require all subcontractors to comply with Section 1776.

9. Indemnification. Contractor shall assume the defense of, pay all expenses of defense, and indemnify and hold harmless the City, and its officers and employees, from all claims, loss, damage, injury and liability of every kind, nature and description, directly or indirectly arising from or in connection with the performance of the Contract or work; or from any failure or alleged failure of Contractor to comply with any applicable law, rules or regulations including those relating to safety and health; and from any and all claims, loss, damages, injury and liability, howsoever the same may be caused, resulting directly or indirectly from the nature of the work covered by the Contract, except for loss or damage caused by the sole or active negligence or willful misconduct of the City. The expenses of defense include all costs and expenses including attorneys' fees for litigation, arbitration, or other dispute resolution method.

Contractor shall also defend and indemnify the City against any challenges to the award of the contract to Contractor, and Contractor will pay all costs, including defense costs for the City. Defense costs include the cost of separate counsel for City, if City requests separate counsel.

Contractor shall also defend and indemnify the City against any challenges to the award of the contract to Contractor, arising in whole or in part from alleged inaccuracies or misrepresentation by the Contractor, whether intentional or otherwise, and Contractor will pay all costs, including defense costs for the City. Defense costs include the cost of separate counsel for City, if City requests separate counsel.

10. Insurance. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his or her agents, representatives, employees or subcontractors. Said insurance shall meet the City's policy for insurance as stated in City Council Policy # 70.

(A) Coverages And Limits Contractor shall maintain the types of coverages and minimum limits indicated herein:

a. **Commercial General Liability (CGL) Insurance:** Insurance written on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

b. **Business Automobile Liability Insurance:** \$2,000,000 combined single limit per accident for bodily injury and property damage. In addition, the auto policy must cover any vehicle used in the performance of the contract, used onsite or offsite, whether owned, non-owned or hired, and whether scheduled or non-scheduled.

c. **Workers' Compensation and Employers' Liability Insurance:** Workers' compensation limits as required by the Labor Code of the State of California and Employers' Liability limits of \$1,000,000 per incident. Workers' compensation offered by the State Compensation Insurance Fund is acceptable to the City.

(B) Additional Provisions: Contractor shall ensure that the policies of insurance required under this agreement with the exception of Workers' Compensation and Business Automobile Liability Insurance contain, or are endorsed to contain, the following provisions.

a. The City, its officials, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the contractor; premises owned, leased, hired or borrowed by the contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers. All additional insured endorsements must be evidenced using separate documents attached to the certificate of insurance; one for each company affording general

liability, and employers' liability coverage.

b. The Contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be in excess of the contractor's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees or volunteers.

d. Coverage shall state that the contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(C) Notice Of Cancellation. Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be nonrenewed, suspended, voided, canceled, or reduced in coverage or limits except after ten (10) days' prior written notice has been sent to the City by certified mail, return receipt requested.

(D) Deductibles And Self-Insured Retention (S.I.R.) Levels. Any deductibles or self-insured retention levels must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention levels as respects the City, its officials and employees; or the contractor shall procure a bond guaranteeing payment of losses and related investigation, claim administration and defense expenses.

(E) Waiver Of Subrogation. All policies of insurance required under this agreement shall contain a waiver of all rights of subrogation the insurer may have or may acquire against the City or any of its officials or employees.

(F) Subcontractors. Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. Coverages for subcontractors shall be subject to all of the requirements stated herein.

(G) Acceptability Of Insurers. Insurance is to be placed with insurers that have a rating in Best's Key Rating Guide of at least A-VII. Insurers must also be authorized to transact the business of insurance by the State of California Insurance Commissioner as admitted carriers as evidenced by a listing in the official publication of the Department of Insurance of the State of California and/or under the standards specified by City Council Policy # 70.

(H) Verification Of Coverage. Contractor shall furnish the City with certificates of insurance and original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be in forms approved by the City and are to be received and approved by the City before the Contract is executed by the City.

(I) Cost Of Insurance. The Cost of all insurance required under this agreement shall be included in the Contractor's bid.

11. Claims and Lawsuits. All claims by Contractor shall be resolved in accordance with Public Contract Code section 9204, which is incorporated by reference. A copy of Section 9204 is included in Section 3 of the General Provisions. In addition, all claims by Contractor for \$375,000 or less shall be resolved in accordance with the provisions in the Public Contract Code, Division 2, Part 3, Chapter 1, Article 1.5 (commencing with section 20104) which are incorporated by reference. A copy of Article 1.5 is included in Section 3 of the General Provisions. In the event of a conflict between Section 9204 and Article 1.5, Section 9204 shall apply. Notwithstanding the provisions of this section of the contract, all claims shall comply with the Government Tort Claim Act (section 900 et seq., of the California Government Code) for any claim or cause of action for money or damages prior to filing any lawsuit for breach of this agreement.

(A) Assertion of Claims. Contractor hereby agrees that any contract claim submitted to the City must be asserted as part of the contract process as set forth in this agreement and not in anticipation of litigation or in conjunction with litigation.

(B) False Claims. Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and the Contractor may be subject to criminal prosecution.

(C) Government Code. Contractor acknowledges that California Government Code sections 12650 et seq., the False Claims Act, provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information.

(D) Penalty Recovery. If the City of Carlsbad seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorney's fees.

(E) Debarment for False Claims. Contractor hereby acknowledges that the filing of a false claim may subject the Contractor to an administrative debarment proceeding wherein the Contractor may be prevented from further bidding on public contracts for a period of up to five years.

(F) Carlsbad Municipal Code. The provisions of Carlsbad Municipal Code sections 3.32.025, 3.32.026, 3.32.027 and 3.32.028 pertaining to false claims are incorporated herein by reference.

(G) Debarment from Other Jurisdictions. Contractor hereby acknowledges that debarment by another jurisdiction is grounds for the City of Carlsbad to disqualify the Contractor or subcontractor from participating in future contract bidding.

(H) Jurisdiction. Contractor agrees and hereby stipulates that the proper venue and jurisdiction for resolution of any disputes between the parties arising out of this agreement is San Diego County, California.

I have read and understand all provisions of Section 11 above. _____ init _____ init

12. Maintenance of Records. Contractor shall maintain and make available at no cost to the City, upon request, records in accordance with sections 1776 and 1812 of Part 7, Chapter 1, Article 2, of the Labor Code. If the Contractor does not maintain the records at Contractor's principal place of business as specified above, Contractor shall so inform the City by certified letter accompanying the return of this Contract. Contractor shall notify the City by certified mail of any change of address of such records.

13. Labor Code Provisions. The provisions of Part 7, Chapter 1, commencing with section 1720 of the Labor Code are incorporated herein by reference.

14. Security. Securities in the form of cash, cashier's check, or certified check may be substituted for any monies withheld by the City to secure performance of this contract for any obligation established by this contract. Any other security that is mutually agreed to by the Contractor and the City may be substituted for monies withheld to ensure performance under this Contract.

15. Unfair Business Practices. In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

16. Provisions Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and included herein, and if, through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, then upon application of either party, the Contract shall forthwith be physically amended to make such insertion or correction.

17. Additional Provisions. Any additional provisions of this agreement are set forth in the "General Provisions" or "Supplemental Provisions" attached hereto and made a part hereof.

NOTARIAL ACKNOWLEDGMENT OF EXECUTION BY ALL SIGNATORIES MUST BE ATTACHED

(CORPORATE SEAL)

CONTRACTOR:

CITY OF CARLSBAD a municipal corporation of the State of California

(name of Contractor)

By: _____
Mayor

By: _____
(sign here)

ATTEST:

(print name and title)

BARBARA ENGLESON, City Clerk

By: _____
(sign here)

(print name and title)

President or vice-president **and** secretary or assistant secretary must sign for corporations. If only one officer signs, the corporation must attach a resolution certified by the secretary or assistant secretary under the corporate seal empowering that officer to bind the corporation.

APPROVED AS TO FORM:

CELIA A. BREWER
City Attorney

By: _____
Deputy City Attorney

LABOR AND MATERIALS BOND

WHEREAS, the City of Carlsbad, State of California, has awarded to _____
(hereinafter designated as the "Principal"), a Contract for:

NAME OF PROJECT
CONTRACT NNNN

(insert contract number & name) **(REMOVE THIS TEXT BEFORE PRINTING THE SPECIFICATIONS)**

in the City of Carlsbad, in strict conformity with the drawings and specifications, and other Contract Documents now on file in the Office of the City Clerk of the City of Carlsbad and all of which are incorporated herein by this reference.

WHEREAS, Principal has executed or is about to execute said Contract and the terms thereof require the furnishing of a bond, providing that if Principal or any of their subcontractors shall fail to pay for any materials, provisions, provender or other supplies or teams used in, upon or about the performance of the work agreed to be done, or for any work or labor done thereon of any kind, the Surety on this bond will pay the same to the extent hereinafter set forth.

NOW, THEREFORE, WE, _____, as
Principal, (hereinafter designated as the "Contractor"), and _____
_____ as Surety, are held firmly bound unto the City of Carlsbad
in the sum of _____
_____ Dollars (\$_____),
said sum being an amount equal to: One hundred percent (100%) of the total amount payable under the terms of the contract by the City of Carlsbad, and for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, successors, or assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Contractor or his/her subcontractors fail to pay for any materials, provisions, provender, supplies, or teams used in, upon, for, or about the performance of the work contracted to be done, or for any other work or labor thereon of any kind, consistent with California Civil Code section 9100, or for amounts due under the Unemployment Insurance Code with respect to the work or labor performed under this Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and subcontractors pursuant to section 13020 of the Unemployment Insurance Code with respect to the work and labor, that the Surety will pay for the same, and, also, in case suit is brought upon the bond, reasonable attorney's fees, to be fixed by the court consistent with California Civil Code section 9554.

This bond shall inure to the benefit of any of the persons named in California Civil Code section 9100, so as to give a right of action to those persons or their assigns in any suit brought upon the bond.

Surety stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the work to be performed hereunder or the specifications accompanying the same shall affect its obligations on this bond, and it does hereby waive notice of any change, extension of time, alterations or addition to the terms of the contract or to the work or to the specifications.

In the event that Contractor is an individual, it is agreed that the death of any such Contractor shall not exonerate the Surety from its obligations under this bond.

Executed by CONTRACTOR this _____
day of _____, 20_____.

Executed by SURETY this _____ day
of _____, 20_____.

CONTRACTOR:

SURETY:

(name of Contractor)

(name of Surety)

By: _____
(sign here)

(address of Surety)

(print name here)

(telephone number of Surety)

(title and organization of signatory)

By: _____
(signature of Attorney-in-Fact)

By: _____
(sign here)

(printed name of Attorney-in-Fact)

(print name here)

(attach corporate resolution showing current power
of attorney)

(title and organization of signatory)

(Proper notarial acknowledgment of execution by CONTRACTOR and SURETY must be attached.)

(President or vice-president **and** secretary or assistant secretary must sign for corporations. If only one officer signs, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering that officer to bind the corporation.)

APPROVED AS TO FORM:

CELIA A. BREWER
City Attorney

By: _____
Deputy City Attorney

FAITHFUL PERFORMANCE/WARRANTY BOND

WHEREAS, the City Council of the City of Carlsbad, State of California, has awarded to _____, (hereinafter designated as the "Principal"), a Contract for:

NAME OF PROJECT

CONTRACT NNNN

(insert contract number & name) **(REMOVE THIS TEXT BEFORE PRINTING THE SPECIFICATIONS)**

in the City of Carlsbad, in strict conformity with the contract, the drawings and specifications, and other Contract Documents now on file in the Office of the City Clerk of the City of Carlsbad, all of which are incorporated herein by this reference.

WHEREAS, Principal has executed or is about to execute said Contract and the terms thereof require the furnishing of a bond for the faithful performance and warranty of said Contract;

NOW, THEREFORE, WE, _____, as Principal, (hereinafter designated as the "Contractor"), and _____, as Surety, are held and firmly bound unto the City of Carlsbad, in the sum of _____

_____ Dollars (\$_____), said sum being equal to one hundred percent (100%) of the estimated amount of the Contract, to be paid to City or its certain attorney, its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the above bounden Contractor, their heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alteration thereof made as therein provided on their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City of Carlsbad, its officers, employees and agents, as therein stipulated, then this obligation shall become null and void; otherwise it shall remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

Surety stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the work to be performed there under or the specifications accompanying the same shall affect its obligations on this bond, and it does hereby waive notice of any change, extension of time, alterations or addition to the terms of the contract or to the work or to the specifications.

In the event that Contractor is an individual, it is agreed that the death of any such Contractor shall not exonerate the Surety from its obligations under this bond.

Executed by CONTRACTOR this _____
day of _____, 20____.

CONTRACTOR:

(name of Contractor)

By: _____
(sign here)

(print name here)

(Title and Organization of Signatory)

By: _____
(sign here)

(print name here)

(Title and Organization of signatory)

Executed by SURETY this _____ day of
_____, 20____

SURETY:

(name of Surety)

(address of Surety)

(telephone number of Surety)

By: _____
(signature of Attorney-in-Fact)

(printed name of Attorney-in-Fact)

(Attach corporate resolution showing current power of attorney.)

(Proper notarial acknowledgment of execution by CONTRACTOR and SURETY must be attached.)

(President or vice-president **and** secretary or assistant secretary must sign for corporations. If only one officer signs, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering that officer to bind the corporation.)

APPROVED AS TO FORM:

CELIA A. BREWER

City Attorney

By: _____
Deputy City Attorney

OPTIONAL ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between the City of Carlsbad whose address is 1200 Carlsbad Village Drive, Carlsbad, California, 92008, hereinafter called "City" and

_____ whose address is _____ hereinafter called "Contractor" and _____ whose address is _____ hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the City, Contractor and Escrow Agent agree as follows:

1. Pursuant to section 22300 of the Public Contract Code of the State of California, the Contractor has the option to deposit securities with the Escrow Agent as a substitute for retention earnings required to be withheld by the City pursuant to the Construction Contract entered into between the City and Contractor for

**NAME OF PROJECT
CONTRACT NNNN**

(insert contract number & name) (REMOVE THIS TEXT BEFORE PRINTING THE SPECIFICATIONS)

in the amount of _____ dated _____ (hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the City shall make payments of the retention earnings directly to the Escrow Agent. When the Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the City within 10 days of the deposit. The market value of the securities at the time of the substitution shall be a least equal to the cash amount then required to be withheld as retention under the terms of the contract between the City and Contractor. Securities shall be held in the name of the City and shall designate the Contractor as the beneficial owner.

2. The City shall make progress payments to the Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

3. When the City makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until such time as the escrow created under this contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the City pays the Escrow Agent directly.

4. The Contractor shall be responsible for paying all fees for the expenses incurred by the Escrow Agent in administering the Escrow Account and all expenses of the City. These expenses and payment terms shall be determined by the City, Contractor and Escrow Agent.

5. The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the City.

6. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account

only by written notice to Escrow Agent accompanied by written authorization from City to the Escrow Agent that City consents to the withdrawal of the amount sought to be withdrawn by Contractor.

7. The City shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days' written notice to the Escrow Agent from the City of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the City.

8. Upon receipt of written notification from the City certifying that the Contract is final and complete and that the Contractor has complied with all requirements and procedures applicable to the Contract, the Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

9. The Escrow Agent shall rely on the written notifications from the City and the Contractor pursuant to sections (1) to (8), inclusive, of this agreement and the City and Contractor shall hold Escrow Agent harmless from Escrow Agent's release, conversion and disbursement of the securities and interest as set forth above.

10. The names of the persons who are authorized to give written notices or to receive written notice on behalf of the City and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

For City:

Title FINANCE
DIRECTOR

Name _____

Signature _____

Address 1635 Faraday Avenue, Carlsbad, CA 92008

For Contractor:

Title

Name _____

Signature _____

Address _____

For Escrow Agent:

Title

Name _____

Signature _____

Address _____

At the time the Escrow Account is opened, the City and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

For Escrow Agent:

Title

Name

Signature

Address
