

City of San Leandro
Civic Center, 835 E. 14th Street
San Leandro, California 94577



**14901 EAST 14TH STREET REMEDIATION
PROJECT NO. 11-962-39-022**

ADDENDUM NO. 3

August 22, 2011

TO: All Prospective Bidders

The additions and/or deletions contained in this Addendum shall be made a part of the plans and specifications and contract documents for the above described project, and shall be subject to all applicable requirements thereunder, as if originally shown and/or specified.

THE CONTRACT BOOK SHALL BE REVISED AS FOLLOWS:

SPECIFICATIONS

Item 3.01 **SECTION 7 – RESPONSIBILITIES OF THE CONTRACTOR** – Replace 7-3 **LIABILITY INSURANCE** beginning on page 68 with the following:

7-3 LIABILITY INSURANCE Section 7-3, “Liability Insurance”, of the Standard Specifications is revised to read as follows:

1. INSURANCE REQUIREMENTS Before beginning any work under this Agreement, Contractor, at its own 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 here under 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 for 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 require insurance listed herein for the duration of this Agreement.

A. 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 within 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

Stephen H. Cassidy, Mayor

City Council:

Pauline Russo Cutter
Ursula Reed

Michael J. Gregory
Diana M. Souza

Jim Prola
Joyce R. Starosciak



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.

B. Commercial General and Automobile Liability Insurance.

- 1) **General Requirements:** Contractor, at its own expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than **\$1,000,000.00** per occurrence and automobile liability insurance for the term of this Agreement in an amount not less than **\$1,000,000.00** per occurrence. 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.
- 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.
- 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 an occurrence or on 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 coverage 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.

The Contractor shall obtain from the insurer a waiver of subrogation endorsement for losses caused by fire or other perils to the extent covered by this insurance. Contractor shall pay an extra premium required therefor.

C. Builders Risk Insurance. **Not Required**

D. Environmental Insurance.

- 1) **General Requirements.** Contractor shall purchase and maintain liability insurance with coverage, as further specified below, for losses and arising from or in any way related to pollution conditions, both sudden and non-sudden (gradual), which arise from or in connection with the Contractor’s transportation services and any disposal facilities used in connection with the underlying Agreement. The required insurance coverage shall be endorsed to cover Non-Owned Disposal Sites. The Contractor’s insurance shall include:
 - a. Pollution Legal Liability; and.

- b. Environmental Transportation Liability insurance; provided, however, if the Contractor does not maintain a separate policy evidencing pollution liability coverage in relation to the Contractor's transportation services, then the Contractor's automobile liability insurance policy must be endorsed so as to satisfy the minimum scope of coverage related to the Contractor's transportation services as set for in this Addendum.
- 2) Limits: The Policies shall contain minimum liability limits of:
 - a. Pollution Legal Liability - \$1,000,000 per loss and \$1,000,000 in the aggregate.
 - b. Environmental Transportation Liability - \$1,000,000 per loss and \$1,000,000 in the aggregate.
 - 3) Form and Duration: Continuous coverage under the Policies shall be maintained until final completion or termination of the Project, in accordance with the underlying Agreement. If written on a claims made basis, continuous coverage under the Policies shall be maintained for a minimum of one year beyond final completion or termination of the Project, in accordance with the underlying Agreement.

E. All Policies and Requirements.

- 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.
- 2) Verification of Coverage: Prior to beginning any work under this Agreement, Contractor shall furnish City with complete and legible copies of insurance evidencing all policies delivered to Contractor by the insurer, including complete copies of all endorsements attached to those policies. All copies of certificates of insurance 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 certificates 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 and endorsements at any time.
- 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) Wasting Policies: No policy required by Section 7.3 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).
- 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.

- 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.

- F. 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 become 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.

G. Subcontractor. Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

2. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES: Contractor shall take all responsibility for the work, shall bear all losses and damages directly or indirectly resulting to Contractor, to any subcontractor, to the City, to City officer and employees, or to parties designated by the City on account of the performance or character of the work, unforeseen difficulties, accidents, occurrences, or other causes predicated on active or passive negligence, or the willful misconduct, of the Contractor or of any subcontractor. Contractor shall indemnify, defend, and hold harmless the City, its officers, officials, directors, employees, and agents from and against any or all loss, liability, expense, claim, costs (including costs of defense), suits, and damages of every kind, nature and description directly or indirectly arising from the performance of the work. This paragraph shall not be construed to exempt the City, its employees, and officers from its own fraud, willful injury or sole active negligence. By execution of this agreement, Contractor acknowledges and agrees that Contractors has read and understands the provisions hereof and that this paragraph is a material element of consideration.

Approval of the insurance contracts does not relieve the Contractor or subcontractors from liability under this paragraph.

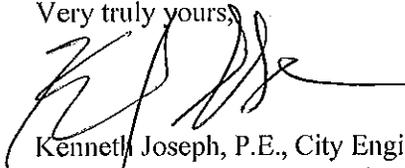
A. Responsibility for Damage. The Contractor is solely responsible to protect the work, including site security, until project acceptance. The Contractor shall have the charge and care of the work, including materials, whether incorporated into the work or not, and shall bear the risk of injury, loss or damage to any part thereof by the action of the elements, vandalism, theft or any other cause, whether arising from the execution or from the non-execution of the work. The City of San Leandro and all officers and employees thereof connected with the work, including but not limited to the Engineer, shall not be answerable or accountable in any manner for any loss or damage that may happen to the Work or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Work; for injury or death of any person, either worker or public; or for damage to the Work or any property from any cause that might have been prevented by the Contractor, Contractor's workers, or anyone employed by the Contractor.

B. Contractor. In the event damage or injury to persons or property are suffered by a third party (i.e. not City employees, contractors, consultants, subcontractors, volunteers or Contractor's employees, consultants, subcontractors, or invitees) and such third party contacts the City for recovery or restitution for damages, City shall forward such party and all information received from them to Contractor for response. Contractor shall receive such information, and respond to the injured party within 7 calendar days, with a copy of the response to City, which could include but is not limited to including, any settlement, compromise or response plan formulated. If the matter remains unresolved, such that City representatives are contacted by the same aggrieved party, or if Contractor shall have rejected the damage claims, then City shall take all reasonable steps to respond to the claim, which may include tendering the damage claim to Contractor pursuant to the Contractor's indemnity clause. Failure of Contractor to be responsive to third party damage claims under this provision may be grounds for breach of contract, wherein remedies of such breach may include but are not limited to withholding of progress payments.

- C. Failure to Maintain Insurance. During the term of this agreement and until final completion and acceptance of the work by the City, the Contractor shall maintain in full force and effect insurance coverage in the forms and amounts specified in the Contract and any Special Provisions. If at any time during the performance of this contract, Contractor fails to maintain any item of required insurance in full force and effect, Contractor shall immediately discontinue all work under the contract and the City will withhold all contract payments due or that become due until notice is received by City that such insurance has been restored in full force and effect and that the premiums therefore have been paid for a period satisfactory to the City. Any delay to the work or the project shall be borne by and attributable to the Contractor and its failure to maintain or adhere to these insurance requirements.
- D. PERS Benefits. 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 the City.

Acknowledge this addendum and include a signed copy of the Acknowledgement Form in your Proposal. If you have any questions, please call the Project Engineer, Nelson Lam, at (510)577-3375.

Very truly yours,



Kenneth Joseph, P.E., City Engineer
Engineering and Transportation Department
kjoseph@sanleandro.org
www.sanleandro.org

KJ:tar

ACKNOWLEDGEMENT ADDENDUM NO. 3

(Include a signed copy of this form in your proposal)

I hereby acknowledge receipt of this Addendum for the above noted project.

Date: _____

(Signature)

(Business Name – Please Print)

cc: Internal Plans & Specs Distribution List
COSL Current Plan-holders