

**CITY OF GREEN BAY, WISCONSIN
REQUEST FOR QUOTE - RFQ #2021-09**

**PARK, RECREATION & FORESTRY DEPARTMENT (PRF)
SWIMMING POOL VESSEL CAULKING PROJECTS –
SPRING 2021 WITH THE OPTION OF FOUR 1-YR RENEWALS
(2 Pools and 3 Wading Pools)**

| Request for Quotation (RFQ) Schedule of Events CC: 910, 912, 931, 988 | |
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| February 24, 2021 | RFQ issued to Vendors |
| March 5, 2021 by 4:30pm (CT) | Questions from Vendors due (written only) |
| March 8, 2021 by 4:30pm (CT) | Addendum issued (if required) |
| March 11, 2021 by 4:30pm (CT) | Statement of Qualifications (SOQ's) OR Bidder's Proof MUST be on file with the City no later than five days before the quote is due. SUBMIT THESE FORMS BY THIS DATE! |
| March 16, 2021 by 2:00pm (CT) | DUE DATE FOR RFQ (by 2:00PM CT) |
| May 20 th , annually | Work to be completed by this date. |
| ONE | Submit ONE complete sets of documents |
| Method and deadline of submittal | <p><u>E-mail quotes will be accepted</u>, Due at 2:00 PM (CT) on the due date indicated above.</p> <p>E-mail them to: PurchasingAg@greenbaywi.gov</p> <p>Due to the <u>restrictions of COVID-19, there will be no public opening.</u></p> <p>Responses received after the deadline cannot be considered and if mailed, will be returned unopened. The City is not responsible for delays occasioned by the U.S. Postal Service, the internal mail delivery system of the City, or any other delivery method employed by the Vendor.</p> |
| Purchasing E-mail and Phone Number | General Department E-mail: PurchasingAg@greenbaywi.gov Phone Number: 920-448-3047 |

Although every effort will be made to follow this schedule, the City reserves the right to modify the dates as necessary and to accommodate special circumstances. All RFQ's are due by the time specified. Any RFQ received at the designated location after the required time and date specified for receipt shall be considered late and non responsive. All times listed are in Central Time (CT), unless otherwise noted.

GENERAL CONTRACTUAL INFORMATION AND INSTRUCTIONS TO BIDDERS

The City of Green Bay (City) is requesting your consideration to participate in our Request for Quote (RFQ). This section lists basic information and instructions. All Vendors are expected to read this section thoroughly to ensure full understanding of the conditions. These are considered general terms & conditions. Specific requirements as stated in the specifications will take precedence over these general terms & conditions. No changes to the RFQ by any vendor will be accepted, and that in the event of a discrepancy between the vendor's submission and the RFQ, the RFQ will control. Failure to agree to the terms of the RFQ as presented will result in the submission being deemed non-responsive. Thank you for the time and effort you put forth in responding. We sincerely look forward to hearing from your company.

VENDOR REGISTRATION: To receive free automatic and immediate notification of procurement opportunities for the City of Green Bay and other government agencies, register at NO CHARGE on State of Wisconsin VendorNet at <http://vendornet.wi.gov> and at DemandStar at www.demandstar.com. For technical assistance, call 206-940-0305 or email agencysservices@demandstar.com. Both platforms provide automatic supplier registration, procurement notices, and a document distribution system.

QUESTIONS: Vendors are asked to examine this RFQ upon receipt. If necessary, Vendors should make a written request for interpretation or correction of any ambiguity, inconsistency or error discovered. Vendor questions may be answered at the pre-quote meeting. All questions or clarifications after this date shall only be directed in writing via e-mail to the Purchasing Department, before to the designated deadline for written questions. Questions received after this date may not be responded to. Any contact or attempt to contact any other employee of the City regarding this RFQ may result in the immediate disqualification of the Vendor. Oral and other interpretations or clarifications will be without legal effect. Only questions answered by formal written addenda will be binding.

ADDENDA: Questions will be responded to in the form of written addenda to all Vendors. It shall be the responsibility of each Vendor, prior to submitting their bid, to determine if addenda were issued. All addenda issued shall become a part of the contract documents and shall be acknowledged and dated on the bottom of the Quotation Pricing & Signature Page.

COVID-19: The Contractor may be required to wear a face covering at the project location. Due to an ever evolving situation procedures may change to also require daily temperature checks and/or screening questions, and use of gloves when working in an effort to maintain safety for everyone at the project location.

DISABLED ACCESS: At City Hall (when it is open to the public) is available through either of the two entrances on the Jefferson Street (west) side of the building.

NON-RESTRICTIVE SPECIFICATIONS AND VENDOR ALTERNATES: Specifications are intended to define the level of quality and performance of this purchase and not to restrict competition. Where certain brands or part number are specified, it is for illustration or to establish a standard of quality (unless 'No Substitution' is noted). Vendors may offer one or more alternates with lesser or greater features, however the City reserves the right to make its selection based on the best interest of the City. The City will make the decision based on City personnel if it is an approved equal. Vendors offering alternates shall submit, with their quote, an itemized comparison with this specification, documenting equivalence for quality, performance, etc. ALL SUCH ITEMIZED LISTS SHALL BE PRESENTED IN THE EXACT SAME ORDER AS THE CITY SPECIFICATIONS AND SHALL REFERENCE THE CITY ITEM NUMBER. Failure to identify exceptions or deviations in this manner may be a basis to declare the quote as non-responsive. If in your opinion, any of the specifications, terms and conditions of this RFQ prevents you from offering a quote, consideration will be given to a Vendor's request for change.

QUOTATION EVALUATION PROCEDURE/AWARD: The City will award the quote to the responsive and responsible bidder whose bid/quote is most advantageous to the City. In determining the most advantageous bid/quote, the City will consider criteria such as, but not limited to, cost, quality / workmanship, compatibility, standardization, major and minor exceptions to our specifications, superior design features, warranty, delivery, past experience installation, equality, discount, customer satisfaction, bidder's past performance and/or service reputation, and service capability. The City may opt to establish alternate selection criteria to protect its best interest or meet performance or operational standards.

APPEALS PROCESS: Protest of this award or recommendation of award shall be made in writing and received in the purchasing office within 72 hours after the posting of intent to award and evaluation tabulation. Tabulations for interested parties may be either posted on the DemandStar service or e-mailed to the responsive parties.

A written protest must contain a specific legal basis for appeal, precise statements of the relevant facts, an identification of the issue to be resolved and authorities in support of the protest. Appeals not containing the necessary information or not filed on a timely basis shall be rejected. Appeals shall be addressed to the Purchasing Agent.

AWARD NOTICE: After an award is made, a quotation tabulation summary will be available through DemandStar. Quotation results **will not be given** over the telephone.

TERMINATION OF CONTRACT: The City may terminate the resulting contract at any time by a notice in writing from the City Purchasing Agent to the Vendor. If the City terminates the contract with the Vendor, the Vendor shall be entitled to receive payment for work completed up to the date of notice.

COMPLETE INFORMATION: Vendors shall submit all specifications or requirements included within the provisions of the Contract prior to the quotation opening. Failure to enclose all necessary attachments by the time the quotations are opened may disqualify the Vendor from being awarded the contract.

DIGGER'S HOTLINE: If required for this project, selected vendor is responsible to contact Digger's Hotline to file a locate request & to be properly marked prior to starting any construction/installation work for this project.

LIEN WAIVER: The successful Vendor shall submit Waivers of Lien for all draws. At the completion of the project and prior to final payment, Vendor shall submit final Waivers of Lien for themselves, all subcontractors and material suppliers.

SUBSTANCE ABUSE PREVENTION: The owner recognizes and supports alcohol & drug free workplace programs as an important element in the national strategy to reduce the devastating effects of drug and alcohol abuse in our society. The owner urges contractors, subcontractors, suppliers and vendors to establish and enforce drug free workplace policies and programs.

CITY OF GREEN BAY CITIZEN AND LEGAL IMMIGRANT PROTECTION ACT: The City of Green Bay expects that those who wish to contract with the City adhere to all State and Federal laws, including those proscribing employment of unauthorized aliens. In no way does the City intend or condone discriminatory practices or profiling but rather simply adherence to the law. No City contract shall be issued to unauthorized aliens or companies who employ unauthorized aliens. See sec. 6.025, Green Bay Municipal Code, and 8 USC sec. 1324a.

MISCELLANEOUS CONDITIONS

- **RIGHT TO ACCEPT/REJECT:** The City reserves the right to accept or reject any or all quotations or to waive any technicality, and accept any quotation deemed to be in the best interests of the City.
- **UNIT PRICE PRECEDENCE:** The each price supersedes the total price.
- **UNBALANCED QUOTES/BIDS:** The City reserves the right to reject unbalanced quotes/bids. Unbalanced quotes/bids may be rejected as non-responsive, a potentially less time consuming and costly option than completely rebidding the project
- **NON-MATERIAL VARIANCES:** The City reserves the right to waive or permit cure of nonmaterial variances in the offer if, in the judgment of the City, it is in the City's best interest to do so. Nonmaterial variances include minor informalities that do not affect responsiveness, that are merely a matter of form or format, that do not change the relative standing or otherwise prejudice other quoters, that do not change the meaning or scope of the RFQ, or that do not reflect a material change in the services. A nonmaterial variance in a bid/quote does not give one quoter a competitive advantage or benefit not enjoyed by others. A nonmaterial variance may be accepted as responsive, or **at the discretion of the City**, may be rejected as non-responsive. In the event the City waives or permits cure of nonmaterial variances, such waiver or cure will not modify the RFQ requirements or excuse the Contractor from full compliance with the specification or other contract requirements if the Contractor is awarded the contract.
- **RIGHT TO AWARD ALL OR A PORTION:** The City reserves the right to award all or a portion of this request to one or more Vendors on a line item basis. Vendor to indicate any additional discount allowed for award of entire order.
- **FINANCIAL COMMITMENTS:** All financial commitments by the City are subject to the availability of funds approved by the Green Bay Common Council.
- **INCURRING COSTS AND RESERVE RIGHT TO CANCEL:** The City will not be responsible for any expenses incurred by any vendor in the development of a response to this RFQ, including any onsite (or otherwise) interviews and/or presentations, and/or supplemental information provided, submitted, or given to the City and/or its representatives. Further, the City shall reserve the right to cancel the work described herein prior to issuance and acceptance of any contractual agreement/purchase order by the recommended vendor even if the City Council has formally accepted a recommendation.
- **RIGHT TO CANCEL:** The City reserves the right to cancel this agreement and any resulting agreement at any time with 30 days written notice.
- **FIRM PRICING:** Offered prices shall remain firm for a minimum of **90 days** after the due date of this solicitation to allow evaluation and award determination, unless indicated otherwise. Once awarded, prices shall remain firm for

the duration of the contract. Prices MUST also be free of federal, state, and local taxes unless otherwise imposed by a governmental body, and applicable to the material on the quotation.

- **NONDISCRIMINATION:** In connection with the performance of work under this agreement, the Contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, marital status, sexual orientation, sex, disability, national origin or ancestry. This provision must be included in all subcontracts.
- **INDEPENDENT CONTRACTOR STATUS:** The Contractor agrees it is an independent Contractor with respect to the services provided pursuant to this agreement. Nothing in this agreement shall be considered to create the relationship of employer and employee between the parties.
- **NON-COMPLIANCE:** Submission of a quotation constitutes confirmation your firm is not presently on any lists maintained by the Wisconsin Department of Administration, or any other State or the Federal Government, for non-compliance with any requirements, including equal opportunity and/or affirmative action.
- **PATENT INFRINGEMENT:** The seller shall indemnify and hold harmless the City of Green Bay and all persons acting for or on their behalf from all suits and claims against them, or any of them, arising from or occasioned by the use of any material, equipment or apparatus, or any part thereof, which infringes or is alleged to infringe on any patent rights. In case such material, equipment, or apparatus, or any part thereof, in any such suit is held to constitute infringement, the Seller, within a reasonable time, will at its expense, and as the agencies may elect, replace such material, equipment or apparatus with non-infringing material, equipment, or apparatus, or remove the material, equipment, or apparatus, and refund the sums paid therefore.
- **WORKING HOURS:** The Contractor shall perform his work during the hours from **7:00am to 7:00pm**, Monday through Friday. The Owner shall approve any work performed outside of these hours.
- **TIME OF COMPLETION:** The work to be completed under this Contract shall commence within ten (10) calendar days after receipt of a written "Purchase Order" or "Notice to Proceed" from the Owner. **Selected vendor to perform work by May 20th of each year.**
- **TEMPORARY POWER AND WATER:** Temporary power and water may be obtained from the existing facilities available at the site, provided it does not conflict or interfere with the daily operations of the facility. The City will pay for the cost of energy and water obtained from City Hall. In the event the Contractor's, or Subcontractor's equipment requires more power or water flow than is available through the City's existing facilities, then the Contractor shall be responsible to make the necessary arrangements with the local utilities to satisfy his needs. The cost for additional power and water beyond what is currently available at the site shall be considered incidental and shall be paid for by the Contractor. No additional compensation will be allowed.
- **SANITARY FACILITIES:** The City will designate toilet facilities, which may be used by the Contractor. No other toilet facilities shall be used. The Contractor shall cooperate with the Owner in maintaining the facilities in a clean and sanitary condition.
- **PARKING FACILITIES:** The Contractor shall arrange with the City of Green Bay for use of limited parking spaces for company vehicles at, or near, the site. The City will provide said parking, without charge.
- **DISPOSAL:** All materials, rubbish and debris are the property of the Contractor and shall be removed from the premises as soon as it accumulates. Removal of rubbish and debris shall be conducted in such a way that a minimum of dust is caused. All material shall be disposed of by the Contractor in consistency with ordinances of the City of Green Bay and Brown County, and with regulations set forth in the State of Wisconsin Administrative Code. All rubbish shall be hauled to an approved landfill.
- **SCHEDULING AND COORDINATION:** This project will require close cooperation and coordination between the City and Contractor and all Subcontractors. The Contractor shall consider such coordination in his work. The Contractor shall be responsible for scheduling the work with Subcontractors and the City. To minimize interference with the Owner's activities, the Contractor shall access the roof from the outside of the building only.
- **PRODUCT SUBMITTALS:** Prior to construction, the Contractor shall submit product data and literature on all approved materials to be used on this project. This should include, but not be limited to, technical data and manufacturers application instructions, color charts where available, and material safety data sheets.
- **SELECTION OF MATERIALS:** All contractors, subcontractors and vendor who provide finish materials to the site for installation on the project shall certify that products are certified by Greenguard, Green Seal, or equal standards to ensure low VOC content. This shall include but not be limited to paint, carpet, casework, stains, varnish, adhesives, etc.
- **DELIVERY, STORAGE AND HANDLING:** Deliver all materials to site in original, unopened containers bearing the following information: name of product, name of manufacturer, date of preparation, and lot or batch number. Store materials under cover and protect from weather. Replace packages or materials showing any signs of damage with new material at no additional cost to the City. The Owner shall allocate space to the Contractor for storage of materials and equipment for the duration of the project.
- **PROTECTION AND RESTORATION OF PROPERTY:** The Contractor shall use every precaution to prevent damage or destruction of property within or outside of the project area. The Contractor shall be responsible for the damage or destruction of property resulting from neglect, misconduct, or omission in his/her manner or method of execution or non-execution of the work. Prior to performing any work, the Contractor and Owner shall inspect any existing areas of concern. In addition, before performing any Contract work, the Contractor shall review with the Owner his proposed means of protection.

INSURANCE/INDEMNIFICATION REQUIREMENTS FOR CITY OF GREEN BAY

It is hereby agreed and understood that the insurance required by the City of Green Bay is primary coverage and that any insurance or self insurance maintained by the City of Green Bay, its officers, council members, agents, employees or authorized volunteers will not contribute to a loss. This insurance shall be written for not less than any limit of liability specified herein, or required by law, whichever is greater, notwithstanding that the policy may have lower limits applying elsewhere in the policy. All applicable insurance and endorsements shall be in full force and evidenced prior to commencing work and remain in force until the entire job is completed or the length of time that is specified in the contract.

1. GENERAL LIABILITY COVERAGE

- A. Commercial General Liability
 - (a) \$1,000,000 general aggregate
 - (b) \$1,000,000 products - completed operations aggregate
 - (c) \$1,000,000 personal injury and advertising injury
 - (d) \$1,000,000 each occurrence limit
- B. Claims made form of coverage is not acceptable.
- C. Insurance must include:
 - (a) Premises and Operations Liability
 - (b) Blanket Contractual Liability including coverage for the joint negligence of the City of Green Bay, its officers, council members, agents, employees, authorized volunteers and the named insured
 - (c) Personal Injury
 - (d) Explosion, collapse and underground coverage
 - (e) Products/Completed Operations
 - (f) Independent Contractors

2. BUSINESS AUTOMOBILE COVERAGE

- A. Minimum Limits - \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage each accident
- B. Must cover liability for "Any Auto" - including Owned, Non-Owned and Hired Automobile Liability

3. WORKERS COMPENSATION AND EMPLOYERS LIABILITY

- A. Must carry coverage for Statutory Workers Compensation and Employers Liability minimum limit of:
 - \$100,000 Each Accident
 - \$500,000 Disease Policy Limit
 - \$100,000 Disease - Each Employee

4. ADDITIONAL PROVISIONS

- * **Additional Insured** – On the General Liability Coverage, City of Green Bay and its officers, council members, agents, employees, and authorized volunteers shall be “Additional Insureds.”
- * **Endorsement** -The Additional Insured and Workers Compensation Subrogation Waiver policy endorsements must accompany the Certificate of Insurance.
- * **Waiver of Workers Compensation Subrogation** - The workers' compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses paid under the terms of the policy that arises from the work performed by the named insured for or on behalf of the City of Green Bay.
- * **Certificates of Insurance** - A copy of the Certificate of Insurance must be on file with the Risk Management.
- * **Notice** - City of Green Bay requires written notice of cancellation.
- * **Acceptability of Insurers** - No insurance required hereunder shall be carried with an insurer not authorized to do business in Wisconsin. The City reserves the right to disapprove any insurance company. A minimum AM Best Rating of A-VII is required.

**CITY OF GREEN BAY – REQUEST FOR QUOTATION RFQ #2021-09
CONTRACT FOR POOL VESSEL CAULKING PROJECTS (2 Pools & 3 Wading Pools)
SCOPE OF WORK**

The City of Green Bay, Wisconsin (City) is seeking quotations from qualified Vendors All labor, materials and equipment necessary to completely and satisfactorily remove and dispose of old pool vessel caulking, the cleaning and preparation of concrete joints and cracks (both vertical & horizontal) and the installation of new caulk specifically designed for pool water applications (Pools and Wading Pools). Estimated quantity: 500' – 1000' annually for the 2021 season with the option of four one-year renewals (2022, 2023, 2024 and 2025) upon mutual agreement by both parties.

DEFINITIONS

For the purpose of this quote agreement, the following terms shall have the meaning hereinafter stated unless another meaning is clear from the context or usage.

- “City”, it shall be understood to refer to, City of Green Bay and/or its authorized representative.
- “Vendor”, it shall be understood to refer to, a firm submitting a quotation in response to this Request For Quotation (RFQ).
- “Contractor”, it shall be understood to refer to, Vendor awarded the contract.
- “Engineer”, it shall be understood to refer to, the Director of Public Works and/or an authorized representative.
- “Provide”, it shall mean to furnish and install.

VENDOR’S RESPONSIBILITY: Responsibility refers to the Vendor's potential ability to perform successfully under the terms of the proposed contract. The following are minimums of standards a responsible Vendor should meet:

- 1) For a minimum of THREE (3) years, has in operation a pool vessel caulking service with personnel and equipment adequate to assure compliance with the requirements stated in this quotation;
- 2) Be able to comply with the requirements of the City’s work, taking into consideration all existing business commitments;
- 3) Favorable references from firms with projects of similar scopes and indicate the Vendor has the ability to carry out the services specified:
 - Completed contracts in accordance with the Contract Documents.
 - Diligently pursued execution of the work and completed contracts according to the established time schedule unless extensions were granted by the owner.
 - Fulfilled Guarantee requirements of the Contract Documents.
 - Is not presently on an ineligible list maintained by the Wisconsin Department of Administration for noncompliance with equal employment opportunities and affirmative action requirements or for projects involving federal funds, not presently included on the "List of Parties Excluded From Federal Procurement and Non-Procurement Contracts" identifying federally debarred contractors
- 4) Have a satisfactory record of integrity and business ethics;
- 5) Be otherwise qualified, licensed and eligible to receive the contract award under applicable laws and regulations.

VENDOR’S PERFORMANCE CAPABILITY: Prospective Vendor's performance capability will be evaluated. This may include:

- 1) An evaluation of data on hand;
- 2) An evaluation of the data from other agencies, including references;
- 3) An optional on-site inspection of facilities;
- 4) Any combination of above.

PRICING: The pricing will be firm during the initial one-year term of the contract. VENDOR WILL BE PAID FLAT RATES ONLY - NO ADDITIONAL CHARGES PAID unless pre-approved by an authorized City employee, otherwise rates will include all labor and materials.

If it is mutually decided to renew beyond the initial period and the Vendor requests a price increase, the Vendor shall provide sufficient written certification and documentation to substantiate the request. Documentation shall include, but not be limited to; actual materials invoices, copies of commercial price lists, provision of appropriate indices, etc which reflect said increases. The City reserves the right to accept or reject such price increases, to negotiate more favorable terms or to allow the agreement to terminate without additional cost.

PAYMENT: Payment of the seller's invoices is subject to adjustment for any shortage, or for the rejection of any item or items.

VENDOR NAME: _____

**VENDOR REQUIREMENTS
~ SPECIFICATIONS & QUOTATION SUBMITTAL FORMS – RFQ #2021-09 ~**

- **FORMAT:** Vendor shall complete every space in the ‘Vendors Column’ with a (√) to indicate compliance with specification or (Exception) to indicate any deviation from specification. Any items appearing in the manufacturer’s specifications furnished by the vendor are assumed to be included in this quotation. Note any exceptions to standard manufacturer’s specifications.
- **COMPLETE REQUIREMENTS:** While every effort has been made to ensure the accuracy and completeness of the information in this RFQ, the City recognizes the information is not exhaustive of every detail and all work and materials may not be expressly mentioned in the requirements of this RFQ. Therefore, it is the Vendor’s responsibility to include in their quotation all requirements necessary for the full and faithful performance of the requested goods/services in accordance with the objectives of the City. The goods/services offered shall be complete in every respect inclusive of all design, components, and recommendations for auxiliary equipment, and required maintenance or licensing, etc.

| No. | DESCRIPTION | VENDOR'S COLUMN “√” COMPLY OR “EXCEPTION” |
|-----|---|---|
| 1. | <p>QUANTITY/TYPE: All labor, materials and equipment necessary to completely and satisfactorily remove and dispose of old pool vessel caulking, the cleaning and preparation of concrete joints and cracks (both vertical & horizontal) and the installation of new caulk specifically designed for pool water applications at 2 pools and 3 wading pools. Vendor to quote caulk brand “Deck-O-Seal”, Two-part Elastomeric Polysulfide-based joint sealant (or equal) per the width-to-depth ratio as specified in their technical specifications. Estimated quantity: 500’-1000’ annually for 2021 with the option of four one-year renewals (2022, 2023, 2024 and 2025) upon mutual agreement by both parties. Selected vendor to perform work in May of each year and to be completed by May 20th annually.</p> <p>Vendor’s quoted price per lineal foot shall include everything as stated above for all the work performed at the 2 pools and 3 wading pools.</p> | |
| 2. | <p>TERM OF CONTRACT: The initial term of the contract shall be for a one-year period starting spring of 2021 with work to be completed by May 20, 2021. Upon mutual agreement by both parties, the City and Vendor may renew this agreement four one-year renewals (2022, 2023, 2024 and 2025). A minimum of thirty (30) days notice must be given to renew the contract for additional increments. The City of Green Bay reserves the right to cancel any resulting agreement at any time (with 30 days notice.)</p> <p>Any resulting purchase agreement, based on this RFQ, shall become the contractual agreement for the required services. Each section contained herein, any addenda and the response from the successful Vendor shall also be incorporated by reference into the resulting agreement. The authorization for the contract to begin will be upon City Council approval of the award, assuming any insurance and bonding requirements have been met. Similar services may be added and pricing for these services negotiated during the term of the contract.</p> | |
| 3. | <p>ADDRESSES (2 POOLS & 3 WADING POOLS): Joannes Family Aquatic Center is at 1430 E. Walnut Street and Resch Aquatic Center is at 1058 Reed Street. The wading pools are at the following parks: Astor Park at 1100 Porlier Street; Marquette Park at 1061 Hickory Hill Drive and Mather Heights Park at 1280 Richardson Street. If the vendors need to see the sites for inspection(s), contact Andy Krzewina at (920) 606-8536.</p> | |
| 4. | <p>CONSTRUCTION ACCESS AND PUBLIC SAFETY: Construction access to the site shall be indicated to the selected vendor for all pools/wading pools. Heavy vehicles and construction equipment should not drive on existing turf areas surrounding the pools/wading pools. The contractor shall provide and maintain signage and warning barricades as needed to inform park users of work in progress. For projects over one day in duration, it will be the contractor’s responsibility to secure the site overnight.</p> | |

| No. | DESCRIPTION | VENDOR'S COLUMN "√" COMPLY OR "EXCEPTION" |
|-----|---|--|
| 5. | STATEMENT OF QUALIFICATION: – SOQ's: – A current Statement of Qualifications or Bidders Proof must be on file with the City no later than five days before the date quotations are due – per Wis. Stats. #66.0901. <u>If you have previously submitted one, it is only valid for one (1) year.</u> It is the vendor's responsibility to keep this current with the City of Green Bay Purchasing & Public Works Departments. Contact Purchasing for information at (920) 448-3047. The Statement of Qualifications form is available to download & print off the City of Green Bay's website: www.greenbaywi.gov Under Agencies, Click on "Administrative Services" and then click on "Purchasing". Scroll to the bottom of the page and you will see "STATEMENT OF QUALIFICATION (SOQ) FORM" . Click on it to download & print. | |
| 6. | LICENSED CONTRACTORS & PERMITS: All Contractors eligible to quote this contract work must be Licensed by the City of Green Bay under the appropriate WI Municipal Code for each trade. No permits required for this project. | |
| 7. | SITE RESTORATION: At the conclusion of the work and before final acceptance and payment, the Contractor shall remove from the site of the work all debris, stored materials, scaffolding, temporary structures, and the like, and leave the site in its original condition. Sweep and clean pool surface to remove all dirt and debris. The Contractor shall restore, at his own cost and expense, any damage to existing structures or elements caused by his operation or those of his Subcontractors. Restore any turf areas rutted or otherwise damaged by vehicles and construction equipment outside of plaza area with soil, seed and mulch as needed. The cost of site restoration shall be considered incidental and shall be included in the overall quote price and no extra compensation will be allowed. | |
| 8. | WARRANTY: Vendor will warrant their product to be merchantable and to be free of defects in materials and workmanship for a minimum period of 1 year upon acceptance by the City. <p style="text-align: center;">INDICATE PRODUCT WARRANTY: INDICATE WARRANTY ON WORKMANSHIP:</p> | <p style="text-align: right;">_____ YEARS _____ YEARS</p> |
| 9. | NOTICE TO PROCEED: Upon receipt and review of quotes for the project, the selected contractor will be notified to proceed with work on the project. The contractor shall submit an anticipated construction schedule and anticipated date of completion. The contractor shall meet on site with the City Superintendent of Parks before proceeding with any work. | |
| 10. | PROJECT COMPLETION DATE: The project shall be performed in spring 2021 and to be completed prior to May 20, 2021 or sooner if weather permits. Selected vendor to perform work by May 20th of each year. | |
| 11. | DELIVERY & TAX EXEMPT: All quoted items or services delivered shall be tax-exempt, F.O.B. Delivered to the pools and wading pools mentioned above - Green Bay, WI. | |
| 12. | VENDORS INSURANCE / INDEMNIFICATION REQUIREMENTS: The successful vendor will be required to provide proof of required insurance coverage, naming the City of Green Bay as an additional insured, to the City of Green Bay's Risk Management Division prior to the start of work. The vendor complies with the insurance/indemnification requirements listed in these specifications. | |

| No. | DESCRIPTION | VENDOR'S COLUMN "√" COMPLY OR "EXCEPTION" |
|-----|---|---|
| 13. | PAYMENT: Upon completion of the work, the contractor shall submit an invoice for payment to the City of Green Bay. | |
| 14. | RESPONSE TO THIS RFQ is required to be on these attached specification/ worksheets. Additional information may be attached. | |
| 15. | ABILITY TO FULFILL QUOTE REQUIREMENTS: The City of Green Bay may make an investigation as is necessary to determine the ability of the vendor/contractor to fulfill quote requirements. The Vendor/Contractor shall furnish such information requested and be prepared to demonstrate types of products or services similar to that included in the quote. | |
| 16. | <p>QUOTES: Due at 2:00 PM (CT) on the due date indicated above. E-mail them to PurchasingAg@greenbaywi.gov</p> <p>Responses received after the deadline cannot be considered and if mailed, will be returned unopened. The City is not responsible for delays occasioned by the U.S. Postal Service, the internal mail delivery system of the City, or any other delivery method employed by the Vendor.</p> <p>Due to the <u>restrictions of COVID-19, there will be no public opening.</u></p> | |
| 17. | ATTACHMENT(S) INCLUDED IN THIS RFQ: "Appendix A" City of Green Bay Standard Terms and Conditions (STC-Form: 3/5/2020). | |
| 18. | LIQUIDATED DAMAGES: If Vendor fails to deliver all materials quoted to a location where they are readily available for installation by May 20th of each year of the contract , Vendor agrees to be liable to the City for liquidated damages in the amount of One Hundred Dollars (\$100.00) for each day said materials are not readily available. | |
| 19. | <p>REFERENCES: Vendors are to include a list of TWO (2) municipalities or customers to be used as references. These references should be current customers utilizing services similar to those requested. The City may make such investigation as is necessary to determine the ability of the Vendor to fulfill service requirements. <u><i>If you are currently working with the City of Green Bay, just list your City contact person's name & phone number below.</i></u></p> <p>1. Company Name: Address: Telephone: Contact Person: E-mail address: Product(s) and/or Service(s) Used: <u>How long have you been working with this company?</u></p> | |

| No. | DESCRIPTION | VENDOR'S COLUMN "√" COMPLY OR "EXCEPTION" |
|-----|---|---|
| | <p>2. Company Name: Address: Telephone: Contact Person: E-mail address: Product(s) and/or Service(s) Used: How long have you been working with this company? _____</p> <p>3. Company Name: Address: Telephone: Contact Person: E-mail address: Product(s) and/or Service(s) Used: How long have you been working with this company? _____</p> | |

VENDOR'S SIGNATURE & INFORMATION:

Vendor Full Legal Name: _____
Complete Address, City, ST, Zip: _____
Bidders Contact Name & Title (Type or Print): _____
Authorized Signature: _____
Phone # & Fax#: _____
Date: _____
Taxpayer I.D. Number: _____
E-mail address: _____

Interested in doing business with the City? Register at NO CHARGE <http://www.demandstar.com> to access opportunities at the City.

ADDENDA - It is Vendor's responsibility to check for issuance of any addenda. The undersigned hereby acknowledges receipt of the following addenda:

Addenda Number: _____ Date: _____ Addenda Number: _____ Date: _____
Addenda Number: _____ Date: _____ Addenda Number: _____ Date: _____

City of Green Bay
Contract for Swimming Pool Caulking Project (Pools & Wading Pools) – RFQ #2021-09
QUOTATION PRICING & SIGNATURE PAGE

The undersigned, on behalf of the Vendor, certifies: (1) this offer is made without previous understanding, conflict of interest, agreement or connection with any person, firm, or corporation making a quotation on the same project; (2) is in all respects fair and without collusion or fraud; (3) the person whose signature appears below is legally empowered to bind the firm in whose name the quotation is entered; (4) they have read the complete Request for Quotation and understand all provisions and fully understanding the local conditions affecting the cost of the work, hereby proposes to furnish all labor, materials, tools and equipment to perform the work required by the proposed purchase contract documents referred to therein (as altered, amended or modified by addenda); (5) if accepted by the City, this quotation is guaranteed as written and will be implemented as stated; and (6) mistakes in writing of the submitted quotation will be their responsibility.

Your quoted price is to include all labor, materials & equipment necessary to satisfactorily complete the above listed project(s). Payment to vendor will be upon satisfactorily completion of work. **By signing this quotation, vendor agrees to all City of Green Bay Specifications, terms & conditions contained herein.**

| | |
|--|-------------------------------------|
| COST PER LINEAL FOOT OF: All labor, materials and equipment necessary to completely and satisfactorily remove and dispose of old pool vessel caulking, the cleaning and preparation of concrete joints and cracks (both vertical & horizontal) and the installation of new caulk specifically designed for pool water applications per specifications and locations listed above. Estimated total annual quantity: 500'-1000'. | \$ _____ /Lineal Foot |
| This contract is for the 2021 season. Upon mutual agreement, the City and Vendor may renew this agreement for four additional 1-year contracts for: 2022; 2023; 2024 and 2025. Indicate to the right below the maximum percentage increase/decrease for the additional one-year contracts. | |
| INDICATE MAXIMUM % (<i>DECREASE/INCREASE</i>) FOR 2022 <small>(circle one)</small> | _____ % |
| INDICATE MAXIMUM % (<i>DECREASE/INCREASE</i>) FOR 2023 <small>(circle one)</small> | _____ % |
| INDICATE MAXIMUM % (<i>DECREASE/INCREASE</i>) FOR 2024 <small>(circle one)</small> | _____ % |
| INDICATE MAXIMUM % (<i>DECREASE/INCREASE</i>) FOR 2025 <small>(circle one)</small> | _____ % |
| VENDOR TO STATE BRAND NAME OF CAULK TO BE USED: (Deck-O-Seal Or Equal) | |
| State LEAD-TIME to furnish & install as per specs stated above: _____ Days Work shall be performed in Spring 2021- to be completed by May 20, 2021. | |
| STATE IF COMPANY ACCEPTS PAYMENT BY CREDIT CARD: (check one) YES ___ or NO ___ <i>The City does not pay service charges.</i> | |
| PAYMENT TERMS: Final payment will be made Net 30. Vendor to indicate early payment discount offered: → → _____ | |

- Vendor shall complete & submit the following required documents:**
1. Quotation Submittal Forms – Pages 7 – 10
 2. Quotation Pricing & Signature Page - Page 11



Appendix A City of Green Bay Standard Terms and Conditions

(STC-Form: 3/5/2020)

1. General. Throughout this document, "City of Green Bay," "City" and "Purchasing" shall be synonymous and mean the City of Green Bay. The words "bid" and "proposal" are synonymous, as are the words "bidder," "proposer," "vendor," and "contractor." The phrases "request for proposal," "request for bids," "request for quotes," "quote," "request," "invitation," and "solicitation" shall also be synonymous.
As applied to the winning or selected bidder, the words "bid," "proposal," and "contract" are synonymous.

2. Entire Agreement, Order of Precedence. These standard terms and conditions shall apply to any Purchase Order issued as a result of this Request for Bid/Proposal, except where expressly stated otherwise in the RFB/RFP or in a written instrument covering this purchase signed by an authorized representative of the City and the Contractor, in a form approved by the City Attorney (a "Separate Contract"). If such a separate contract is executed it shall along with these Standard Terms and Conditions, the City's request for proposals/bids, the version of the vendor's response/bid that was accepted by the City, and the City's Purchase Order (if any) shall constitute the entire agreement ("Contract") and no other terms and conditions, whether oral or written, shall be effective or binding unless expressly agreed to in writing by the City.

If a Separate Contract is not executed, these Standard Terms and Conditions, the City's request for proposals/bids, the version of the vendor's response/bid that was accepted by the City, and the City's Purchase Order (if any) shall constitute a contract and will be the entire agreement.

3. Bid Selection. This invitation for bids does not commit the City to award a contract, pay any costs incurred in preparation of bids, or to procure or contract for services or equipment. The City may require the bidder to participate in negotiation and to submit such additional price or technical or other revisions to his or her bids as may result from negotiation. The bidder shall be responsible for all costs incurred as part of his or her participation in the pre-award process.

The City reserves the right to accept or reject any or all bids submitted, in whole or in part, and to waive any informalities or technicalities which at the City's discretion are determined to be in the best interests of the City. Further, the City makes no representations that a contract will be awarded to any offeror responding to this request. The City expressly reserves the right to reject any and all bids responding to this invitation without indicating any reasons for such rejections(s).

The City reserves the right to postpone due dates and openings for its own convenience and to withdraw this solicitation at any time without prior notice.

4. Addenda. Changes affecting the specifications will be made by addenda. Changes may include, or result in, a postponement in the bid due date. Bidders are required to complete the Bidder Response Sheet, acknowledging receipt of all parts of the bid, including all addenda.
5. Price Proposal. All bidders are required to identify the proposed manufacturer and model, and to indicate the proposed delivery time on the attached Proposal Form. Failure to do so may cause the bid to be considered not responsive. If desired, the bidder may include product literature and specifications. The price quoted will remain firm throughout each contract period. Any price increase proposed shall be submitted sixty (60) calendar days prior to subsequent contract periods and shall be limited to fully documented cost increases to the bidder which are demonstrated to be industry-wide.
6. Price Inclusion. The price quoted in any bid shall include all items of labor, materials, tools, equipment, and other costs necessary to fully complete the furnishing and delivery of equipment or services pursuant to the specifications attached thereof. Any items omitted from the specifications which are clearly necessary for the completion of the project shall be considered a portion of the specifications although not directly specified or called for in these specifications.
7. Pricing and Discount.
 - a. Unit prices shown on the bid/proposal or contract shall be the price per unit of sale (e.g., gal., cs., doz., ea., etc.) as stated on the bid/proposal or contract. For any given item, the quantity multiplied by the unit price shall establish the extended price. If an apparent mistake exists in the extended price, the unit price shall govern in the bid/proposal evaluation and contract administration.
 - b. In determination of award, discounts for early payment will only be considered when all other conditions are equal. Early payment is defined as payment within fifteen (15) days providing the discount terms are deemed favorable. All payment terms must allow the option of Net 30.

8. F.O.B. Destination Freight Prepaid. Bid prices must include all handling, transportation and insurance charges. Failure to bid FOB Destination Freight Prepaid may disqualify your bid.

9. Award.
- The City will have sole discretion as to the methodology used in making the award. Where none is specified, the award will be made to the lowest responsible bidder in compliance with the specifications and requirements of this solicitation.
 - The right is reserved to make a separate award of each item, group of items or all items, and to make an award in whole or in part, whichever is deemed in the best interest of the City.
10. Responsiveness and Responsibility. Award will be made to the responsible and responsive bidder whose bid is most advantageous to the City with price and other factors considered. For the purposes of this project, responsiveness is defined as the bidder's conformance to the requirements of the solicitation. Being not responsive includes the failure to furnish information requested.
- Responsibility is defined as the bidder's potential ability to perform successfully under the terms of the proposed Contract. Briefly, a responsible bidder has adequate financial resources or the ability to obtain said resources; can comply with required delivery taking into account other business commitments; has a satisfactory performance record; has a satisfactory record of integrity and business ethics; and has the necessary organization, experience and technical skills.
- The City reserves the right to refuse to accept any bid from any person, firm or corporation that is in arrears or is in default to the City, or has failed to perform faithfully any previous contract with the City. If requested, the bidder must present within five (5) working days evidence satisfactory to the City of performance ability and possession of necessary facilities, financial resources, adequate insurance, and any other resources required to determine the bidder's ability to comply with the terms of this solicitation document.
11. Cancellation/Termination.
- The City reserves the right to cancel any contract in whole or in part without penalty due to non-appropriation of funds.
 - The City may terminate this Contract for any reason, including convenience upon prior written notification to Bidder. Termination for convenience by City will entitle Bidder to payment for only those goods or services delivered, received and accepted and not subsequently rejected by the City.
 - In the event the Bidder shall default in any of the covenants, agreements, commitments, or conditions and any such default shall continue un-remedied for a period of ten (10) days after written notice to the Bidder, the City may, at its option and in addition to all other rights and remedies which it may have, terminate the Contract and all rights of the Bidder under the Contract.
 - Failure to maintain the required certificates of insurance, permits, licenses and bonds will be cause for Contract termination. If the Bidder fails to maintain and keep in force the insurance, if required, the City shall have the right to cancel or terminate the Contract without notice.
12. Specifications.
- All bidders must be in compliance with all specifications and any drawings provided with this solicitation. Exceptions taken to these specifications must be noted on your bid.
 - When specific manufacturer and model numbers are used, they are to establish a design, type, construction, quality, functional capability and/or performance level desired. When alternates are bid/proposed, they must be identified by manufacturer, stock number, and the bidder/proposer is responsible for providing sufficient information to establish equivalency. The City shall be the sole judge of equivalency. Bidders are cautioned to avoid bidding alternates which do not meet specifications, which may result in rejection of their bid/proposal.
13. Regulatory Compliance.
- Seller represents and warrants that the goods or services furnished hereunder, including all labels, packages, and container for said goods, comply with all applicable standards, rules and regulations in effect under the requirements of all Federal, State and local laws, rules and regulations as applicable, including the Occupational Safety and Health Act (OSHA), as amended, with respect to design, manufacture or use for their intended purpose of said goods or services. Seller shall furnish Material Safety Data Sheets (MSDS) whenever applicable.
 - If it is determined by the City that such standards are not met, the seller agrees to bear all costs required to meet the minimum standards as stated above for the equipment/products furnished under this contract.
14. Warranty. Unless otherwise specifically stated by the bidder, products shall be warranted against defects by the bidder for one (1) year from the date of receipt. If bidder or manufacturer offers warranty that exceeds one year, such warranty shall prevail.
15. Ownership of Printing Materials. All artwork, camera-ready copy, negative, dies, photos and similar materials used to produce a printing job shall become the property of the City. Any furnished materials shall remain the property of the City. Failure to meet this requirement will disqualify your bid.
16. Nonexclusive Contract. Unless otherwise stated, the City reserves the right to purchase work or materials outside of this Contract.
17. Item Return Policy. Bidder will be required to accept return of products ordered in error for up to thirty (30) calendar days from date of receipt, with the City paying only the return shipping costs. Indicate in detail on the Bidder Response Sheet, your return policy.

18. Payment Terms and Invoicing. The City will pay properly submitted vendor invoices within thirty (30) days of receipt, providing good and/or services have been delivered, installed (if required), and accepted as specified.
 - a. Payment shall be considered timely if the payment is mailed, delivered, or transferred within thirty (30) days after receipt of a properly completed invoice, unless the vendor is notified in writing by the agency of a dispute before payment is due.
 - b. Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order, including reference to purchase order and submittal to the correct address for processing. Invoice payment processing address is shown on the purchase order. Send invoices to Bill To address on the purchase order. Do not send invoices to ship to address.
 - c. Bidders, proposers shall include discounts for early payment as a percent reduction of invoice. Invoice discounts shall be determined where applicable, from the date of acceptance of goods and/or the receipt of invoice, whichever is later. Discounts for early payment terms stated on the bid/proposal must be shown plainly on the invoice; discounts for early payment not shown on the invoice will be taken.
 - d. Invoices submitted not in accordance with these instructions will be removed from the payment process and returned within ten (10) days.
 - e. Invoices submitted more than 60 days after the last day of service or after delivery shall not be paid and will be returned to the Vendor.
19. F.O.B. Destination Freight Prepaid. Unless otherwise agreed in writing, the vendor shall bear all handling, transportation and insurance charges. Title of goods shall pass upon acceptance of goods at the City's dock.
20. Tax Exemption. The City of Green Bay is exempt from the payment of Federal Excise Tax and State Sales Tax. **The City Tax Exempt number is ES 47920.** Any other sales tax, use tax, imposts, revenues, excise, or other taxes which are now, or which may hereafter be imposed by Congress, the State of Wisconsin, or any other political subdivision thereof and applicable to the sale of material delivered as a result of the bidder's bid and which, by terms of the tax law, may be passed directly to the City, will be paid by the City.
21. Nondiscrimination. During the term of this Contract, the contractor, and the employees, representatives, agents and or volunteers thereof, shall not discriminate against any person based on race, color, creed, religion, sex, national origin, age, ancestry, disability, sexual orientation, gender identity, gender non-conformity, gender expression, transgender status, pregnancy, or marital or parental status.
22. Prevailing Wage. Where applicable under federal law, the contractor warrants that prevailing wages will be paid to all trades and occupations.
23. Indemnification. Contractor hereby agrees to indemnify, defend and hold harmless the City of Green Bay and its elected and appointed officials, officers, employees, agents, representatives and volunteers, and each of them, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs and expenses of whatsoever kind or nature in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive, of contractor or of anyone acting under its direction or control or on its behalf, even if liability is also sought to be imposed on City of Green Bay and its elected and appointed officials, officers, employees, agents, representatives and volunteers. The obligation to indemnify, defend and hold harmless the City of Green Bay and its elected and appointed officials, officers, employees, agents, representatives and volunteers, and each of them, shall be applicable unless liability results from the sole negligence of the City of Green Bay and its elected and appointed officials, officers, employees, agents, representatives and volunteers.

Contractor shall reimburse the City of Green Bay, its elected and appointed officials, officers, employees, agent or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

In the event that contractor employs other persons, firms, corporations or entities (sub-contractor) as part of the work covered by this Agreement, it shall be Contractor's responsibility to require and confirm that each sub-contractor enters into an Indemnity Agreement in favor of the City of Green Bay, its elected and appointed officials, officers, employees, agents, representatives and volunteers, which is identical to this Indemnity Agreement.

This indemnity provision shall survive the termination or expiration of this Agreement.

24. Choice of Law and Compliance. This Contract shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin. The parties agree, for any claim or suit or other dispute relating to this Contract that cannot be mutually resolved, the venue shall be Brown County Circuit Court or the United States District Court for the Eastern District of Wisconsin.

The contractor shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this Contract and which in any manner affect the work or its conduct. The City reserves the right to cancel this Contract if the contractor fails to follow the requirements of s. 77.66, Wis. Stats., and related statutes regarding certification for collection of sales and use tax. The City also reserves the right to cancel this Contract with any state or federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.

Contractor shall be required to demonstrate valid possession of appropriate required licenses and will keep them in effect for the term of this contract. The contractor shall also be required, when appropriate to obtain the necessary building permits prior to performing work on City facilities.

25. Independent Capacity/Status of Contractor/Tax Filing. The parties hereto agree that the contractor, its officers, agents, and employees, in the performance of this agreement shall act in the capacity of an independent contractor and not as an officer, employee, or agent of the City. The contractor agrees to take such steps as may be necessary to ensure that each subcontractor of the contractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venture, or partner of the City.

Contractor shall provide a valid IRS W9 form to the Purchasing Department, prior to payment. The contractor is informed that as an independent contractor, s/he may have a responsibility to make estimated tax returns, file tax returns, and pay income taxes and make social security payments on the amounts received under this Contract and that no amounts will be withheld from payments made to this contractor for these purposes and that payment of taxes and making social security payments are solely the responsibility and obligation of the contractor. The contractor is further informed that s/he may be subject to civil and/or criminal penalties if s/he fails to properly report income and pay taxes and social security taxes on the amount received under this Contract.

26. Open Records. Both parties understand that the City is bound by the Wisconsin Public Records Law, and as such, responses and contracts are subject to and conditioned on the provisions of the law. Contractor acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of the Contract, and that the contractor must defend and hold the City harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of final payment under the Contract.
27. Confidentiality. Each party (on its behalf and on behalf of its subcontractors, employees or representatives, or agents of any kind) agrees to hold and treat all confidential information of the other party, including, but not limited to, trade secrets, sales figures, employee and customer information and any other information that the receiving party reasonably should know is confidential ("**Confidential Information**") as confidential and protect the Confidential Information with the same degree of care as each party uses to protect its own Confidential Information of like nature. Confidential Information does not include any information that (i) falls under Wisconsin Public Records Law (see Open Records) (ii) at the time of the disclosure or thereafter is lawfully obtained from publically available sources generally known by the public (other than as a result of a disclosure by the receiving party or its representatives); (iii) is available to the receiving party on a non-confidential basis from a source that is not and was not bound by a confidentiality agreement with respect to the Confidential Information; or (iv) has been independently acquired or developed by the receiving party without violating its obligations under this Contract or under any federal or state law.
28. Work Site Damages. Any damage, including damage to finished surfaces, resulting from the performance of this Contract shall be repaired to the City's satisfaction at the contractor's expense.
29. Warranty of Materials and Workmanship.
- The contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the work under the Contract shall be new, first class, and in accordance with the Contract Documents. The contractor further warrants that all workmanship shall be first class and in accordance with the Contract and shall be performed by persons qualified in their respective trades.
 - Work not conforming to these warranties shall be considered defective.
 - This warranty of materials and workmanship is separate and independent from and in addition to any other guarantees in this Contract.
30. Replacement of Defective Work or Materials. Any work or material found to be in any way defective or unsatisfactory shall be corrected or replaced by the contractor at its own expense at the order of the City notwithstanding that it may have been previously overlooked or passed by an inspector. Inspection shall not relieve the contractor of its obligations to furnish materials and workmanship in accordance with this Contract and its specifications.
31. Reservation of the Right to Inspect Work. At any time during normal business hours and as often as the City may deem necessary, the contractor shall permit the authorized representatives of the City to review and inspect all materials and workmanship at any time during the duration of this Contract, provided, however, the City is under no duty to make such inspections, and any inspection so made shall not relieve the contractor from any obligation to furnish materials and workmanship strictly in accordance with the instructions, Contract requirements and specifications.
32. Ownership of Contract Product. All of the work product, including, but not limited to, documents, materials, files, reports, data, including magnetic tapes, disks of computer-aided designs or other electronically stored data or information (the "Documents"), which the contractor prepares pursuant to the terms and conditions of this Contract are the sole property of the City. The contractor will not publish any such materials or use them for any research or publication, other than as expressly required or permitted by this Contract, without the prior written permission of the City. The grant or denial of such permission shall be at the City's sole discretion.

The contractor intends that the copyright to the Documents shall be owned by City, whether as author (as a Work Made For Hire), or by assignment from contractor to City. The parties expressly agree that the Documents shall be considered a Work Made For Hire as defined by Title 17, United States Code, Section 101(2).

As further consideration for the City entering into this Contract, the contractor hereby assigns to City all of the contractor's rights, title, interest and ownership in the Documents, including the right to procure the copyright therein and the right to secure any renewals, reissues and extensions of any such copyright in any foreign country. The City shall be entitled to the sole and exclusive benefit of the Documents, including the copyright thereto, and whenever required by the City, the contractor shall at no additional compensation, execute all documents of assignment of the full and exclusive benefit and copyright thereof to the City. Any subcontractors and other independent contractors who prepare portions of the Documents shall be required by the contractor to execute an assignment of ownership in favor of the City before commencing work.

33. Force Majeure. Neither party shall be in default by reason of any failure in performance of this Contract in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.
34. Software & Technology Purchases.
 - a. Software Licenses. All software license agreements shall include the City's mandatory legal terms and conditions as determined by the City Attorney. Please be advised that no City employee has the authority to bind the City by clicking on an End User License Agreement (EULA) or any other click-through terms and conditions without being specifically authorized by the City's Attorney or IT Director through procedures approved by the City Attorney and Risk Manager. All legal documents associated with the purchase or download of software must be reviewed by the City Attorney and may only be signed by an individual authorized to do so.
35. No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or contractor shall operate as a waiver thereof, no shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or contractor therein. A waiver of any covenant, term or condition contained herein shall not be construed as waiver of subsequent breach of the same covenant, term or condition.
36. Assignability/Subcontracting. Contractor shall not assign or subcontract any interest or obligation under this Contract without the City's prior written approval. All of the services required hereunder will be performed by contractor and employees of contractor.
37. Amendment. This Contract shall be binding on the parties hereto, their respective heirs, devisees, and successors, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto. Any other change in any provision of this Contract may only be made by a written amendment, signed by the duly authorized agent or agents who executed this Contract.
38. Severability. It is mutually agreed that in case any provision of this Contract is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the parties that all other provisions of this Contract remain in full force and effect.
39. Authority. Contractor represents that it has the authority to enter into this Contract. If the contractor is not an individual, the person signing on behalf of the contractor represents and warrants that he or she has been duly authorized to bind the contractor and sign this Contract on the contractor's behalf.
40. Counterparts, Electronic Delivery. This Contract may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Contract may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original. Executed copies or counterparts of this Contract may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Contract, fully executed, shall be as valid as an original.

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