

**AGREEMENT FOR HOMELESS ENCAMPMENT CLEAN-UPS
BETWEEN
THE CITY OF SAN JOSE
AND
TUCKER CONSTRUCTION, INC.**

This Agreement is entered into as of the City’s execution date (“Effective Date”) between the City of San José, a municipal corporation (hereinafter “City”), and Tucker Construction, Inc., a California corporation (hereinafter “Contractor”). Each of City and Contractor are sometimes hereinafter referred to as a “Party” and collectively as the “Parties.”

R E C I T A L S

WHEREAS, City has issued a Request for Proposal ("RFP") 17-18-10 for Homeless Encampment Clean-Ups (“Services”); and

WHEREAS, Contractor has a good understanding of City’s requirements through Contractor’s examination of the Request for Proposal documents and exchange of information leading up to this Agreement; and

WHEREAS, Contractor has the necessary expertise and skill to perform such services and Contractor's proposal can best meet City's needs; and

WHEREAS, based on Contractor’s understanding of the City’s requirements and the Contractor’s knowledge and experience with other municipal organizations, Contractor warrants that the services will meet the City’s specifications and requirements as described in the Scope of Services; and

WHEREAS, the Recitals are true and correct and are incorporated into this Agreement;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Contractor shall consist of the following:

- EXHIBIT A – Scope of Services
 - Appendix A1 – Examples of Tools, Equipment, and Third-Party Services
 - Appendix A2 – Guidelines for Property Identification
- EXHIBIT B – Compensation
- EXHIBIT C – Insurance Requirements
- EXHIBIT D – Change Order Form (CO)
- EXHIBIT E – Notice of Exercise of Option to Extend Agreement
- EXHIBIT F – Wage Requirements and Information
 - Appendix F1 – Work Classification Determination
 - Appendix F2 – Labor Compliance Workforce Statement
 - Appendix F3 – Labor Compliance Fringe Benefit Statement
 - Appendix F4 – Labor Compliance Addendum

In the event any discrepancies or inconsistencies between the provisions of this Agreement and any of the above-referenced documents arise, the provisions of this Agreement will prevail. The provisions in the Exhibits shall prevail over conflicting terms in any Appendices to the Exhibits. Contractor and City hereby acknowledge that they have drafted and negotiated the Agreement jointly and that the Agreement will be construed neither against nor in favor of either, but rather in accordance with its fair meaning

This Agreement and the Exhibits set forth above, contain all of the agreements, representations and understandings of the Parties hereto, and supersede and replace any previous understandings, commitments, or agreements, whether oral or written. Any other terms or conditions included in any shrink-wrap or boot-screen license agreements, quotes, invoices, acknowledgments, bills of lading, or other forms utilized or exchanged by the Parties shall not be incorporated in this Agreement or be binding upon the Parties unless the Parties expressly agree in writing or unless otherwise provided for in this Agreement.

2. TERM OF AGREEMENT

2.1. Term

The term of this Agreement is from July 1, 2018 to June 30, 2019 (“Initial Term”), inclusive, subject to the provisions of Section 12 “Termination” and subsection 2.2 “Options to Extend.”

2.2. Options to Extend

After the Initial Term, the City, at its sole discretion, reserves the right to extend the term of this Agreement for four (4) additional one-year periods (“Option Periods”) through June 30, 2023, based upon the same conditions of the Initial Term, subject to adjustments for compensation as set forth in Exhibit B and appropriation of funds. City shall provide Contractor prior written notice in the form of Exhibit E of its intention to exercise its option prior to the end of the then current term.

2.3. No Waiver

City’s agreement to extend the term of this Agreement is not a waiver of the “time is of the essence” provision in Section 4.

3. SCOPE OF SERVICES

3.1. Scope of Work

Contractor shall perform those services set forth in the Scope of Services which is attached as Exhibit A hereto and incorporated as through fully set forth herein (the “Scope of Services”).

3.2. Notification

Contractor agrees to notify City promptly of any factor, occurrence, or event coming to its attention that may affect Contractor’s ability to meet the requirements of the Agreement, or that is likely to occasion any material delay in completion of the projects contemplated by this

Agreement. Such notice shall be given in the event of any loss or reassignment of key employees, threat of strike, or major equipment failure.

4. SCHEDULE OF PERFORMANCE

Contractor shall perform the Services according to the terms and provisions contained in Exhibit A, Scope of Services. Time is expressly made of the essence with respect to each and every term and provision of this Agreement.

5. STANDARDS OF SERVICE

In connection with the performance of any Services pursuant to this Agreement:

5.1. Number of Employees

Contractor warrants it will provide sufficient employees to complete the Services ordered within the applicable time frames established pursuant to this Agreement. Furthermore, Contractor shall, at its expense, supply all tools, equipment and other materials necessary to perform the Services contemplated in this Agreement.

5.2. Skill of Employees

Contractor warrants that employees shall have sufficient skill, knowledge, and training to perform Services and that the Services shall be performed in a professional and workmanlike manner.

5.3. Duty of Confidentiality

All data, documents, discussions or other information developed or received by or for one Party in performance of this Agreement are confidential and must not be disclosed to any person except as authorized by the other Party, or as required by law. The receiving Party warrants that all employees utilized by it in performing Services are under a written obligation to the receiving Party requiring the employee to maintain the confidentiality of information of the other Party to the extent permitted by law.

5.4. Security and Safety

Contractor shall require employees providing Services at a City location to comply with applicable City security and safety regulations and policies. City may require each employee providing Services to undergo a background investigation, including, but not limited to a criminal records and fingerprint check. Contractor shall promptly replace any employee found to be unacceptable to City, in its sole discretion, on the basis of a significant infraction found in the background investigation.

5.5. Contractor's obligations to employees

Contractor shall provide for and pay the compensation of its employees and shall pay all taxes, contributions, and benefits (such as, but not limited to, workers' compensation benefits) which

an employer is required to pay relating to the employment of employees. City shall not be liable to Contractor or to any employee for Contractor's failure to perform its compensation, benefit, or tax obligations. Contractor shall indemnify, defend and hold City harmless from and against all such taxes, contributions and benefits and will comply with all associated governmental regulations, including the filing of all necessary reports and returns.

5.6. Replacement of Employees

During the course of performance of Services, City may request replacement of an employee or a proposed employee, provided that there is reasonable cause. In such event, Contractor shall, within five (5) working days of receipt of such request from City, provide a substitute employee of sufficient skill, knowledge, and training to perform the applicable Services. If, within the first thirty (30) days after an employee's commencement of Services, City notifies Contractor (i) such employee's level of performance is unacceptable, (ii) such employee has failed to perform as required, or (3) such employee, in City's sole opinion, lacks the skill, knowledge or training to perform at the required level, then Contractor will be required to review the work performed by said employee, confirm the quality of work, and correct any items the Contractor deems incorrect. If City requests replacement of an employee for the above-referenced reasons after such thirty (30) day time period, or at any time for a reason other than the reasons indicated above. City shall not be required to pay for, and shall be entitled to a refund of, any sums paid to Contractor for such employee's Services after the date of City's requested replacement of such employee.

6. CHANGE ORDER PROCEDURE AND AUTHORIZATION

6.1. Changes

Any changes to this Agreement that relate to (i) the deletion of Products or Services, (ii) adding additional Products or Services, (iii) changing or modifying Products or Services, or (iv) making other changes that materially alter the scope of this Agreement or the Deliverables required under this Agreement, including approval of all performance and/or payment schedules shall be made by the Director of Finance in accordance with the procedures set forth below.

6.2. Contract Change Requests

Either Party hereto may, from time to time, and at any time during the term hereof request a change, as defined in the above section. The Party requesting the change is hereinafter referred to as the "Requesting Party." Requests for changes shall be in writing and shall be addressed and delivered to the other Party as provided herein. Such writing shall be identified as a "Contract Change Request," shall carry a sequential number for ease of tracking, shall set forth in detail the nature of the change requested and the costs associated therewith, and shall identify the Products, Services, Deliverables or Schedules to be changed.

6.3. Procedures

As soon as practical after receipt by the notified Party of copies of the Request, the Parties shall as necessary meet to discuss the change and to ascertain its cost and schedule impacts, if any.

6.4. Change Orders

If the Parties decide to implement a change request, a standard form Change Order ("CO") shall be prepared in a form substantially similar to the form attached hereto as EXHIBIT D, which CO shall describe the change, delineate the cost, schedule, and other impacts of the change and the payment terms for any price increase. Only City's Director of Finance and Contractor's Authorized Representative shall have authority to execute CO's to this Agreement. Execution of a CO by City's Director of Finance and Contractor's Authorized Representative shall constitute a modification hereof and shall be binding on both Parties hereto.

7. COMPENSATION

The total contract price in U.S. dollars shall not exceed Three Hundred Fifteen Thousand Dollars (\$315,000) during the Initial Term ("Maximum Compensation"). The terms, rate, and schedule of payment are set forth in the attached EXHIBIT B, entitled "Compensation and Payment Schedule."

8. NON-FUNDING

City's funding of this Agreement shall be on a fiscal year basis (July 1 to June 30) and is subject to annual appropriations. Contractor acknowledges that City, a municipal corporation, is precluded by the California State Constitution and other laws from entering into obligations that financially bind future governing bodies, and that, therefore, nothing in this Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of this Agreement. Accordingly, the Parties agree that the Initial Term and any Option Periods are contingent upon the appropriation of funds by the City. This Agreement will terminate immediately if funds necessary to continue the Agreement are not appropriated. Despite the foregoing, the City shall pay Contractor for any Services performed in accordance with this Agreement up to the date of termination.

9. TAXES AND CHARGES

Contractor shall be responsible for payment of all taxes, fees contributions or charges applicable to the conduct of Contractor's business.

10. LABOR COMPLIANCE

This Agreement is subject to City's Prevailing/Living Wage Policy and the applicable implementing regulations (collectively, the "Policy"). Contractor shall comply with the provisions of the attached EXHIBIT F which sets forth Contractor's obligations under the Policy.

11. REPRESENTATIONS AND WARRANTIES

11.1. Contractor Responsibility

Contractor understands and accepts full responsibility for all requirements and deliverables defined in this Agreement. Contractor warrants it:

- 11.1.1. Has read and agrees with the specifications contained in the Scope of Services (EXHIBIT A); and
- 11.1.2. Fully understands the facilities, difficulties, and restrictions attending performance of the services; and
- 11.1.3. Contractor agrees to inform City of any unforeseen conditions which will materially affect performance of the work within 45 days of the execution of this Agreement and shall not proceed until written instructions are received from City.

11.2. Authority to Make Agreement

Contractor represents and warrants that Contractor has full right and authority to perform its obligations under this Agreement.

11.3. Contractor Agreements with City Employees

Contractor agrees to not enter into a relationship that may result in a financial conflict of interest with any employee or agent of the City who participated in the making of governmental decisions related to this Agreement.

12. TERMINATION

12.1. Termination for Convenience

City shall have the right to terminate this Agreement, without cause, by giving not less than thirty (30) days' written notice of termination.

12.2. Termination for Default

If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice

12.3. Termination Authority

The Director of Finance (“Director”) is empowered to terminate this Agreement on behalf of City.

12.4. Consequences of Termination

In the event of termination, Contractor shall deliver to City copies of all reports, documents, and other work performed by Contractor under this Agreement, and upon receipt thereof, City shall pay Contractor for services performed and reimbursable expenses incurred to the date of termination.

13. INDEMNIFICATION

Contractor shall defend, indemnify and hold harmless City, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this Agreement due to the willful or negligent acts (active or passive) or omissions by Contractor's officers, employees or agents. The acceptance of said services and duties by City shall not operate as a waiver of such right of indemnification.

14. INSURANCE REQUIREMENTS

Contractor agrees to have and maintain the policies set forth in EXHIBIT C, entitled "Insurance Requirements," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of the City of San José as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. Contractor agrees to provide City with a copy of said policies, certificates and/or endorsements before work commences under this Agreement.

15. WAIVER

Contractor agrees that City's waiver of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver of any other provision or a waiver of any subsequent breach or violation of the same or any other provision. City's acceptance of the performance of any of Contractor's services will not be a waiver of any provision of this Agreement.

16. INDEPENDENT CONTRACTOR

Contractor, in the performance of this Agreement, is an independent contractor. Contractor shall maintain complete control over all of Contractor's employees, any subcontracting subcontractors, and Contractor's operations. Neither Contractor nor any person retained by Contractor may represent, act, or purport to act as the agent, representative or employee of City. Neither Contractor nor City is granted any right or authority to assume or create any obligation on behalf of the other.

17. COMPLIANCE WITH LAWS

Contractor shall comply with all applicable laws, ordinances, codes and regulations (collectively, "laws") of the federal, state and local governments, including without limitation, any and all laws specified elsewhere in this Agreement.

18. CONFLICT OF INTEREST

Contractor shall avoid all conflict of interest or the appearance of conflict of interest in performance of this Agreement.

19. NONDISCRIMINATION

Contractor agrees that there shall be no discrimination against, or segregation of, any person, on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, marital status, or family status, in connection with or related to the performance of this Agreement.

20. GIFTS

20.1. Prohibition on Gifts

Contractor acknowledges that Chapter 12.08 of the San José Municipal Code prohibits City's officers and designated employees from accepting gifts as defined in Chapter 12.08.

20.2. No Offer

Contractor agrees not to offer any City officer or designated employee any gift prohibited by Chapter 12.08.

20.3. Breach of Agreement

Contractor's offer or giving of any gift prohibited by Chapter 12.08 will constitute a material breach of this Agreement. In addition to any other remedies City may have in law or equity, City may terminate this Agreement for such breach as provided in Section 12 of this Agreement.

21. DISQUALIFICATION OF FORMER EMPLOYEES

Contractor is familiar with Chapter 12.10 of the San José Municipal Code ("Revolving Door Ordinance") relating to the disqualification of City's former officers and employees in matters which are connected with their former duties or official responsibilities. Contractor shall not utilize either directly or indirectly any officer, employee, or agent of Contractor to perform services under this Agreement, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

22. CONFIDENTIAL INFORMATION

All data, documents, discussions or other information developed or received by or for Contractor in performance of this Agreement are confidential and must not be disclosed to any person except as authorized by City, or as required by law.

23. OWNERSHIP OF MATERIALS

All reports, documents or other materials developed or discovered by Contractor or any other person engaged directly or indirectly by Contractor to perform Contractor's services are City's property without restriction or limitation upon their use.

24. CONTRACTOR'S BOOKS AND RECORDS

24.1. Maintenance during Term

Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor pursuant to this Agreement.

24.2. Maintenance after Term

Contractor shall maintain all documents, which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

24.3. Inspection

Any documents required to be maintained pursuant to this Agreement must be made available for inspection or audit at no cost to the City and at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Contractor shall provide copies of such documents to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's address indicated for receipt of notices in this Agreement.

24.4. Custody of Records

Where City has reason to believe that any of Contractor's documents relating to this Agreement may be lost or discarded due to dissolution, disbandment or termination of Contractor's business, City may, by written request by any of the above-named officers, require that custody of the Contractor's documents be given to City and that these documents be maintained in City Hall. City agrees to grant access to Contractor's documents to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in-interest.

25. ASSIGNABILITY

The Parties agree that the expertise and experience of Contractor are material considerations for this Agreement. Unless specifically authorized by this Agreement, Contractor may not assign the performance of any obligation or interest under this Agreement without the prior written consent of City. Any attempt by Contractor to assign this Agreement, in violation of this Section, will be voidable at City's sole option.

26. SUBCONTRACTORS

26.1. Authorized Subcontractors

Notwithstanding Section 25 (Assignability) above, Contractor may use designated subcontractors, approved in advance by City, in performing Contractor's Services. Contractor must obtain City's prior written consent in order to change or add subcontractors. Contractor

shall be responsible for directing the work of the approved subcontractors and for any compensation due to subcontractors. City assumes no responsibility whatsoever concerning such compensation.

26.2. Compliance with Agreement

Contractor shall ensure that Contractor's subcontractors comply with this Agreement. At City's request, Contractor shall require any or all of Contractor's subcontractors to sign an agreement with Contractor requiring compliance with this Agreement.

27. GOVERNING LAW

This Agreement must be construed -- and its performance enforced--under California law.

28. VENUE

In the event that suit is brought by either Party to this Agreement, the Parties agree that venue must be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

29. NOTICES

All notices and other communications required or permitted to be given under this Agreement must be in writing and must be personally served, or mailed, postage prepaid via U. S. mail, or sent via courier service, addressed to the respective Parties as follows:

To City: City of San José
Attention: Director of Finance
200 E. Santa Clara St., 13th Floor
San José, CA 95113

To Contractor: Tucker Construction, Inc.
Attention: Mark Tucker
1725-D Little Orchard Street
San José, CA 95125

Notice will be effective on the date personally delivered or if sent by courier service, on the date of receipt. If mailed, notice will be effective three (3) days after deposit in the mail. The Parties may change their respective addresses in accordance with the provisions of this Section.

30. MISCELLANEOUS

30.1. Survival of Provisions

If any part of this Agreement is for any reason found to be unenforceable, all other parts nevertheless remain enforceable.

30.2. Assignment

Subject to the provisions of Section 25 (Assignability), this Agreement binds and inures to the benefit of the Parties and their respective successors and assigns.

30.3. Headings

The headings of the sections and exhibits of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and are not to be used in its construction.

30.4. Authority of City Manager

Where this Agreement requires or permits City to act and no officer of the City is specified, City’s Manager or the designated representative of City’s Manager has the authority to act on City’s behalf.

WITNESS THE EXECUTION HEREOF on the day and year set forth beneath the respective names below.

City of San José
a municipal corporation

Tucker Construction, Inc.
a California corporation

By _____

By _____

Name: Jennifer Cheng

Name: Mark Tucker

Title: Deputy Director, Finance

Title: President, Secretary, and Treasurer

Date: _____

Date: _____

APPROVED AS TO FORM:

Name: Rosa Tsongtaatarii

Title: Senior Deputy City Attorney

Date: _____

EXHIBIT A SCOPE OF SERVICES

1. INTRODUCTION

- 1.1. As directed by City, Contractor shall provide turnkey homeless encampment site clean-ups as described herein, with the goal of keeping waterways, parks, and public space free of encampments in order to protect the environment and provide safe use of public areas.

2. CONTRACTOR DUTIES AND RESPONSIBILITIES

- 2.1. Contractor shall clean-up encampment sites as assigned by City. Clean-up duties shall include surveying sites, collecting debris, dismantling temporary structures, removing trash, and disposing of all debris at a permitted solid waste disposal or Class III landfill facility.
- 2.2. Contractor shall coordinate the disposal of materials excluded from solid waste disposal facilities found at abatement sites such as hazardous waste, universal waste, medical waste, and other items banned from Newby Landfill at a site permitted to accept such material. Contractor may provide these services directly or through a licensed subcontractor.
- 2.3. Contractor shall follow best practices and work procedures to safely manage any hazardous materials that may be found on the job site, including soiled personal hygiene items, syringes, and other materials which could pose a health threat.
- 2.4. Contractor shall supply all labor, materials, tools, heavy machinery and equipment, vehicles, protective clothing, protective gear, portable bathroom facilities, and other supplies that may be required to remove tons of debris, litter, and waste as listed in Appendix A1. Such equipment, tools, and protective gear shall be sufficient for all conditions including jobsites that may be located in heavy foliage, poison oak, steep embankments, next to train tracks, by creeks and rivers, and other areas requiring alertness to the environment and pre-planning to prevent injury or illness.
- 2.5. Contractor shall coordinate with the City on a project-by-project basis to determine the scope for each encampment clean-up. The scope will establish the project start date, period of work, size/scope of the job, work location, the name and title of the onsite Contractor representative, and the estimated not-to-exceed cost of the clean-up as provided in Exhibit B. Additional specific instructions will be given by the City at the work location.
- 2.6. Contractor shall post City-provided "notice to vacate" signs at the work site at least seventy-two (72) hours prior to the commencement of each removal project as established in the work scope and as directed by City staff. Contractor shall photograph posted notices to document time and location of posting. Photographs shall be available to the City by the end of work day.
- 2.7. Contractor shall be responsible to provide one (1) on-site supervisor/manager for abatement crews and ensure all necessary safety procedures are followed. This individual will also serve as the City contact for all projects. City will not pay for more than one (1) supervisor unless agreed upon in writing.
- 2.8. Contractor shall provide industrial grade bags and tags and, with City supervision, sort items that may include litter, debris and waste at the site and identify and tag certain items as

"personal property". Such personal property items include but are not limited to items in good repair such as tents, backpacks, medication, eye glasses, books, jewelry, stoves, audio equipment, toiletries, personal records, handbags, personal photographs, duffel bags, bedrolls, blankets, watches, and clean clothing.

- 2.9.** In the sorting process, Contractor will: (a) open any bag, purse, backpack, or suitcase to verify the contents, but will not sort each item inside, (b) cut open or disassemble any structure or tent in order to verify the contents, but will not sort each item inside and (c) consider trash any structure or tent that required cutting or disassembling in order to inspect the inside without entry.
- 2.10.** Once a site is sorted the Contractor will photograph the personal property to document what is being placed in storage (the "photo inventory"). A sign or board indicating the date, location of the containers will be placed in the photograph with the property. The Contractor will then place all personal property clear plastic tubs or bags marked with the date and location of abatement. The Contractor will load the personal property into a truck to be transported to a City storage facility.
- 2.11.** Contractor will request the name of any individual claiming property during the sorting. Any returned item will be photographed and noted on the photo inventory list with the name of the individual who collected it.
- 2.12.** Contractor shall transport identified personal property for storage at an identified City facility or as directed by City staff. Contractor shall adhere to the Guidelines for the proper identification and classification of personal property in Appendix A2. In addition, the City will provide training and written instructions as required for the Contractor to help identify, sort, tag, and catalogue what will be retained as personal property.
- 2.13.** Contractor shall photograph the encampment site and surrounding area identified by City staff before and after the cleanup to document the condition of the site and the date of the cleanup. Photographs of cleanup will be provided to the City electronically after completion of the cleanup.
- 2.14.** Contractor shall immediately contact the City of San José Police Department in the event that weapons are found at the encampment.
- 2.15.** Contractor shall trim shrubs and vegetation as required in a work order issued by the City as an encampment deterrent, provided that such abatement is consistent with any permits required to perform cleanups along watercourses, including but not limited to, any permits required by the California Regional Water Quality Control Board, the U.S. Army Corps of Engineers, or the California Department of Fish and Wildlife.
- 2.16.** Contractor shall be familiar with the areas and verify with the City designated representative that the abatement site is within the City's jurisdiction. Encampments may be located on properties shared by the City or other agencies. Contractor is expected to be familiar with the area and verify the jobsite is within the City's jurisdiction. In the event that access to the jobsite is restricted, Contractor shall coordinate entry with the City.
- 2.17.** Contractor shall notify the City when the work is complete and provide a clean-up report to City representative. City will provide template for reporting.

- 2.18. In the event that an adjacent homeless encampment is discovered in the general area during the course of a project, Contractor shall notify the City's designated representative to obtain authorization prior to proceeding with any additional work that was not identified in the work scope.
- 2.19. Contractor shall provide a representative, if requested by City, to attend regional encampment clean-up coordination meetings that involve multiple agencies, jurisdictions, and/or special interest organizations.
- 2.20. City reserves the right to cancel any given project if the City deems, in its sole discretion, that unsafe conditions exist at the site on the day of a planned event. The City will attempt to provide Contractor with at least 24-hour notice of any project cancellation.
- 2.21. Contractor shall perform work in a timely and efficient manner, and conduct themselves in a courteous and business-like fashion at all times.
- 2.22. Contractor shall obtain, maintain, and comply with all permits required to perform cleanups along watercourses, including but not limited to, any permits required by the California Regional Water Quality Control Board, the U.S. Army Corps of Engineers, or the California Department of Fish and Wildlife.
- 2.23. Contractor shall track data related to each encampment clean-up and provide detailed monthly reports to the City.
- 2.24. Upon receipt of a phone call or email regarding an item collected at an abatement, Contractor will review the photo inventory list for the date and location of the abatement for the reported item. If the item can be located, Contractor shall retrieve the item from storage and drop off the item(s) with staff at the Boccardo Regional Reception Center (2011 Little Orchard Street) for collection by the caller.

3. CITY RESPONSIBILITIES

- 3.1. City shall issue a work order and provide a minimum one week notice to Contractor prior to the start time of a clean-up project.
- 3.2. City shall provide security during the posting of the "notice to vacate" and for the duration of the clean-up.
- 3.3. City shall provide a representative to serve as a point of contact to approve and issue work orders and to address any Contractor issues or questions that may arise during the course of a clean-up.
- 3.4. City shall provide training and written instructions as required for Contractor to help identify, sort, tag, and catalogue what will be retained as personal property.

4. SAFETY AND TRAINING

- 4.1. Safety and appropriate training/licensing are critical requirements for the selected Contractor. The City will provide security for all scheduled clean-up activities. At no time is the Contractor expected to interact with the homeless residents or put their employees at risk.

- 4.2. Contractor shall comply with all safety rules, protocols, and licensing requirements mandated by the State of California.
- 4.3. Work may be performed in inclement weather. Jobsites can be in heavy foliage, poison oak, steep embankments, next to train tracks, by creeks and lakes, and other areas requiring alertness to the environment and pre-planning to prevent injury or illness. Contractor shall perform a hazard assessment and provide all training and supplies necessary.
- 4.4. Contractor shall be OSHA certified to operate any heavy equipment required to complete the encampment clean-up work, including trash compactors, bulldozers, graders, or other ground moving equipment.
- 4.5. Contractor shall conform to all applicable occupational safety and health standards, rules, regulations, and orders established by the State of California. Contractor shall provide all safety equipment, materials, and training to its employees as required. Contractor shall provide its employees with appropriate safety apparel. This apparel shall include hardhats, safety glasses, vests, gloves, and leather (or adequately puncture resistant) boots.
- 4.6. Contractor shall be trained annually in OSHA's Bloodborne Pathogen Standard 1910.1030. This training must be supplemented with precautions regarding West Nile Virus, hanta virus, Hepatitis A, and histoplasmosis. Employees must have work procedures to be able to safely manage urine, feces, soiled personal hygiene items, syringes, and other materials which could pose a health threat. Wearing Personal Protective Equipment (PPE) and following other protocols established for this situation must be followed. Contractor will coordinate disposal of these wastes and syringes with the City.
- 4.7. Contractor shall provide copies of any training records and licenses required by the City.

APPENDIX A1 TO EXHIBIT A EXAMPLES OF TOOLS, EQUIPMENT, AND THIRD-PARTY SERVICES

Examples of tools and equipment provided by Contractor (and included in Contractor's hourly labor rate):

Clothing supplied by workers

- Boots – high top leather uppers
- Long sleeve shirts
- Longs pants

Maintenance items

- Identifying shirts or vests
- First aid kit
- Drinking water
- Toilet provisions

Personal Protection Items

- Gloves
- Hardhats
- Dust masks
- Goggles
- Sunscreen
- Insect Repellant
- Bite treatment cream
- Poison oak exposure cream

Hand tools

- Rakes
- Shovels
- Pitch forks
- Tarps

- Garbage cans
- Plastic bags
- Hammers
- Pry-bars
- Knives
- Weed trimmer
- Weed mower
- Chainsaw
- Brooms

Bio Supplies

- PPE clothing
- Eye protection
- Face protection
- Red bags
- Hazard notices
- Red second containment for transport
- Cleaning materials including bleach
- Shovels

Heavy equipment, if needed

- Small skid steer tractor
- Backhoe loader
- Dump trucks
- Other vehicles

Examples of additional equipment, materials, and third-party services at Contractor's actual cost plus 20%:

Boom rental
Dumpsters
Portable toilet
Disposal

APPENDIX A2 TO EXHIBIT A GUIDELINES FOR PROPERTY IDENTIFICATION

Unless an item is trash or poses an immediate threat to public health or safety, it should be retained for storage as potential personal property.

Items that are arranged in a manner that suggests ownership (e.g., items that are neatly folded or stacked, stored off the ground, hung, or clearly on display or packed in bag or box) should be retained for storage.

If there is any uncertainty regarding whether an item should be thrown away or stored, it should be stored.

Examples of items to take to storage: *The following are examples of items that could be considered personal property and will be stored:*

- ID/Social Security cards
- Medications
- Photos/Photo Albums
- Tax/medical records
- Jewelry
- Eyeglasses
- Books
- Tents
- Pots & Pans
- Radios & Electronics
- Tools
- Stoves & Generators
- Bicycles
- Purses/backpacks/briefcases

Examples of items that are trash or pose a threat to public health or safety and will not be stored: *The following are examples of conditions that will cause an item (including those examples listed above) to be immediately disposed of:*

- **Dirty or Soiled:** items that smell, are stained with urine, bodily waste, or mud, or are infested with fleas, bed bugs, rats or other vectors
- **Perishable:** open food or personal products that will spoil or rot in storage
- **Contaminated:** items used for hygiene or that present a risk of biohazard (e.g., used toothbrushes, hairbrushes, washcloths, bandages, sponges, and underwear)
- **Hazardous or Explosive:** items that could corrode or burn in storage (e.g., car batteries, gasoline cans, and propane tanks)
- **Broken or Disassembled:** items that are broken, damaged, or stripped of parts (e.g., electronics stripped for copper, flat tires, and torn up clothes)
- **Weapons:** weapons will be turned over to the SJPD
- **Obvious Trash:** food/ beverage wrappers, tissue/paper napkins, open household product containers, etc.

EXHIBIT B COMPENSATION

1. MAXIMUM COMPENSATION

The maximum amount payable for all products and services provided under this Agreement shall not exceed Three Hundred Fifteen Thousand Dollars (\$315,000) during the Initial Term. Any additional services or products requested by the City that would exceed the preceding maximum amount will be addressed in accordance with the Change Order Procedures described in Section 5 of this Agreement. No additional services will be performed unless both Parties execute a Change Order outlining the services requested and the compensation agreed for such services.

2. PRICING

2.1. Compensation shall be paid to Contractor on a time and material basis as listed below.

Labor Category	Hourly Rate
Laborer (non-hazardous)	\$75.00
Laborer (hazardous)	\$105.00
Supervisor	\$85.00
Trucker	\$85.00

Additional equipment/materials/third-party services	%
Markup on Actual Cost	20%

2.2. Prior to the commencement of work, Contractor shall provide City with a not to exceed estimated cost of the clean-up. Contractor shall notify City, with as much advanced notice as possible, if it is determined that the estimate will be exceeded.

2.3. The hourly labor rates are fully loaded and include wages, overhead costs, general and administrative costs, and profit. Overhead costs shall include all hand tools, power tools, consumables, and related items that may be required to perform each clean-up. Refer to Appendix A1 for examples of tools and equipment. The hourly labor rates shall be firm fixed for the initial twelve (12) months of the Agreement.

2.4. In the event that additional tools, equipment, and/or third-party services are required for a clean-up, Contractor shall obtain pre-approval from the City describing the additional requirement and the associated cost. City shall reimburse Contractor for any pre-approved additional charge at Contractor's actual cost, plus a maximum of 20% markup.

3. INVOICING PROCEDURE

3.1. At the conclusion of each encampment clean-up, the City shall pay Contractor in arrears within thirty (30) days of a properly completed invoice in a form acceptable to the City.

3.2. The invoice shall itemize the number of employees assigned to the clean-up, the actual hours worked for each employee, and the hourly rate as quoted above, and the extend cost which is the hourly labor rate times the total hours worked. Actual hours worked shall only include clean-up work at the encampment, and shall not include time for travel to the job-site, or any incidental time that is not directly related to

the clean-up. If any additional tools, equipment, and/or third-party services were required for the clean-up, then supporting documentation must be provided with the invoice to document the cost to the vendor.

- 3.3. City will make payments when due in the form of a check, cashier's check, or wire transfer drawn on a U.S. financial institution.

4. RENEWAL PERIOD COMPENSATION

- 4.1. After the Initial Term, the City reserves the right to extend the term of this Agreement pursuant to Section 2.2 ("Options to Extend") at the same rates as set forth above, subject to compensation adjustments as outlined in Section 4.2 below.
- 4.2. Contractor may request adjustments to the hourly labor rates sixty (60) days prior to an option term. Contractor shall provide information justifying reasons for any increase, and City shall not unreasonably withhold approval of any increase provided the renewal quote for ongoing services does not exceed 3%, except to reflect an increase to the City's Living/Prevailing Wage that is greater. Contractor must provide wages and benefits information to establish the amount paid to their workers to justify an adjustment that is greater than 3%. In no event will an adjustment greater than 3% be allowed for general and administrative expenses, overhead expenses, and profit.

EXHIBIT C INSURANCE REQUIREMENTS

Contractor, at Contractor’s sole cost and expense, shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by the Contractor, its agents, representatives, employees or subcontractors or suppliers. The cost of such insurance shall be included in the Contractor’s bid.

1 Minimum Scope and Limit of Insurance

There shall be no endorsements reducing the scope of coverage required below unless approved by the City’s Risk Manager.

Type of Insurance	Minimum Limit
<p>1. Commercial General Liability</p> <p>The coverage provided by Insurance Services Office “occurrence” form CG 0001, including coverages for contractual liability, personal injury, broadform property damage, independent contractors, products and completed operations.</p>	<p>\$1,000,000 per occurrence for bodily injury, personal injury and property damage or \$2,000,000 annual aggregate.</p>
<p>2. Automobile Liability</p> <p>The coverage provided by Insurance Services Office form number CA 0001. Coverage shall be included for all owned, non-owned and hired automobiles.</p>	<p>\$1,000,000 combined single limit per accident for bodily injury and property damage.</p>
<p>3. Workers’ Compensation and Employer Liability</p> <p>As required by the Labor Code of the State of California.</p>	<p>\$1,000,000 combined single limit per accident for bodily injury and property damage.</p>

2 Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the City’s Risk Manager. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and contractors; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City’s Risk Manager.

3 Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

3.1. General Liability and Automobile Liability Coverages

- a. The City, its officials, employees, and agents are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, and agents.
- b. The Contractor’s insurance coverage shall be primary insurance as respects the City, its officials, employees, and agents. Any insurance or self-insurance maintained by the City, its officials, employees, and agents shall be excess of the contractor’s insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, or agents.

- d. Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, and agents.

3.2. Workers' Compensation and Employers Liability

Coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials, and agents.

3.3. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City; except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

4 Acceptability of Insurance

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

5 Verification of Coverage

- 5.1. Contractor shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- 5.2. Copies of all the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by the Contractor's insurance company as evidence of the stipulated coverages.
- 5.3. Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San José – Finance Department
Risk & Insurance
200 East Santa Clara St., 14th Floor
San José, CA 95113-1905

6 Subcontractors

Contractors shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

EXHIBIT D CHANGE ORDER FORM (CO)

CHANGE ORDER #

<p>Pursuant to Section <u> </u> of the Agreement for the <u> </u> System between <u> </u> and the City of San José, the Agreement is hereby amended as follows:</p> <p><i>(The following language is provided as an example of how to complete this form.)</i></p>		
<p>1. Contractor shall provide the following additional services at the costs indicated below:</p>		
TOTAL		
<p>2. The following services, products or deliverables are hereby deleted and the associated costs in amounts set forth below are also deleted.</p>		
TOTAL		
<p>3. Exhibit <u> </u> is hereby amended to read as set forth in the Revised Exhibit <u> </u> which is attached hereto.</p>		
<p>4. All of the terms and conditions of the Agreement not modified by Change Order shall remain in full force and effect.</p>		
	Total Cost of Change	
	Total Credit of Change	
	Previous Amendments and/or Change Orders	
	Original Contract	
<p>ACCEPTANCE</p> <p>Contractor hereby agrees to accept the amount set forth herein as payment in full of the work described and further agrees that Contractor is entitled to no additional time or compensation for such work other than as set forth herein.</p> <p>Contractor</p> <p>_____</p> <p style="text-align: right;">Date</p>	<p>APPROVED AS TO FORM</p> <p>_____</p> <p>{Name}</p> <p>Title</p> <p>City of San José</p> <p>_____</p> <p>Name</p> <p>Title</p> <p style="text-align: right;">Date</p>	

EXHIBIT E
NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT

AGREEMENT TITLE:	
CONTRACTOR Name and Address:	
DATE:	

(date the notice is sent must be consistent with the time for exercise set forth in Agreement)

Pursuant to Section ____ of the Agreement referenced above, the City of San José hereby exercises its option to extend the term under the following provisions:

OPTION NO.	
-------------------	--

NEW OPTION TERM

Begin date:	
End date:	

CHANGES IN RATE OF COMPENSATION

Percentage change in CPI upon which adjustment is based:	
---	--

Pursuant to Section ___ of the Agreement the Rates of Compensation are hereby adjusted as follows:
(use attachment if necessary)

MAXIMUM COMPENSATION for New Option Term:	
--	--

For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of San José hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

<p>CITY OF SAN JOSE a municipal corporation</p> <p>By _____ Name: Title: Date:</p>
--

EXHIBIT F

WAGE REQUIREMENTS AND INFORMATION

Pursuant to City of San Jose Prevailing Wage and Living Wage Policies, Contractor and any subcontractor shall be obligated to pay not less than the prevailing wage or living wage in accordance with the requirements of this policy document, and the Wage Determination as indicated in **Appendix F1** to this attachment.

I. CITY COUNCIL WAGE POLICIES

A. Living Wage Policy

Under City Council Policy 3-3, contractors who are awarded certain City service and labor contracts are required to pay a minimum level of compensation and provide a minimum number of days of compensated time off to covered employees who work on these projects.

Living wages shall mean the wages paid under a collective bargaining agreement between the Contractor and a recognized union representing employees who will perform services pursuant to the Agreement.

If the wage rates set forth in the collective bargaining agreement fall below the then current Living Wage Rate set by the City of San Jose, the required rate of pay shall be the City's Living Wage Rate unless the collective bargaining agreement expressly provides that the agreement shall supersede the requirements of the Living Wage Policy.

If there is no collective bargaining agreement as described above, not less than the following Living Wage Rate must be paid to covered employees performing work identified in the applicable wage determination issued by the City of San Jose's Office of Equality Assurance.

1. If health insurance benefits are provided, a wage of not less than **Twenty Dollars and Fourteen Cents (\$20.14)** per hour.
2. If health insurance benefits are not provided, a wage of not less than **Twenty-One Dollars and Thirty-Nine Cents (\$21.39)** per hour.

Contractors shall provide twelve (12) days of compensated time off to full time covered employees, and six (6) days of compensated time off to part time covered employees. Paid holidays, paid sick days, paid vacation and paid personal days are allowed to count towards the 12 or 6 required days.

B. Prevailing Wage Policy

California Labor Code and/or Resolutions of the City of San Jose require the payment of not less than the general rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations.

Prevailing Wages established by the California Department of Industrial Relations shall be the General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1. The General Prevailing Wage Rates may be adjusted throughout the term of this Agreement.

Prevailing Wages established by the City of San Jose shall mean the wages paid under a collective bargaining agreement between the Contractor and a recognized union representing workers who perform services pursuant to this agreement; or

If there is no collective bargaining agreement as described above, not less than the prevailing rate of per diem wages for the employee craft/classification as determined by the City of San Jose's Office of Equality Assurance.

The City's Prevailing Wage will be subject to annual adjustment on the anniversary date of the agreement. Adjustment will be based on the U.S. Department of Labor/Bureau of Labor Statistics Consumer Price Index, All Items, for all Urban Consumers [CPI-U] for San Francisco-Oakland-San Jose.

Please see **Appendix F1** for Classification and Wage Determination.

C. Reports

The Office of Equality Assurance will monitor the payment of prevailing and living wages by requiring the awarded Contractor and all Subcontractors to file a LABOR COMPLIANCE WORKFORCE STATEMENT and LABOR COMPLIANCE FRINGE BENEFIT STATEMENT with supporting documentation.

The awarded Contractor and Subcontractors shall also report such other additional information, including certified payrolls, as requested by the Director of Equality Assurance to ensure adherence to the Policies.

Labor compliance statements must be filed in the Office of Equality Assurance within 10 days of execution of this Agreement at the address below.

City of San Jose
Office of Equality Assurance
200 East Santa Clara Street
Fifth Floor
San Jose, CA 95113
Phone: 408-535-8430

NOTE: Appendices F2 and F3 are provided for informational purposes only.

II. LIVING WAGE POLICY PROVISIONS

On November 17, 1989, by Resolution No. 68554, amended on June 8, 1999 by Resolution No. 68900, amended on May 27, 2003 by Resolution No. 71584, amended on June 4, 2013 by Resolution No. 76653 and amended on January 28, 2014 by Resolution No. 76911 the San Jose City Council adopted its Living Wage Policy to meet the employment and economic development needs of low wage workers by mandating:

1. A minimum level of compensation and a minimum number of days of compensated time off for workers employed by contractors and subcontractors who are awarded certain City of San Jose service and labor contracts with an expenditure in excess of \$20,000 and recipients who receive direct monetary financial assistance from the City in the amount of \$100,000 or more in any twelve month period, excluding non-profit corporations;

2. The provision of health insurance benefits or the ability to afford health insurance;
3. Retention of employees when certain new contractors take over a continuing City service;
4. An environment of labor peace; and
5. Employee Work Environment Evaluation (Third Tier Review)

A. WAGE REQUIREMENTS

1. Covered Employees Defined:

For the purpose of this provision, Covered Employees means any person employed by the Contractor or Subcontractor who meets the following conditions:

- a) The person does not provide volunteer services that are uncompensated except for reimbursement of expenses such as meals, parking or transportation;
- b) The person expends at least half of his/her time on work for the City;
- c) The person is at least eighteen (18) years of age; and
- d) The person is not in training for the period of training specified under training standards approved by the City of San Jose.

B. EMPLOYEE WORK ENVIRONMENT EVALUATION

An Employee Work Environment Evaluation looks into a Proposer's history as an employer and work condition commitments.

Proposers are required to complete the Employee Work Environment Questionnaire (Questionnaire). If the Questionnaire is incomplete or inadvertently omitted from your proposal, it will not result in immediate disqualification of your proposal. However, failure to submit these forms with your proposal or incomplete submittals may result in a lower overall score.

C. ENFORCEMENT

1. General

Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Contract, it is required to pay workers either a prevailing or living wage ("Wage Provision") and to submit certain documentation to the City establishing its compliance with such requirement. ("Documentation Provision.") Contractor further acknowledges the City has determined that the Wage Provision promotes each of the following (collectively "Goals"):

- a) It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.

- b) It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
- c) Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.
- d) It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

2. Remedies for Contractor's Breach of Prevailing Wage/Living Wage Provisions

- a) **Withholding Of Payment:** Contractor agrees that the Documentation Provision is critical to the City's ability to monitor Contractor's compliance with the Wage Requirement and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Requirement. In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor's compliance with this Provision, as well as the Wage Requirement, is an express condition of City's obligation to make each payment due to the Contractor pursuant to this Agreement. The City is not obligated to make any payment due the Contractor until Contractor has performed all of its obligations under these Provisions. This Provision means that City can withhold all or part of a payment to Contractor until all required documentation is submitted. Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of the Wage Provision or the Documentation Provision.
- b) **Restitution:** Contractor agrees that in the event of a breach of its obligations it will pay any amounts underpaid in violation of the required payments and City's administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the City.
- c) **Liquidated Damages For Breach Of Wage Provision:** Contractor agrees its breach of the Wage Requirement would cause the City damage by undermining the Goals, and City's damage would not be remedied by Contractor's payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing/living wage and the longer the amount of time over which such wages were not paid. The City and Contractor mutually agree that making a precise determination of the amount of City's damages as a result of Contractor's breach of the Wage Requirement would be impractical and/or extremely difficult. Therefore, the parties agree that, in the event of such a breach, Contractor shall pay to the City as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the amount of wages that should have been paid.
- d) **Additional Remedies:** Contractor agrees that in addition to the remedies set forth above City retains the right to suspend or terminate the Agreement for cause and

to debar Contractor or subcontractors from future City contracts and/or deem the recipient ineligible for future financial assistance.

D. AUDIT RIGHTS

All records or documents required to be kept pursuant to this Contract to verify compliance with the Wage Provision shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor's address indicated for receipt of notices in this Contract.

E. COEXISTENCE WITH ANY OTHER EMPLOYEE RIGHTS

These provisions shall not be construed to limit an employee's ability to bring any legal action for violation of any rights of the employee.



**Appendix F1 to Exhibit F
City of San Jose Work Classification Determination**

CONTRACT SCOPE: HOMELESS ENCAMPMENT CLEAN-UPS
ISSUE DATE: JANUARY 22, 2018

Contracts governed by both the City of San José’s Living Wage Policy (Council Policy 3-3) and its Prevailing Wage Policy (Resolution No. 61144) are subject to the Policy with the higher wage requirements. **The prevailing wage rates for this contract are contained in the General Prevailing Wage Determination 2017-1 and Predetermined Increases issued by the Director of Industrial Relations.** A copy of the Wage Determination can be obtained from the Office of Equality Assurance at 200 East Santa Clara Street, 5th Floor, San Jose CA 95113 or by phone at 408-535-8430.

Living Wage Classifications

Work Description	Craft Classification(s)
Landscape Maintenance & Clean-Up Minor tree trimming, cleaning grounds using rakes, brooms, hose & leaf blowers, minor graffiti clean-up, color change (seasonal change of flowers), clearing paths and trails and emptying trash containers	City of San Jose Living Wage If health benefits are provided, living wage rate is \$20.57 If health benefits are not provided, living wage rate is \$21.82 per hour

The living wage rates shall be adjusted on the anniversary date of the contract.

Prevailing Wage Classifications

Work Description	Craft Classification(s)
Hazardous Material Removal	Craft: Laborer Group 1 - Certified Hazardous Waste Worker (Including Lead Abatement) [Northern California Basic Trade Determinations, Pgs. 49-50]
Repair and Renovation Work Traffic Control, Erosion Control, Tree/Plant and Shrub Removal/Planting, Tree Stump Grinding/Removal, Tree/Plant Maintenance after planting (water and fertilizer)	LABORER: Multiple Groups Page 49/DIR Wage Deter.
Traffic Control	TRAFFIC CONTROL/LANE CLOSURE (LABORER) Page 44/DIR Wage Deter
Landscape Equipment over 35 Horsepower	OPERATING ENGINEER, LANDSCAPE Page 42/DIR Wage Deter. Exp.
Trucker	Craft: Teamsters* [Northern California Basic Trade Determinations Pg. 55]

For any work not expressly identified, please contact the Office of Equality Assurance at 408-535-8430.

Hours and Days of Work

Employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh (7th) consecutive day of work in a workweek.



**Appendix F2 to Exhibit F
Labor Compliance Workforce Statement**

CONTRACTOR NAME: _____

CONTRACT: _____

In the chart below, list the name, prevailing wage or living wage classification(s) to be used, rate of pay and hire date for each employee expected to work on the above contract. See example below.

EMPLOYEE NAME	CRAFT/TRADE CLASSIFICATION	BASIC HOURLY RATE OF PAY (On City of San Jose Contract)	DATE OF HIRE (Indenture Date If Apprentice)
<i>Example: Bob Jones</i>	<i>Recycle Driver</i>	<i>\$24.28</i>	<i>6/1/2002</i>

Questions regarding classifications allowed on San Jose projects should be directed to the Office of Equality Assurance at 408-535-8430.



Appendix F3 to Exhibit F Labor Compliance Fringe Benefit Statement

CONTRACTOR NAME: _____

CONTRACT: _____

I certify under penalty of perjury that fringe benefits are paid to the approved plans, funds, or programs as listed below:

Classification	Fringe Benefit Hourly Amount	Name of the Plan or Fund (Attach Premium Transmittal)
<p>1. _____</p> <div style="border: 1px solid black; padding: 5px; background-color: #f0f0f0;"> <p>Documentation of Plan contribution <u>must</u> be returned with this statement</p> <p>Please attach a copy of your most recent transmission into each medical, pension, or profit sharing plan account indicating worker name and amount of contribution.</p> </div>	Vacation \$ _____ Health & Welfare \$ _____ Pension \$ _____ Apprentice \$ _____ Other (specify) \$ _____	_____ _____ _____ _____ _____
<p>2. _____</p>	Vacation \$ _____ Health & Welfare \$ _____ Pension \$ _____ Apprentice \$ _____ Other (specify) \$ _____	_____ _____ _____ _____ _____
<p>3. _____</p>	Vacation \$ _____ Health & Welfare \$ _____ Pension \$ _____ Apprentice \$ _____ Other (specify) \$ _____	_____ _____ _____ _____ _____

All (or some) fringes are paid in cash by adding the amount to the employee's basic hourly rate.

Company Name (Please Print)

Name and Title (Please Print)

Date

Signature



Appendix F4 to Exhibit F Labor Compliance Addendum

AGREEMENT TITLE:	Homeless Encampment Clean-Ups
CONTRACTOR Name and Address:	Tucker Construction, Inc. 1725-D Little Orchard Street San Jose, CA 95125

By executing this Addendum, Contractor acknowledges and agrees that the work performed pursuant to the above referenced Agreement or Purchase Order, including all renewals and extensions, is subject to all applicable provisions.

Payment of Minimum Compensation to Employees. Contractor shall be obligated to pay not less than the General Prevailing Wage Rate and/or Living Wage Rate as indicated in the attached Exhibit(s) titled “**Work Classification and/or Living Wage Determination.**”

- A. *Prevailing Wage Requirements.*** California Labor Code and/ or Resolutions of the San Jose City Council require the payment of not less than the general prevailing rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations. The General Prevailing Wage Rates may be adjusted throughout the term of this Agreement. Notwithstanding any other provision of this Agreement, Contractor shall not be entitled to any adjustment in compensation rates in the event there are adjustments to the General Prevailing Wage Rates.
- B. *Living Wage Requirements.*** Any person employed by Contractor or subcontractor or City financial recipient or any sub recipient whose compensation is attributable to the City’s financial assistance, who meets the following requirements is considered a covered employee. The employee: 1) is not a person who provides volunteer services, that are uncompensated except for reimbursement of expenses such as meals, parking or transportation; 2) spends at least half of his or her time on work for the City; 3) is at least eighteen (18) years of age; and 4) is not in training for the period of training specified under training standards approved by the City.
- C. *Reports.*** Contractor shall file a completed and executed copy of this Addendum with the Department of Finance/Purchasing Division. Upon award the Department of Finance/Purchasing Division shall provide the contractor with compliance documents to be completed and returned (with supporting documentation) to the Office of Equality Assurance. **These documents must be returned within 10 days of receipt.** Contractor shall not perform on site work on this contract until labor compliance documents are filed. Contractor shall also report additional information, including certified payrolls, as requested by Director of Equality Assurance to assure adherence to the Policy.
- D. *Coexistence with Any Other Employee Rights.*** These provisions shall not be construed to limit an employee’s ability to bring any legal action for violation of any rights of the employee.
- E. *Audit Rights.*** All records or documents required to be kept pursuant to this Agreement to verify compliance with the Wage Requirement shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City

Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor's address indicated for receipt of notices in this Contract.

F. Enforcement.

1. **General.** Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Agreement, it is required to comply with the Wage Requirement and to submit certain documentation to the City establishing its compliance with such requirement. ("Documentation Provision.") Contractor further acknowledges the City has determined that the Wage Requirement promotes each of the following (collectively "Goals"):
 - a. It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
 - b. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
 - c. Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.
 - d. It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

2. Remedies for Contractor's Breach of Prevailing Wage/Living Wage Provisions.

- a. **WITHHOLDING OF PAYMENT:** Contractor agrees that the Documentation Provision is critical to the City's ability to monitor Contractor's compliance with the Wage Requirement and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Requirement. In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor's compliance with this Provision, as well as the Wage Requirement, is an express condition of City's obligation to make each payment due to the Contractor pursuant to this Agreement. **THE CITY IS NOT OBLIGATED TO MAKE ANY PAYMENT DUE THE CONTRACTOR UNTIL CONTRACTOR HAS PERFORMED ALL OF ITS OBLIGATIONS UNDER THESE PROVISIONS. THIS PROVISION MEANS THAT CITY CAN WITHHOLD ALL OR PART OF A PAYMENT TO CONTRACTOR UNTIL ALL REQUIRED DOCUMENTATION IS SUBMITTED.** Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of the Wage Requirement or the Documentation Provision.
- b. **RESTITUTION:** Require the employer to pay any amounts underpaid in violation of the required payments and City's administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the City.
- c. **SUSPENSION OR TERMINATION:** Suspend and/or terminate Agreement for cause;
- d. **DEBARMENT:** Debar Contractor or subcontractor from future City contracts and/or deem the recipient ineligible for future financial assistance.

e. **LIQUIDATED DAMAGES FOR BREACH OF WAGE PROVISION:** Contractor agrees its breach of the Wage Requirement would cause the City damage by undermining the Goals, and City's damage would not be remedied by Contractor's payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid. The City and Contractor mutually agree that making a precise determination of the amount of City's damages as a result of Contractor's breach of the Wage Requirement would be impracticable and/or extremely difficult. **THEREFORE, THE PARTIES AGREE THAT, IN THE EVENT OF SUCH A BREACH, CONTRACTOR SHALL PAY TO THE CITY AS LIQUIDATED DAMAGES THE SUM OF THREE (3) TIMES THE DIFFERENCE BETWEEN THE ACTUAL AMOUNT OF WAGES PAID AND THE AMOUNT OF WAGES THAT SHOULD HAVE BEEN PAID.**

City

Contractor

By _____
Name:
Title:
Date: _____

By _____
Name:
Title:
Date: _____