

REQUEST FOR PROPOSALS

FOR

AQUATIC FACILITY INSPECTION AND AUDITING



CITY OF SAN RAMON
PARKS AND COMMUNITY SERVICES DEPARTMENT

Issued: April 1, 2024

Proposal Deadline: May 2, 2024 at 2:00 p.m.

TO

**City of San Ramon
7000 Bollinger Canyon Road
San Ramon, CA 94583**

ATTN: City Clerk

**CITY OF SAN RAMON
REQUEST FOR PROPOSALS**

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CITY OF SAN RAMON
REQUEST FOR PROPOSALS

The City of San Ramon (“**City**”) requests proposals (“**Proposals**”) from qualified individuals or firms (individually, a “**Respondent**” and collectively, “**Respondents**”) for Aquatic Facility Inspection and Auditing services .

1. ABOUT THE CITY AND POOLS

The City of San Ramon was incorporated in 1983 as a Charter City, located in the San Ramon Valley of Contra Costa County, approximately 35 miles east of the City of San Francisco in the San Francisco Bay Area. The San Ramon Valley has long been considered one of the most desirable living areas in the Bay Area because of its scenic beauty, suburban charms, excellent school systems, and proximity to major employment centers. The City occupies a land area of 18.56 square miles and is surrounded by the communities of Danville and Dublin, as well as the unincorporated lands in both the Alameda and Contra Costa Counties.

The City operates under a Council-Manager form of government with over 250 employees, serving a population of approximately 81,344. Additional information about the City is available online at www.sanramon.ca.gov.

The City of San Ramon operates two year-round aquatic facilities. Both facilities are utilized for a variety of competitive and recreational programs.

The San Ramon Olympic Pool was built in 1975 on the campus of California High School. Since February 1998, it has been maintained and operated by the City of San Ramon Parks and Community Services Department as designated in a joint use agreement with the San Ramon Valley Unified School District. The facility currently consists of a 50-meter pool with 1 meter and 3 meter diving boards; an 8-lane 25 yard pool and a zero depth activity pool with a play structure. The facility also includes staff offices and locker rooms.

In 2007, the City opened its second aquatic facility, the Dougherty Valley Aquatic Center, on the Dougherty Valley High School campus. The facility includes a 50-meter pool ranging in depth from three and a half to 14 feet deep with 1 meter and 3 meter diving boards and a zero depth interactive activity pool with an area for teaching lessons. The facility also includes staff offices and locker rooms.

Both aquatic facilities are on School District property and are part of a Master Use Agreement between the City of San Ramon and the San Ramon Valley Unified School District. The aquatic programs serve over 60,000 recreation and lap swim participants from May through September, over 16,000 lap swim participants from October through April, and offers more than 10,000 swim lessons per year based on program registrations and point of sale transactions. The aquatic facilities are used by many user-groups such as two high school Athletic Departments, youth recreational and US Swimming swim teams, a Master’s swim team, a competitive diving program, water exercise classes, triathlon training programs, City run aquatics camps and classes, and SCUBA classes.

2. THE SERVICES

A. Summary. The City requires Aquatic Facility Inspection and Auditing (“**Services**”) to perform five (5) Lifeguard / Facility Operation Safety Audits and one (1) Facility & Maintenance Inspection that includes a Lifeguard / Facility Operational Safety Audit per facility, on a mutually

agreed upon schedule with the Aquatics Supervisor, each year. Once a time period to conduct audits is agreed upon, the selected Proposer will make unannounced visits to the sites. The City desires an initial three (3) year contract with the option to renew for one (1) subsequent 2-year term.

B. Form of Agreement. A copy of the City’s standard Professional Services Agreement (“**Agreement**”) is attached hereto as **Attachment A** and incorporated herein. By submitting a Proposal, the Respondent agrees to enter into the Agreement using the attached form with no exceptions to the form of the Agreement, unless addressed in the Requests for Information deadline below.

C. Scope of Services. The required Scope of Services is attached hereto as **Attachment B** and incorporated herein. By submitting a Proposal, the Respondent represents that it is fully qualified and available to provide the Services set forth in the Scope of Services, at the price set forth in its Proposal, and that it agrees to provide those Services if it is awarded the Agreement, which will attach and incorporate the Scope of Services.

3. REQUEST FOR PROPOSAL PROCEDURES

A. Requests for Information. Questions or objections relating to the RFP, Agreement, the attachments hereto, the RFP procedures, or the required Services may only be submitted via email to Mae Mlyniec, Administrative Analyst at mmlynec@sanramon.ca.gov by 4:00 p.m., April 25, 2024 (the “**Request for Information Deadline**”). Any questions or objections that are not submitted in the manner specified and by the Request for Information Deadline will be deemed waived. City will not be bound by the oral representations of any City official, employee, or representative.

B. Pre-Submittal Meeting. A Pre-Submittal Meeting will not be held.

C. Submittal Instructions. Proposals must be **received** by the City by or before May 2, 2024 at 2:00 p.m. (“**Proposal Deadline**”). Respondent must submit one original and three (3) identical copies of the Proposal in a sealed envelope labeled with Respondent’s name and return address, marked “Proposal for Aquatic Facility Inspection and Auditing,” and addressed as follows:

City of San Ramon
ATTN: City Clerk
 7000 Bollinger Canyon Road
 San Ramon, CA 94583

The Proposal may be hand-delivered, sent via overnight delivery, or by regular mail, provided that it is received by the City no later than the Proposal Deadline. Late submissions will be disregarded.

D. Planned RFP Schedule. The following schedule is provided for planning purposes based on current information. However, all dates are subject to revision, including the Proposal Deadline, and may be amended by addenda to this RFP:

ACTIVITY	PLANNED DATES/TIME
RFP Issued	Monday, April 1, 2024
Request for Information Deadline	Thursday, April 25, 2024 by 4:00 p.m.
Proposal Deadline	Thursday, May 2, 2024 by 2:00 p.m.
Interviews (if requested by City)	Wednesday, May 8, 2024
Notice of Selection	Thursday, May 9, 2024

E. Addenda. City reserves the right to issue addenda to modify the terms and conditions of this RFP, including modifications to the Proposal Deadline or to the Attachments to this RFP. Addenda will be posted on the City’s website at www.sanramon.ca.gov/our_city/bids_rfp. Each Respondent is solely responsible for checking the City’s website for addenda, and for reviewing all addenda before submitting its Proposal.

4. PROPOSAL REQUIREMENTS

Each Proposal must be submitted in compliance with the requirements of this RFP. Each Proposal must respond to the items listed below. *Clarity and brevity are preferable to volume.* Do not attach brochures or promotional materials to the Proposal. Proposals should not exceed **15** one-sided pages, excluding any tabs or dividers. However, resumes may be included in an appendix and not counted in the total page count. By submitting a Proposal, the Respondent agrees that the lump sum price and proposed approach to providing the Services, including staffing, constitute a firm offer to enter into the Agreement with the City, and that the offer will remain open for 60 days following the Proposal Deadline.

- A. Cover Letter.** Provide a brief cover letter that includes all the following information:
- (1) Respondent’s name, address, phone number, and website address;
 - (2) Type of organization (e.g. corporation, partnership, etc.);
 - (3) A summary of general information about Respondent and the types of services it provides in relation to the Services required by the City;
 - (4) Contact information, including name, title, address, phone number, and email, of Respondent’s primary representative for purposes of this RFP;
- INCLUDE THE STATEMENTS BELOW:**
- (5) Respondent agrees that it has confirmed receipt of or access to, and reviewed, all addenda issued for this RFP. Respondent waives any claims it might have against the City based on its failure to receive, access, or review any addenda for any reason. Respondent specifically acknowledges receipt of the following addenda(s):

Addendum:	Date Received:
# 01	_____
# 02	_____
; and	

(6) Respondent has read and understood they must obtain a San Ramon Business License, if applicable, the insurance requirements outlined in **Attachment A** and hereby affirms (1) the cost of providing such license and insurance have been incorporated in the Respondent’s Proposal, and (2) Respondent will be able to obtain the required insurance coverage if awarded the Agreement.

The cover letter must be signed by a representative that is authorized to bind Respondent by Agreement and must state name, title, and email address.

B. General Qualifications. Provide a brief description of the Respondent’s business, including the number of years in business under the current name. Describe the size of the business, including total number of employees and offices, and identify and briefly describe each local office that will be involved in providing the Services if awarded the Agreement. Describe how and why Respondent is qualified to provide the Services.

C. Experience. Identify services Respondent has provided in the last five (5) years that are similar in scope and nature to the Services required by this RFP, particularly with respect to services provided to other cities or public agencies. For each example, provide (1) a brief description of the services provided, (2) an explanation of why this experience is relevant to the required Services, and (3) the name and address of the contracting agency, including contact information for a reference check (name, title, phone number, and email address).

D. Staffing. Identify by name and title Respondent's key personnel that will be assigned to provide the Services and for each, include a resume with their education, training, and experience. Identify by name, address, and website, each subconsultant or subcontractor, if any, that will be involved with providing the Services, including the proposed role for each such subconsultant or subcontractor. Include all applicable license numbers for any license required to perform the Services.

E. Price. Provide a lump sum price, and if necessary, a pricing schedule, for the Services that is fully inclusive of all costs to provide the Services, including hourly billing rates, all labor, materials, equipment, supplies, the insurance required under the terms of the Agreement, travel fees, etc. Attach a copy of billing rates that would apply to any authorized additional Services.

F. Proposed Approach. Briefly describe Respondent's proposed approach to providing the Services and how that approach will offer value to the City. Identify any proposed innovations that may be used to achieve more cost-effective delivery of the Services. Provide a work plan and proposed schedule for the tasks described in the Scope of Services.

5. EVALUATION

The factors that the City will consider in evaluating Proposals are as follows:

- General qualifications 1-15 points
- Relevant experience 1-15 points
- Proposed staffing 1-15 points
- Pricing 1-15 points
- Proposed approach 1-10 points
- References 1-10 points
- Interview (if requested) 1-10 points

6. SELECTION AND AWARD

A. Review. Proposals will be reviewed for responsiveness and evaluated and ranked based on the factors listed in Section 5, above. When the evaluation is complete, the Proposals will be ranked based on total scores to identify the Proposal that is the most advantageous to the City. Acting in its sole discretion, the City may elect to conduct interviews with shortlisted Respondents.

B. Award. The City will award the Agreement, if at all, to the Respondent that is determined by the City, acting in its sole discretion, to offer the most advantageous Proposal to the City based on the City's review, as outlined above. City staff will submit its recommendation to the City Council or the awarding officer, as applicable, for award of the Agreement to the Respondent that it determines to offer the most advantageous Proposal. The Respondent will be notified of staff's intended recommendation by a Notice of Selection which will be posted on the City's website at www.sanramon.ca.gov/our_city/bids_rfp, and may also be emailed to each Respondent that submits a Proposal.

- i. Upon award, Respondent must apply and obtain a San Ramon Business License, for more information please see [here](#).

C. Protest Procedures. Any protest challenging the City's intended selection, or the selection process must be submitted no later than 5:00 p.m., on the fifth (5th) business day following the date of the Notice of Selection. The protest must be submitted in writing via email to the City Clerk at cityclerk@sanramon.ca.gov, with a copy to mmlyniec@sanramon.ca.gov, and must clearly specify the basis for the protest. The protest will be reviewed by the Parks and Community Services Director in consultation with the City Attorney's Office, and their determination on the protest is final. No public hearing will be held on the protest. Time being of the essence, the City reserves the right to proceed with award of the Agreement and commencement of the Services notwithstanding any pending protest or legal challenge.

7. MISCELLANEOUS

- A. Disclaimers and Reservation of Rights.** Upon receipt, each Proposal becomes the sole property of the City and will not be returned to the Respondent. Each Respondent is solely responsible for the costs it incurs to prepare and submit its Proposal. The City reserves, in its sole discretion, the right to reject any and all Proposals, including the right to cancel or postpone the RFP or the Services at any time, or to decline to award the Agreement to any of the Respondents. The City reserves the right to waive any immaterial irregularities in a Proposal or submission of a Proposal. The City reserves the right to reject any Proposal that is determined to contain false or misleading information, or material omissions.
- B. Conflict of Interest.** Respondents must disclose to the City any actual, apparent, direct or indirect, or potential conflicts of interest that may exist with respect to Respondent, any employees of Respondent, or any other person relative to the Services to be provided pursuant to this RFP. This RFP process will be conducted in compliance with all laws regarding political contributions, conflicts of interest, or unlawful activities. City employees are prohibited from participating in the selection process for this RFP if they have any financial or business relationship with any Respondent. When applicable, Respondents must adhere to California Government Code § 1097.6.
- C. Public Records.** The City is subject to the provisions of the California Public Records Act (Govt. Code § 7920.000, *et seq.*) (the "Act"), and each Proposal submitted to the City is subject to disclosure as a public record, unless the Proposal or any portion thereof is exempt under the Act. If a Respondent believes that any portion of its Proposal is exempt from disclosure under the Act, it must clearly identify the portion(s) it believes to be exempt and identify the basis for the exemption. Each Respondent bears the burden of proving any claimed exemption under the Act, and by submitting a Proposal, a Respondent agrees to indemnify, defend, and hold harmless the City against any third-party claim seeking disclosure of the Proposal or any portions thereof.

ATTACHMENTS:

- Attachment A – Form of Agreement
- Attachment B – Scope of Services

Attachment A – Form of Agreement

PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF SAN RAMON AND VENDOR FOR Aquatic Facility Inspection and Auditing

This is an Agreement between the City of San Ramon, a municipal corporation (“CITY”), and **VENDOR**, (“CONTRACTOR”) together referred to as the “Parties.”

RECITALS

WHEREAS, on April 1, 2024, CITY solicited Proposals by Request for Proposals (“RFP”) for Aquatic Facility Inspection and Auditing; and

WHEREAS, after review of all responses submitted pursuant to said RFP, CONTRACTOR’s Proposal was accepted by CITY and identified as most advantageous; and

WHEREAS, CONTRACTOR by reason of qualifications, experience, and facilities for performing the type of services contemplated herein, has proposed to provide the requested services; and

WHEREAS, CONTRACTOR is willing to provide the requested services.

NOW, THEREFORE, in consideration of the mutual promises set forth, CITY and CONTRACTOR agree as follows:

1. **Award of Agreement.** In response to the RFP, CONTRACTOR submitted a Proposal to perform the Work as set forth in the RFP Attachment B – Scope of Services. On May 9, 2024, CITY authorized award of this Agreement to CONTRACTOR for the amount set forth in Section 6, below.
2. **RFP Documents.** The RFP documents incorporated into this Agreement include and are comprised of all the documents listed below.

Sections

- 2 The Services
 - 3 Request for Proposal Procedures
 - 4 Proposal Requirements
 - 5 Evaluation
 - 6 Selection and Award
 - 7 Miscellaneous
3. **Scope of Service.** The scope of services covered by this Agreement include mandatory timeframes for performance, deadlines for providing deliverables to CITY, and the maximum fee for each item are further described in **Exhibit A** attached and incorporated herein by reference.

CONTRACTOR shall comply with specific industry standards or governmental requirements applicable to specific tasks hereunder or as may be necessary to enable CONTRACTOR to provide the services required.

4. **Modification of Agreement.** CITY may request changes to this Agreement including the Scope of Services to be performed by CONTRACTOR. Such requests shall be made in writing exclusively by CITY’s designated Project Manager, and shall describe in detail the proposed additions, deletions, or modifications. Such requests will include tabulation of costs, expenses,

Contractor: VENDOR
Agreement Amount: Not-to-Exceed \$XX,XXX.XX
Project: Aquatic Facility Inspection and Auditing
Project Manager: Kevin Boggs, Recreation Supervisor

and time required to complete the requested work. CONTRACTOR shall have the length of time specified in the request to reply in writing to the request. Neither CITY's request nor CONTRACTOR's reply shall constitute a modification of this Agreement. Any modification shall be contained in a written amendment to the Agreement and will be effective only if signed by both parties. Execution of the amendment by CITY shall constitute authorization to proceed with the work identified therein.

5. **Time of Performance.** CONTRACTOR's performance shall commence as of the effective date listed below and be completed by June 30, 2027 or the date CONTRACTOR completes the services provided for in this Agreement, whichever occurs first, unless otherwise terminated under the terms of this Agreement.

However, CONTRACTOR is under no obligation to commence work hereunder prior to execution of this Agreement.

CITY shall have the option to renew this Agreement for not more than one (1) successive two (2) year term, upon the same terms and conditions as provided in this Agreement. Any Agreement extension or amendment must be in writing and fully executed by both parties to take effect.

6. **Compensation.** CITY agrees to pay CONTRACTOR at the rates set forth in **Exhibit A**, and incorporated herein, in a sum not-to-exceed **XX DOLLARS (\$XX,XXX.XX)**. No compensation shall be made in excess of this amount. This amount includes all costs and reimbursable expenses as specified in **Exhibit A**.

Upon completion and acceptance of the deliverables CONTRACTOR shall submit an itemized invoice for the completed work showing applicable rates and charges as agreed to hereunder and the total amount due.

7. **Designated Representatives.**

- A. CITY designates Kevin Boggs, Recreation Supervisor, or his designee as its representative in all matters under this Agreement.
- B. CONTRACTOR designates Contact Title, Contact Name as its Project Manager for this Agreement. CONTRACTOR may designate a different Project Manager only with prior written authorization from CITY.

8. **Cooperation of the City.** CITY shall make available to CONTRACTOR all financial records and related information necessary for performance of CONTRACTOR's work under this Agreement.

9. **Independent Contractor.** The Parties intend that this Agreement will create an independent CONTRACTOR/CITY relationship. No agent, employee, or representative of the CONTRACTOR shall be deemed to be an employee, agent, or representative of the CITY for any purpose, and the employees of the CONTRACTOR are not entitled to any of the benefits the CITY provides for its employees. The CONTRACTOR will be solely and entirely responsible for its acts and for the acts of its agents, employees, subcontractors, or representatives during the performance of this Agreement.

In the performance of the services contemplated in this Agreement, the CONTRACTOR is an independent contractor with the authority to control and direct the performance of the details of the work; however, the results of the work contemplated in this Agreement must meet the approval of the CITY and shall be subject to the CITY's general rights of inspection and review to secure the satisfactory completion of the work.

Contractor: VENDOR
Agreement Amount: Not-to-Exceed \$XX,XXX.XX
Project: Aquatic Facility Inspection and Auditing
Project Manager: Kevin Boggs, Recreation Supervisor

- 10. Out of State Business.** If CONTRACTOR is an out of state business and does not have a local office within the State of California, CONTRACTOR shall provide to CITY a completed Withholding Exemption Certificate Form as required by the California Franchise Tax Board. If the out of State CONTRACTOR fails to provide the required form, CITY shall withhold seven (7%) percent of the total payment amount and send the withholdings to the Franchise Tax Board, as required by State law.
- 11. Proprietary or Confidential Information.** CONTRACTOR understands and agrees that, in the performance of the work under this Agreement or in contemplation thereof, CONTRACTOR may have access to private, proprietary, or otherwise confidential information owned or controlled by CITY, the disclosure of which may be damaging to CITY or to third parties.
- CONTRACTOR agrees that all confidential information disclosed to CONTRACTOR by CITY shall be held in confidence and used only in performance of this Agreement. CONTRACTOR shall exercise the same standard of care to protect such information, as a reasonably prudent businessperson would use to protect its own private proprietary or confidential information.
- 12. Ownership and Final Work Product.** Final work products produced by CONTRACTOR in any form shall be delivered in an easily accessible digital format, where applicable. ALL work products of CONTRACTOR provided hereunder shall become the property of the CITY.
- 13. Public Records.** CONTRACTOR acknowledges that CITY is subject to the provisions of the California Public Records Act (Govt. Code § 7920.000, *et seq.*) (the "Act"); therefore, this Agreement and any writing prepared for or submitted to CITY, including but not limited to CONTRACTOR's Proposal or Statement of Qualifications, is subject to disclosure as a public record, unless any portion thereof is exempt under the Act. If CONTRACTOR believes that any portion of a public record is exempt from disclosure under the Act, it must clearly identify the portion(s) it believes to be exempt and identify the basis for the exemption. CONTRACTOR bears the burden of proving any claimed exemption under the Act, and by signing this Agreement and initialing the acknowledgement below, CONTRACTOR agrees to indemnify, defend, and hold harmless CITY against any third-party claim seeking disclosure of the public record or any portions thereof.

PLEASE INITIAL:

_____ CONTRACTOR has read and understands the Public Records Act requirements outlined above and hereby affirms that (1) CONTRACTOR bears the burden of proving any claimed exemption under the Act, and (2) CONTRACTOR agrees to indemnify, defend, and hold harmless CITY against any third-party claim seeking disclosure of the public record or any portions thereof.

- 14. Financial Records of Contractor.** CONTRACTOR shall maintain accounting records of funds received under this Agreement and full documentation of performance hereunder. CONTRACTOR shall permit CITY to have access to those records for the purpose of making an audit, examination, or review of financial and performance information relating to this Agreement. CONTRACTOR shall maintain such records for a minimum of four (4) years following payment by CITY for the last invoice for such services to be provided. When requested by CITY, CONTRACTOR shall make all such records available to CITY within fourteen (14) days of the request.
- 15. Compliance with Law.** CONTRACTOR shall comply with all applicable laws, regulations, and ordinances. CONTRACTOR has and shall maintain in effect all the licenses, permissions,

Contractor: VENDOR
Agreement Amount: Not-to-Exceed \$XX,XXX.XX
Project: Aquatic Facility Inspection and Auditing
Project Manager: Kevin Boggs, Recreation Supervisor

authorizations, consents, and permits that it needs to carry out its obligations under this Agreement.

- 16. Conflict of Interest.** CONTRACTOR certifies that it has disclosed to CITY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Agreement, CITY Resolution No. 2022-029, California Government Code § 1090, *et seq.*, or the Political Reform Act, as set forth in California Government Code § 81000, *et seq.*, and its accompanying regulations. CONTRACTOR agrees to advise CITY of any actual, apparent or potential conflicts of interest that may develop after the date of execution of this Agreement. Any violation of this Section constitutes a material breach of the Agreement.

Pursuant to California Government Code § 1097.6, when applicable, CONTRACTOR's duties and services under this Agreement shall not include preparing or assisting the CITY with any portion of the CITY's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the CITY. The CITY entering into this Agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of the Aquatic Facility Inspection and Auditing services. CONTRACTOR's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. CONTRACTOR shall cooperate with the CITY to ensure that all bidders for a subsequent contract on any subsequent phase of the Aquatic Facility Inspection and Auditing services have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by CONTRACTOR pursuant to this Agreement.

- 17. Nondiscrimination.** CONTRACTOR represents that it does not and agrees that it shall not discriminate against any employee or applicant for employment because of age, sex (including gender, gender identity, gender expression, transgender, pregnancy, and breastfeeding), religion, color, disability, genetic characteristics or information, race, national origin, ancestry, citizenship status, marital status, military or veteran status, medical condition, or sexual orientation (including homosexuality, bisexuality, or heterosexuality) or any other protected classification as defined and protected by law.
- 18. Prohibited Interest.** No member, officer, or employee of the CITY shall have any interest, direct or indirect, in this Agreement or the proceeds of this Agreement.
- 19. Political Activity Prohibited.** None of the funds, materials, property, or services provided directly or indirectly under this Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

20. Indemnification.

A. To the fullest extent permitted by law, CONTRACTOR must indemnify, defend, and hold harmless CITY, its Council, officers, officials, employees, agents, volunteers, and consultants (individually, an "Indemnitee," and collectively the "Indemnitees") from and against any and all liability, loss, damage, claims, causes of action, demands, charges, fines, costs, and expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with the acts or omissions of CONTRACTOR, its employees, Subcontractors, representatives, or agents, in bidding or performing the Work or in failing to comply with any obligation of CONTRACTOR under the Agreement, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of CONTRACTOR's bid for the Agreement. CONTRACTOR's failure or refusal to timely accept a tender of defense

Contractor: *VENDOR*
Agreement Amount: *Not-to-Exceed \$XX,XXX.XX*
Project: *Aquatic Facility Inspection and Auditing*
Project Manager: *Kevin Boggs, Recreation Supervisor*

pursuant to this Agreement will be deemed a material breach of the Agreement. CITY will timely notify CONTRACTOR upon receipt of any third-party claim relating to the Agreement, as required by Public Contract Code § 9201. CONTRACTOR waives any right to express or implied indemnity against any Indemnitee. CONTRACTOR's indemnity obligations under this Agreement will survive the expiration or any early termination of the Agreement.

- B. CONTRACTOR does now remise, release, forever discharge and covenant not to sue the CITY, its Council, agents, servants, employees, officers, successors and assigns, and also any and all other persons, associations and corporations, whether or not named in this Agreement, who, together with the above named, may be jointly and severally liable to CONTRACTOR, of and from any and all actions and causes of action, rights, suits, covenants, contracts, agreements, judgments, claims and demands in law or equity, including claims for contribution, arising from and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries or death, damage to property, and the consequences of the same, which previously have been or which later may be sustained by CONTRACTOR or by any and all other persons, associations and corporations, from all liability arising out of or in connection with this Agreement. Notwithstanding the foregoing, CONTRACTOR may assert claims against the CITY arising from the sole negligence, active negligence, or willful misconduct of the CITY.
- C. No liability shall attach to the CITY by reason of entering into this Agreement except as expressly provided in this Agreement.

21. Intellectual Property Indemnification. CONTRACTOR shall, at its expense, defend, indemnify and hold harmless CITY and any Indemnified Party against any and all losses arising out of or in connection with any claim that CITY's or Indemnified Party's use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall CONTRACTOR enter into any settlement without CITY's or Indemnified Party's prior written consent.

22. Insurance. CONTRACTOR shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by CONTRACTOR, its agents, representatives, employees or subcontractors. The cost of such insurance shall be incorporated in the CONTRACTOR's proposal.

- A. **Required Insurance.** CONTRACTOR shall maintain, at all times, during the term of this Agreement and at CONTRACTOR's sole cost and expense:
- i. **Comprehensive General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "**occurrence**" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury, including, without limitation, blanket contractual liability, with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
 - ii. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if CONTRACTOR has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.

- iii. **Workers' Compensation:** As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than **\$1,000,000** per accident for bodily injury or disease. Any notice of cancellation or non-renewal of Workers' Compensation policies must be received by CITY at least thirty (30) days prior to such change. CONTRACTOR shall require each subcontractor to maintain Workers' Compensation insurance and Employer's Liability insurance in accordance with the laws of the State of California for all the subcontractor's employees.

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

B. The liability policies must contain, or be endorsed to contain the following provisions:

- i. **Additional Insured Status:** CITY, its Council, officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used).
- ii. **Primary Coverage:** For any claims related to this Agreement, the **CONTRACTOR's insurance coverage shall be primary and non-contributory** and at least as broad as ISO CG 20 01 04 13 as respects the CITY, its Council, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its Council, officers, officials, employees, or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.
- iii. **Umbrella or Excess Policy:** The CONTRACTOR may use Umbrella or Excess Policies to provide the liability limits as required in this Agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the CONTRACTOR's primary and excess liability policies are exhausted.
- iv. **Notice of Cancellation:** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to CITY.

- v. **Waiver of Subrogation:** CONTRACTOR hereby grants to CITY a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the CITY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer.
- vi. **Self-Insured Retentions:** Self-insured retentions must be declared to and approved by CITY. The CITY may require the CONTRACTOR to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or CITY. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds \$25,000 unless approved in writing by CITY. Any and all deductibles and SIRs shall be the sole responsibility of CONTRACTOR or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. CITY may deduct from any amounts otherwise due to CONTRACTOR to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named Insured. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. CITY reserves the right to obtain a copy of any policies and endorsements for verification.
- vii. **Acceptability of Insurers:** Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the CITY.
- viii. **Subcontractors:** CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONTRACTOR shall ensure that CITY is an additional insured on insurance required from subcontractors.
- ix. **Verification of Coverage:** CONTRACTOR shall furnish the CITY with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause and **a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements.** All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the CITY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR's obligation to provide them. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- x. **Special Risks or Circumstances:** CITY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

PLEASE INITIAL:

Contractor: *VENDOR*
Agreement Amount: *Not-to-Exceed \$XX,XXX.XX*
Project: *Aquatic Facility Inspection and Auditing*
Project Manager: *Kevin Boggs, Recreation Supervisor*

_____ CONTRACTOR has read and understood the insurance requirements outlined above and hereby affirms that (1) the cost of providing such insurance has been incorporated into CONTRACTOR's proposal, and (2) that CONTRACTOR provided the required documentation for insurance coverages prior to execution of this Agreement.

23. Suspension of Performance. For the convenience of CITY or because of events beyond the control of CITY, CITY may give written notice to CONTRACTOR to suspend all work under this Agreement. If CONTRACTOR's work is suspended for longer than a period of one hundred twenty (120) days, an adjustment to CONTRACTOR's compensation may be made for increased costs, if any, and this Agreement shall be modified accordingly.

24. Assignment. The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities that will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR must not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.

25. Termination. CITY may terminate this Agreement, in whole or in part, at any time, by providing at least ten (10) days' written notice to the other party. The CONTRACTOR shall be paid its costs, including Agreement close-out costs, and profit on work performed up to the time of termination. The CONTRACTOR shall promptly submit a termination claim to the CITY. If the CONTRACTOR has any property in its possession belonging to the CITY, the CONTRACTOR will account for such property and dispose of it in a manner directed by the CITY.

If the CONTRACTOR fails to perform in the manner called for in this Agreement, or if the CONTRACTOR fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within fourteen (14) days after written notice of such failure, the CITY may immediately terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default. The CONTRACTOR will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.

26. Survival. Subject to the limitations and other provisions of this Agreement:

- A. The representations and warranties of the Parties contained herein shall survive the expiration or earlier termination of this Agreement; and
- B. Sections of this Agreement, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, shall survive the expiration or earlier termination of this Agreement.

27. Notices. If either party shall desire or is required to give notice to the other such notice shall be given in writing, via prepaid U.S. certified or registered postage, addressed to recipient as follows:

To CITY:
City of San Ramon
Attn: City Clerk
7000 Bollinger Canyon Road
San Ramon, CA 94583
cityclerk@sanramon.ca.gov

To CONTRACTOR:
VENDOR
Attn: [Contact Name, Title](#)
[Address](#)
[Address](#)
[Email](#)

Changes to the above information shall be given to the other party in writing ten (10) business days before the change is effective.

Contractor: *VENDOR*
Agreement Amount: *Not-to-Exceed \$XX,XXX.XX*
Project: *Aquatic Facility Inspection and Auditing*
Project Manager: *Kevin Boggs, Recreation Supervisor*

28. Commencement, Completion and Closeout. Time is of the essence in the performance of this Agreement. Any time extension granted to CONTRACTOR must be in writing and shall not constitute a waiver of right CITY may have under the Agreement.

It shall be the responsibility of CONTRACTOR to coordinate and schedule the work to be performed so that commencement and completions take place in accordance with the provisions of the Agreement. Within thirty (30) days of completion CONTRACTOR shall submit to CITY a final billing to include all costs, charges, and claims in connection with the completed work. CITY shall not be required to pay for any work or claims not included on the aforementioned final billing.

29. Jurisdiction, Venue, and Governing Law. Any action at law or in equity brought by either of the Parties for the purpose of enforcing a right or rights provided for by this Agreement will be tried in a court of competent jurisdiction in the County of Contra Costa, State of California, and the Parties waive all provisions of law providing for a change of venue in these proceedings to any other county. This Agreement shall be governed by the laws of the State of California.

30. Severability. If, for any reason, any part, term, or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

If it should appear that any provision of this Agreement is in conflict with any statutory provision of the state of California, such conflicting provision shall be deemed inoperative and null and void insofar as it may be in conflict with such statutory provisions and shall be deemed modified to conform to such statutory provisions.

31. Entire Agreement, Time of Essence, No Waiver. The parties agree that this Agreement is the complete expression of the terms of this Agreement and any oral representations or understandings not incorporated in this Agreement are excluded. Failure to comply with any of the provisions of this Agreement shall constitute material breach of contract and cause for termination. Both parties recognize that time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement. In the event of conflict between the body of this Agreement and its Exhibit(s), the terms of the body of this Agreement shall prevail.

32. Signatures and Counterparts. This Agreement may be entered into by the Parties by signing any one or more counterparts, all of which shall constitute one and the same instrument. It is understood and agreed that this Agreement shall become effective and binding when one or more counterparts have been executed by each party and delivered to each other party. Additionally, electronic, facsimile, and scanned signatures shall be binding the same as originals.

[SIGNATURES INTENTIONALLY OMITTED]

[END OF ATTACHMENT A]

Attachment B – Scope of Services and Compensation Schedule
Aquatic Facility Inspection and Auditing Services

1. CONTRACTOR shall perform five (5) Lifeguard / Facility Operational Safety Audits and one (1) Facility & Maintenance Inspection that includes a Lifeguard / Facility Operational Safety Audit per facility (ie., San Ramon Olympic Pool and Dougherty Valley Aquatic Center) on a mutually agreed upon schedule with the Aquatics Supervisor each year. Once a time period to conduct audits is agreed upon, CONTRACTOR will make unannounced visits to the sites.
2. CONTRACTOR shall evaluate the facility and staff based on industry standards, aquatic operation best practices, local and state codes and federal mandates.
3. CONTRACTOR shall provide to the CITY audit results in two formats within fifteen (15) days of the site visit; [1] Video of the observational audit and staff skill test; and [2] written report in electronic format (Microsoft Office Word, Excel or .PDF file format) that will detail the results of all of the agreed upon elements of the audit/inspection.
4. Facility & Maintenance Inspections including a Lifeguard / Facility Operational Safety Audit will be completed one (1) time per year prior to the first weekend of June annually, per facility, and at a minimum shall include:
 - A. Facility & Maintenance Inspection shall include at a minimum:
 - i. Inspection of rescue equipment including but not limited to; rescue tubes, lifeguard packs, emergency crash bags, oxygen units, AEDs, extrication boards, first aid kit, ring buoys and pool rescue hooks. Including correct quantity and location as required by state and local health code.
 - ii. Verification and inspection of communication devices, radios, air horns, whistles and PA system.
 - iii. Verification and inspection of customer information including hours of operation, fees, service policies, disclaimers, and special notices.
 - iv. Verification and inspection of posted warnings and hazard signage required by code or to mitigate a hazard.
 - v. Verification and inspection of instructional signage such as pool rules and other useful patron information.
 - vi. Verification and inspection of signage required by state and local health code, such as but not limited to; Emergency Dial 911, CPR Instructions, No Lifeguard on Duty, No Diving, Pool Capacity, Hazardous Materials Emblems.
 - vii. Inspection of diving boards including; board surface, mounting bolts, rails, steps and fulcrums.
 - viii. Inspection of starting blocks including; visual inspection, labeling when not in use and stability.
 - ix. Inspection of inflatable obstacle courses including; visual inspection of vinyl and seams, blower, blower tube, anchors, ropes, vertical features, starting mat, trip hazards and that entrance, exits and overhead is clear of obstructions.

- x. Inspection and verification of daily inflatable obstacle course inspection forms, routine maintenance and required training documentation.
 - xi. Inspection of play pool amenities including; visual inspection of condition, protruding bolts, hazards, obstructions, stability and functionality.
 - xii. Inspection of pool decks including surface wear, cracks, chips, expansion joints.
 - xiii. Verification and inspection of pool depth markers and no diving markers on pool decks.
 - xiv. Inspection of gutters and grating around play pools and swimming pools.
 - xv. Inspection of ladders, lifeguard stands, ADA lifts, pool cover reels, safety ropes, lane lines and lane line reels.
 - xvi. Inspection of condition and classification of onsite life jackets available for loan.
 - xvii. Inspection of electrical outlets for functional ground fault interrupter.
 - xxviii. Inspection of locker rooms floors, stalls, fixtures, lights and ADA amenities.
 - xix. Verification and inspection of facility barriers and security fences.
 - xx. Verification and inspection of locks and latches.
 - xxi. Review and inspect daily facility logs for accuracy, best practices and ensure daily recording includes state required chemical measurements.
 - xxii. Verification that Safety Data Sheets are available on site.
 - xxiii. Inspection of aquatic attractions. Inspection to include, but not limited to; visual inspection, maintenance logs and training records appropriate for the attractions.
 - xxiv. Inspection of proper chemical storage.
 - xxv. Certification check for Pool Operators Certifications.
- B. Lifeguard / Facility Operational Safety Audits shall include at minimum:
- i. Lifeguard audits shall include observation of lifeguard staff present at the time of the audit.
 - 1. Review of patron safety relating to lifeguard supervision and rescue readiness.
 - 2. Review of patron safety relating to active on deck supervision by lead lifeguard staff.
 - 3. Review of lifeguards in uniform and proper protection from the elements.
 - 4. Review of lifeguard placement and level of supervision is appropriate for the activity taking place.
 - 5. Review of continual coverage through any lifeguard station changes or rotations.
 - ii. Lifeguard skill checks shall include testing of up to four (4) lifeguards.
 - 1. Active and unresponsive rescue skills.
 - 2. A spinal management scenario or an unresponsive victim scenario to test staff readiness to respond to critical incidents. Oxygen and AED shall be introduced into these scenarios whenever possible.

- iii. Review and inspection of certification records and the mechanism used to track those records for all staff.
 - iv. Review of diving board, inflatable, play structure and water attraction operations.
- 5. Lifeguard / Facility Operations Safety Audits will be completed five (5) times per year, per facility and at a minimum shall include:
 - i. Inspection of rescue equipment including, but not limited to; rescue tubes, lifeguard packs, emergency crash bags, oxygen units, AEDs, extrication boards, first aid kit, ring buoys and pool rescue hooks. Including correct quantity and location as required by state and local health code.
 - ii. Lifeguard audits shall include observation of lifeguard staff present at the time of the audit.
 - 1. Review of patron safety relating to lifeguard supervision and rescue readiness.
 - 2. Review of patron safety relating to active on deck supervision by lead lifeguard staff.
 - 3. Review of lifeguards in uniform and proper protection from the elements.
 - 4. Review of lifeguard placement and level of supervision is appropriate for the activity taking place.
 - 5. Review of continual coverage through any lifeguard station changes or rotations.
 - iii. Lifeguard skill checks shall include testing of up to four (4) lifeguards.
 - 1. Active and unresponsive rescue skills.
 - 2. A spinal management scenario or an unresponsive victim scenario to test staff readiness to respond to critical incidents. Oxygen and AED shall be introduced into these scenarios whenever possible.
 - iv. Review and inspection of certification records and the mechanism used to track those records for all staff.
 - v. Review of diving board, inflatable, play structure and water attraction operations.
- 6. CONTRACTOR shall perform up to two (2) two-hour in-service trainings at the request of the Aquatics Supervisor. Trainings to be coordinated with the Aquatics Supervisor annually.
- 7. CONTRACTOR shall provide Consulting services if needed.
- 8. CONTRACTOR shall supply all materials, labor and equipment to perform Facility / Maintenance Inspections, Lifeguard / Operational Safety Audits and In-Service Trainings at the San Ramon Olympic Pool and Aquatic Park and Dougherty Valley Aquatic Center per the scope of services.

Proposed Annual Contract Costs: [to be submitted in proposal by RESPONDENT]

Year 1:

Year 2:

Year 3:

Year 4:

Year 5:

Total Contract Not to Exceed: \$

[END OF ATTACHMENT B]