

CITY OF SAN LEANDRO

REQUEST FOR BID

SUBMIT BID TO: City of San Leandro Purchasing Department 835 East 14th Street San Leandro, CA 94577	FOR FURTHER INFORMATION CALL: Don Brockman Purchasing Supervisor (510) 577-3377 fax (510) 577-3312 dbrockman@ci.san-leandro.ca.us
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BID NO: 09-10.005	DATE MAILED: June 25, 2009	THIS QUOTATION MUST BE DELIVERED TO THE CITY BEFORE: 3:00 PM, Wednesday, July 15, 2009
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DESCRIPTION
<p>Carpet Replacement at Marina Community Center – Titan Auditorium Bid No. 09-10.005 Notice to Bidders</p>
<p>1. BID OPENING: Sealed bids for CARPET REPLACEMENT AT MARINA COMMUNITY CENTER – TITAN AUDITORIUM, BID NO. 09-10.005, will be received at City Hall, 835 East 14th Street, 2nd Floor San Leandro, CA 94577 at the office of the Purchasing Agent up to 3:00 p.m. on Wednesday, July 15, 2009, at which time they will be publicly opened and read.</p> <p>2. BID RESULTS: A summary of the bids received will be made available, via the Internet, at: www.ci.san-leandro.ca.us/sl purchasing bids.html.</p> <p>3. WORK DESCRIPTION: Work to be done consists of removal and replacement of carpet, including lifting of furniture and doing all appurtenant work in place and ready for use, all as described in the specifications. The scope of work required of this contract is attached as are drawings of the areas where the carpet is to be replaced. Any deviations from specifications must be clearly indicated in writing at the time the proposal is submitted. The City reserves the right to waive minor variations in specifications bid.</p> <p><u>NOTE: Work to be coordinated with painting contractor and MUST BE COMPLETED between July 24 and August 4, 2009. Installation of new carpet to be done AFTER completion of painting.</u></p> <p>4. PRE-BID CONFERENCE: A pre-bid conference will be held on Wednesday, July 8th, at 11:00 A.M., at the Marina Community Center, 15301 Wicks Boulevard, San Leandro, CA 94579. A bidder who fails to attend a pre-bid conference will be held responsible for any information that could have been reasonably deduced from said attendance. Attendance is strongly encouraged. Questions regarding the plans and specifications may be submitted in writing to the project manager until 5:00 p.m., five (5) calendar days before bids are due. The City will not respond to oral questions outside of the pre-bid conference. The response, if any, will be by written addendum only. Oral responses do not constitute a revision to these plans or specifications.</p> <p>5. SERVICES AGREEMENT: Attached is a sample of the Non-Professional Services Agreement which the successful contractor will be required to sign and be bound by for the duration of the contract, this Agreement includes the City’s insurance requirements which must be complied with.</p> <p>6. CONTRACTOR’S LICENSE: A Class C15 Contractor’s License is required for this work. No bid will be accepted from a contractor who has not been licensed in accordance with Chapter 9 Division 3 of the Business and Professional Code.</p> <p>7. BID DEPOSIT: A Bid Deposit equal to at least 10% of the total amount of the bid shall be placed in the sealed proposal. The</p>

Bid Deposit shall be in one of the following forms: cash, cashier's check or certified check payable to the City, or bidder's bond in favor of the City executed by an authorized surety company. Bid bonds are returned to bidders when the Notice to Proceed is issued to the successful bidder.

8. **BUSINESS LICENSE:** In accordance with Title 2 Chapter 2 of the San Leandro Municipal Code, all contractors, including subcontractors, shall possess a current business license to perform work in San Leandro, the license is not required in order to bid on the project, but successful contractor will be required to obtain and maintain a current City of San Leandro business license for the duration of the work.
9. **CITY'S RIGHT TO REJECT BIDS:** The right is reserved, as the interest of the City may require, to reject any or all bids, or to waive any informality or minor irregularity in the bids.
10. **GENERAL PREVAILING WAGE RATES:** The City Council has ascertained the general prevailing rate of wages applicable to the work to be done. A tabulation of the various classifications of work persons to be employed and the prevailing rate of wages applicable thereto is on file in the **City Clerk's Office**. Certified payrolls will be requested periodically throughout the course of the contract.
11. **WITHDRAWAL OF PROPOSALS:** Any bid may be withdrawn at any time prior to the time fixed in the public notice for the opening of bids only by written request for the withdrawal of the bid filed with the **Purchasing Agent**. The request shall be executed by the bidder or its duly authorized representative. The withdrawal of a bid does not prejudice the right of the bidder to file a new bid. Whether or not bids are opened exactly at the time fixed in the public notice for opening bids, a bid will not be received after that time nor may any bid be withdrawn after the time fixed in the public notice for opening of bids.
12. **RELIEF OF BIDDERS:** As stated in Public Contract Code Sections 5100 to 5108, inclusive concerning relief of bidders and in particular to the requirement therein, that if the bidder claims a mistake was made in the bid presented, the bidder shall give the **Purchasing Agent**, written notice within five (5) days after the opening of the bids of the alleged mistake, specifying in the notice in detail how the mistake occurred.
13. **DISQUALIFICATION OF BIDDERS:** More than one proposal from an individual, firm, partnership, corporation, or combination thereof under the same or different names will not be considered. Reasonable grounds for believing that any individual, firm, partnership, corporation, or combination thereof is interested in more than one proposal for the work contemplated may cause the rejection of all proposals in which such individual, firm, partnership, corporation, or combination thereof is interested. If there is reason for believing that collusion exists among the bidders, any or all proposals may be rejected. Proposals in which the prices obviously are unbalanced may be rejected.
14. **PREVIOUS DISQUALIFICATION, REMOVAL, OR OTHER PREVENTION OF BIDDING:** A bid may be rejected on the basis of a bidder, any officer of such bidder, or any employee of such bidder who has a proprietary interest in such bidder, having been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local project because of a violation of any law or any safety regulation.
15. **RESPONSIBILITY FOR VERIFYING CONTRACT ADDENDA:** All bidders shall verify if any addenda for this project have been issued by the City of San Leandro. It is the bidders' responsibility to ensure that all requirements of contract addenda are included in the bidder's proposal. All bidders shall include a signed copy of all contract addenda with the proposal. Failure to comply with this requirement shall cause the proposal to be considered as nonresponsive and shall be grounds for rejection of the bid.
16. **SITE INVESTIGATION:** The bidder shall examine carefully the site of the work to verify all existing conditions. The submission of a bid shall be conclusive evidence that the bidder has investigated and is satisfied as to the conditions to be encountered, as to the character, quality, and scope of work to be performed, as to the quantities of materials to be furnished, and as to the requirements of the proposal, plans, specifications, and the contract. The bidder shall not take advantage of any apparent error or omission in the plans or specifications. In the event the bidder discovers any apparent error, discrepancy, or omission as a result of its site investigation, bidder shall immediately notify the City.

17. **BID PROTEST PROCEDURES:** Any protest of the proposed award of bid to the bidder deemed the lowest responsible bidder must be submitted in writing to the City no later than 5:00 p.m. on the third (3rd) business day following the date of the bid opening. The initial protest must contain a complete statement of the basis for the protest. The protest must state the facts and refer to the specific portion of the document or the specific statute that forms the basis for the protest. The protest must include the name, address, and telephone number of the person representing the protesting party. The party filing the protest must concurrently transmit a copy of the initial protest to the bidder deemed the lowest responsible bidder. The party filing the protest must have actually submitted a bid on the project. A subcontractor of a party filing a bid on this project may not submit a Bid Protest. A party may not rely on the Bid Protest submitted by another bidder, but must timely pursue its own protest. The procedure and time limits set forth in this Section are mandatory and are the bidder's sole and exclusive remedy in the event of a Bid Protest. The bidder's failure to fully comply with these procedures shall constitute a waiver of any right to further pursue the Bid Protest, including filing of a challenge of the award pursuant to the California Public Contracts Code, filing of a claim pursuant to the California Government Code, or filing of any other legal proceedings. The City shall review all timely protests prior to formal award of the bid. The City shall not be required to hold an administrative hearing to consider a timely protest, but may do so at the option of the Engineer, or if otherwise legally required. At the time of the City Council's consideration of the award of the bid, the City Council shall also consider the merits of any timely protests and the Engineer's recommendation thereon. The City Council may either accept the protest and award the bid to the next lowest responsible bidder, or reject the protest and award to the lowest responsible bidder. Nothing in this section shall be construed as a waiver of the City Council's right to reject all bids. The City reserves the right to waive any bid irregularities not affecting the amount of the bid, except where such waiver would give the low bidder an advantage or benefit not allowed other bidders.
18. **BID RESPONSE REQUIREMENT:** Responses to this bid shall be submitted on paper containing a minimum of 30% post-consumer recycled content and shall be labeled as such. Responses to this bid shall also be printed and copied on both sides of the page whenever practical.
19. **CITY PROJECT MANAGER:** The City's Facilities Maintenance Section of the Public Works Department is in charge of this project. The Project Manager is Glen Contreras and he can be reached at 510-577-6014.

The successful bidder shall submit a certificate of insurance showing compliance with the enclosed insurance requirements (per the attached NPSA). This insurance shall be maintained at all times during the course of any resulting agreement. In addition, the successful bidder shall have the proper City of San Leandro business license and all other applicable licenses and permits.

The City may increase or decrease the scope of work, or add or delete service locations as needed with 15-days written notification.

The award will be made to the lowest responsible bidder whose bid complies with the specifications in a manner satisfactory to the City's best interests as determined by the City. The right is reserved, as the interest of the City may require rejecting any or all bids, any part of a bid, or to waive any informality or minor irregularity in a bid or bids.

To bid, complete and return a copy of the Request and the other required forms, in a sealed envelope. The envelope shall be marked with the bid information and number. The bid must be received by the date and time shown in order to be considered. Please note that there is a one-day delay in mail delivery to City Hall by the U.S. Postal Service.

Firm _____ Date: _____

Address _____ Phone: _____

_____ FAX: _____

By (Signature) _____ Print Name: _____

Title: _____



Don Brockman
Purchasing Agent

**Carpet Replacement at Marina Community Center – Titan Auditorium
Bid No. 09-10.005
Bid Response Page (Return with Bid packet)**

Supply and install Carpet in Marina Community Center-Titan Auditorium per attached specifications

Materials/Supplies \$ _____

Labor \$ _____

Sales Tax \$ _____

Total Bid \$ _____

In written form _____ **dollars and** _____ **cents**

Alternate Item 1:

Materials/Supplies \$ _____

Labor \$ _____

Sales Tax \$ _____

Total Bid \$ _____

In written form _____ **dollars and** _____ **cents**

Alternate Item 2:

Materials/Supplies \$ _____

Labor \$ _____

Sales Tax \$ _____

Total Bid \$ _____

In written form _____ **dollars and** _____ **cents**

(To be notarized)

**BID SECURITY BOND
To Be Completed and Submitted Inside Sealed Bid**

KNOW ALL PERSONS BY THESE PRESENTS:

THAT _____ hereinafter called Principal, and
(Contractor)

_____ hereinafter called Surety, are
(Surety)

jointly and severally held and firmly bound unto the City of San Leandro, San Leandro, CA, hereinafter called the City, in the penal sum of ten percent (10%) of the aggregate of the bid of Principal for the work, this sum not to exceed (\$_____) dollars lawful money of the United States, for the payment whereof unto the City, Principal and Surety jointly and severally bind themselves forever firmly by these presents.

WHEREAS, Principal is herewith submitting a bid to:

Carpet Replacement Marina Community Center – Titan Auditorium, Bid 09-10.005

NOW, THEREFORE, the condition of this obligation is such that if Principal is awarded a contract for the work, and if Principal within that time specified in the bid enters into, executes and delivers to the City a contract in the form provided herewith, and if Principal within the time specified in the bid gives to the City the performance bond on the form provided herewith, and evidence of required liability and worker's compensation insurance, then this obligation shall be void.

If, however, Principal shall fail or refuse to furnish, execute, and deliver to the City said performance bond, and evidence of required liability and worker's compensation insurance, and any other required documents in the time stated in the bid, then Principal and Surety shall forfeit to the City the penal sum hereof.

AND IT IS HEREBY DECLARED AND AGREED that Surety shall be liable under this obligation as Principal, and that nothing of any kind or nature whatsoever that will not discharge Principal shall operate as a discharge or a release of liability of Surety.

IT IS HEREBY FURTHER DECLARED AND AGREED that this obligation shall be binding upon and inure to the benefit of Principal, Surety and the City and their respective heirs, executors, administrators, successors and assigns.

SIGNED AND SEALED THIS _____ day of _____, 2008

Name of Principal

Signature of Principal's Authorized Representative

Name and Title of Signer

(Seal and signature of Notary Public)

(Attach notary acknowledgment of Surety)

CITY OF SAN LEANDRO
STATE OF CALIFORNIA

MAINTENANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the **City of San Leandro**, State of California, has awarded to _____, hereinafter designated as the “Principal” a contract for Carpet Replacement at Marina Community Center – Titan Auditorium, Bid 09-10.005.

WHEREAS, said Principal is required under the terms of said contract to furnish a bond for the correction of any defects due to defective materials or workmanship in the work performed under said contract.

NOW, THEREFORE, we the Principal, and _____ as Surety, are held and firmly bound unto the City of San Leandro in the penal sum of _____ dollars (\$_____), lawful money of the United States for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if, during a maintenance period of one (1) year from the date of recordation of the Notice of Completion by the City, the Contractor upon receiving written notice of need for repairs which are directly attributable to defective materials or workmanship, shall diligently take the necessary steps to correct said defects within seven (7) days from the date of said notice, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

If any action shall be brought by the City upon this bond, a reasonable attorney’s fee, to be fixed by the court, shall be and become a part of City’s judgment in any such action.

No right of action shall accrue on this bond to, or for the use of, any person or corporation other than the City named herein or their heirs, executors, administrator, or successor of the City.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their seals this _____ day of _____, the name and corporation seals of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Corporate Seal) **Principal** _____
By _____
Title _____

(Attach Notarial Acknowledgement)

(Corporate Seal) **Surety** _____
Address _____
Phone No.: _____
Fax No.: _____
By _____
Title _____

(Attach Notarial Acknowledgement)

NOTE TO SURETY COMPANY: There must be submitted a certified copy of unrevoked resolution of authority for the attorneys-in-fact.

(Seal) **Witness** _____

Approved as to form:

Risk Manager

SCOPE OF WORK

Carpet Replacement at Marina Community Center – Titan Auditorium Bid No. 09-10.005

Demolish and remove existing carpet and prep floor per specifications to lay new floor.

Supply and install Carpet Tile “Shaw Worklife” (Style name: Focus; Style number: 59455; Color Name: Meditate; Color number 5476) throughout Titan Auditorium (wood dance floor to remain) in ¼ turn pattern per attached specifications.

Supply and install new 4” topset Base (color to be chosen by City) where existing.

Demolish and remove existing carpet and prep floor per specifications to lay new floor.

Alternate Item 1:

Include front entry to Auditorium – “Shaw Worklife” (Style: Embrace; number: 59496 Color: Meditate; number: 54761) including demo, base and floor prep.

Alternate Item 2:

Include Common Hall - “Shaw Worklife” (Style: Embrace; number: 59496 Color: Meditate; number: 54761) including demo, base and floor prep.

Work to be coordinated with painting contractor and MUST BE COMPLETED between July 24 and August 4, 2009.

Installation of new carpet to be done AFTER completion of painting.

CITY OF SAN LEANDRO
STATE OF CALIFORNIA

GENERAL CONDITIONS

PART 1 – GENERAL PROVISIONS

1.1 WORK TO BE DONE

- A. The Contractor shall perform all work necessary to complete the Contract in a satisfactory manner. Unless otherwise provided, the Contractor shall furnish all materials, equipment, tools, labor, and incidentals necessary to complete the work.
- B. The work to be done consists of removal and replacement of carpet, including lifting of furniture and doing all appurtenant work in place and ready for use, all as shown and described in the specifications.
- C. **UNAUTHORIZED WORK:** Any work done beyond the lines shown on the plans and specifications, or beyond lines established by the City Project Manager pursuant to the plans or any work done without written authority of the City Project Manager, or performed during unauthorized working hours or performed without benefit of or subject to inspection, shall be considered as unauthorized work and no compensation will be allowed therefore. The City Project Manager shall have the authority to have such work removed and the area restored and to deduct the cost thereof from money due or to become due to the Contractor. The Contractor shall be subject to liquidated damages in accordance with part 3.5 of this section for each incident of unauthorized work.

PART 2 – MATERIALS

2.1 MATERIALS AND WORKMANSHIP

- A. All materials, parts, and equipment furnished by the Contractor in the Work shall be new, high grade, and free from defects. Quality of work shall be in accordance with the generally accepted standards. Material and work quality shall be subject to the City Project Manager's approval.
- B. Materials and work quality not conforming to the requirements of the Specifications shall be considered defective and will be subject to rejection. Defective work or material, whether in place or not, shall be removed immediately from the site by the Contractor, at its expense, when so directed by the City Project Manager.
- C. If the Contractor fails to replace any defective or damaged work or material after reasonable notice, the City Project Manager may cause such work or materials to be replaced. The replacement expense will be deducted from the amount to be paid to the Contractor.

PART 3 – PROGRESS AND ACCEPTANCE OF WORK

3.1 COMMENCEMENT OF WORK

- A. The Contractor shall not begin work until the Notice to Proceed is issued by the City. Contract time shall begin 7 calendar days from the date of issuance of the Notice to Proceed. Contractor shall diligently prosecute the work.

3.2 TERMINATION OF CONTRACT

- A. The City may terminate the Contract at its own discretion or when conditions encountered during the Work make it impossible or impracticable to proceed, or when the City is prevented from proceeding with the Contract by act of God, by law, or by official action of a public authority.

3.3 TIME OF COMPLETION

- A. The Contractor shall complete the Work within the time set forth here. Work must be coordinated with painting contractor and must be completed between July 24 and August 4, 2009.
- B. Working hours will be set by the Project Manager.

3.4 COMPLETION, ACCEPTANCE AND WARRANTY

- A. The Work of the Contractor shall be inspected by the City Project Manager for acceptance upon receipt of the Contractor's written assertion that the Work is completed.
- B. Upon acceptance of the work and upon receipt and approval of the required documents (Final Agreement of Quantities, Maintenance Bonds, Manufacturer Warranties, etc.), the City will forward work invoices to Accounts Payable for processing of payment.
- C. The work shall be guaranteed for 1 year.

3.5 LIQUIDATED DAMAGES

- A. Failure of the Contractor to complete the Work within the time allowed will result in damages being sustained by the City. Execution of the Contract shall constitute agreement by the City and Contractor that the following liquidated damages will be due. These sums are liquidated damages and shall not be construed as a penalty, and may be deducted from payments due the Contractor if such delay occurs.
- B. The Contractor shall be subject to liquidated damages in the sum of \$300 per day for each and every calendar day's delay in completing the work in excess of the time frame allowed for the contract.

- C. The Contractor shall be subject to liquidated damages in the sum of \$200 per day for each and every calendar days for performing unauthorized work as specified in part 1.1 of this section; and/or for non-compliance and/or violation of construction phasing. This shall include not showing up for a scheduled work period unless notice is received by the City's Project Manager by noon of the day before.
- D. The Contractor shall be subject to liquidated damages in the sum of \$300 per incidence of security breach.
- E. Each location, incident, noncompliance situation and/or violation shall be considered separate occurrences and the resulting payments for damages are cumulative (even if occurred on the same day).

SPECIFICATIONS

Carpet Replacement at Marina Community Center – Titan Auditorium Bid No. 09-10.005

PRODUCT GUIDE SPECIFICATION

Shaw Contract Group's Focus EW24 Modular Carpet SECTION 09681 - CARPET TILE

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 1 Specification Sections, apply to this Section.

1.2 SUMMARY

- A. This section includes the following:
 - 1. Tufted carpet tile.
- B. Related sections:
 - 1. 01350 Special Project Procedures - Carpet Reclamation
 - 2. 01738 Selective Demolition
 - 3. 02222 Building Demolition

1.3 SUBMITTALS

- A. Manufacturer's Data - Submit two (2) copies of manufacturer's specifications and installation instructions for carpet tile and related items specified. Manufacturer shall also submit a plan for recycling the specified carpet tile and related items at the end of useful life of the carpet.
- B. Fiber verification - Certification from the fiber producer verifying use of the branded fiber in the submitted carpet product. Certification should include the % recycled content by

weight for fibers, describing the source of this recycled content. If virgin nylon is used the manufacturer shall include as part of the fiber certification, the precise method that will be used to recapture the nylon at the end of the useful life of the carpet tile. State whether it will be returned to nylon carpet yarn production, down-cycled to an end use other than carpet yarn, or disposed of in a specified manner.

- C. Shop Drawings - Submit shop drawings for areas to be carpeted showing installation of carpeting, seam diagram, pattern direction, necessary installation accessories, and provisions for work of other trades. Show location of different patterns or styles of carpet. Also, show locations of any threshold conditions. If mixed fiber types are used on the areas shown the fiber type must be clearly identified to facilitate future recycling
 - 1. The construction manager will supply reproducible prints on request, to facilitate shop drawing preparation.

- D. Samples - Submit standard size carpet samples of each type of carpet, in each specified pattern, color and construction.
 - 1. Any alternates to specified products) must be submitted for approval by a representative of the end user at least ten (10) working days prior to bid or proposal.
 - 2. Final Sample Submittal - Submit two (2) sets of samples for each carpet type.
 - 3. No carpet shipments are permitted until acceptance of final samples by representative of the end user or architect/design firm, certifying that samples are the approved color, pattern, and texture. No carpet shipments are permitted until the fiber certifications and recycling plans are approved by the end user or architect/design firm.
 - 4. Custom Color Only - Quality color samples shall be signed by a representative of the end user or architect/design firm, certifying that samples are the approved color, pattern, and texture.
 - 5. Samples submitted will be assumed to be the manufacturer's best obtainable match to the carpet described under Materials section.

- E. Maintenance Instructions - Submit to the Construction Manager two (2) copies of the manufacturer's carpet maintenance instructions, including information needed for the removal of common stains from each type of carpet required.

- F. Recycling Instructions - Submit to the Construction Manager two (2) copies of the manufacturer's instructions on post-consumer recycling of the specified carpet tile and related items.
 - 1. A representative from the carpet manufacturer shall meet with the Construction Manager in the presence of a representative of the end user and architect/design firm to review the recommended procedures, prior to occupancy of the finished spaces.

1.4 QUALITY ASSURANCE

- A. Manufacturer - Carpet manufacturer shall have no less than three years of production experience with recyclable carpet tile similar to type specified in this document; and whose published product literature clearly indicates compliance of products with requirements of this section.
 - 1. Single source responsibility - provide product material by a single manufacturer for each recyclable carpet type specified.
 - 2. Commitment to sustainability - carpet manufacturer must practice environmental responsibility through programs of source reduction, recycling, reuse, and conservation.
- B. Trade Contractor - firm with not less than five years of successful carpet tile experience similar to work of this Section and recommended and approved by the carpet manufacturer. Upon request, submit letter from carpet manufacturer stating certification qualifications and acceptance of all environmental requirements.
 - 1. Participant in environmental program including responsible carpet removal, recycling, and installation
- C. Substitutes - Where a selected manufacturer or product has been specified, an equal or superior product may be accepted only upon review and written acceptance by the architect. It is mandatory that such review and approval be obtained prior to bidding, or the substitution will not be considered. All such proposed substitutions shall be submitted to the architect with appropriate manufacturer's specifications, literature, environmental compliance assurance, and independent laboratory testing data. The architect's decision as to whether a product is equal or superior to the one specified shall be final. This section applies to any "or equal" noted in the specification.

1.5 PRODUCT DELIVERY AND STORAGE

- A. Deliver carpeting materials in sealed protective cartons for carpet tile and sealed containers for related materials. Carpet materials shall be bound with secure protective wrapping. Consideration should be given to bulk packaging of carpet tile when delivery is made to the jobsite for immediate installation to reduce packaging waste. Alternative, environmentally friendly, packaging must protect the carpet tile as securely as normal packaging.
- B. Storage and staging area at the site must be coordinated with the Construction Manager.
- C. Provide 3% overage of calculated yardage for each type of carpet (calculated yardage shall include carpet needed for complete installation plus waste and usable scraps).

Waste, unusable scrap, and carpet tile damaged during the life of the carpet tile installation must be recycled through the manufacturer's environmental program by the qualified installer.

 - 1. Deliver specified overrun and usable scraps of packages to owner's designated storage space, properly packaged (boxed) and identified. (Redirect small pieces of waste carpet to be appropriately recycled.)
- D. Materials shall be stored in an enclosed and dry area protected from damage and soiling.

1.6 PRE-INSTALLATION MEETING

- A. The manufacturer shall meet at the project site with representatives of end user, Construction Manager and the Trade Contractor to review the carpet installation procedure and coordination with other trades. The Trade Contractor must have available at this meeting the carpet manufacturer's installation procedures, instructions for the carpet types specified in the various applications required, and recycling procedures outlined in the manufacturer's environmental program.
- B. Store carpet in working areas which have been enclosed and have maintained environmental conditions as those planned for occupancy. Carpet shall be allowed to reach room temperature or minimum temperature recommended by manufacturer before installation.

1.7 WARRANTY

- A. Provide warranties by Carpet Manufacturer and Trade Contractor agreeing to replace defective materials and workmanship of carpet work during one (1) year warranty period following substantial completion. Also, submit carpet manufacturer's warranties as follows:
 - 1. Wear - Surface wear shall not be more than 10% by weight throughout the life of the product.
 - 2. Static - Carpet will maintain static generation at less than 2.5 KV at 70 degrees F, and 20% R.H. throughout the life of the product.
 - 3. No de-lamination throughout the life of the product.
 - 4. No edge ravel throughout the life of the product.
 - 5. No dimensional instability, I.e. shrinkage, curling, and doming which adversely affect the ability of the tile to lay flat throughout the life of the product (per installation instructions). See Aachen test.
 - 6. Environmental warranty for recycling.
- B. Submit manufacturer's certified independent test results to show that carpet meets or exceeds product performance specification criteria for carpet testing requirements (i.e. see section 2.3 flame, smoke, Aachen test, etc.).
- C. Lifetime Commercial Limited Warranty (Owner's Option) - Owner will be completely satisfied with the performance of the carpet product when installed in accordance with the manufacturer's current installation specifications and is maintained in accordance with the current carpet care recommendations and such maintenance continues throughout the duration of the original installation when owned and maintained by the original end user. Further, owner will be satisfied with the recycling of the product at the end of its useful life as outlined in the manufacturer's environmental program.

PART 2 - PRODUCTS

2.1 MANUFACTURER - CT-1

- A. Subject to the minimum requirements listed above and below, provide carpeting as specified.
 - 1. Colors and patterns of carpet shall match samples.
 - 2. A preference will be given to manufacturers recycling 100% of the reclaimed carpet tile back into carpet tile with recycled content.
 - 3. The product must be capable of disassembly with nylon returned to nylon carpet yarn production and the backing returned to carpet backing production
 - 4. The product must meet the guidelines of Presidential Executive Order 13101 and meet the spirit of section 6002 of the Resource and Recovery Act (RCRA).

2.2 CARPET TILE

- A. Package Marking - Mark each carpet package according to style, color, pattern, dye lot, run number and quantity. Within each continuous carpet area, install carpet from same dye lot and run.
- B. Carpet Construction Specification - All yarn and carpet shall be manufacturer's first quality and 100% recyclable or down-cyclable.

2.3 Carpet shall meet the following performance standards:

A.	Carpet flammability	
	1. Pill Test (ASTM D2859 or CPSC FF-1-70):	Passes
	2. Radiant Panel Test (ASTM E648):	> .45 watts/cm2, Class I
B.	Smoke Density (ASTM E662):	< 450 Flaming Mode
C.	Dimensional Stability (Aachen Method DIN 54318):	< 0.1% change
D.	Static Generation at 700 F. (AATCC 134 w/neolite):	< 2.5 KV at 20% R.H.
E.	Lightfastness (AATCC 16E):	4.0 after 60 hours
F.	Crocking (AATCC 165):	4.0 wet, dry
G.	Cold Water Bleed (AATCC 107):	4.0
H.	Sublimation (AATCC 117):	4.0
I.	Gas Fade (AATCC 23):	4.0
J.	Ozone Fade (AATCC 109):	4.0
K.	Antimicrobial (AATCC 174, part II):	> 95.0% reduction

L.	Fungicidal (AATCC 174, part III):	No growth
M.	Soil/Stain Protection (AATCC 175-1991):	> 8.0 on the Red 40 Stain Scale
N.	Appearance Retention Rating (ASTM D-5252 or ASTM D-5417):	Heavy use classification
O.	CRI Green Label Air Quality Certification	Passes

2.4 PRODUCT SPECIFICATIONS

A.	Product (100% recyclable)	Focus EW24
B.	Construction Type	Multilevel Pattern Loop
C.	Face Fiber	100% EcoSolution Q BCF SD nylon Type 6
D.	Yarn Treatment	Shaw Soil Protection
E.	Gauge	1/12
F.	Stitches	9
G.	Pile Density (UM 44D)	4,896 oz/yd ³
H.	Weight Density	
I.	Yarn Weight	17 oz/yd ²
J.	Pile Thickness (ASTM D-418)	.125 in.
K.	Backing Structure	67.9 oz/yd ² EcoWorx polyolefin recyclable composite.
L.	Total Weight	94.5 oz/yd ²
M.	Total Thickness	.268 in.
N.	Size	24 in. x 24 in.
O.	Base Color Method	88% solution dyed/12% space dyed
P.	Antimicrobial	Florsept Antimicrobial

(Inhibits fungi, gram positive and gram negative bacteria)

2.5 MINIMUM CONSTRUCTION STANDARDS IN ADDITION TO PRODUCT SPECIFICATIONS

- A. Nylon Specification - All nylon fiber shall be branded nylon containing post-consumer recycled content.
- B. Carpet average density shall be 6000 minimum. Average pile thickness as determined by ASTM D418.
- C. Appearance Retention Rating (see product specifications)
- D. Antimicrobial with broad spectrum efficacy against bacteria and fungus for the life of the product (see product specification). Minimizes likelihood of Building Related Illness, Sick Building Syndrome, and assists in improving Indoor Air Quality.
- E. Carpet tile backing shall be 100% recyclable.

2.6 RELATED CARPET MATERIALS

- A. Leveling Compound - Latex type as recommended by carpet manufacturer and is compatible with carpet adhesive and curing/sealing compound on concrete.
- B. Releasable pressure sensitive type adhesive - Use the following as recommended by the carpet manufacturer which will allow removal of carpet at any time without damage or adherence to carpet: N5000 low VOC (no solvents) carpet tile adhesive.
- C. Multi-purpose Adhesive - Provide the following adhesive as recommended by carpet manufacturer for direct glue-down of carpet on steps.
- D. Carpet Edge Guard, Nonmetallic - Extruded or molded heavy duty vinyl or rubber carpet edge guard of size and profile indicated and with minimum 2 inch wide anchorage flange; colors selected by architect/designer from among standard colors available within the industry.
- E. Miscellaneous Materials - As recommended by manufacturer of carpet, cushion and other carpeting products and selected by Trade Contractor to meet project circumstance and requirements.

PART 3 - EXECUTION

3.1 PRE-INSTALLATION REQUIREMENTS AND PREPARATORY WORK

- A. The Trade Contractor shall measure carefully and check all dimensions and other conditions in the field to insure proper fit in the areas designated. Trade Contractor shall be totally responsible for the accuracy of his measurements on total yardage requirements, individual floor yardage requirements and dye lot yardage requirements. No request for carpet or installation extras from the owner will be considered due to measurement or takeoff errors by the Trade Contractor. The Trade Contractor shall confirm total yardage required, including 3% attic stock along with bid.

- B. The Trade Contractor shall coordinate all installation activities with the Construction Manager.
- C. Removal of carpet to be replaced (if applicable) should be handled according to preapproved plan for reuse and/or recycling.
- D. Sequence carpeting with other work so as to minimize possibility of damage and soiling of carpet during remainder of construction period. Carpet installation must not commence until painting and finishing work is complete and ceiling and other overhead work has been tested, approved and completed, unless specifically approved by owner's Project Manager, in writing.
- E. Trade Contractor and manufacturer's representative must examine substrates for conditions over which carpeting is to be installed.
 1. New concrete shall be allowed to cure for ninety (90) days before carpet installation.
 2. Trade Contractor shall perform moisture content testing as required in manufacturer's instructions to ensure pH readings of no more than 9. Moisture transmission of 5.5 pounds per sqm per 24 hours is acceptable. If values exceed this level manufacturer's recommendations must be followed for moisture transmission mitigation. Do not proceed until unsatisfactory conditions are corrected.
 3. Cracks 1/16 inch or more, holes, unevenness and roughness must be filled, leveled and made smooth with a compatible latex floor patching compound. Prior to filling, the floor must be swept clean of all loose granular debris. After filling, allow filler to dry. Then damp mop the floor with warm water and allow to dry. Vacuum after mopping, to ensure all loose granular debris is removed and provide a proper substrate to install carpet.
- F. All surfaces to receive carpet shall be clean and dry, and in a condition satisfactory to the Trade Contractor. Trade Contractor shall notify Construction Manager in writing of any conditions which will prevent him from producing satisfactory finish work after above specified preparatory work is completed.
- G. Trade Contractor shall vacuum floors again immediately before installation of carpeting.
- H. Confirm compatibility of adhesive with curing compounds on concrete floors. All adhesives and curing compounds shall comply with the CRI Green Label Certification program for low VOC's.
- I. Environmental Conditions - Areas to be carpeted must be pre-heated at a minimum of 68° F. for 72 hours prior to installation with the relative humidity not more than 65%. A minimum temperature of 50° F. shall be maintained thereafter. Carpet and adhesive must be stored at a minimum temperature of 68° F. for 72 hours prior to installation.
- J. Once the Trade Contractor commences installation work under this contract, it shall be assumed that the condition of the floor has been accepted and any repairs or further corrections in the floor surface shall become the responsibility of the Trade Contractor.

3.2 INSTALLATION

- A. General

1. Comply with manufacturer's instructions and recommendations for uniformity of direction of carpet installation.
2. Install carpet under open-bottom obstructions and under removable flanges and furnishings, and into alcoves and closets of each space.
3. Provide cut outs where required. Conceal cut edges with protective edge guards or overlapping flanges.
4. Run carpet under open-bottom items such as heating convectors and install tight against walls, columns and cabinets so that the entire floor area is covered with carpet. Cover over all floor type door closures.
5. Install edging guard at all openings and doors wherever carpet terminates, unless indicated otherwise. Prior to installation, report to the Construction Manager all other obstructions which may occur.
6. Cutting shall be done in accordance with the manufacturer's recommendation, using the tools designed for the carpet being installed. Scraps shall be retained or disposed of per the manufacturer's environmental program.
7. Edges shall be butted together with the proper pressure to produce the tightest joint possible without distortion.
8. All carpet shall be installed with pile-lay in the same direction except when directed to use a quarter turned method as specified in the drawings.
9. Use leveling compound where necessary. Any floor filling or leveling shall have a minimum of 4'0" of feather.
10. Expansion joints - Do not bridge building expansion joints with continuous carpeting. Provide for movements.

B. Installation

1. Install carpet according to carpet manufacturer's printed instructions.
2. Measuring - Divide the room into four quadrants and snap a chalk line. Make sure quadrants meet at right angles (offset the center line, if necessary, to ensure that perimeter tiles will be cut no less than half size (9 inches).
3. Apply environmentally approved adhesive as per instructions in the area to be carpeted first.
4. Note carefully if the product is designed to be installed "quarter turned" only. Arrows should point in the same direction every other tile and diagonally. Arrows on alternating tiles should be turned 90⁰ in either direction, consistently.
5. Begin installing by laying an anchor row of tiles on one side of the center chalk line. Ensure straight lines and square corners. Repeat anchor rows in each quadrant, extending out from center. Fill in each quadrant with tiles using a stair step technique.

6. Tip individual tiles into place to avoid catching pile in the joint. Frequently check tile joints for proper alignment and firm abutment.
7. Although tiles are nominally 18 inches by 18 inches square, there will be slight gain due to joints. To check, measure 11 installed tiles from edge to edge, spanning 10 joints. This measurement should be no greater than 198 and 1/8 inches for tufted product. If more gain is measured, tiles are not butted tightly enough. Reposition and check again. Use this method to continually check for excessive gain. See manufacturer's instructions for 24" x 24" Ecoworx tiles.
8. Fixtures, architectural elements, and perimeters will require tile cutting. Cut tiles from the back. Secure cut or partial tiles with adhesive.
9. Electrical floor outlets are usually wired after tile installation. Install tile over electrical boxes and mark locations with a piece of tape. Tiles can be lifted for cut-outs later.
10. Center trench headers directly under a full tile row.
11. In open perimeter designs, use a fixed reducer strip to secure the tile area.
12. Use an environmentally acceptable permanent adhesive for tiles installed on stairs. Compatible edge trim and nosing products may also be required.

3.3 CLEANING AND PROTECTION

- A. On completion of the installation in each area, all dirt, carpet scraps, etc., must be removed from the surface of the carpet. Any soiling spots or excessive adhesive on the carpet shall be removed with the proper spot remover. (See Section 1.3.7)
- B. Construction traffic other than as may be required to fit up specific carpeted area will not be allowed to traverse the completed work.
- C. Remove debris, and sort pieces to be saved from scraps to be redirected and recycled.
- D. Protect carpeting against damage during construction. Cover with 6-mil thick polyethylene covering with taped joints during the construction period, wherever protection is required, so that carpet will be without any indication of deterioration, wear, or damage at the time of acceptance. Damaged carpeting will be rejected and recycled. As the carpet is laid, remove all trimmings, excess pieces of carpet and laying materials.
- E. At the completion of the work and when directed by the Construction Manager, vacuum carpet using commercial dual motor vacuum of type recommended by carpet manufacturer. Remove spots and replace carpet where spots cannot be removed. Remove rejected carpeting and replace with new carpeting. Remove any protruding yarns with shears or sharp scissors.
- F. Protection of carpeting shall be maintained on each floor or area until accepted.

3.4 INSPECTION

- A. Preliminary Acceptance - Upon completion of the carpet installation of each floor, it shall be inspected by Owner, the Construction Manager and Trade Contractor.
- B. Upon completion of the installation, verify that work is complete, properly installed and acceptable. Remove and replace all work not found acceptable to the owner at the installer's expense.
- C. Upon completion of the installation the manufacturer shall deliver a certificate of recycling describing the method by which the uplifted carpet was recycled (see Section 01350 Special Project Procedures- Carpet Reclamation), and shall provide a promise of recycling specifying the method of recycling of the newly installed carpet tile at the end of its useful life.

END OF SECTION 09681

General Disclaimer

Every effort has been made to ensure that the information contained within this specification is accurate. Data may appear to conflict or to be incomplete where examples were used to illustrate alternatives to make the specification more or less proprietary. The user should review the individual specification sections and use his or her discretion in writing an active specification. Shaw Contract makes no representations concerning suitability or fitness for use of these specifications and expressly disclaims any and all warranties, express or implied, including without limitation warranties of fitness for a particular purpose.

**NON-PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND**

[NAME OF CONTRACTOR]

THIS AGREEMENT for non-professional services is made by and between the City of San Leandro ("City") and _____ ("Contractor") (together referred to as the "Parties") as of _____, 20__ (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the services described in the Scope of Work attached as Exhibit A, and incorporated herein, at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on _____, the date of completion specified in Exhibit A, and Contractor shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Contractor to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 8.
- 1.2 **Standard of Performance.** Contractor shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the industry in which Contractor is engaged.
- 1.3 **Assignment of Personnel.** Contractor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Contractor shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.2 above and to satisfy Contractor's obligations hereunder.

1.5 Reserved

1.6 City of San Leandro Living Wage Rates. This contract may be covered by the City of San Leandro Living Wage Ordinance (LWO). Contractor's attention is directed to the City's Municipal Code, Title 1, Article 6, Chapter 6. Contractor must submit completed self-certification form and comply with the LWO, if covered.

Section 2. COMPENSATION. City hereby agrees to pay Contractor a sum not to exceed _____, notwithstanding any contrary indications that may be contained in Contractor's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Contractor's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Contractor for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Contractor for services rendered pursuant to this Agreement. Contractor shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Contractor shall not bill City for duplicate services performed by more than one person.

Contractor and City acknowledge and agree that compensation paid by City to Contractor under this Agreement is based upon Contractor's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Contractor. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Contractor and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Contractor shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Contractor and each employee, agent, and subcontractor of Contractor performing services hereunder;

- The Contractor's signature;
- Contractor shall give separate notice to the City when the total number of hours worked by Contractor and any individual employee, agent, or subcontractor of Contractor reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Contractor and City. Such notice shall include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between Contractor and City, if applicable.

2.2 **Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Contractor.

2.3 **Reserved.**

2.4 **Total Payment.** City shall pay for the services to be rendered by Contractor pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Contractor in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Contractor submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

2.5 **Reserved**

2.6 **Reimbursable Expenses.** Reimbursable expenses shall not exceed \$. Expenses not previously approved by the City are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

2.7 **Payment of Taxes.** Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

- 2.8 **Payment upon Termination.** In the event that the City or Contractor terminates this Agreement pursuant to Section 8, the City shall compensate the Contractor for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Contractor shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.9 **Authorization to Perform Services.** The Contractor is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Contractor shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City may, in its discretion, provide Contractor facilities and equipment that may be necessary, but only after City is satisfied that Contractor and its individual employees are trained to use such facilities or equipment safely and properly.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Contractor, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Contractor and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Contractor shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Contractor shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Contractor's bid. Contractor shall not allow any subcontractor to commence work on any subcontract until Contractor has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Contractor shall maintain all required insurance listed herein for the duration of this Agreement.

- 4.1 **Workers' Compensation.** Contractor shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000.00 per accident. In the alternative, Contractor may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Contractor, if a program of self-insurance is provided, shall waive all

rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.2 **Commercial General and Automobile Liability Insurance.**

4.2.1 **General requirements.** Contractor, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$1,000,000.00 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles. If no owned or non-owned automobiles will be used under this Agreement, Contractor shall provide a statement that provides under penalty of perjury that no owned or non-owned automobiles will be used in the performance of this Agreement.

4.2.2 **Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 **Additional requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an occurrence basis, and not on a claims-made basis.
- b. City, its officers, officials, employees, and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or

on behalf of the Contractor; or automobiles owned, leased, hired, or borrowed by the Contractor

- c. For any claims related to this Agreement or the work hereunder, the Contractor's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

- d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.

4.3 **Reserved**

4.4 **All Policies Requirements.**

4.4.1 **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Contractor shall furnish City with complete copies of all policies delivered to Contractor by the insurer, including complete copies of all endorsements attached to those policies. All copies of policies and endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Contractor beginning work, it shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.

4.4.3 **Deductibles and Self-Insured Retentions.** Contractor shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Contractor

shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4.4.4 **Reserved**

4.4.5 **Waiver of Subrogation.** Contractor hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Contractor agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Contractor, its employees, agents, and subcontractors.

4.4.6 **Subcontractors.** Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.5 **Remedies.** In addition to any other remedies City may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Contractor's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Contractor to stop work under this Agreement or withhold any payment that becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

Contractor shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Contractor's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of City.

The Contractor's obligation to defend and indemnify shall not be excused because of the Contractor's inability to evaluate Liability or because the Contractor evaluates Liability and determines that the Contractor is not liable to the claimant. The Contractor must respond within 30 days, to the tender of any claim for defense and indemnity by the City, unless this time has been extended by the City. If the Contractor fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Contractor under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Contractor accepts or rejects the tender of defense, whichever occurs first.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. **STATUS OF CONTRACTOR.**

- 6.1** **Independent Contractor.** At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee of City. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3; however, otherwise City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

- 6.2 **Contractor Not an Agent.** Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Contractor and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Contractor and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Contractor represents and warrants to City that Contractor and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Contractor shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services

that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby.

Contractor shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

8.1 **Termination.** City may cancel this Agreement at any time and without cause upon written notification to Contractor.

Contractor may cancel this Agreement upon 30 days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Contractor shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Contractor delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Contractor or prepared by or for Contractor or the City in connection with this Agreement.

8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Contractor understands and agrees that, if City grants such an extension, City shall have no obligation to provide Contractor with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Contractor for any otherwise reimbursable expenses incurred during the extension period.

8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

8.4 **Assignment and Subcontracting.** City and Contractor recognize and agree that this Agreement contemplates personal performance by Contractor and is based upon a determination of

Contractor's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Contractor shall survive the termination of this Agreement.

8.6 **Options upon Breach by Contractor.** If Contractor materially breaches any of the terms of this Agreement, City's remedies shall included, but not be limited to, the following:

8.6.1 Immediately terminate the Agreement;

8.6.2 Reserved;

8.6.3 Retain a different Contractor to complete the work described in Exhibit A not finished by Contractor; or

8.6.4 Charge Contractor the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Contractor pursuant to Section 2 if Contractor had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 **Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property

of the City. Contractor hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Contractor agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

9.2 **Contractor's Books and Records.** Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Contractor to this Agreement.

9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.

- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Reserved.**
- 10.7 **Conflict of Interest.** Contractor may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Contractor shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Contractor hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Contractor was an employee, agent, appointee, or official of the City in the previous twelve months, Contractor warrants that it did not participate in any manner in the forming of this Agreement. Contractor understands that, if this Agreement is made in violation of Government Code § 1090 *et seq.*, the entire Agreement is void and Contractor will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Contractor will be required to reimburse the City for any sums paid to the Contractor. Contractor understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

10.8 **Solicitation.** Contractor agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 **Contract Administration.** This Agreement shall be administered by Ron May and Don Brockman ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 **Notices.** Any written notice to Contractor shall be sent to:

Any written notice to City shall be sent to:

10.11 **Reserved**

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10.12 **Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A represents the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.

Exhibit A Scope of Services

10.13 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

[SIGNATURES ON FOLLOWING PAGE]

The Parties have executed this Agreement as of the Effective Date.

CITY OF SAN LEANDRO

CONTRACTOR

Approved as to Form:

Name and Title

Jayne W. Williams, City Attorney

Don Brockman, Purchasing Agent

1234123.1

EXHIBIT A

SCOPE OF SERVICES