



REQUEST FOR OFFERS (RFO)

Solicitation Title: Fire Suppression System Maintenance Services
Solicitation No.: 5006182

Release Date: 5/30/2019 Offers Due By: 6/20/2019
Federally Funded: Yes No Funding Source: FTA FHWA Other
Project Number: _____ Award based on: Lowest Price
 Best Value

SANDAG Contact: <u>Mark Holt</u>	Submit via Email to: <u>Mark Holt</u>
Phone: <u>(619) 595-5394</u>	Email: <u>Mark.holt@sandag.org</u>
Payment Method: <u>Firm Fixed Price</u>	

Liquidated Damages: Yes No
Amount / Calendar Day: N/A SANDAG may split the award between multiple Offerors: Yes No
Period of Performance: Up to 3 years
Contractor License Required: Yes No Insurance/Bond Required: Yes No
License Classification: C-16 or OSFM "A" License Prevaling Wage*: Yes No
* CA State or Davis-Bacon, whichever is greater

Offer shall be valid for 60 days. SANDAG reserves the right to cancel this RFO. Part 2 of this RFO must be submitted by Offeror with offer. This purchase is subject to the Services Agreement attached to this RFO plus federal Department of Transportation language if the FTA or FHWA funding source boxes are marked above.

By signing this offer, Offeror acknowledges that it has read and accepted the terms and conditions associated with this RFO. No supplemental contract language, exceptions to SANDAG's language or variance in terms of any kind will be accepted by SANDAG. If Offeror proposes substantive varying terms on any documentation submitted to SANDAG at any time, such terms will not apply to SANDAG.

(PRINT ALL INFORMATION EXCEPT SIGNATURES)

Name: _____
Title: _____
Signature: _____
Dated: _____
DUNS Number: _____
Age of Firm: _____
Business Address: _____
Phone Number: _____ Email: _____
Contractor's License Number: _____ Type: _____
Tax ID Number: _____ DIR Registration Number: _____

PART 1 PROJECT REQUIREMENTS

I. SUMMARY

SANDAG is seeking qualified offerors to provide Automatic Fire Extinguishing Systems inspection, testing maintenance services and associated appurtenances at the SANDAG South Bay Expressway Operations building for a firm fixed price contract, one-year term with two one-year renewal options.

The total maximum contract value, defined as all SANDAG-approved work performed under the master IDIQ contract, shall not exceed \$36,000.

II. MANDATORY PRE-BID SITE VISIT

A pre-bid site visit will be held at 10:00 PST on June 7, 2019 at SANDAG, 1129 La Media Road, San Diego, CA 92154. All prospective bidders must attend.

III. TECHNICAL SPECIFICATIONS

The specifications are provided below for the Automatic Extinguishing System inspection, testing, and maintenance services.

IV. MINIMUM QUALIFICATIONS

Offers shall be accepted from responsive and responsible Offerors that can demonstrate the following:

The contractor must ensure that qualified personnel conduct all testing.

The Contractor shall provide the service of personnel who are qualified and experienced in the inspection, maintenance, and servicing of the Automatic Fire Extinguishing Systems being serviced, their components, and all associated peripheral equipment to include the following system types: Wet Sprinkler Fire Extinguishing System, and Ansul Inergen, Clean Agent Fire Extinguishing Systems.

Possess the required California State License Board (CSLB) licenses OR an Office of the State Fire Marshall (CAL Fire – OSFM) license to conduct the inspections, maintenance, or servicing of Automatic Fire Extinguishing Systems. Those who meet the criteria under Reference E.1 are exempt for CAL FIRE (OSFM) license. All certifications, qualification and licenses shall be provided with the submitted quote.

To conduct inspection, maintenance, or service automatic fire extinguishing systems, a business must possess either a CSLB C-16 Fire Protection Contractor License or a CAL FIRE – OSFM “A” license.

Work will be awarded on a task basis by the authorized SANDAG representative under the Agreement.

V. BRIEF DESCRIPTION OF SERVICES

Offeror shall provide the following services:

- Services specified herein which may include, but are not necessarily limited to, inspection and testing of existing fire detection and suppression systems, related equipment and fire extinguishers; and identification of defective components and reporting recommended corrective action, including cost estimates.
- Conduct quarterly, semi-annual, annual, and 5-year inspections as applicable. Guidance for the applicable work is referenced below in the section titled Standards. Work items include, but are not limited to, weighing all affected cylinders, testing time delays, alarms and shut downs, and inspecting the physical condition, testing, and servicing of each system, including enclosures, hoses, and nozzles to ensure they are clean, free of leaks, cracks, and deformities, and are otherwise in good condition.
- The Offeror shall provide all labor materials, tools, supplies, and equipment necessary to provide the required services at the identified location. All material, supplies, and equipment furnished

under the terms of the contract must be UL listed, Factory Mutual approved, and in compliance with all applicable provisions of the NFPA.

- All equipment furnished as standard by the manufacturer shall be included, if not stated in the written specifications. Any deviations from the written specifications shown shall be noted in the Exceptions Section of the Required Data Forms.

VI. STANDARDS

1. NFPA 25 Standard for the Inspection, Testing, and Maintenance of Water Based Fire Protection Systems with California Amendments
2. NFPA 2001 Standard on Clean Agent Fire Extinguishing Systems
3. NFPA 72 National Fire Alarm Signaling Code

VII. DEFINITIONS

- Inspection. A visual examination of a system or portion thereof to verify that it appears to be in operating condition and free from physical damage.
- Maintenance. Work performed to keep equipment operable or to make repairs.
- Testing. A procedure used to determine the status of a system as intended by conducting periodic physical checks.
- Service. The performance of testing and maintenance on an automatic fire extinguishing system.

VIII. SCOPE OF WORK

This section sets forth the minimum requirements for inspection and testing of all fire detection, alarm, and suppression systems for the identified building. The applicable NFPA Code shall be used for the interpretation of requirements for inspection and testing procedures based on the system being inspected and appurtenances. The offeror must inspect and test all devices connected to the fire detection, alarm, and suppression systems, as may be applicable. The contractor must visually inspect components of each system to determine if they are free of corrosion, foreign material, physical damage, tampering or other conditions that could prevent operation.

Upon completion of inspection, the Offeror shall provide an inspection report with any recommendations and findings. A copy is also required to be provided to SANDAG Facilities Maintenance Department.

1. **Wet Pipe Fire Sprinkler System**: The contractor shall perform the following for the wet pipe sprinkler system as per California Code of Regulations – Title 19 “Inspection, Testing, and Maintenance” (NFPA 25 CA ed. Reference):

Requested Frequency:

Quarterly Inspections (January, April, July, October)

- Control Valves – Identification Sign (Reference 13.3.1)
- Control Valves – Inspection (Reference 13.3.2)
- Waterflow Alarm Devices (Reference 5.2.5)
- Supervisory Devices (Reference 5.2.5)
- Gauges (Wet Pipe Systems) (Reference 5.2.4.1)

- Enter Water Supply Pressure Below Riser Check (Reference 5.2.4.1)
- Enter Water Supply Pressure Above Riser Check (Reference 5.2.4.1)
- Pressure Readings Acceptable (Reference 5.2.4.1).
- Hydraulic Design Information Sign (Reference 5.2.6)
- Spare Sprinkler (Reference 5.2.1.4)
- Fire Department Connections (Reference 13.7)
- Backflow Preventers (Reference 13.6.1)

Annual Testing and Maintenance (December)

- Water flow Alarm Devices (Reference 5.3.3, 13.2.6)
- Control Valve-Position (Reference 13.3.3.2)
- Control Valve-Operation (Reference 13.3.3.1)
- System Return to Service (Reference 4.5.3)
- Obstruction Investigation required (Reference 14.3)

2. **Clean Agent Fire Extinguishing Systems:** The contractor shall perform the following for clean agent fire extinguishing system (Ansul Inergen, Autopulse Z-10) as per **(NFPA 2001 Chapter 7 Inspection, Testing, Maintenance, and Training guidelines)**

Requested Frequency:

Semi-Annual

- Agent Quantity and Pressure of refillable containers shall be checked **(Reference 7.1.3)**
- Hoses-**(Reference 7.3.1)**
- Enclosure Inspection – The enclosure protected by the clean agent shall be thoroughly inspected. **(Reference 7.4, 7.5.3)**
- Personnel System Trained – **(Reference 7.6.1)**
- Approval of Installation – **(Reference 7.7.1)**
- System Components Security Fastened – **(Reference 7.7.2.2.3)**
- Discharge Nozzles Unobstructed-**(Reference 7.7.2.4)**
- Nozzle Orientation-**(Reference 7.7.2.2.5)**
- Impingement of Loose Objects-**(Reference 7.7.2.2.7)**
- Cylinder Mounting Brackets – **(Reference 7.7.2.2.9)**
- Detectors Near Obstructions **(Reference 7.7.2.4.8)**
- Alarm Devices (Visual Only)- **(Reference 7.7.2.4.11)**
- System Identification Signs-**(Reference 7.7.4.12)**

Annual

- Control Panel Primary Power Source-(**Reference 7.7.2.5.4**)
- Alarm Devices (Test) (**Reference 7.7.2.4.14**)
- Remote Monitoring Operations (**Reference 7.7.2.5.3**)
- Test Auxiliary Functions (**Reference 7.7.2.4.5**)

Every 5 Years

- Hoses-(**Reference 7.3.2.1**)
- External Cylinder Inspection-(**Reference 7.2.2**)

3. System Shutdown Requirements:

It may be necessary for the fire suppression systems to be shut down during the inspection and testing procedures. Prior to system testing, shutdown for such procedures and the restoral of systems, the contractor must obtain authorization from the Site Supervisor designated by SANDAG. Before authorization is granted, the contractor shall be responsible for verifying that each of the following has been accomplished:

- The extent and expected duration of the downtime has been determined.
- The affected areas of the building have been inspected and the increased risk identified and defined.
- Risk management recommendations have been submitted to and approved by the Site Supervisor.
- The personnel in the affected areas have been notified. All necessary tools and materials have been assembled on the site.

4. Additional Work

- In addition to the inspection schedules promulgated within NFPA Codes, SANDAG reserves the right to schedule additional service calls with the Contractor(s) as deemed necessary.
- Following a system activation, the Contractor(s) may be called to perform a systems inspection, maintenance, repair, and testing services necessary to return the system to a fully operational status. The contractor shall provide a post inspection report annotating the systems current operational status, discovered deficiencies, proposed repair plan, and estimated costs to an authorized representative or the authority having jurisdiction.
- Upon approval through the cognizant authority to proceed with repair plan the contractor shall complete service repairs without delay. Contractor along with SANDAG system representative will conduct acceptance inspection to validate systems operational status.

- 5. Service Scheduling:** The contractor along with the Site Supervisor designated by SANDAG must coordinate the scheduling of the services. Upon award, an initial system inspection may be requested by the Site Supervisor which may include and not be limited to a complete systems/site inspection in order to fully understand the systems operational characteristics.

IX. DELIVERY OF SERVICES

All regularly scheduled services including, but not limited to, inspection, cleaning, lubrication, adjustments, repairs, replacements, minor emergency or major emergency service shall be performed during regular working hours.

Offeror shall be available to provide all services on a 24-hour basis, 365 days per year, if requested by SANDAG. If SANDAG requests that any work be performed other than regular working hours, Offeror will be compensated as described in the section below titled Compensation.

Service Hours and Building Access: All preventative and predictive maintenance or repair services provided under this agreement will be performed during SANDAG's normal working hours, which are from 8:00 a.m. – 5:00 p.m. Monday through Friday. Unless previously authorized, no work will take place on SANDAG's holidays listed below.

SANDAG Holidays:

New Year's Day
Martin Luther King Day
President's Day
Cesar Chavez Day
Memorial Day
Independence Day
Labor Day
Veterans Day
Thanksgiving Day
Christmas Day

Building Location: 1129 La Media Road, San Diego, CA 92154

Response Times:

Standard Service Call – Replace/repair equipment within 48 hours of notification.

Emergency Service Call – Providing emergency call-back services, which consists of responding to requests from SANDAG within an hour of notification by telephone, for emergency at any hour, day or night.

X. COMPENSATION

Routine Maintenance Costs

Preventive maintenance prices are “all-inclusive” prices, and include labor, consumable materials, use of tools and equipment, vehicles, tolls, government charges, all required tests, inspection and permitting fees and all other costs, overhead and profit to perform such services, and no additional costs whatsoever shall be assessed against or borne by SANDAG in connection with any services. Rates shall be inclusive of prevailing wage rates applicable to the services provided.

As-Needed Repair Cost

As-needed repairs will be quoted consistent with the Itemized Price Sheet and subsequently substantiated with invoices submitted by the offeror for materials used in carrying out the various tasks issued under this agreement.

Mark-up on materials required to perform the services described herein shall be fixed for the term of the agreement. In no case, shall mark-up for materials exceed ten percent (10%).

Offeror must attach supporting documentation that proves actual purchase price of parts with the invoice to show actual cost paid/final sale for parts or materials obtained from its suppliers.

XI. INSURANCE

Offeror must meet all insurance requirements as outlined in Part 3, Services Agreement. Section VI, Insurance. Please note that actual endorsements must be provided. A statement on an insurance certificate will not be accepted in lieu of the actual endorsement. SANDAG will not fully execute the agreement until compliant certificates and endorsements are provided.

WE STRONGLY RECOMMEND THE REQUIREMENTS BE GIVEN TO YOUR INSURANCE AGENT/BROKER IMMEDIATELY TO ENSURE YOUR FIRM CAN COMPLY WITH OUR REQUIREMENTS IN THE EVENT YOUR FIRM IS AWARDED THE CONTRACT.

XII. SELECTION OF OFFEROR

A. Best Value to SANDAG Selection Method

1. Selection Requirements

- a. Proposed method to accomplish the work
- b. Detailed Itemized Price Sheet supporting amount of offer
- c. List of relevant experience with references, minimum of three
- d. List of previous contracts with SANDAG
- e. Experience of key individuals

2. Evaluation

Offerors will be evaluated by SANDAG based on the factors listed below in order of importance. Based upon the offers and the evaluation factors, which will include cost as a significant factor, the top-ranked Offeror(s) will be identified. SANDAG reserves the right to create a short-listing of the top-ranked Offerors and to interview firms as part of the evaluation process. If required, negotiations with the selected Offeror(s) may cover: scope of work, Agreement terms and conditions, and price.

Table 1 Evaluation Criteria

Evaluation Factor	Importance
Approach to providing the services described in the RFO	1

<ul style="list-style-type: none"> • Contractor shall provide a description of their process that demonstrates how they are going to provide preventative maintenance, testing, and inspection of fire alarm and fire suppression systems described in this RFO. • Contractor shall provide with this Offer a sample of your firm's equipment maintenance forms, typical service reports, methods of record keeping and computer-generated scheduling that indicates the level of knowledge and degree of experience in the maintenance of mechanical systems. Provide a sample of a preventative maintenance report. 	
Project experience <ul style="list-style-type: none"> • Nature, quality and relevance of recently completed projects • Experience of key individuals • References, including references for prior SANDAG work if available 	2
Proposed cost/fees	3
Overall clarity, thoroughness, and quality of proposal materials.	4

3. Selection

After negotiation of a proposed scope and price that is fair and reasonable to SANDAG, SANDAG will award an Agreement to the selected Offeror.

The Agreement shall consist of the provisions in this RFO, cross-referenced federal terms and conditions (if applicable), and the Services Agreement, in the order of precedence provided in the Services Agreement.

No negotiation or variance of material terms and conditions will be permitted. No work shall commence until after a notice to proceed or purchase order is issued by SANDAG. SANDAG shall have no obligation to pay for goods or services provided prior to approval of the Agreement by SANDAG or a notice to proceed from an authorized SANDAG representative. The selected Offeror also may be referred to as Contractor in the Agreement.

XIII. OTHER PROCEDURES AND REQUIREMENTS

SANDAG protest procedures may be obtained at <https://www.sandag.org/index.asp?fuseaction=rfps.home>

Questions regarding this RFO may be submitted by email to Mark Holt at mark.holt@sandag.org no later than 5 p.m. PST at least two days prior to the deadline for offers. All questions and SANDAG's responses will be sent to all Offerors. Offerors must report any errors or mistakes in the RFO as a question. SANDAG will issue any changes to this RFO via addenda, which shall be sent to all Offerors.

The selected Offeror also may be referred to as Contractor in the Agreement.

PART 2
SUBMISSION DOCUMENTS

The documents in this part of the RFO must be completed by the Offeror and submitted with the offer. If all documents identified below are not submitted and/or are not complete and executed, the offer may be classified as non-responsive and will not be considered further.

The following list is provided to assist in assuring a complete submission:

1. Signed RFO Cover Sheet
2. Itemized Price Sheet
3. Bidders List
4. Workers Compensation Certificate
5. Public Records Act Indemnification Certificate
6. False Claims Certificate
7. Public Contract Code Section 10162 Questionnaire
8. Public Contract Code Section Statements
9. Eligibility Certification of Federally Funded Contracts
10. Subcontractor's Statement of Eligibility
11. Certification of Primary Participant Regarding Debarment, Suspension and Other Responsibility Matters
12. Non-Collusion Affidavit
13. EEO Certificate
14. Exceptions

The following items shall be provided by the successful offeror within three (3) business days of SANDAG's request and are required to issue an agreement:

1. W-9
2. Insurance Certificates, as needed

ITEMIZED PRICE SHEET

Please utilize the Itemized Price Sheet that is provided in Microsoft Excel format.

BIDDERS LIST

Offeror Name	Contract No.
<p>The U.S. Department of Transportation (DOT) requires the San Diego Association of Governments (SANDAG) to create and maintain a Bidders List containing information about all firms (Disadvantaged Business Enterprise (DBEs) and non-DBEs) that offer on the SANDAG DOT-assisted contracts in accordance with 49 C.F.R. 26.11. The Offeror is to complete all requested information for every firm that submitted an offer, including the Offeror itself and any proposed subcontractors. SANDAG will utilize this information to assist in the Overall Annual DBE Goal Setting process.</p>	

Offeror's Information			
Name of Offeror's Firm:		Phone: () -	
Firm Address:		Fax: () -	
City		ST	ZIP
Number of years in business:		Type of work/services/materials provided:	
Contact Person:		Title:	
Is the firm currently certified as a DBE under 49 C.F.R. 26? <input type="checkbox"/> Yes <input type="checkbox"/> No		Check the box below for your firm's annual gross receipts last year:	
Offeror has DBE Certification in the following categories (place an "X"):		<input type="checkbox"/> Less than \$1 million	
<input type="checkbox"/> African American	<input type="checkbox"/> Asian Pacific American	<input type="checkbox"/> Less than \$5 million	
<input type="checkbox"/> Native American	<input type="checkbox"/> Woman	<input type="checkbox"/> Less than \$10 million	
<input type="checkbox"/> Hispanic American	<input type="checkbox"/> Subcontinent Asian American	<input type="checkbox"/> Less than \$15 million	
<input type="checkbox"/> Other		<input type="checkbox"/> More than \$15 million	

BIDDERS LIST
(CONT'D)

Note: Each proposed subcontractor shall complete this form, and the Offeror will submit it with its proposal.

Subcontractor's Information			
Name of Subcontractor's Firm:			Phone: () -
Firm Address:			Fax: () -
Type of work/services/materials provided:			
City	ST	ZIP	
Number of years in business:			
Contact Person:			
Is the subcontractor's firm currently certified as a DBE under 49 C.F.R. 26? <input type="checkbox"/> Yes <input type="checkbox"/> No			Check the box below for your firm's annual gross receipts last year:
Subcontractor has DBE Certification in the following categories (place an "X"):			<input type="checkbox"/> Less than \$1 million
<input type="checkbox"/> African American	<input type="checkbox"/> Asian Pacific American		<input type="checkbox"/> Less than \$5 million
<input type="checkbox"/> Native American	<input type="checkbox"/> Woman		<input type="checkbox"/> Less than \$10 million
<input type="checkbox"/> Hispanic American	<input type="checkbox"/> Subcontinent Asian American		<input type="checkbox"/> Less than \$15 million
<input type="checkbox"/> Other			<input type="checkbox"/> More than \$15 million

If necessary, this Bidders List form can be duplicated to include all firms (DBEs and non-DBEs) that submitted an offer to subcontract to Offeror relating to this DOT-assisted Project, whether they were successful or unsuccessful in their attempt to obtain a contract from Offeror.

WORKERS' COMPENSATION CERTIFICATE

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code and I will comply with such provisions before commencing the performance of the work of this Agreement.

Executed this _____ day of _____, 20____.

Official, legal name of Offeror (Type or Print)

Print Name: _____ Title: _____

Signature: _____ Date: _____

PUBLIC RECORDS ACT INDEMNIFICATION CERTIFICATE

I, _____ hereby agree, on behalf of
(Type or Print name)

Official, legal name of Offeror (Type or Print)

to indemnify and defend SANDAG in the event SANDAG withholds production of any records submitted in response to this RFO that Offeror has marked "Confidential" "Trade Secret" "Proprietary", or similar designations, in response to a Public Records Act request pursuant to California Government Code section 6250 or a Freedom of Information Act request.

Official, legal name of Offeror (Type or Print)

Print Name: _____ Title: _____

Signature: _____ Date: _____

FALSE CLAIMS CERTIFICATION

OFFEROR'S CERTIFICATION OF COMPLIANCE
WITH
LAWS RELATING TO
FALSE CLAIMS

I hereby certify that if awarded the Agreement of which this certificate shall be made a part of, I will ensure that Offeror does not violate any provisions of the False Claims Act or any other applicable federal or state laws and regulations relating to the filing of false claims against a public agency, including laws and regulations hereinafter enacted. I additionally certify that in the event it is determined that Offeror or one of its subcontractors has violated the False Claims Act, that such violation shall be grounds for, among other things, debarment pursuant to the policies established by Federal, State, or local law.

Official, legal name of Offeror (Type or Print)

Print Name: _____ Title: _____

Signature: _____ Date: _____

PUBLIC CONTRACT CODE SECTION 10162 QUESTIONNAIRE

In accordance with Public Contract Code Section 10162, the Offeror shall complete, under penalty of perjury, the following questionnaire:

Has the Offeror, any officer of the Offeror, or any employee of the Offeror who has a proprietary interest in the Offeror, ever been disqualified, removed, or otherwise prevented from bidding or proposing on, or completing a federal, state, or local government project because of a violation of law or a safety regulation?

Yes No

If the answer is yes, explain the circumstances in the space below.

Official, legal name of Offeror (Type or Print)

Print Name: _____ Title: _____

Signature: _____ Date: _____

PUBLIC CONTRACT CODE SECTION STATEMENTS

PUBLIC CONTRACT CODE SECTION 10232 STATEMENT

In conformance with Public Contract Code Section 10232, the Offeror, hereby states under penalty of perjury, that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Offeror within the immediately preceding two year period because of the Offeror's failure to comply with an order of a federal court which ordered the Offeror to comply with an order of the National Labor Relations Board.

PUBLIC CONTRACT CODE SECTION 10285.1 STATEMENT

In conformance with Public Contract Code Section 10285.1 (Chapter 376, Stats. 1985), the Offeror hereby declares under penalty of perjury under the laws of the State of California that the Offeror

has has not

(MUST CHECK ONE)

been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Public Contract Code Section 1101, with any public entity, as defined in Public Contract Code Section 1100, including the Regents of the University of California or the Trustees of the California State University. The term "Offeror" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1 (reference to "Offeror").

The above statement is part of the offer. Signing the offer on the signature portion thereof shall also constitute signature of this statement. Offerors are cautioned that making a false certification may subject the certifier to criminal prosecution.

Official, legal name of Offeror (Type or Print)

Print Name: _____ Title: _____

Signature: _____ Date: _____

ELIGIBILITY CERTIFICATION FOR FEDERALLY FUNDED CONTRACTS

The award of the Agreement is subject to a financial assistance contract between the San Diego Association of Governments (SANDAG) and the U.S. Department of Transportation or another federal agency. Any name appearing on the Comptroller General’s list of ineligible contractors for federally financed or assisted contracts is not eligible for the Agreement.

Offeror hereby certifies that neither the Offeror nor any of its officers or holders of a controlling interest are on the U.S. Comptroller General’s list of ineligible contractors for federally funded and assisted contracts. In the event the Offeror or any of its subcontractors are included on such a list during the performance of this Project, Offeror shall promptly inform SANDAG of this fact.

Official, legal name of Offeror (Type or Print)

Print Name: _____ Title: _____

Signature: _____ Date: _____

SUBCONTRACTOR'S STATEMENT OF ELIGIBILITY

(To be filled out by each proposed subcontractor and submitted with the proposal.)

_____ certifies that neither it nor its
(Type or Print name)

principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any federal project by any federal department or agency.

Where the subcontractor is unable to certify any of the statements in the certification, such subcontractor shall attach an explanation with this form.

The subcontractor certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 USC 3801, et seq., are applicable.

Official, legal name of Offeror (Type or Print)

Print Name: _____ Title: _____

Signature: _____ Date: _____

DEBARMENT AND SUSPENSION CERTIFICATE,
TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29

Offeror, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, manager:

1. is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
2. has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three (3) years;
3. does not have a proposed debarment pending; and
4. has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining Offeror's responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Official, legal name of Offeror (Type or Print)

Print Name: _____ Title: _____

Signature: _____ Date: _____

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATE

Offeror hereby certifies that it will comply with the provisions of the San Diego Association of Governments (SANDAG) Equal Employment Opportunity Program (SANDAG Board Policy No. 007), and rules and regulations adopted pursuant thereto, Title VI of the Civil Rights Act of 1964, the California Fair Employment Practices Act, and any other applicable federal and state laws and regulations relating to equal employment opportunity, including laws and regulations hereinafter enacted.

Furthermore, Offeror hereby certifies that it

has has not

(MUST CHECK ONE)

been found, adjudicated, or determined to have violated any laws of Executive Orders relating to employment discrimination or affirmative action including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000(e) et seq.); the Equal Pay Act (29 U.S.C. 206(d)); Executive Order (EO) 10925 (Kennedy, 1961), EO 11114 (Kennedy, 1963), or EO 11246 (Johnson, 1965); or the California Fair Employment and Housing Act (Government Code 12460 et seq.); by any federal or California court or agency, including but not limited to the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs, and the California Fair Employment and Housing Commission.

If the "has" box is marked above, please explain the circumstance.

Official, legal name of Offeror (Type or Print)

Print Name: _____ Title: _____

Signature: _____ Date: _____

PART 3
SERVICES AGREEMENT

SERVICES AGREEMENT

5006182
CONTRACT NO.

PROJECT NO.

THIS AGREEMENT is effective as of this _____ day of _____, 2019, in the State of California by and between San Diego Association of Governments (SANDAG) and the following contractor, hereinafter referred to as "Consultant." This Agreement will be for one year from _____, 2019, through _____, 2020, with the potential of two one-year renewal options at the discretion of SANDAG. If the option periods are exercised, the maximum duration shall not exceed _____, 2022. Any revisions to the Agreement term or exercise of renewal options shall be by written amendment executed by the parties.

Name: _____
Address: _____
City, State, ZIP: _____
Form of Business: _____
Tax ID Number: _____

Request for Offers
Disadvantaged Business
Enterprise (DBE) Goal: 0%
Consultant DBE Commitment _____%
Is Consultant a DBE? YES NO

Authorized person to sign contract:
Name: _____
Title: _____
Phone: () _____
Fax: _____
Email: _____

The attached Standard Terms and Conditions are part of this Agreement. The Consultant agrees to furnish to SANDAG services and materials, summarized as follows (the "Project"):

Fire Suppression System Maintenance

The Total Agreement Value shall not exceed \$36,000 in U.S. dollars unless amended.

SAN DIEGO ASSOCIATION OF GOVERNMENTS CONSULTANT AUTHORIZATION

By: _____
Executive Director (or designee)

By: _____
Signature

Approved as to form:

By: _____
Office of General Counsel

I. AUTHORIZATION TO PROCEED

A. Assignment of Work

The San Diego Association of Governments (SANDAG) will provide written authorization to commence deliveries of the goods or services described in the Agreement by issuing purchase orders. No expenditures are authorized and no work may commence until the Services Agreement has been fully executed by SANDAG and a notice to proceed has been issued.

Other than regular inspection and maintenance according to the schedule provided in the Scope of Work, work will be either recommended by Contractor or requested by SANDAG on a task basis at the time work is required. A brief explanation of the assistance needed will be provided to Contractor along with the opportunity to view the site. Contractor will then provide SANDAG with a brief description of the approach to the task, a schedule for its completion, and estimated cost (if a part or service is not covered under the fixed fee for inspection and maintenance) within 24 hours. For additional service, Contractor shall utilize the applicable labor rate in the attached Itemized Price Sheet. When the SANDAG representative has agreed to the approach, schedule, and cost, Contractor will commence the work within the schedule agreed to by SANDAG.

This Agreement does not eliminate the right of SANDAG to request quotations from other vendors or use the formal proposal process on specific projects when its representatives feel it will be in the best interest of SANDAG. The Agreement is not a guarantee that any work will be requested. If the price(s) offered in the priced proposals are not acceptable to SANDAG and the situation cannot be resolved to the satisfaction of SANDAG, SANDAG reserves the right to procure those items from other vendors or to cancel the Agreement upon giving Contractor notice pursuant to the termination provisions of this Agreement.

Contractor shall retain professional personnel who have successfully and competently provided similar services on projects of similar scope and complexity. The maintenance and all repairs shall be provided in accordance with the highest standards of professionalism, skill, workmanship, and applicable trade practices and shall meet warranties and conform to all applicable laws, codes, and regulations. Contractor's maintenance program and repairs shall, at a minimum, include, but not be limited to, the specifications outlined in the RFO. SANDAG reserves the right to let contracts for any and all work that requires a separate low-bid process based upon the nature of the work and its anticipated costs. It is Contractor's responsibility to provide an appropriate level of on-site staffing as specified, appropriate tools, environmentally safe "Green" supplies, and vehicles necessary to support all repair and maintenance functions during hours of maintenance and standby response. All of Contractor's functions are to be compliant with all federal, state, City and County of San Diego, California Air Resources Board, Air Quality Management District, Occupational Safety and Health Administration, and all other regulatory requirements.

Contractor shall furnish all the necessary materials and supplies to complete the work as specified. All materials and supplies shall be new, high-quality, free from defects, and designed for the intended use and shall be subject to SANDAG approval. All materials shall be purchased at wholesale prices whenever available and include Contractor's discount.

Contractor's standard discounts or markups shall be included, if applicable, in the Itemized Price Sheet.

Contractor is responsible for submitting and paying all fees, permits, inspections, etc. as required in conjunction with the Agreement, from project initiation through construction, completion, and acceptance by controlling authorities, with necessary record and certificate copies thereof furnished to SANDAG with Contractor's invoices.

II. PAYMENT

A. Compensation

Payment will be by the following method: full payment will be made after SANDAG acceptance of goods and receipt of a complete invoice for the period or for the assigned task, as applicable.

B. Price for Items Not in Bid Schedule

For supplies or other commodities not listed in Itemized Price List, but which fall within the scope of the Agreement, Contractor shall charge SANDAG for such items at a rate that shall not exceed the lowest price at which Contractor offered the items and/or services to its most favored customer as of the date of the SANDAG order.

C. Payment in the Event of Noncompletion

If Contractor fails to satisfactorily provide all or part of a service or deliverable according to the schedule set forth in the Agreement or a purchase order, no payment will be made until the service or deliverable has been satisfactorily provided.

D. Payment Offsets

Payments may be subject to an audit and if applicable, SANDAG may adjust future payments to recover monies owed.

All payments are subject to the conditions set forth in the Agreement or as otherwise required by law. SANDAG may withhold payments if Contractor fails to comply with the requirements of the Agreement or relevant law.

E. Estimated Quantities

This is an indefinite quantity or requirements Agreement. The actual amount of goods and services requested by SANDAG may be less than the maximum value of the Agreement and there is no guarantee, either expressed or implied, as to the actual quantity of goods and commodities that will be authorized under this Agreement.

III. SUBCONTRACTOR REIMBURSEMENT AND PAYMENT

A. Payment of Subcontractors

Contractor must pay subcontractors within ten calendar days from receipt of each payment by SANDAG unless Contractor has withheld retainage and a longer period is agreed to in writing by SANDAG.

B. Subcontractor Retainage

1. Contractor and, as applicable, any subcontractor, must release all retainage withheld from subcontractors within ten Business Days after release by SANDAG of retainage to Contractor.
2. Contractor or its subcontractors may only withhold retainage on the same terms and conditions as SANDAG withholds retainage from Contractor.
3. Any delay or postponement of payment may take place only for good cause and with the prior written approval of SANDAG. Any violation of these provisions shall subject the violator to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by Contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor.

C. Compliance Information System

Contractor and its subcontractors shall report payment details using the SANDAG web-based Compliance Information System (CIS) by the 15th of each month. CIS allows contractors to manage their own records, maintain accurate contract information, and report payment details to SANDAG online. CIS is mandatory for Contractor and its subcontractors to use unless SANDAG instructs otherwise. An account will be created after award, which will allow Contractor to enter data into CIS via an internet browser. After award, Contractor will receive instructions on how to set up its account and enter required subcontractor data. Contractor must require each of its subcontractors to enter required payment information into CIS. Failure of Contractor or its subcontractors to enter required information into CIS on a timely basis will result in delay of payment by SANDAG.

IV. INVOICES

A. General

1. On each invoice, include the Agreement number, title of the Agreement, and any applicable purchase order number.
2. Submit invoices no later than 30 calendar days after completion of work in a purchase order.

3. SANDAG will pay invoices no later than 30 calendar days after acceptance and approval of the goods or services invoiced, and payment will be deemed made upon mailing by SANDAG.
4. Contractor must reimburse any credits due to SANDAG, including any equipment purchased under this Agreement, prior to the expiration or termination of this Agreement. SANDAG may deduct such credits from payments otherwise due Contractor.
5. In no event shall language in Contractor's invoices or any other document supersede a conflicting term or condition in the Agreement.

V. INDEPENDENT CONTRACTOR

A. Not a SANDAG Employee

1. Contractor has and retains full control of employment, compensation, and discharge of all Contractor employees and is fully responsible for all matters relating to its agents and employees, including compliance with Social Security, withholding tax, and all other laws and regulations governing such matters.
2. Contractor is an independent business, and in its performance under this Agreement will act as an independent contractor and not as an employee of SANDAG, which has no control over Contractor's means, method, or manner of performance.

B. No Agency

Except as SANDAG may specify in writing, Contractor has no authority, express or implied, to act on behalf of SANDAG in any capacity whatsoever, as an agent or otherwise, or to bind SANDAG or its member agencies, directors, agents, or employees to any obligation whatsoever, unless expressly provided in the Contract.

VI. INSURANCE

Consultant shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property, which may arise from, or in connection with, the performance of the work hereunder by Consultant, its agents, representatives, or employees.

A. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. Carriers must be licensed to do business in California and maintain an agent for service of process within California. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

B. Notice of Termination, Cancellation, or Change

Should any of the insurance policies be canceled before the expiration date thereof, notice will be delivered in accordance with the policy provisions and sent to SANDAG. Consultant

shall notify SANDAG immediately following Consultant's first notice or awareness of any proposed or actual termination, cancellation, or change in its insurance coverage. Each insurance policy required by this clause shall state or be endorsed to state that coverage shall not be amended or canceled except after 30 days' prior written notice has been given to SANDAG. Notice of cancellation sent by registered mail, postage prepaid, with a return receipt of addresses requested shall be sufficient notice.

C Failure to Provide Insurance

Failure to provide and continue in force any insurance as described in this Insurance Section shall be deemed a material breach of this Agreement, which SANDAG may deem to constitute cause for immediate termination. SANDAG reserves the right to withhold payments to Consultant in the event of material noncompliance with the insurance requirements outlined herein. If consultant fails to maintain the insurance as set forth herein, SANDAG shall have the right, but not the obligation, to purchase said insurance at Consultant's expense and to withhold the expense of such insurance from any payments otherwise due to Consultant.

D. Certificates of Insurance and Endorsements

Consultant shall furnish SANDAG with Certificates of Insurance and any required endorsements affecting coverage required by this Section. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Endorsements must specifically state that they modify the policy language. All certificates and endorsements are to be received and approved by SANDAG before work commences. Consultant shall ensure that the representations made on the Certificate of Insurance and Endorsements are true and correct. Complete policies of insurance shall be provided to SANDAG upon request and no later than five days after such request. Failure to provide SANDAG a copy of the insurance policies required in this Agreement shall be deemed a material breach of contract, which shall be deemed at the option of SANDAG to constitute a cause for immediate termination hereof. The coverage forms and related endorsements required herein required by Consultant shall conform to the Insurance Services Office (ISO) 2013 Edition (or the latest revision available).

1. Commercial General Liability and Auto Liability Endorsements

The Commercial General and Auto Liability policies shall contain, or be endorsed to contain, the following provisions:

- a. SANDAG, its directors, officers, agents, and employees are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations.
- b. Commercial general liability coverage shall be provided in the form of an additional insured policy endorsement to Consultant's insurance at least as broad as ISO CG 20 10 and CG 20 37 forms, respectively. Auto liability coverage shall be provided in the form of an additional insured policy endorsement at least as broad as the ISO CA 20 48 form.

- c. For any claims related to this project, Consultant's insurance coverage shall be primary insurance as respects SANDAG, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the entity, its officers, officials, employees, or volunteers shall be excess of Consultant's insurance and shall not contribute with it. Consultant shall provide SANDAG a conforming ISO CG 20 01 Endorsement for Commercial General Liability and ISO CA 04 50 Endorsement for Auto Liability, respectively.
- d. Consultant agrees to waive all rights against SANDAG and its directors, officers, agents, and employees for recovery of damages to the extent these damages are covered by the Commercial General Liability and Auto Liability insurance required pursuant to this Contract. Consultant shall provide SANDAG a conforming ISO CG 24 04 Endorsement for Commercial General Liability and ISO CA 04 44 Endorsement for Auto Liability, respectively.

E. Insurance Certificate Submittal

SANDAG will use myCOI to track and verify insurance coverage. On receipt by SANDAG of the executed Agreement, Consultant will receive an email from:

certificaterequest@mycoisolution.com

Follow the instructions contained in the email and complete the online registration. Upon completion of registration, myCOI will request proof of insurance directly from Consultant's insurance agents. Consultant shall not commence work and no payments shall be made to Consultant unless Consultant is registered with myCOI and compliant Certificates of Insurances (COIs) have been received. Consultant shall cause its insurance agents to comply with requests for updated information from myCOI on no less than an annual basis. Consultant is responsible for ensuring that its agents send SANDAG updated certificates of insurance throughout the term of the Agreement via myCOI.

Consultant shall include the Agreement number and/or purchase order number on all insurance-related correspondence submitted to myCOI (i.e., the insurance certificate itself).

F. No Limitation on Liabilities and Obligations

The requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by SANDAG or their insurance Consultants, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Consultant pursuant to this Agreement, including, but not limited to, the provisions concerning indemnification.

The specified insurance limits are minimum amounts to be provided, and any insurance maintained by Consultant above such limits shall provide protection to SANDAG and all additional insureds to the same extent as other insurance provided by Consultant.

G. Coverage for Subconsultants

Insurance required of Consultant shall be provided by all subconsultants or by Consultant on behalf of all subconsultants to cover their services performed under this Agreement.

Consultant shall not require subconsultants to maintain insurance amounts that are disproportionate to the risk exposure, scope of work, and/or dollar value of work subcontracted. Consultant shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to any subconsultant.

H. No Waiver of Requirements

Acceptance by SANDAG of a certificate or endorsement that varies from the requirements in this Section shall not constitute a waiver by SANDAG of strict compliance with the provisions herein.

I. Deductibles or Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved in writing by SANDAG. At the option of SANDAG, either Consultant shall have its insurer reduce or eliminate such deductibles or self-insured retentions as respects SANDAG, its officers, officials, employees, and volunteers; or Consultant shall provide a financial guarantee satisfactory to SANDAG guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

J. Claims-Made Coverages

If any of the Consultant's insurance is written on a claims-made form:

1. The insurance coverage period must commence before the effective date of the Agreement or the beginning of work performed pursuant to the Agreement.
2. Insurance must be maintained and evidence of insurance must be provided for at least two years after completion of work under the Agreement.
3. If coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the Agreement effective date, Consultant must purchase an extended reporting coverage for a minimum of two years after completion of work under the Agreement.
4. A copy of the claims reporting requirements must be submitted to SANDAG for review.
5. For Pollution Liability, if the services involve lead-based paint or asbestos identification/remediation, Consultant's Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Pollution Liability policy shall not contain a mold exclusion, and the definition of "Pollution" shall include microbial matter including mold.

K. Cross-Liability Coverage

If Consultant's liability policies do not contain the standard ISO separation of insured's condition, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

L. Minimum Policy Limits and Requirements

Prior to performing any work, Consultant shall provide proof and maintain limits no less than the following coverages:

Insurance Type	Requirements	Limits
Commercial General Liability (CGL)	Coverage shall conform to ISO Form CG 00 01 covering CGL on an "occurrence" basis. Policy shall include all elements of Coverages A, B, and C.	Limits no less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage. The general aggregate limit shall be twice the required occurrence limit. The policy shall be issued on an occurrence basis.
Automobile Liability	Coverage shall conform to ISO Form CA 00 01 covering any auto (Code 1).	Limit no less than \$1,000,000 per accident for bodily injury and property damage. The policy shall be issued on a combined single limit.
Workers' Compensation and Employer's Liability	Insurance shall cover or insure under the applicable laws relating to workers' compensation insurance, all of their employees working on or about the Right-of-Way, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California, and any Acts amendatory thereof. Not required for sole proprietors or companies with no employees. Verifiable proof of exemption shall be required by Consultant.	As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident; \$1,000,000 policy limit bodily injury by disease; and \$1,000,000 each employee bodily injury by disease. For services rendered within 50 feet of the railroad tracks, Consultant shall provide Employer's Liability Insurance with limit of no less than \$2,000,000 per accident; \$2,000,000 policy limit bodily injury by disease; and \$2,000,000 each employee bodily injury by disease.

Insurance Type	Requirements	Limits
Installation Floater	<p>Coverage shall conform to Commercial Inland Marine Property Insurance Form.</p> <p>A property installation floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion, or adjustment to existing buildings, structures, processes, machinery, and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, cribbing, falsework, scaffolding, and construction forms, as well as contractor’s machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the project site(s).</p> <p>Coverage also shall include debris removal and pollution cleanup and removal.</p> <p>Contractor waives any rights of subrogation against SANDAG, and the policy form must permit and accept such waiver. Contractor hereby releases and holds harmless SANDAG for any loss or damage to its equipment.</p> <p>Coverage shall cease at the time when the Work performed has been accepted by SANDAG.</p>	Replacement Cost

VII. INDEMNIFICATION

A. General

Contractor will defend, indemnify, protect, and hold SANDAG, its member agencies, directors, officers, and employees, as well as any additional insured, harmless from and against all claims asserted or liability established for damages or injuries to any person or property, including injury to Contractor’s or subcontractors’ employees, agents, or officers, which arise from or are connected with or are caused or claimed to be caused by the negligent, reckless, or willful acts or omissions of Contractor and its subcontractors and their agents, officers, or employees, in delivering the goods or services under this Contract, and is responsible for all expenses of investigating and defending against same, including attorney’s fees and costs; provided, however, that Contractor’s duty to indemnify and hold harmless will not include any claims or liability arising from the established sole negligence or willful misconduct of SANDAG, its member agencies, directors, agents, officers, or employees.

B. Retention of Funds

In addition to any other remedy authorized by law, SANDAG may retain as much money due Contractor under the Agreement as SANDAG considers necessary until disposition has been made of any claim for damages.

C. Survival of Indemnification

This Section regarding indemnification applies to all liability, regardless of whether any insurance policies are applicable. The insurance policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor. This Section of the Agreement will survive in perpetuity.

VIII. TERMINATION OF CONTRACT

A. Termination for Cause

1. Should Contractor materially breach this Agreement, SANDAG will send a written notice to cure to Contractor. If Contractor fails to cure the problems to the satisfaction of SANDAG within ten calendar days of the date of such notice, SANDAG may thereafter cancel and/or terminate this Agreement and every right of Contractor and any person claiming any right by or through Contractor.
2. Events of material breach may include failure to adhere to time schedules, failure to obtain and/or maintain required insurance; bankruptcy; failure to pay any subcontractor or other company or person retained by Contractor in connection with this Agreement; documentation or lack thereof establishing that Contractor is failing to meet its Disadvantaged Business Enterprise (DBE) commitment; failure to supply sufficient properly skilled staff or proper materials to timely perform as required; or negligently or intentionally disregarding laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction.
3. In the event of termination for cause, all actual and reasonable costs to SANDAG of completing Contractor's performance will be deducted from any sum due Contractor under this Agreement and the balance due Contractor or SANDAG, as the case may be, will be paid on demand. Costs of completion will include delay costs, the cost of soliciting a new contractor, and any payments made to the new contractor.
4. In the event the Agreement is terminated for cause and it is determined, for any reason, that Contractor was not in material breach under the provisions hereof, the termination will be deemed a Termination for Convenience.

B. Termination for Convenience

SANDAG may terminate this Agreement or a purchase order, in whole or in part, at any time by 30 days' written notice to Contractor. Contractor will be paid its costs, including contract closeout costs and profit on work performed up to the time of termination, but not upon unperformed work. If Contractor has any property in its possession belonging to SANDAG, Contractor will account for and dispose of it in the manner that SANDAG directs. Contract closeout costs will be reimbursed in accordance with 2 CFR 200. Separate final

invoices for project-related costs and for contract closeout costs must be submitted no later than 30 calendar days after the date of termination under this Section.

C. Contractor's Deliverables Under Early Termination

1. Following termination, no payment otherwise due Contractor will be paid until SANDAG has received and accepted all documents and correspondence required as part of the Scope of Work, including all documents that are in complete and final form and those in draft and/or incomplete form for deliverables that were in process at the date of termination.

D. Assignment of Subcontracts on Termination of Contract

On termination of the Contract, SANDAG, in its sole and exclusive discretion, has the option of requiring Contractor to assign its rights under any of its subcontracts and purchase orders to SANDAG, which assignment will become effective upon written notice by SANDAG to Contractor specifying the subcontracts or purchase orders subject to the assignment.

E. Contractor Claims

Acceptance of final payment for performance and/or early termination of this Agreement releases SANDAG from all further claims by Contractor under this Agreement.

IX. ASSIGNMENT AND SUBCONTRACTING

A. SANDAG Consent Required

Contractor may not assign, sublet, or otherwise transfer this Contract, or any rights or interest thereunder, without the written consent of SANDAG, which may be withheld for any reason; provided, however, that claims for money due to Contractor from SANDAG under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of assignment or transfer must be furnished promptly to SANDAG in writing.

B. Non-Assignment of Subcontracted Work

Subcontractors may be employed as Contractor deems appropriate to assist in the performance of services under this Contract. Contractor may not, however, enter into any agreement to assign previously subcontracted work in connection with this Agreement without first obtaining the written approval of SANDAG as to the work to be assigned and the subcontractor.

C. Responsibility for Subcontractors

If Contractor subcontracts any work under this Contract, Contractor will be as fully responsible to SANDAG for the acts, errors, or omissions of the subcontractor and of the persons employed by the subcontractor as Contractor is for the acts and omissions of persons directly employed by Contractor. Nothing contained in this Agreement may create any contractual relationship between any subcontractor of Contractor and SANDAG, nor may it make any such subcontractor a third-party beneficiary of this Contract. Any subcontract in excess of \$25,000, entered into as a result of this Contract, whether

subcontracted by Contractor or another subcontractor, must contain all of the provisions stipulated in this Agreement to be applicable to the subcontractor, including provisions pertaining to costs, records, and payment methods.

D. Addition or Substitution of Subcontractors

Contractor must obtain prior approval for using a subcontractor.

X. QUALITY AND PERFORMANCE STANDARDS

A. Products in Current Stock

Unless otherwise specified, all products provided under this Agreement must be current stock, but need not be in current production, provided the manufacturer has not issued any notice of intent to cease support of such product within the next 12 months.

B. Product Substitutions During Contract Period

1. During the term of the Agreement, product substitutions are not permitted without written permission from the SANDAG employee designated as the SANDAG Project Manager for this Contract.
2. If a manufacturer discontinues producing a selected product subsequent to Agreement award, Contractor must substitute another product meeting or exceeding specifications of the awarded product, at the price awarded, subject to the prior written approval of SANDAG.

C. References to Standards and Codes

Whenever references are made to standards or codes in accordance with which goods are to be manufactured or tested:

1. The edition or revision of the standards or codes current on the effective date of this Agreement will apply unless otherwise expressly stated.
2. The references are solely for implementation of the technical portions of such standards and codes.
3. In case of conflict among any referenced standards and codes, or between any referenced standards and codes and the Scope of Work and specifications supplied by SANDAG, the latter will govern.

D. Best Practice

Apparent silence or omissions in this solicitation regarding a detailed description of the materials and services to be provided is to be interpreted to mean that only the best commercial practices are to prevail and that only materials and workmanship of first quality are to be used.

E. No Waiver

SANDAG review, approval, or acceptance of or payment for any deliverables required under this Agreement is not a waiver of any rights or of any cause of action arising out of the Agreement. Contractor shall be and remain liable to SANDAG for all damages to SANDAG.

F. Damage

Contractor shall be held responsible for any breakage or loss of SANDAG equipment or supplies through negligence of Contractor, a subcontractor, or their employees while working on SANDAG premises. Contractor shall be responsible for restoring or replacing any equipment, facilities, etc. so damaged. Contractor shall immediately report to SANDAG any damages to the premises resulting from services performed under this Agreement. Failure or refusal to restore or replace such damaged property will be a breach of this Agreement.

G. Protection of Public

Adequate warning devices, barricades, guards, flagmen, or other necessary precautions shall be taken by Contractor to give advised and reasonable protection, safety, and warning to persons and vehicular traffic concerned in any work area.

H. Unknown Obstructions

Should any unknown obstruction be encountered during the course of this Agreement, Contractor shall immediately bring it to the attention of a SANDAG representative. Contractor shall be responsible for the protection of all existing equipment, furniture, or utilities encountered within the work area.

I. Cleanup and Removal

Contractor shall remove all debris generated while making repairs, replacement, or installation; dispose of all debris in compliance with all applicable laws; and leave the work area clean. Contractor shall remove all equipment, materials, etc. as directed by SANDAG. All cleanup and removal costs are included in the price for regular inspection and maintenance in the Scope of Work. Any cleanup and removal costs for other service work must be included in the initial estimate provided by Contractor to SANDAG unless such cleanup or removal cost is due to an unknown obstruction at the SANDAG premises.

XI. CONFLICT OF INTEREST

A. Attempts to Influence Government Decisions

Contractor may not, nor in any way attempt to, use Contractor's position to influence a governmental decision in which Contractor knows or has reason to know Contractor has a financial interest other than the compensation promised by this Contract. Contractor represents that Contractor has diligently conducted a search and inventory of Contractor's economic interests as defined in the regulations promulgated by the California Fair Political Practices Commission and has determined that Contractor does not, to the best of Contractor's knowledge, have an economic or organizational interest which would conflict with Contractor's duties under this Contract. Contractor agrees to scrupulously avoid

performing services for any person or entity or entering into any contractual or other relationship with any person or entity that might create a conflict of interest with respect to this Contract. Contractor will immediately advise SANDAG General Counsel if Contractor learns of an economic or organizational conflict of interest or other prohibited conflict of interest during the term of this Contract.

B. Exchange of Gifts with SANDAG

Contractors, subcontractors, vendors, and their agents currently doing business with or planning to seek Agreement awards from SANDAG may not offer gifts to SANDAG officers, employees, agents, or Board members who have taken or may in the future take part in contracting decisions for SANDAG. This prohibition applies to any gift, gratuity, favor, entertainment, or loan and includes such items as liquor, lodging, travel, food, and tickets to public functions such as sports events, theater, etc. If a person has any reason to believe a financial or organizational conflict of interest exists with regard to a particular procurement, he/she should notify the SANDAG Office of General Counsel immediately.

XII. TIMELY PERFORMANCE

Contractor acknowledges that timely performance is of the essence for this Agreement and will comply with applicable milestones, deadlines, and performance requirements set forth in the Agreement or a purchase order.

XIII. PREVAILING WAGE AND PUBLIC WORKS REQUIREMENTS APPLY

- A. Contractor shall hire and maintain for the duration of the Agreement a workforce as required under the specifications and pay at a prevailing wage for the work. The Director of Industrial Relations (DIR) has determined the general prevailing rate of per diem wages in the locality in which this work is to be performed for each craft or type of worker needed to execute the Agreement, copies of which are on file and will be made available to any interested party upon request at SANDAG or online at dir.ca.gov/dlsr. The wage determination applicable to this Agreement can be found at www.dir.ca.gov/oprl/DPreWageDetermination.htm
- B. Contractor and all subcontractor(s) shall comply with all applicable Labor Code provisions, which include, but are not limited to, the payment of not less than the required prevailing rates to all workers employed by them in the execution of the Agreement, the employment of apprentices, the hours of labor, and the debarment of contractors and subcontractors. Notice is hereby given that in accordance with the provisions of California Labor Code, Division 2, Part 7, Chapter 1, Articles 1 and 2, Contractor is required to pay not less than the general prevailing rate of per diem wages for work of a similar character in the locality and the general prevailing rate for holiday and overtime work. Prevailing wage requirements in California Labor Code Sections 1720 and 1775, et seq., shall apply to Contractor when performing work pursuant to this Agreement. Contractor and its subcontractors, if any, shall comply with the provisions of California Labor Code Sections 1775, et seq.
- C. Attention is directed to the requirements in Labor Code Section 1776, a portion of which is quoted below. Regulations implementing Labor Code Section 1776 are located in

Sections 16016 through 16019 and Sections 16207.10 through 16207.19 of Title 8, California Code of Regulations. Particular attention is directed to the following language:

- a. "Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - i. The information contained in the payroll record is true and correct.
 - ii. The employer has complied with the requirements of Sections 1720.9, 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.
- b. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:
 - i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
 - ii. A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - iii. A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.
 - iv. The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.
 - v. A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

- vi. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in a manner so as to prevent disclosure of an individual's name, address and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated.
 - vii. The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.
 - viii. The contractor or subcontractor shall have 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the ten (10) day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section."
- D. The penalties specified above in subdivision (g) of Labor Code Section 1776 for noncompliance with the requirements in Section 1776 may be deducted from any moneys due or which may become due to the Contractor.
 - E. In addition, Contractor and its subcontractors, if any, shall not be qualified to bid unless currently registered and qualified to perform public work pursuant to Section 1725.5 (with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1[a]). Contractor shall be required to maintain current and active DIR registration at all times during the term of the Agreement.
 - F. SANDAG will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the Agreement. The payment of prevailing wages and the possibility of wage increases is one of the elements to be considered by Contractor in determining the amounts it includes in its Itemized Price Sheet and will not under any circumstances be considered as the basis of a claim against SANDAG under the Agreement.
 - G. A copy of all payrolls shall be uploaded weekly to the SANDAG Labor Compliance Monitoring System (LCMS). Payrolls shall contain the full name, address and Social Security number of each employee, the employee's correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages

paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and social security number must be entered on all payrolls. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or the employer's agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the Agreement. The "Statement of Compliance" shall be on forms furnished by SANDAG or on any form with identical wording. Contractor shall be responsible to ensure submission of subcontractor payrolls in the LCMS and the Department of Industrial Relations (DIR) eCPR systems. In addition, Contractor is responsible for maintaining physical copies of all (prime/subcontractor) payrolls for DIR auditing purposes.

- H. The Contractor shall make its records available and is responsible for making its subcontractors' records available for inspection by authorized representatives of SANDAG and shall permit such representatives to interview employees during working hours on the job.

XIV. WARRANTIES

Contractor warrants the following:

A. Fitness for Use

All supplies, equipment and materials provided under this Agreement will be satisfactory for their intended purposes and free from liens or other encumbrances. Contractor's Warranty Period for parts and labor shall be six months or such other longer period of time provided by the manufacturer of any goods, materials, or equipment provided by Contractor to SANDAG ("Warranty Period").

B. Required Warranties

1. All goods, materials, and equipment provided will be free from defects in design, material, and workmanship, whether provided by Contractor or by any of its subcontractors of any tier, and any defective goods, materials, or equipment will be redesigned, repaired, or replaced within a time period and in a manner acceptable to SANDAG, provided that notice of the defect is given to Contractor within the applicable Warranty Period.
2. Items will not be deemed defective if they fail to operate in a normal manner due to exposure to any condition in excess of those published in the applicable specifications.
3. A warranty will be void as to a particular piece of equipment if that equipment is altered or a repair is attempted or made by any party other than Contractor without written authorization by Contractor or otherwise pursuant to the terms of this Agreement.

C. Workmanship and Warranty Period

Unless otherwise agreed, Contractor will provide comprehensive and continuing warranty repair and restoration services from defects in material and workmanship of the deliverables

during the Warranty Period. Any warranty from a subcontractor or supplier to Contractor that exceeds this time period must be assigned to SANDAG.

1. Commencement of Corrective Work

Time is of the essence with respect to all corrective work to be undertaken pursuant to any applicable warranty. On receipt of written notice from SANDAG to commence correction, Contractor must promptly commence and diligently pursue corrective work to completion. Unless otherwise directed in the notice, Contractor must commence corrective work at the time specified by SANDAG, but in no event later than 24 hours after receiving notification of the defect or failure. Upon notice from SANDAG, Contractor shall immediately repair or replace, at its own expense, all or any parts that may prove to be defective during the Warranty Period, whether installed initially or as repair or replacement. Contractor further warrants that any such repair or replacement shall remain in satisfactory working order and condition for a period of six months after the repair is made or the replacement parts installed.

2. Replacement Parts Subject to SANDAG Approval

Replacement parts and repairs provided pursuant to corrective work are subject to prior approval by SANDAG and will be tendered and performed in the same manner and extent as items originally delivered. Contractor warrants such redesigned, repaired, or replaced work against defective design, materials, and workmanship for the later of the remainder of the Warranty Period of the replaced deliverable or six months from SANDAG acceptance of the warranty work, whichever occurs later.

3. Testing

Contractor will perform tests that SANDAG may require to verify that any redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with redesign, repair, replacement, and testing, including removal, replacement, and reinstallation of equipment and materials, including transportation and shipping, will be borne by Contractor.

4. Continued Use of Items

To prevent delays and disruption to the SANDAG operations, when practical and feasible in the opinion of SANDAG, SANDAG will have the right to the continued use of any goods, equipment, systems, and work deemed defective or unsatisfactory until they can be taken out of service pursuant to the corrective work by Contractor.

5. Contractor Responsibility for Repair Reimbursement

Contractor will be responsible for reimbursement or replacement of any parts required for repair. Contractor also shall reimburse SANDAG for all SANDAG direct labor costs, determined by multiplying the number of man-hours actually required to correct the defect by a per-hour, straight wage rate and an overhead rate of 1.75.

D. Warranty Rights and Remedies Non-Exclusive

The warranty rights and remedies of SANDAG stated above are not intended to be exclusive and do not preclude the exercise of any other rights or remedies provided for in this Agreement or otherwise.

XV. DELIVERIES

Unless otherwise specified by SANDAG, all goods and commodities are to be delivered Free on Board destination and priced consistent with the Itemized Price List. SANDAG will provide the destination address and will have no liability for any items until they are accepted at their final destination by SANDAG, and all risk of loss will remain with Contractor until such acceptance. Contractor shall not charge SANDAG any markup on deliveries.

XVI. NOTICES

A. Method of Notice

- 1 Written communications include both physical writings and electronic communications by email.
- 2 Unless otherwise agreed, all notices, requests, claims, demands, and other communications between the parties must be in writing and may be given by:
 - a. Delivery in person or by a nationally recognized courier service or by registered or certified mail, postage prepaid. Notices must be addressed to 401 B Street, Suite 800, San Diego, CA 92101 and to Contractor as shown in the Agreement, or to such other address as either party may specify in writing.
 - b. Email to the authorized contact for the respective party.

B. Receipt of Notice

1. Notice will be deemed given
 - a. On receipt by the party to which the notice is given if physical delivery is made; or
 - b. On the date and time of the email of the sending party if electronic delivery is made.
2. If notice is received by SANDAG after 5 p.m. Pacific Standard Time or on other than a Business Day, it will be deemed given on the following Business Day.

XVII. CIVIL RIGHTS, NONDISCRIMINATION

A. No Discrimination

Contractor and its subcontractors may not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, sexual orientation, gender identity, national origin, ancestry, age, medical condition, physical or mental disability,

Vietnam-era veteran or special disabled veteran status, marital status, status as a parent, or citizenship, within the limits imposed by law. Such actions include but are not limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of these nondiscrimination requirements.

B. Compliance with Nondiscrimination Laws

1. Contractor, a subrecipient, or a subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 CFR 26 in the award and administration of DOT-assisted contracts. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Agreement or such other remedy as SANDAG deems appropriate, which may include, but is not limited to:
 - a. Withholding monthly progress payments;
 - b. Assessing sanctions;
 - c. Liquidated damages; and/or
 - d. Disqualifying Contractor from future bidding as non-responsible.
2. Contractor will, in all solicitations or advancements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, sexual orientation, or national origin and will not discriminate on the grounds of race, religion, color, sex, age, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment, and will not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.
3. Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of Contractor's commitments under Section 202 of Executive Order 11246 (EO 11246) (Johnson, 1965) and will post copies of the notice in conspicuous places available to employees and applicants for employment.
4. Contractor will comply with all provisions of EO 11246 and of the rules, regulations, and relevant orders of the Secretary of Labor, and all the requirements imposed by Title VI and Title VII of the Civil Rights Act of 1964, as amended, and the regulations issued thereunder (EO 11246, the California Fair Employment Practices Act, the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 623), and any other applicable federal and state laws and regulations subsequently enacted.
5. In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. 12112, Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the

Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR 1630, pertaining to employment of persons with disabilities. In addition, Contractor agrees to comply with any implementing requirements an applicable federal agency may issue.

C. Reports

1. Contractor will furnish all information and reports required by the rules, regulations, and orders of the Secretary of Labor or any federal agency providing funding, and will permit access to its books, records, and accounts by SANDAG, the Secretary of Labor, and all agencies providing funding, to ascertain compliance with such rules, regulations, and orders.
2. Upon completion or termination of the Contract, prepare the "Final Utilization of Disadvantaged Business Enterprise and Small Business First-Tier Subcontractors" form, certify it as correct, and submit to SANDAG Contracts and Procurement within 90 days from the date of Agreement completion. The amount of \$10,000 may be withheld from payment until a satisfactory form is submitted.

D. Noncompliance

In the event of Contractor's noncompliance with the nondiscrimination clauses of this Agreement, SANDAG may withhold payments to Contractor or the Agreement may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further government contracts in accordance with procedures authorized in EO 11246, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

E. Inclusion of Provisions in Subcontracts

Contractor will include all of the above provisions in the Section titled "Compliance with Nondiscrimination Laws" in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor or any federal agency providing funding, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance.

XVIII. CONFORMITY TO LEGAL REQUIREMENTS

A. Compliance with Laws

Contractor must comply with all federal, state, and local laws and ordinances applicable to this Contract, including, but not limited to, the Immigration Reform and Control Act of 1986 and its requirement to verify the eligibility for employment of all agents, employees, contractors, and subcontractors that are included in this Agreement and will ensure that all deliverables conform to all applicable federal, state, and local laws and requirements.

B. Licenses and Permits

Contractor represents and warrants to SANDAG that it has all necessary licenses, permits, qualifications, and approvals, of whatever nature, that are legally required for Contractor to practice its business. Contractor further represents and warrants to SANDAG that it, at its sole cost and expense, will keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are required for Contractor to practice its business.

XIX DISPUTES

A. Interpretation

This Agreement will be interpreted in accordance with the laws of the State of California.

B. Continuation of Work During Dispute

1. In the event of a dispute with SANDAG, Contractor must:
 - a. Proceed diligently with performance of this Contract, and any SANDAG directive pertaining to it, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the Contract, and comply with any decision of SANDAG.
 - b. Submit a statement of the grounds for the dispute, including all pertinent dates, names of persons involved, and supporting documentation to the SANDAG Project Manager within 10 days from the date of Contractor's actual or constructive notice of the factual basis supporting the same. Time is of the essence in Contractor's written notice pursuant to the preceding sentence and Contractor acknowledges that its failure, for any reason, to give written notice (with sufficient supporting documentation to permit SANDAG review and evaluation) within such 10 day time period will be deemed Contractor's waiver, release, discharge, and relinquishment of any right to assert or claim any entitlement to an adjustment in the amount of the Agreement or the time for performance on account of the subject matter of such dispute. The SANDAG Project Manager will review any properly and timely submitted documentation concerning any dispute and reply to Contractor within 20 calendar days of receiving the dispute package. Upon receipt of an adverse decision by SANDAG, Contractor may submit a request for reconsideration addressed to the SANDAG Executive Director at the SANDAG Address provided for Notices, or by email to the SANDAG Email Address for Protests. The request for reconsideration must be received within five Business Days of the email date of the SANDAG reply. The Executive Director will respond in writing to the request for reconsideration within ten Business Days. The decision of the Executive Director will be final.

C. Request for Mediation

If Contractor is dissatisfied with the results following exhaustion of the above dispute-resolution procedures, Contractor may make a written request to SANDAG for mediation. SANDAG will respond to the request within 30 calendar days. If SANDAG agrees

mediation is appropriate, a mutually acceptable mediator will be selected by the Parties and the Parties will proceed to mediation of the dispute.

D. Litigation

Any dispute arising from this Agreement or any action brought to interpret or enforce any term of this Agreement must be brought exclusively in a state or federal court of competent jurisdiction in the County of San Diego, California, and will be construed and governed by California law.

E. Government Code Claim

In addition to any requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims, and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code Section 900, et seq., prior to filing any lawsuit against SANDAG. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims will be limited to those matters that remain unresolved after all procedures have been followed by Contractor. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not satisfied, no action against SANDAG may be filed.

XX. INSPECTION AND AUDIT

Contractor will maintain complete and accurate records with respect to actual time and allowable costs incurred under this Contract. All such records must be clearly identified and maintained on a generally accepted accounting basis. Contractor will provide reasonable access to the representatives of SANDAG or its designees, including representatives of applicable government agencies if this Agreement is funded in whole or in part with state or federal funds, to any Agreement work, materials, books, documents, papers, or records of Contractor that are related to this Contract. SANDAG, the State, the State Auditor, or any duly authorized representative of the federal government having jurisdiction under federal laws or regulations applicable to this Agreement will have the right to examine and audit such books and records and to make transcripts or copies from them as necessary.

Where information is in the exclusive possession of another who fails or refuses to furnish the information, Contractor will certify to SANDAG or the relevant state or federal agency what efforts it has made to obtain the information. Contractor will allow inspection of all Agreement work, materials, work data, documents, proceedings, and activities related to this Agreement, including, if applicable, DBE compliance, for a period of five years from the date of final payment under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until SANDAG, the State Auditor, or any duly authorized representative of the state or federal government has disposed of all such litigation, appeals, claims, or exceptions related thereto. If the audit reveals that Contractor invoiced SANDAG for unallowable costs, Contractor agrees to reimburse SANDAG for any overpayment and, if necessary, to execute an amendment to the Agreement. This Section regarding records must be included in any subcontract entered into as a result of this Agreement. To the extent that SANDAG requests production of any record, the record will be provided to SANDAG at no charge.

XXI. OWNERSHIP OF DOCUMENTS AND OTHER WORK PRODUCTS

Unless otherwise agreed, all deliverables produced under this Agreement will become the property of SANDAG and all property rights, including intellectual property rights such as copyrights or patents, that arise from creation of deliverables or other work products required by this Agreement to be developed for SANDAG shall be vested in SANDAG and Contractor agrees to relinquish all claims to such property rights in favor of SANDAG.

XXII. FORCE MAJEURE

A. Nonperformance

1. Neither party will be liable for any failure to perform if the nonperformance results from Force Majeure. Any excuse for nonperformance due to such an event will last only as long as the event remains beyond the reasonable control of the nonperforming party.
2. Should Contractor fail to perform due to Force Majeure, SANDAG may suspend its own performance until Contractor resumes performance. If Contractor's failure to perform continues for more than five Business Days, SANDAG may terminate this Agreement or extend any date specifically designated for Contractor's performance.

B. Non-Exclusions

1. Force Majeure does not modify Contractor's obligations regarding indemnification, confidentiality, redundancy, data backup, disaster recovery, nonperformance by subcontractors, or responsibility for any malware or code introduced or permitted to be introduced by Contractor or any subcontractor that results in damage to any damage to, unauthorized access to, or prevention of access of any authorized user to SANDAG Data or systems.
2. Force Majeure does not include increased cost of performance or failure of Contractor's source of supply.

XXIII. ENTIRE AGREEMENT

This Agreement represents the entire understanding of SANDAG and Contractor and may not be modified or altered except in writing signed by SANDAG and Contractor. No prior oral or written understanding will be of any force or effect with respect to those matters covered.

In the event of conflicting provisions, the following order of precedence will apply:

1. Services Agreement
2. Scope of Work/Technical Provisions
3. Addenda to the RFO
4. RFO

5. Documents submitted by Offeror with Offer

Within the same level of precedence, unless otherwise specified or determined by SANDAG, the more stringent of the provisions will apply. In no event will any invoice, submittal, bill of lading, receipt, or any other document generated by Contractor alter the terms of this Agreement.

XXIV. LANGUAGE OF THE CONTRACT

Unless otherwise stated, all directions and imperatives in the Agreement are understood to be requirements for Contractor. Captions and titles in this Agreement and accompanying documents are for convenience and reference only and will not control or affect the meaning or construction of any provision.

XXV. UNENFORCEABLE PROVISIONS

Should any provision of this Agreement be found invalid or unenforceable, the decision will affect only the provision interpreted, and all remaining provisions will be severable and enforceable.

XXVI. SUCCESSORS OR ASSIGNS

All terms, conditions, and provisions of this Agreement will inure to and will bind each of the parties and each of their respective heirs, executors, administrators, successors, and assigns.

XXVII. SIGNATURES

The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities. This Agreement may be executed in any number of separate counterparts, each of which will be deemed an original but all of which when taken together will constitute one and the same instrument.