

NOTICE OF REQUEST FOR PROPOSALS

November 30, 2023

Re: Notice of Request for Proposals (“RFP”) No. 24-19 – Washington Park Pool Flooring Project

Notice is hereby given that the City of Escondido, a California municipal corporation (“City”), is soliciting proposals from qualified contractors to provide a nonskid three coat epoxy/urethane flooring with full flake option and 4” integral cove base for Washington Park Men’s and Women’s locker rooms and office measuring approximately 5,720 square feet per manufacturer requirements (“Project”). Please see the Scope of Work included in the sample Public Services Agreement, which is attached hereto as Exhibit 1 and incorporated by this reference.

Prospective contractors must submit one proposal to Robert Rhoades, rrhoades@escondido.org, **no later than Thursday, December 28, 2023, 5 p.m. PST** (“Submission Deadline”). Any proposals received after the Submission Deadline will not be accepted.

Questions or comments concerning this RFP may be submitted via e-mail to Robert Rhoades, rrhoades@escondido.org, **no later than Thursday, December 14, 2023, 5 p.m. PST** (“Questions Deadline”). Any questions or comments regarding this RFP received after the Questions Deadline will be disregarded. Emails concerning this RFP should state the following in the subject line: “RFP No. 24-19 – Washington Park Pool Flooring Project.” Any communication prior to the Submission Deadline regarding or relating to this RFP with any City employee or official other than Robert Rhoades is strictly prohibited.

Each proposal shall be in accordance with specifications, instructions, and information contained in this RFP. The City reserves the right to reject any or all proposals for any reason it deems necessary, to waive defects or irregularities in any proposal, and to accept the proposal deemed the most advantageous to the City. This RFP does not commit the City to award a contract or to pay any costs incurred in the preparation of a response to this request.

Sincerely,



Robert Rhoades
Assistant Director of Community Services
City of Escondido

A. General

The contractor awarded the contract (“Contractor”) will provide the City with preparation, installation, and clean-up services for the Project. Within 60 calendar days of the City’s notice of award of the Project, the Contractor shall enter into a Public Services Agreement in substantially the same form as Exhibit 1.

B. Project Description

Services for completion of this Project shall include preparation and installation of a nonskid three coat epoxy/urethane flooring with full flake option and 4” integral cove base for Washington Park men’s and women’s locker rooms and office measuring approximately 5,720 square feet per manufacturer requirements. The Washington Park Aquatics Facility is not climate controlled and receives high barefoot traffic under wet conditions. All materials need to account for these unique conditions to provide a lasting and desirable finish. A site walk through will be made available on **December 11, 2023 at 11 a.m. PST** at Washington Park Pool, 501 N. Rose Street, Escondido, CA 92027 and all prospective contractors are encouraged to attend, comprehend the existing site conditions, and take flooring measurements for accuracy.

The total budget for the Project is approximately \$60,000.

The Project is expected to include the following:

1. Floor preparation. Cleaning, grinding, and concrete repairs as necessary;
2. Installation of a three-part non-skid epoxy/urethane flooring with full flake decorative option; and
3. Clean-up of any trash or debris that occurred during flooring installation.

Please see the Scope of Work included in Exhibit 1 for further detail regarding the services.

C. Right to Submitted Material

This RFP does not commit the City of Escondido to award a contract, to pay any costs incurred in the preparation of a proposal or contract, or to procure or contract for, any services. The City reserves the right to accept or reject any or all proposals received as a result of this RFP, or to amend, cancel (in part or in whole) this RFP if it is in the City’s best interest to do so. All proposals, reports and data submitted to the City shall become the property of the City of Escondido and may not be returned.

D. Proposal Deadlines and Schedule

The following is an estimated schedule relating to the Project:

Activity	Date
Location Walk-through	December 11, 2023, 11 a.m.
Questions Deadline	December 14, 2023, 5 p.m.
Response to Questions Released	December 19, 2023
Proposal Submission Deadline	December 28, 2023, 5 p.m.
Staff Review of Proposals	January 4, 2024
Award of Contract	January 10, 2024

Note: The City reserves the right to make modifications to the estimated schedule outlined above.

E. Proposal Content

Prospective contractors are responsible for preparing and timely submitting an effective, clear, and concise proposal. Proposals must be limited to **15 pages**. Each proposal shall demonstrate the qualifications, competence, and capacity of the prospective contractor to perform the services described within the timeframe in the table above, and in conformity with the requirements of this RFP.

By submitting a proposal in response to this RFP, prospective contractors certify that they take no exceptions to the terms and requirements of this RFP, including the terms of the City's form Public Services Agreement (Exhibit 1).

To be considered responsive, proposals must contain the following information in the order listed:

1. Cover Letter: A cover letter introducing the company and the individual who act as the company's Project manager.
2. Qualifications and Experience:
 - a. A list of qualifications and experience for each person who will be assigned by the prospective contractor or sub-contractor to work on the Project; and
 - b. A list of at least three different projects previously completed by the prospective contractor and/or sub-contractor that are similar in size and scope to the Project.
3. Rate Sheet and Total Fee for Project: Rate sheets shall include, but not be limited to:
 - a. Hourly wages for all staff that will be assigned by the prospective contractor and sub-contractor to work on the Project;
 - b. Estimate of the total number of hours to complete the Project; and
 - c. Total Not-to-Exceed fee of the prospective contractor's proposal, which shall be calculated based the hourly rates of staff assigned to the Project, sub-contractor fees, and the estimated number of hours to complete the Project. Any incidental costs and reimbursable costs shall be included in the total fee.
4. Schedule for completion of all work meeting the City's deadlines above.
5. Detailed Scope of Work:
 - a. A detailed scope of work encompassing all Project services as described in this RFP;
 - b. A detailed list of all materials to be used in performing the services; and
 - c. Any recommended deviation or additional services.

The successful contractor's proposal submitted in response to this RFP may become part of the resulting Public Services Agreement (Exhibit 1). **Any proposed waiver, or change to the resulting Public Services Agreement (Exhibit 1) must be clearly identified in Prospective contractor's proposal.** All contracts, and any addenda thereto, shall be subject to the City's sole discretion and approval. The requirements and service standards of this RFP and the responses of the successful contractor will be incorporated by reference into the resulting agreement regarding the Project. The successful contractor shall enter into a contract within 30 calendar days of the City's notice of award in substantially the same form as Exhibit 1.

F. Selection Process

Proposals will be analyzed and the award made to the most responsive and responsible bidder whose proposal conforms to the solicitation and whose proposal is considered to be most advantageous to the City. The following table depicts the merit and weight of the factors considered in the selection process.

Criteria	Percentages
Experience of Contractor	25%
Cost of Overall Project	50%
Length of Installation	25%
TOTAL	100%

The City will act as the sole judge of the merit and qualifications of the materials and services offered and accept whatever proposal is deemed to be in the best interest of the City. The award of the contract will be all or nothing to one bidder. The City reserves the right to:

1. Reject any or all proposals;
2. Request clarification of any submitted information;
3. Waive any informalities or irregularities in any proposal;
4. Not enter into any contract;
5. Cancel this process at any time;
6. Amend this process at any time;
7. Enter into negotiations with one or more contractors; and/or
8. Issue similar solicitations in the future; or request additional information from prospective contractors.

G. General Conditions

PLEASE READ CAREFULLY. THE FOLLOWING GENERAL TERMS AND CONDITIONS ARE A PART OF ALL PROPOSALS SUBMITTED IN RESPONSE TO THIS RFP AND THE RESULTING CONTRACT.

This RFP as advertised, the specification requirements detailed in this RFP (including the following General Provisions) are subject to all provisions of the Ordinances of the City of Escondido. Each prospective contractor submitting a response to this RFP warrants that the submitted proposal is genuine and non-collusive, or made in the interest of any person, firm, company, or corporation. A non-collusion declaration shall be properly completed and returned with the proposal documents. The non-collusion declaration form is attached to this RFP as Exhibit 2 and incorporated herein by this reference.

In submitting a proposal in response to this RFP, each prospective contractor agrees to the following general terms and conditions:

1. **Public Information:** The City reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal in response to this RFP indicates the prospective contractor’s acceptance of all terms and conditions contained in this RFP, including all exhibits and attachments hereto, unless clearly and specifically stated otherwise.
2. **Confidential Information:** Any information deemed confidential or proprietary should be clearly identified by the prospective contractor as such. Information identified as confidential or proprietary will be protected and treated with confidentiality to the extent permitted by applicable local, state, and federal law.
3. **Addendums:** The City reserves the right to amend, alter, or revoke this RFP at any time. Any modifications, clarification, or additions will be distributed via email as an addendum.

4. Proposal Preparation Cost: The City is not obligated to reimburse any prospective contractor for expenses incurred in preparing proposals in response to this RFP. All Prospective contractors shall bear their own costs, fees, and expenses incurred in preparing proposals in response to this RFP.
5. Withdrawal of Proposal: A prospective contractor may modify or withdraw their proposal, either personally or by written request via email, at any time prior to the Submission Deadline. Such requests should be directed to the City's Project Manager.
6. Inaccuracies or Misinterpretations: Subject to the City's sole discretion, the City may terminate a prospective contractor from the RFP process or terminate any agreement with the Prospective contractor if the City determines that said Prospective contractor has: (i) made a material misstatement, (ii) made a material misrepresentation, or (iii) provided materially inaccurate information.
7. Optional Items: Prospective contractors may elect to provide recommendations and pricing for optional items. Pricing for optional items shall not be included in the minimum requirements pricing.
8. Business License: The successful contractor shall be required to obtain a City of Escondido Business License pursuant to the terms of Exhibit 1.
9. Signature: All proposals shall be signed in the name of the prospective contractor and shall bear the original signature in longhand of the persons duly authorized to sign the proposal. Obligations assumed by such signature shall be fulfilled.
10. Right to Reject Proposal: The City reserves the right to reject any or all proposals, to waive any non-material irregularities or information in any proposal, and to accept or reject any items or combination of items. The City is not obligated to explain or justify its selection or rejection of any Prospective contractor. All proposals submitted in response to this RFP shall immediately become property of the City.
11. Right to Conduct Personal Interviews: The City reserves the right to conduct personal interviews or require oral presentations of any or all prospective contractors prior to selection.
12. Right to Request Additional Information: Prospective contractors shall furnish additional information as the City may reasonably require. The City reserves the right to investigate the qualifications of prospective contractors as it deems appropriate.
13. Right to Determine Financial Responsibility and Viability: The City reserves the right to request information pertaining to the financial stability of a prospective contractor to allow an appraisal of a prospective contractor's current financial condition.
14. Understanding the Services to be Performed: By submitting a proposal in response to this RFP, each prospective contractor certifies that they have fully read and understand this RFP and have full knowledge of the scope, nature, quantity, and quality of services to be performed. Each prospective contractor understands that, if successful, they will be required to enter into a written contract in substantially the same form as Exhibit 1.
15. Award of Contract: Proposals submitted in response to this RFP will be analyzed and the contract

awarded to the responsible prospective contractor whose proposal conforms to this RFP and is considered to be the most advantageous to the City, taking into consideration not just the proposal price, but also the evaluation criteria set forth in this RFP. If the prospective contractor does not execute a contract in substantially the same form as Exhibit 1 within 30 days after notification of award, the City may, subject to its sole discretion, (i) give notice to the Prospective contractor of the City's intent to select from the remaining Prospective contractors or (ii) issue a new RFP for the services.

16. **Contract Funding:** The City's funding of any agreement resulting from this RFP shall be on a fiscal year basis and is subject to annual appropriations. Prospective contractor acknowledges that the City is a municipal corporation, is precluded by the State Constitution and other laws from entering into obligations that financially bind future governing bodies, and that, therefore, nothing in this RFP shall constitute an obligation of future legislative bodies of the City or State to appropriate funds for any agreement resulting from this RFP. Accordingly, prospective contractors acknowledge and agree that the funding for any agreement resulting from this RFP shall be contingent upon appropriation of funds.
17. **City Provisions to Prevail:** The terms of this RFP and the terms of any agreement resulting from this RFP shall govern the services. Any standard terms and conditions of the successful contractor shall not be acceptable to the City unless expressly agreed to by the City by separate document. The City reserves the right to reject a proposal containing unacceptable conditions as non-responsive as a condition of evaluation or award of the proposal.
18. **Equal Employment Opportunity:** The contractor awarded the project shall comply with all equal employment opportunity provisions of federal, state, and local non-discrimination laws, orders, regulations and guidelines as may be applicable to the contractor and be in effect during the performance of any agreement resulting from this RFP.
19. **Public Services Agreement:** Contractors submitting a proposal in response to this RFP shall be prepared to use the City's standard contract form (Exhibit 1) rather than its own contract form. Services may not commence until Agreement for services is executed.
20. **Prospective Contractor's Invoices:** Invoices shall be prepared and submitted to the Community Services Department, ATTN: Robert Rhoades, 201 N. Broadway, Escondido, CA 92025 or via email to rrhoades@escondido.org. Invoices shall be submitted on a monthly basis and contain the following information: Purchase Order number, description of services rendered, rates, quantities, extended totals, and remaining balances. Invoices should include all applicable sales or other taxes, and shall be remitted to appropriate agencies on the City's behalf. All payments made pursuant to this contract are not assignable and shall only be made payable to the seller.
21. **Payment Terms:** The City's payment terms are Net 30 days from date of invoice. No pre-payment or partial up front down payment will be made for any services or equipment. The time period allowed for payment, as indicated on the face hereof or offered by quote, bid, or proposal shall commence upon receipt of Prospective contractor's invoice or upon receipt of the goods or services, whichever is later.
22. **Insurance Requirements:** The successful contractor must have insurance in accordance with the requirements listed in Exhibit 1.
23. **Public Agency Clause:** It is intended that other public agencies (e.g., city districts, public

authorities, municipal utilities, public school districts and other political subdivisions or public corporations of California) shall have the option to participate in any award made as a result of this solicitation. The City shall incur no financial responsibility for their order placement and payments to the successful contractor. This option shall not be considered in proposal evaluation. State whether said option is granted:

YES

NO

EXHIBIT 1

**CITY OF ESCONDIDO
PUBLIC SERVICES AGREEMENT**

This Public Services Agreement (“Agreement”) is made and entered into as of the last signature date set forth below (“Effective Date”),

Between: CITY OF ESCONDIDO
a California municipal corporation
201 N. Broadway
Escondido, CA 92025
Attn: Robert Rhoades
760-839-5482
("CITY")

And: [Name]
[Entity Type: e.g., “a California corporation”]
[Street address]
[City, state, zip code]
Attn: [name of contact]
[telephone number]
("CONTRACTOR").

(The CITY and CONTRACTOR each may be referred to herein as a “Party” and collectively as the “Parties.”)

WHEREAS, the Parties desire to enter into this Agreement for the performance of the Services described herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms, and conditions set forth herein, and the mutual benefits derived therefrom, the Parties hereby agree as follows:

1. Description of Services. CONTRACTOR shall furnish all of the Services described in the Scope of Work, which is attached to this Agreement as Attachment “A” and incorporated herein by this reference (“Services”).
2. Compensation. In exchange for CONTRACTOR’s completion of the Services, the CITY shall pay, and CONTRACTOR shall accept in full, an amount not to exceed the sum of [Dollar Amount]. CONTRACTOR shall be compensated only for performance of the Services described in this Agreement. No compensation shall be provided for any other work or services without the CITY’s prior written consent.
3. Performance. CONTRACTOR shall faithfully perform the Services in a proficient manner, to the satisfaction of the CITY, and in accord with the terms of this Agreement. CONTRACTOR shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of

all reports and other information furnished by CONTRACTOR pursuant to this Agreement, except that CONTRACTOR shall not be responsible for the accuracy of information supplied by the CITY.

4. Termination. The Parties may mutually terminate this Agreement through a writing signed by both Parties. The CITY may terminate this Agreement for any reason upon providing CONTRACTOR with 10 days' advance written notice. CONTRACTOR agrees to cease all work under this Agreement on or before the effective date of any notice of termination. If the CITY terminates this Agreement due to no fault or failure of performance by CONTRACTOR, then CONTRACTOR shall be compensated based on the work satisfactorily performed at the time of such termination. In no event shall CONTRACTOR be entitled to receive more than the amount that would be paid to CONTRACTOR for the full performance of the Services.
5. City Property. All original documents, drawings, electronic media, and other materials prepared by CONTRACTOR pursuant to this Agreement immediately become the exclusive property of the CITY, and shall not be used by CONTRACTOR for any other purpose without the CITY's prior written consent.
6. Insurance Requirements.
 - a. CONTRACTOR shall procure and maintain, at its own cost, during the entire term of this Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services, and the results of such work, by CONTRACTOR, its agents, representatives, employees, or subcontractors. Insurance coverage shall be at least as broad as the following:
 - (1) *Commercial General Liability*. Insurance Services Office ("ISO") Form CG 00 01 covering Commercial General Liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury, with limits no less than \$2,000,000 per occurrence and \$4,000,000 general aggregate.
 - (2) *Automobile Liability*. ISO Form 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 limits no less than \$1,000,000 per accident for bodily injury and property damage, unless waived by the CITY and approved in writing by the CITY's Risk and Safety Division.
 - (3) *Workers' Compensation*. Worker's 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.
 - (4) If CONTRACTOR maintains broader coverage and/or higher limits than the minimums otherwise required by this Agreement, the CITY requires and shall be entitled to the broader coverage and/or the higher limits maintained by CONTRACTOR.
 - b. Each insurance policy required by this Agreement must be acceptable to the City Attorney and shall meet the following requirements:
 - (1) *Acceptability of Insurers*. Insurance coverage must be provided by an insurer authorized to conduct business in the state of California with a current A.M. Best's rating of no less than A-: FSC VII, or as approved by the CITY.
 - (2) *Additional Insured Status*. Both the Commercial General Liability and the Automobile Liability policies must name the CITY (including its officials, officers, agents, employees, and volunteers) specifically as an additional insured under the policy on a separate endorsement page. The Commercial General Liability additional insured endorsement shall be 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. The Automobile Liability endorsement shall be at least as broad as ISO Form CA 20 01.

- (3) *Primary Coverage.* CONTRACTOR's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 with respect to the CITY, its officials, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officials, officers, agents, employees, or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
 - (4) *Notice of Cancellation.* Each insurance policy shall provide that coverage shall not be canceled, except with prior written notice to the CITY.
 - (5) *Subcontractors.* If applicable, CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated in this Agreement, and CONTRACTOR shall ensure that the CITY (including its officials, officers, agents, employees, and volunteers) is an additional insured on any insurance required from a subcontractor.
 - (6) *Waiver of Subrogation.* CONTRACTOR hereby grants to the CITY a waiver of any right to subrogation that any insurer of 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 subsection shall apply regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer. Any Workers' Compensation policy required by this Agreement shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the CONTRACTOR, its agents, representatives, employees and subcontractors.
 - (7) *Self-Insurance.* CONTRACTOR may, with the CITY's prior written consent, fulfill some or all of the insurance requirements contained in this Agreement under a plan of self-insurance. CONTRACTOR shall only be permitted to utilize such self-insurance if, in the opinion of the CITY, CONTRACTOR's (i) net worth and (ii) reserves for payment of claims of liability against CONTRACTOR are sufficient to adequately compensate for the lack of other insurance coverage required by this Agreement. CONTRACTOR's utilization of self-insurance shall not in any way limit the liabilities assumed by CONTRACTOR pursuant to this Agreement.
 - (8) *Self-Insured Retentions.* Self-insured retentions must be declared to and approved by the CITY.
- c. *Verification of Coverage.* At the time CONTRACTOR executes this Agreement, CONTRACTOR shall provide the CITY with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting the insurance coverage required by this Agreement), which shall meet all requirements under this Agreement. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this Agreement, at any time.
 - d. *Special Risks or Circumstances.* The CITY reserves the right, at any point during the term of this Agreement, to modify the insurance requirements in this Agreement, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
 - e. *No Limitation of Obligations.* The insurance requirements in this Agreement, including the types and limits of insurance coverage CONTRACTOR must maintain, and any approval of such insurance by the CITY, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONTRACTOR pursuant to this Agreement, including but not limited to any provisions in this Agreement concerning indemnification.

- f. Failure to comply with any of the insurance requirements in this Agreement, including but not limited to a lapse in any required insurance coverage during the term of this Agreement, shall be a material breach of this Agreement. In the event that CONTRACTOR fails to comply with any such insurance requirements in this Agreement, in addition to any other remedies the CITY may have, the CITY may, at its sole option, (i) immediately terminate this Agreement; or (ii) order CONTRACTOR to stop work under this Agreement and/or withhold any payment that becomes due to CONTRACTOR until CONTRACTOR demonstrates compliance with the insurance requirements in this Agreement.

7. Indemnification, Duty to Defend, and Hold Harmless.

- a. CONTRACTOR (including CONTRACTOR's agents, employees, and subcontractors, if any) shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers from and against any and all claims, demands, actions, causes of action, proceedings (including but not limited to legal and administrative proceedings of any kind), suits, fines, penalties, judgments, orders, levies, costs, expenses, liabilities, losses, damages, or injuries, in law or equity, including without limitation the payment of all consequential damages and attorney's fees and other related litigation costs and expenses (collectively, "Claims"), of every nature caused by, 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 where caused by the active negligence, sole negligence, or willful misconduct of the CITY.
 - b. CONTRACTOR (including CONTRACTOR's agents, employees, and subcontractors, if any) shall defend, indemnify, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers from and against any and all Claims caused by, arising under, or resulting from any violation, or claim of violation, of the San Diego Municipal Storm Water Permit (Order No. R9-2013-0001, as amended) of the California Regional Water Quality Control Board, Region 9, San Diego, that the CITY might suffer, incur, or become subject to by reason of, or occurring as a result of, or allegedly caused by, any work performed pursuant to this Agreement.
 - c. All terms and provisions within this Section 7 shall survive the termination of this Agreement.
8. Anti-Assignment Clause. Because the CITY has relied on the particular skills of CONTRACTOR in entering into this Agreement, CONTRACTOR shall not assign, delegate, subcontract, or otherwise transfer any duty or right under this Agreement, including as to any portion of the Services, without the CITY's prior written consent. Any purported assignment, delegation, subcontract, or other transfer made without the CITY's consent shall be void and ineffective. Unless CONTRACTOR assigns this entire Agreement, including all rights and duties herein, to a third party with the CITY's prior written consent, CONTRACTOR shall be the sole payee under this Agreement. Any and all payments made pursuant to the terms of this Agreement are otherwise not assignable.
9. Attorney's Fees and Costs. In any action to enforce the terms and conditions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs.
10. Independent Contractor. CONTRACTOR is an independent contractor, and no agency or employment relationship is created by the execution of this Agreement.
11. Amendment. This Agreement shall not be amended except in a writing signed by the CITY and CONTRACTOR.
12. Merger Clause. This Agreement, together with its attachments or other documents described or incorporated herein, if any, constitutes the entire agreement and understanding of the CITY and CONTRACTOR concerning the subject of this Agreement and supersedes and replaces all prior

negotiations, understandings, or proposed agreements, written or oral, except as otherwise provided herein. In the event of any conflict between the provisions of this Agreement and any of its attachments or related documents, if any, the provisions of this Agreement shall prevail.

13. Anti-Waiver Clause. None of the provisions of this Agreement shall be waived by the CITY because of previous failure to insist upon strict performance, nor shall any provision be waived because any other provision has been waived by the CITY, in whole or in part.
14. Severability. This Agreement shall be performed and shall be enforceable to the full extent allowed by applicable law, and the illegality, invalidity, waiver, or unenforceability of any provision of this Agreement shall not affect the legality, validity, applicability, or enforceability of the remaining provisions of this Agreement.
15. Governing Law. This Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California. Venue for any action arising from this Agreement shall be conducted only in the state or federal courts of San Diego County, California.
16. Counterparts. This Agreement may be executed on separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed signature page of this Agreement by electronic means, including an attachment to an email, shall be effective as delivery of an executed original. The Agreement on file with the City is the copy of the Agreement that shall take precedence if any differences exist between or among copies or counterparts of the Agreement.
17. Provisions Cumulative. The foregoing provisions are cumulative to, in addition to, and not in limitation of any other rights or remedies available to the CITY.
18. Notice. Any statements, communications, or notices to be provided pursuant to this Agreement shall be sent to the attention of the persons indicated herein, and the CITY and CONTRACTOR shall promptly provide the other Party with notice of any changes to such contact information.
19. Business License. CONTRACTOR shall obtain a City of Escondido Business License prior to execution of this Agreement and shall maintain such Business License throughout the term of this Agreement.
20. Compliance with Laws, Permits, and Licenses. CONTRACTOR shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements in effect during the term of this Agreement. CONTRACTOR shall obtain any and all permits, licenses, and other authorizations necessary to perform the Services. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONTRACTOR to comply with this section.
21. Prevailing Wages. If applicable, pursuant to California Labor Code section 1770 et seq., CONTRACTOR agrees that a prevailing rate and scale of wages, in accordance with applicable laws, shall be paid in performing this Agreement. CONTRACTOR shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements pertaining to the payment of prevailing wages. The prevailing rate and scale to be paid shall be the same as the applicable "General Prevailing Wage Determination" approved by the Department of Industrial Relations as of the Effective Date of this Agreement, which are available online at <http://www.dir.ca.gov/oprl/dprevagedetermination.htm> and incorporated into this Agreement by this reference. Neither the CITY, nor any elected or

appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONTRACTOR to comply with this section.

22. Department of Industrial Relations Compliance. This public project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. CONTRACTOR shall post all job site notices required by regulation. CONTRACTOR, as well as any subcontractors, shall be registered pursuant to California Labor Code section 1725.5 to be qualified to bid on, be listed in a bid proposal (subject to the requirements of Public Contract Code section 4104), or engage in the performance of any public works contract subject to the requirements of Division 2, Part 7, Chapter 1 of the California Labor Code. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONTRACTOR to comply with this section.
23. Immigration Reform and Control Act of 1986. CONTRACTOR shall keep itself informed of and shall comply with the Immigration Reform and Control Act of 1986 (“IRCA”). CONTRACTOR represents and warrants that all of its employees and the employees of any subcontractor retained by CONTRACTOR who perform any of the Services under this Agreement, are and will be authorized to perform the Services in full compliance with the IRCA. CONTRACTOR affirms that as a licensed contractor and employer in the State of California, all new employees must produce proof of eligibility to work in the United States within the first three days of employment and that only employees legally eligible to work in the United States will perform the Services. CONTRACTOR agrees to comply with the IRCA before commencing any Services, and continuously throughout the performance of the Services and the term of this Agreement.
24. The Parties acknowledge that Community Development Block Grant (“CDBG”) funds will be used to fund all or a portion of this Agreement. The California Office of Housing and Community Development (referred to herein as “HCD” or “Administering Agency”) administers the State of California's annual federal allocation of CDBG funds. The CONTRACTOR shall comply with all applicable federal laws, regulations, executive orders, policies, procedures, and directives relating to such federal funds.
25. Equal Employment Opportunity. During the performance of this Agreement, the contractor agrees as follows:
 - a. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - b. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - c. The CONTRACTOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired

about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- d. The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g. In the event of the CONTRACTOR's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- h. The CONTRACTOR will include the portion of the sentence immediately preceding subpart a of this section and the provisions of subparts a through h in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency,

instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

26. Compliance with the Davis-Bacon Act.

- i. All transactions regarding this Agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The CONTRACTOR shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- j. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- k. Additionally, contractors are required to pay wages not less than once a week

27. Compliance with the Copeland "Anti-Kickback" Act.

- l. Contractor. The CONTRACTOR shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Agreement.
- m. Subcontracts. The CONTRACTOR and any subcontractors shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- n. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

28. Clean Air Act. CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. CONTRACTOR agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Awarding Agency, and the appropriate Environmental Protection Agency Regional Office. CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by the Federal Awarding Agency.
29. Federal Water Pollution Control Act. CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. CONTRACTOR agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Awarding Agency, and the appropriate Environmental Protection Agency Regional Office. CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by the Federal Awarding Agency.
30. Debarment and Suspension.
- o. This Agreement is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, CONTRACTOR is required to verify that none of CONTRACTOR's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
 - p. CONTRACTOR shall comply with 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction CONTRACTOR enters into.
 - q. This certification is a material representation of fact relied upon by the CITY. If it is later determined that CONTRACTOR did not comply with 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C, in addition to remedies available to the CITY, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.
 - r. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.
31. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).
- s. Prior to entering into this Agreement, CONTRACTOR shall file the required certification pursuant to the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended)). Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the Federal Awarding Agency.
 - t. Required Certification. At the time CONTRACTOR executes this Agreement, CONTRACTOR shall provide the CITY with a completed Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying. A blank Appendix A, 44 C.F.R. Part 18 – Certification

Regarding Lobbying is attached to this Agreement as Attachment “B” and incorporated herein by this reference.

32. Procurement of Recovered Materials. In the performance of this Agreement, CONTRACTOR shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (1) competitively within a timeframe providing for compliance with the Agreement’s performance schedule, (2) meeting Agreement performance requirements, or (3) at a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines website, located at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. CONTRACTOR shall also comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.
33. Access to Records. The following access to records requirements apply to this Agreement: (1) CONTRACTOR agrees to provide the CITY, the Federal Awarding Agency Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of CONTRACTOR that are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. CONTRACTOR agrees to provide the Federal Awarding Agency Administrator or their authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement. In compliance with the Disaster Recovery Act of 2018, the CITY and CONTRACTOR acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the Federal Awarding Agency Administrator or the Comptroller General of the United States.
34. Federal Awarding Agency Seal, Logo, and Flags. CONTRACTOR shall not use the Federal Awarding Agency seal(s), logos, crests, or reproductions of flags or likenesses of Federal Awarding Agency officials without specific Federal Awarding Agency pre-approval.
35. No Obligation by Federal Government. The United States Federal Government is not a party to this Agreement and is not subject to any obligations or Agreement to the CITY, CONTRACTOR, or any other party pertaining to any matter resulting from this Agreement.
36. Program Fraud and False or Fraudulent Statements or Related Acts. CONTRACTOR acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to CONTRACTOR’s actions pertaining to this Agreement.
37. Effective Date. Unless a different date is provided in this Agreement, the effective date of this Agreement shall be the latest date of execution set forth by the names of the signatories below.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, this Agreement is executed by the Parties or their duly authorized representatives as of the Effective Date:

CITY OF ESCONDIDO

Date: _____

Jennifer Schoeneck, Director of
Economic Development

[CONTRACTOR COMPANY NAME]

Date: _____

Signature

Name & Title (please print)

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY
MICHAEL R. MCGUINNESS, CITY ATTORNEY

BY: _____

THE CITY OF ESCONDIDO DOES NOT DISCRIMINATE AGAINST QUALIFIED PERSONS WITH DISABILITIES.

ATTACHMENT “A”

Scope of Work

A. General

Company, Inc., a California corporation (“Contractor”) will provide the City of Escondido, a California municipal corporation (“City”) with installation of a nonskid three coat epoxy/urethane flooring with full flake option and 4-inch integral cove base for the Washington Park Pool house men’s and women’s locker rooms and office spaces.

B. Location

Contractor will provide services at the City’s facility located at 501 N. Rose Street, Escondido, CA 92027.

C. Services

1. Subcontractor will review all existing conditions and shall prepare and clean all areas to receive epoxy flooring and integral cove base. Surface must be clean, dry, and in sound condition. Subcontractor shall remove all oil, grease, dirt, loose debris, and other foreign material to ensure adequate adhesion using a vacuum shot blast method and diamond grinder. Subcontractor shall prepare, patch, and smooth existing concrete so surface is level and ready to receive epoxy flooring;
2. Subcontractor shall furnish and install 4” epoxy base cove prior to epoxy flooring being installed so the flooring and base create a seamless look;
3. Subcontractor shall furnish and install epoxy/urethane flooring per manufacturers requirements including #30 mesh non-skid additive and full flake option. Flake color scheme must be verified with project contact before installation;
4. Subcontractor shall furnish install a single coat application of clear urethane.
5. Subcontractor shall provide the following products (or approved equal):
Verida Moisture Incentive Epoxy Primer, Verida 100% solids Epoxy base coat, Verida Pigmented high traffic and chemical resistant Urethane;
6. Epoxy flooring and cove base finish to be full flake “sea mist”– Nonskid unless otherwise noted by the City;
7. Subcontractor shall provide system which complies with local slip resistance requirements;
and
8. Subcontractor shall review and comply with the City of Escondido standard Public Improvement Agreement regarding prevailing wage requirements, Department of Industrial Relations requirements, insurance requirements, etc.

D. Scheduling

Contractor to schedule specific dates of work in advance by contacting Tyler Lockwood at 760-839-4355 or tjlockwood@escondido.org. Work shall be performed in-between the hours of 7:30 a.m. and 5:30 p.m., Monday through Friday. Further instructions will be provided upon scheduling.

E. Contract Price and Payment Terms

The contract price shall not exceed **[\$Dollar Amount]**. The contract price includes all labor, materials, equipment, and transportation required to perform the work. Services will be billed as services are performed. Payment will be made after services have been performed and within 30 days of receipt of an invoice for those services.

F. Term

The term of this Agreement shall be from the Effective Date of the Agreement through June 30, 2024.

G. Other

Contractor will guarantee workmanship for a period of one year from date of completion. During this time flooring will remain free from bubbling, cracking, up-lifting or other issues due to improper installation. Contractor will repair these reported issues at no cost to the City during this one year period.

ATTACHMENT B

Appendix A, 44 C.F.R. Part 18
Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Contractor ("Contractor"), certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

EXHIBIT 2

NONCOLLUSION DECLARATION

TO BE EXECUTED BY PROSPECTIVE CONTRACTOR AND SUBMITTED WITH PROPOSAL

The undersigned declares:

The foregoing proposal submitted in response to the City of Escondido’s Request for Proposals No. 24-19 – Washington Park Pool Project is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The proposal is genuine and not collusive or sham. The prospective contractor has not directly or indirectly induced or solicited any other prospective contractor to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any prospective contractor or anyone else to put in a sham proposal, or to refrain from submitting a proposal. The prospective contractor has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the prospective contractor or any other prospective contractor, or to fix any overhead, profit, or cost element of proposal price, or of that of any other prospective contractor. All statements contained in the proposal are true. The prospective contractor has not, directly or indirectly, submitted their proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal, and has not paid, and will not pay, any person or entity for such purpose.

Each individual executing this declaration on behalf of a prospective contractor that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that they have full power to execute, and does execute, this declaration on behalf of the prospective contractor.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____.
Date

Signature
Title _____
Of _____

Signature
Title _____
Of _____

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY
MICHAEL R. MCGUINNESS, City Attorney

By: _____