

RESOLUTION NUMBER R- 308136

DATE OF FINAL PASSAGE MAY 16 2013

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING AN AGREEMENT FOR LEGAL SERVICES WITH PROCOPIO, CORY, HARGREAVES & SAVITCH LLP, FOR AN AMOUNT NOT TO EXCEED \$250,000; AUTHORIZING AND DIRECTING THE MAYOR TO SIGN THE AGREEMENT; AND AUTHORIZING THE CHIEF FINANCIAL OFFICER TO EXPEND SPECIFIED AMOUNTS UNDER THE AGREEMENT

WHEREAS, the City of San Diego ("City") is a named defendant in five related cases entitled: *Border Business Park, Inc. v. City of San Diego*, San Diego Superior Court Case No. 692794 ("Border III"); *National Enterprises, Inc. v. City of San Diego*, San Diego Superior Court Case No. 730011 ("National"); *Otay Acquisitions LLC v. City of San Diego*, San Diego Superior Court Case No. 753247 ("Otay Acquisition"); *Otay Truck Parking LP v. City of San Diego*, San Diego Superior Court Case No. 37-2009-00095661-CU-EI-CTL ("Otay Truck"); and *Border Business Park, Inc. v. City of San Diego*, San Diego Superior Court Case No. 37-2011-00090494-CU-EI-CTL ("Border IV") (collectively, the "De La Fuente cases"); and

WHEREAS, the City was also a named defendant and counter-claimant in *Insurance Company of the State of Pennsylvania v. City of San Diego*, District Court Case No. 02-CV-0693 BEN (CAB) and a related appeal (collectively, the "ISOP cases"); and

WHEREAS, the ISOP cases involved the City's claims relating to insurance coverage and bad faith for the De La Fuente cases; and

WHEREAS, the law firm of Latham & Watkins LLP has represented the City in defending the De La Fuente cases since 2001; and

WHEREAS, Latham & Watkins also defended and prosecuted the *ISOP* cases on the City's behalf; and

WHEREAS, Cecilia O. Miller, Esq., was a member of the Latham & Watkins litigation team, and provided the City with insurance coverage analysis and representation related to the *De La Fuente* and *ISOP* cases since 2002; and

WHEREAS, Ms. Miller joined the law firm of Procopio, Cory, Hargreaves & Savitch LLP ("Procopio"), in November 2012; and

WHEREAS, the City desires to continue to utilize the services of Ms. Miller for insurance coverage analysis and representation related to the *De La Fuente* and *ISOP* cases; and

WHEREAS, Ms. Miller and Procopio possess the specialized knowledge and experience, beyond that available in the Office of the City Attorney, that is necessary in order to provide insurance coverage services to the City related to the *De La Fuente* and *ISOP* cases; and

WHEREAS, the agreement for legal services ("Agreement"), attached hereto as Attachment A, between the City and Procopio is for an amount not to exceed \$250,000, and shall run from the date the last party signs the Agreement, and it is approved by the City Attorney in accordance with San Diego Charter section 40, until the scope of services defined in the Agreement is complete, but not for a term exceeding five years unless an extension is approved by ordinance of the Council of the City of San Diego pursuant to San Diego Charter section 99; and;

WHEREAS, the funding for the Agreement shall be borne by Public Liability Fund 720045; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Council approves the Agreement and authorizes and directs the Mayor or his designee to sign the Agreement for legal services with Procopio, Cory, Hargreaves & Savitch LLP, attached hereto as Attachment A and which is on file with the Office of the City Clerk as Document No. RR-

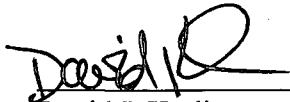
308136

BE IT FURTHER RESOLVED, that Chief Financial Officer is authorized to expend an amount up to \$250,000 for the Agreement with Procopio, Cory, Hargreaves & Savitch LLP

BE IT FURTHER RESOLVED, that the actions authorized here are contingent upon the Chief Financial Officer first furnishing one or more certificates stating that funds necessary for the authorized expenditures are, or will be, on deposit with the City Treasurer.

APPROVED: JAN I. GOLDSMITH, City Attorney

By

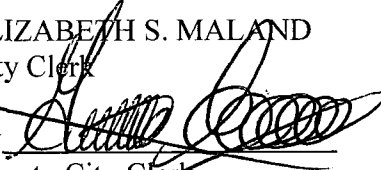


\_\_\_\_\_  
David J. Karlin  
Deputy City Attorney

DJK:lla  
March 18, 2013  
Or.Dept: City Atty.  
Doc. No. 532575

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of APR 30 2013.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 5/16/13  
(date)

  
BOB FILNER, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
BOB FILNER, Mayor

# Attachment A



**AGREEMENT FOR LEGAL SERVICES**

**BETWEEN**

**THE CITY OF SAN DIEGO**

**AND**

**PROCOPIO, CORY, HARGREAVES & SAVITCH LLP**

**IN CONNECTION WITH**

**INSURANCE COVERAGE REPRESENTATION AND  
COUNSELING IN THE *DE LA FUENTE* LITIGATION  
MATTERS**

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- Exhibit C - Insurance
- Exhibit D - City's Equal Opportunity Contracting Program Law Firm Requirements
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  - (BB) Subcontractors List
  - (CC) Contract Activity Report
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- Exhibit G - Vendor Registration Form
- Exhibit H - Contractor Standards Pledge of Compliance

**AGREEMENT BETWEEN  
THE CITY OF SAN DIEGO  
AND PROCOPIO, CORY, HARGREAVES & SAVITCH LLP  
FOR LEGAL SERVICES**

The City of San Diego, a municipal corporation (City), and Procopio, Cory, Hargreaves & Savitch LLP (Law Firm) enter into this agreement for the Law Firm to provide legal services to the City (Agreement).

**RECITALS**

The City desires to retain the services of a law firm to provide legal representation related to insurance coverage in the *De La Fuente* litigation matters (the Services).<sup>1</sup>

The Law Firm has the expertise, experience and personnel necessary to provide the Services. The City and the Law Firm (Parties) want to enter into an Agreement whereby the City will retain the Law Firm to provide, and the Law Firm will provide, the Services.

In consideration of the above recitals and the mutual covenants and conditions set forth in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the Parties set forth their mutual covenants and understandings as follows:

**ARTICLE I**

**LAW FIRM SERVICES**

The above-listed recitals are true and correct and are incorporated by reference.

**1.1 Scope of Services.** The Law Firm will perform the Services as set forth in the written Scope of Services (Exhibit A) at the City's direction. The Scope of Services excludes work on all matters related to litigation for which the Office of the City Attorney is an attorney of record, and it also excludes those matters expressly stated in Exhibit A. The Law Firm must not perform any work, represent the City, or represent themselves as representatives of the City on any excluded matters.

**1.2 Contract Administrator.** The City's Office of the City Attorney (City Attorney) is the contract administrator for this Agreement. The Law Firm will provide the Services under the direction of a designated representative of the City Attorney (Designated Representative),

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<sup>1</sup> The *De La Fuente* litigation includes five cases captioned: (1) *Border Business Park, Inc. v. City of San Diego*, San Diego Superior Court Case No. 692794 ("*Border III*"); (2) *National Enterprises, Inc. v. City of San Diego*, San Diego Superior Court Case No. 730011 ("*National*"); (3) *Otay Acquisitions LLC v. City of San Diego*, San Diego Superior Court Case No. 753247 ("*Otay Acquisition*"); (4) *Otay Truck Parking LP v. City of San Diego*, San Diego Superior Court Case No. 37-2009-00095661-CU-EI-CTL ("*Otay Truck*"); and (5) *Border Business Park, Inc. v. City of San Diego*, San Diego Superior Court Case No. 37-2011-00090494-CU-EI-CTL ("*Border IV*").

who can be contacted at:

**David J. Karlin, Senior Deputy City Attorney**  
**Office of the City Attorney**  
**1200 Third Avenue**  
**San Diego, CA 92101**  
**(619) 533-5816**  
**DKarlin@sandiego.gov**

The Law Firm must communicate with the City's Designated Representative on all matters related to the administration of this Agreement and the Law Firm's performance of the Services. The Designated Representative has authority to represent the City with respect to all communications, acts, and approvals related to this Agreement, except where this Agreement specifies otherwise.

**1.3 City Modification of Scope of Services.** The City may, without invalidating this Agreement, order changes in the Scope of Services by altering, adding to, or deducting from the Services to be performed. All changes must be in writing and must be performed in accordance with this Agreement. If any such changes increase or decrease the Law Firm's cost of performing the Services, or the time required to perform any of the Services, the Law Firm must immediately notify the City. If the City deems it appropriate, the City may equitably adjust the Law Firm's compensation or time for performance, subject to the restrictions set forth in Section 3.1 of this Agreement. Adjustments must be approved by both Parties in writing in accordance with Section 3.2 of this Agreement.

**1.4 Written Authorization.** The Law Firm must obtain written authorization to proceed from the City before performing any Services. Further, throughout the term of this Agreement, the Law Firm must immediately advise the City in writing of any anticipated change in the Scope of Services (Exhibit A) or Compensation and Fee Schedule (Exhibit B), and must obtain the City's written consent before making any changes. The City's consent does not relieve the Law Firm from its duty to render all Services in accordance with applicable laws and accepted industry standards.

**1.5 Confidentiality of Services.** All Services the Law Firm performs under this Agreement, including all drafts, data, correspondence, proposals, reports, and estimates the Law Firm compiles or composes, are for the City's sole use. The Law Firm must not release these documents or their contents to any third party without the City's prior written consent.

This requirement is in addition to the Law Firm's ethical obligations to keep all attorney work product and attorney-client communications confidential. This provision does not apply to information that: (a) was publicly known, or otherwise known to the Law Firm, when the City disclosed it to the Law Firm, (b) subsequently becomes publicly known through no act or omission of the Law Firm, or (c) otherwise becomes known to the Law Firm other than through disclosure by the City. Except for Subcontractors covered by Section 4.4, neither the documents nor their contents may be released to any third party without the City's prior written consent.

## ARTICLE II

### DURATION OF AGREEMENT

**2.1 Term of Agreement.** This Agreement is effective on the date it is signed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter section 40. Unless otherwise terminated, this Agreement will remain in effect until the Scope of Services is completed, but may not exceed five years unless an extension is approved by ordinance of the City Council pursuant to San Diego Charter section 99.

**2.2 Time of Essence.** Time is of the essence for each provision of this Agreement, unless otherwise specified.

**2.3 Notification of Delay.** The Law Firm must immediately notify the City in writing if the Law Firm experiences or anticipates a delay in performing the Services within the time frames set forth in this Agreement. The written notice must explain the cause of the delay and provide a reasonable estimate of the length of the delay. If the City believes that the delay affects a material part of the City's requirements for the Services, the City may suspend or terminate this Agreement under Sections 2.5-2.7.

**2.4 Delay.** If delays in the performance of the Services are caused by unforeseen events beyond the Parties' control, the Law Firm may be entitled to a reasonable extension of time, but not to damages or additional compensation. The City's written approval is required for any extension of time. The following conditions may constitute unforeseen events: war; changes in law or government regulations; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements that stops the Law Firm's work; inability to obtain materials, equipment, or labor; required additional Services; or other specific reasons agreed to between the City and the Law Firm. The Law Firm will not be entitled to a time extension for a delay caused by: (a) the Law Firm's inability to obtain materials, equipment, or labor unless the Law Firm gives the City timely documentary proof satisfactory to the City of the Law Firm's inability to obtain materials, equipment, or labor, or (b) the Law Firm's own acts or omissions.

**2.5 City's Right to Suspend for Convenience.** The City may, at its sole discretion, suspend some or all of the Law Firm's performance of the Services, for a reasonable period of time not to exceed six months. The City will give written notice to the Law Firm of any suspension. If the City chooses to suspend this Agreement, the City will pay the Law Firm, in accordance with the provisions of Article III of this Agreement, for the Services the Law Firm has satisfactorily performed up to the date of suspension. The City may later rescind the suspension by written notice to the Law Firm. The City may then require the Law Firm to resume the Services in compliance with this Agreement; in which case the Law Firm will be entitled to an extension of time equal to the length of the suspension, unless the Parties otherwise agree in writing.

**2.6 City's Right to Terminate for Convenience.** The City may, at its sole discretion, terminate all or any portion of the Services by giving written notice to the Law Firm. The notice must be delivered by certified mail with return receipt for delivery to the City. The termination

will be effective upon the Law Firm's receipt of the notice. After termination of this Agreement, the Law Firm must complete all additional work necessary for the orderly filing of documents and closing of the Law Firm's Services under this Agreement. For services satisfactorily rendered in completing the work, the Law Firm will be entitled to compensation for the Services it performed before the effective date of termination. After the Law Firm completes its performance, it must deliver all documents related to the Services to the City. By accepting payment for completion, filing and delivering documents as called for in this paragraph, the Law Firm discharges the City of all of the City's payment obligations and liabilities under this Agreement.

**2.7 City's Right to Terminate for Default.** The Law Firm's failure to satisfactorily perform any obligation under this Agreement, including a failure to adhere to the agreed-upon time schedules constitutes a default. If the Law Firm fails to satisfactorily cure a default within ten calendar days of receiving written notice from the City specifying the nature of the default, the City may immediately terminate this Agreement, and terminate every right of the Law Firm, and any person claiming any rights by or through the Law Firm under this Agreement. The City's rights and remedies under this Section are cumulative, and do not limit any of the City's rights under other provisions of this Agreement. The City does not waive any right or remedy that it may have against the Law Firm.

### ARTICLE III

#### COMPENSATION

**3.1 Amount of Compensation.** The City will pay the Law Firm for performing the Services under this Agreement, including reasonably related expenses, in an amount not to exceed \$250,000.

The Law Firm must immediately inform the City when the cumulative value of work done under this Agreement exceeds 80 percent of the total compensation authorized by this Agreement, or when it reasonably appears to the Law Firm that the cumulative value of work done under this Agreement may exceed the total authorized compensation within forty-five days. The City is not required to pay more than the maximum amount authorized. In addition, the Law Firm acknowledges, despite any representation to the contrary, that its total compensation under this Agreement may not exceed \$250,000 unless the Council pre-approves the expenditure, pursuant to applicable local laws and regulations.

**3.2 Additional Services.** The City may require that the Law Firm perform additional Services beyond those described in the Scope of Services (Additional Services). Before the Law Firm performs Additional Services, the City and the Law Firm must agree in writing to the Additional Services and upon a fee for the services, including reasonably related expenses, in accordance with the Compensation and Fee Schedule (Exhibit B). The City will pay the Law Firm for the performance of Additional Services in accordance with Section 3.3 of this Agreement.

**3.3 Manner of Payment.** The City will pay the Law Firm in accordance with the Compensation and Fee Schedule (Exhibit B). For the duration of this Agreement, the Law Firm

will not be entitled to fees, including fees for expenses, above the amounts listed in the Compensation and Fee Schedule. The Law Firm will submit one invoice per calendar month in a form acceptable to the City in accordance with the Compensation and Fee Schedule. The Law Firm will include with each invoice a description of completed Services, reasonably related expenses, if any, and all other information, including: the progress percentage of the Scope of Services or deliverables completed before the invoice date. The City will pay undisputed portions of invoices within thirty calendar days of receipt. Invoices must be mailed to the following address:

**David J. Karlin, Senior Deputy City Attorney**  
**Office of the City Attorney**  
**1200 Third Avenue**  
**San Diego, CA 92101**  
**(619) 533-5816**  
**DKarlin@sandiego.gov**

**3.4 Additional Costs.** Additional Costs are those costs that the City reasonably determines are related to the Law Firm's errors or omissions, and may include Law Firm, City, or Subcontractor overhead, materials, and related costs. The City will not pay the Law Firm for Services required due to the Law Firm's errors or omissions, and the Law Firm will be responsible, and must reimburse the City, for any Additional Costs. The City may deduct Additional Costs from amounts it owes to the Law Firm.

## **ARTICLE IV**

### **LAW FIRM'S OBLIGATIONS**

**4.1 Industry Standards.** The Law Firm agrees to perform the Services in accordance with the standards customarily adhered to by an experienced and competent Law Firm using the degree of care and skill ordinarily exercised by reputable public agency labor negotiators and attorneys practicing in the State of California. Where approval by the City, the Mayor or his designee, or other City Designated Representative is required, this approval does not relieve the Law Firm of its responsibility to comply with all applicable laws and industry standards.

#### **4.2 Right to Audit.**

**4.2.1 Access.** The City has the right, at its sole discretion, to audit the Law Firm or any Subcontractor's compliance with this Agreement (City's Right). The City's Right includes the right of reasonable access to the Law Firm or Subcontractor's premises, the right to inspect, photocopy documents, and to retain copies of any records related to the Services. The City will keep these records in the strictest confidence allowed by law.

**4.2.2 Audit.** The City's Right includes the right to examine any documents that the City determines are necessary to discover and verify that the Law Firm or Subcontractor is complying with all requirements under this Agreement.

**4.2.2.1 Cost Audit.** If there is a claim for additional compensation or for Additional Services, the City's Right includes the right to examine documents and accounting procedures and practices that the City determines are necessary to discover and verify all direct and indirect costs that the Law Firm claims have been or will be incurred.

**4.2.2.1.1 Accounting Records.** The Law Firm and all Subcontractors must maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. The Law Firm and Subcontractors must allow the City to review and audit all Service-related accounting records, and any other financial data. At the City's request, the Law Firm and Subcontractors must provide the City exact duplicates of the originals of all requested records.

**4.2.3 City's Right Binding on Subcontractors.** The Law Firm must include the City's Right as described in Section 4.2, in any and all of its subcontracts, and must ensure that these sections are binding upon all Subcontractors.

**4.2.4 Compliance Required before Mediation or Litigation.** The Law Firm or Subcontractor's full compliance with Section 4.2, within sixty days of receiving a written request from the City to audit for compliance, is a pre-condition to proceeding with mandatory mediation or litigation, as provided in Article VI.

**4.3 Insurance.** Before beginning the Services, the Law Firm must: (a) provide insurance certificates to the City reflecting all insurance coverage required under this Agreement (as set forth in Exhibit C) and, upon the City's reasonable request, provide full copies of the required policies; (b) obtain City approval of each insurance company providing required coverage; and (c) confirm that all policies contain the specific provisions set forth in Exhibit C. The Law Firm's liabilities under this Agreement are not limited to the required insurance coverage. To the extent allowed under California law, all insurance policies required under this Agreement must state that the City is entitled to thirty days prior written notice of cancellation or non-renewal (ten days for cancellation due to non-payment of premium). The Law Firm's maintenance of the required insurance coverage is a material element of this Agreement; the Law Firm's failure to maintain or renew coverage, or to provide evidence of renewal during the term of this Agreement, is a material breach of this Agreement. In addition, the Law Firm agrees not to modify any required policy or endorsement in a manner that increases the City's exposure to loss while this Agreement is in effect.

**4.4 Subcontractors.** The City must approve in advance the Law Firm's hiring or retaining of any third parties (Subcontractors) to perform the Services (Subcontractor Services). The Law Firm must list on the Subcontractor List (Exhibit D) all Subcontractors known to the Law Firm at the time it signs this Agreement. If the Law Firm later determines it requires additional Subcontractor Services, it must notify the City in writing at least fifteen days before entering into a contract for Subcontractor Services. The Law Firm's notice must include a justification, a description of the scope of work, and an estimate of all costs for the Subcontractor Services. The Law Firm may ask the City to reduce the fifteen-day notice period. The City will consider such requests in good faith.

**4.4.1 Subcontractor Contract.** All contracts entered into between the Law Firm and any Subcontractor must contain the information described in Sections 4.6, 4.7, and 4.8 of this Agreement, and must also provide as follows:

**4.4.1.1** The Law Firm must require each Subcontractor to obtain all insurance policies described in Exhibit C in the amounts required by the City, which will not be greater than the amounts required of the Law Firm. These insurance policies must be kept in full force and effect during all work on this Agreement.

**4.4.1.2** The Law Firm must pay the Subcontractor, for Law Firm and City-approved invoice amounts, out of amounts the City pays to the Law Firm, no more than fourteen business days from the date the Law Firm receives the City's payment. Nothing in this paragraph is intended to impair the right of the Law Firm and any Subcontractor to negotiate fair and reasonable pricing and payment provisions among themselves.

**4.4.1.3** The Law Firm must notify the City in writing if it withholds payment to any Subcontractor, specifying: (a) the amount withheld; (b) the specific cause under the terms of the subcontract for withholding payment; (c) the connection between the cause for withholding payment and the amount withheld; and (d) the remedial action the Subcontractor must take in order to receive the amount withheld. Once the Subcontractor corrects the deficiency, the Law Firm must pay the Subcontractor the amount withheld within fourteen working days of the Law Firm's receipt of the City's next payment.

**4.4.1.4** The Law Firm must not make the City a party to any judicial or administrative proceeding between the Law Firm and any Subcontractor. The Law Firm agrees to defend and indemnify the City as described in Article V of this Agreement in any dispute between the Law Firm and any Subcontractor, if the City is made a party to any judicial or administrative proceeding.

**4.4.1.5** The City is an intended beneficiary of any work performed by the Subcontractor for purposes of establishing a duty of care between the Subcontractor and the City.

**4.5 Contract Activity Report.** The Law Firm must submit statistical information to the City as requested in the City's Contract Activity Report (Exhibit D). The statistical information must include the amount of subcontracting provided by firms during the period covered by the Contract Activity Report. With the Contract Activity Report, the Law Firm must provide an invoice from each Subcontractor listed in the report. The Law Firm agrees to pay each firm listed in the Report within fourteen working days of receiving payment from the City for Subcontractor Services as described in Section 4.4.1.2 of this Agreement.

#### **4.6 Non-Discrimination Requirements.**

**4.6.1 Compliance with the City's Equal Opportunity Contracting Program.** The Law Firm must comply with the City's Equal Opportunity Contracting Program Law Firm Requirements (Exhibit D). The Law Firm must not discriminate against any employee or applicant for employment on any basis prohibited by law. The Law Firm must provide equal opportunity in all employment practices. The Law Firm must also ensure that its Subcontractors comply with the City's Equal Opportunity Contracting Program Law Firm Requirements.



Nothing in this Section may be interpreted to hold the Law Firm liable for any discriminatory practice of its Subcontractors.

**4.6.2 Non-Discrimination Ordinance.** The Law Firm must not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in selecting, hiring or dealing with Subcontractors, vendors or suppliers. The Law Firm must provide equal opportunity for Subcontractors to participate in subcontracting opportunities. The Law Firm agrees that a violation of this clause is a material breach of the Agreement and may result in termination, debarment, or other sanctions. This language must be in contracts between the Law Firm and any Subcontractors, vendors or suppliers.

**4.6.3 Compliance Investigations.** At the City's request, the Law Firm must provide the City, within sixty calendar days, a complete list of all Subcontractors, vendors, and suppliers that the Law Firm has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount the Law Firm paid for each subcontract or supply contract. The Law Firm further agrees to cooperate fully in any investigation conducted pursuant to the City's Nondiscrimination in Contracting Ordinance. The Law Firm agrees that violation of this clause is a material breach of the Agreement and may result in remedies against the Law Firm, including termination of this Agreement and other sanctions for violation of the Nondiscrimination in Contracting Ordinance. The remedies and sanctions in the Nondiscrimination Ordinance apply only to violations of the Nondiscrimination Ordinance.

**4.7 Drug-Free Workplace.** For the duration of this Agreement, the Law Firm must comply with the City's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is available on the City's website at: [http://docs.sandiego.gov/councilpolicies/cpd\\_100-17.pdf](http://docs.sandiego.gov/councilpolicies/cpd_100-17.pdf). Failure to do so is a material breach of this Agreement. The Law Firm must certify that it will provide a drug-free workplace by submitting a Law Firm Certification for a Drug-Free Workplace form (Exhibit F).

**4.8 ADA Certification.** The Law Firm must comply with the City's Americans with Disabilities Act Compliance/City Contracts requirements set forth in Council Policy 100-04, which is available on the City's website at: [http://docs.sandiego.gov/councilpolicies/cpd\\_100-04.pdf](http://docs.sandiego.gov/councilpolicies/cpd_100-04.pdf). Failure to do so is a material breach of this Agreement.

**4.9 Equal Benefits.** The Law Firm must certify it will provide and maintain equal benefits as defined in the City's Equal Benefits Ordinance (EBO) for the duration of the Agreement. Failure to do so is a material breach of this Agreement. The Law Firm must notify employees of their equal benefits policy at the time of hire and during open enrollment periods and must post a copy of the following statement in an area frequented by employees:

During the performance of a contract with the City of San Diego, this employer will provide equal benefits to its employees with spouses and its employees with domestic partners.

The Law Firm must give the City access to records sufficient to verify compliance with the Equal Benefits Ordinance. The full text of the EBO and the rules implementing the EBO are

posted on the City's website at [www.sandiego.gov/purchasing/](http://www.sandiego.gov/purchasing/) or can be requested from the Equal Benefits Program at (619) 533-3948.

**4.10 Product Endorsement.** The Law Firm agrees to comply with City Administrative Regulation 95.65 concerning product endorsements. Any advertisement identifying the City as the user of a product or service requires the City's prior written approval.

**4.11 Conflict of Interest.** The Law Firm is subject to all federal, state, and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including California Government Code sections 1090, the California Political Reform Act, and the City's Ethics Ordinance. In addition, the Law Firm is subject to all laws, regulations, rules, and policies applicable to the legal profession.

**4.11.1** If, in performing the Services, any agent or employee of the Law Firm makes, or participates in, a "governmental decision" as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the department's conflict of interest code, the Law Firm agent or employee must submit statements of economic interests disclosing his or her relevant financial interests.

**4.11.1.1** Statements of economic interests must be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. Each Law Firm agent or employee who is subject to this requirement must file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that he or she is subject to a conflict of interest code. The Law Firm agent or employee must also file a Form 700 (Annual Statement) on or before each April 1, disclosing any relevant financial interests held during the previous calendar year.

**4.11.1.2** If the City requires a Law Firm agent or employee to file a statement of economic interests, that agent or attorney will be considered a "City Official" subject to the City's Ethics Ordinance, and will be prohibited from lobbying the City for one year after this Agreement is terminated.

**4.11.2** The Law Firm must establish (and inform its agents and employees of) appropriate safeguards to prevent its employees and agents from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships.

**4.11.3** The Law Firm's personnel employed for the Services must not accept gratuities or any other favors from any Subcontractors or potential Subcontractors. The Law Firm must not recommend or specify to the City any product, supplier, or contractor with whom the Law Firm has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

**4.11.4** A violation of any conflict of interest law or any provision in Section 4.10 of this Agreement by the Law Firm or any of its agents or employees is grounds for immediate

termination of this Agreement, and the Law Firm will be liable to the City for attorneys' fees and all damages sustained as a result of the violation.

**4.11.5** Before beginning to represent the City, the Law Firm must, consistent with the standards normally followed by Law Firms performing comparable work, identify any actual or potential conflicts between the City's interests and its own interests or those of its current or former clients. In addition, the Law Firm must continue to monitor its own interests and those of its clients to identify any conflicts that may arise during the course of the representation. The Law Firm must immediately inform the City of any actual or potential conflicts. This paragraph does not relieve the Law Firm of its duties to the City under the Rules of Professional Conduct of the State Bar of California or other applicable laws, regulations, rules or policies.

**4.12 Mandatory Assistance.** If a third party dispute or litigation, or both, arises out of the Services, the Law Firm and its agents and employees must assist in resolving the dispute or litigation upon the City's request. The Law Firm's assistance includes providing professional consultations and attending any event related to the dispute resolution or litigation.

**4.13 Compensation for Mandatory Assistance.** The City will pay the fees the Law Firm incurs in providing Mandatory Assistance as Additional Services under Section 3.3 of this Agreement. But, if the fees are determined, through resolution of the third party dispute or litigation, to be attributable in whole or in part to the acts or omissions of the Law Firm, its agents or employees, the Law Firm must reimburse the City for all fees paid to the Law Firm, its agents or employees for Mandatory Assistance.

**4.14 Attorney Fees related to Mandatory Assistance.** The Law Firm agrees that any attorneys' fees it incurs as a result of providing Mandatory Assistance are not reimbursable. But, this provision does not affect the parties' rights to seek attorneys' fees under Section 8.7 of this Agreement.

**4.15 Submittals.** Law Firm is required to submit the following documentation. Failure to submit this required documentation with the Agreement will delay execution of the Agreement, and therefore, commencement of work by and payments to the Law Firm.

- Insurance Certificates with all endorsements (Exhibit C)
- Equal Opportunity Forms (Exhibit D)
- Drug Free Workplace Form (Exhibit F);
- Vendor Registration (Exhibit G);
- Business Tax License;
- Taxpayer Identification Number (W-9) if not currently on file; (<http://www.irs.gov/formspubs/lists>)
- Contractor Standard Pledge of Compliance (Exhibit H).

## ARTICLE V

### INDEMNIFICATION

**5.1 Indemnification.** The Law Firm agrees to defend and indemnify the City, its agents, officers, and employees against all liability for injury to any person or property caused or claimed to be caused by the acts or omissions of the Law Firm, or any of its agents or employees, in performing the Services under this Agreement. This agreement to defend and indemnify includes liability arising from or related to the active or passive negligent acts or omissions of the City, its agents, officers, or employees, which may be in combination with the active or passive negligent acts or omissions of the Law Firm, its employees, agents, or officers, or any third party. The Law Firm's duty to defend and indemnify does not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its agents, officers, or employees.

## ARTICLE VI

### MEDIATION

**6.1 Mandatory Non-binding Mediation.** Before initiating litigation related to this Agreement, the Parties will attempt to settle their dispute in an amicable manner, using mandatory mediation under the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association (AAA) or any other agreed-upon neutral organization. This section does not apply to the City's right to suspend or terminate this Agreement under Sections 2.5 through 2.7.

**6.2 Mandatory Mediation Costs.** Witness expenses will be paid by the Party who produces the witness. Unless the Parties agree otherwise, the Parties will share all other mediation expenses equally, including the Mediator's fees and expenses, and the cost of any proofs or expert advice produced at the Mediator's direct request.

**6.3 Selection of Mediator.** A single Mediator that is acceptable to both Parties will be used to mediate the dispute. The Mediator must be knowledgeable in the relevant subject matter and may be selected from lists furnished by the AAA or any other agreed-upon neutral organization. The Party who initiates the Mediation will serve a Request for Mediation on the opposing Party. If the Mediator is selected from a list provided by AAA, the initiating Party will concurrently file with the AAA a "Request for Mediation" along with the appropriate fees, a list of three requested Mediators marked in preference order, and a preference for available dates.

**6.3.1** If AAA is selected to coordinate the mediation (Administrator), the opposing Party will file, within ten working days of receiving the Request for Mediation: (a) a list of preferred Mediators, in order of preference, after striking any Mediators to which the opposing Party objects, and (b) a list of available dates. If the opposing Party strikes all of initiating Party's preferred Mediators, the opposing Party will submit a list of three preferred Mediators, in order of preference, to the initiating Party and Administrator. The initiating Party will file a list of preferred Mediators, in preference order, after striking any Mediator to which the initiating Party objects. This process will continue until both sides have agreed upon a Mediator.

**6.3.2** The Administrator will appoint the highest, mutually-preferred Mediator from the individual Parties' lists who is available to serve within the designated time frame.

**6.3.3** If the Parties agree not to use AAA, then the Parties will mutually agree upon a Mediator, date and place for the mediation.

**6.4 Conduct of Mediation Sessions.** Mediation hearings will be conducted in an informal manner. Discovery will not be allowed, but the Parties may agree to exchange any information they deem necessary. Statements made during or in connection with the mediation will be confidential and without prejudice to either Party's legal position, and will be not admissible in any subsequent proceedings.

**6.4.1** An authorized representative must attend the mediation for each Party. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorneys or experts present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification of whether attorneys will be present.

**6.4.2** Any agreements resulting from mediation must be documented in writing. All mediation results and documentation, by themselves, will be "non-binding" and inadmissible for any purpose in any legal proceeding, unless the Parties agree otherwise in writing. Mediators will not be subject to any subpoena or liability and their actions will not be subject to discovery.

## ARTICLE VII

### INTELLECTUAL PROPERTY RIGHTS

**7.1 Work for Hire.** All original material, whether written or readable by machine, that is prepared exclusively for the City under this Agreement (Deliverable Materials) is "work for hire" under the United States copyright law and is the City's sole property. The Law Firm, including its employees and independent Subcontractor(s), will not assert any common law or statutory patent, copyright, trademark, or any other intellectual proprietary right to the Deliverable Materials.

**7.2. Rights in Data.** All rights in the Deliverable Materials (including publications, registration of copyrights, and trademarks) are the City's sole property. The Law Firm, including its employees, agents, talent, and independent Subcontractor(s), may not use the Deliverable Materials for any purpose without the City's prior written consent.

**7.3 Intellectual Property Rights Assignment.** At the City's request, the Law Firm, its employees, agents, talent, and independent Subcontractor(s) must promptly sign and deliver all instruments needed to fully protect the City's rights and interests in the content of the Deliverable Materials, without further compensation. The Law Firm must also assist in prosecuting any action or opposition proceeding involving the adjudication of the City's rights.

**7.4 Moral Rights.** The Law Firm, its employees, agents, talent, and independent Subcontractor(s) irrevocably and forever waive any Moral Rights in the Deliverable Materials that they may now have or that may accrue to their benefit under U.S. or foreign copyright laws, and any and all other residual rights and benefits that arise under any other applicable law now in

force or later enacted. The term “Moral Rights” means all rights of paternity or integrity of the Deliverable Materials and the right to object to any modification, translation or use of the Deliverable Materials, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, even if the right is not referred to as a moral right.

**7.5 Subcontracting.** If the Law Firm uses a Subcontractor(s) to produce any of the Deliverable Materials, the agreement between Law Firm and the Subcontractor (Subcontractor Agreement) must state that the Deliverable Materials are a “work for hire” as defined in the United States copyright law, and that all intellectual property rights in the Deliverable Materials belong solely to the City. The Subcontractor Agreement must also require the Subcontractor to transfer exclusively to the City, free of charge, all titles, rights, and interests to the Deliverable Materials, including all intellectual property rights. The City may review any Subcontractor Agreement for compliance with this provision.

**7.6 Publication.** The Law Firm may not publish or reproduce any Deliverable Materials for purposes unrelated to Law Firm’s work on behalf of the City without the City’s prior written consent.

**7.7 Intellectual Property Warranty and Indemnification.** The Law Firm warrants that any deliverables provided under this Agreement, including all Deliverable Materials, are either: (1) original and do not infringe upon the intellectual property rights of any third party, or (2) in the public domain. If the Deliverable Materials become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, the City may, in its sole discretion, require the Law Firm to produce, at the Law Firm’s own expense, new non-infringing work product as a means of remedying the claim, in addition to any other remedy available to the City under law or equity. The Law Firm further agrees to indemnify and defend the City, its officers, employees and agents against all claims alleging that any of the Deliverable Materials infringe the intellectual property or proprietary rights of any third party (Third Party Claims of Infringement). If a Third Party Claim of Infringement is threatened or made before the Law Firm receives payment under this Agreement, the City may withhold some or all of such payment, upon written notice to Law Firm.

**7.8 Enforcement Costs.** The Law Firm agrees to pay all costs the City incurs enforcing the indemnity and defense provisions in Article V of this Agreement, including attorneys’ fees.

## ARTICLE XIII

### MISCELLANEOUS

**8.1 Notices.** Where this Agreement requires written notice, service is sufficient if the notice is deposited in the United States mail, postage paid. Proper notice is effective on the date it is mailed, unless otherwise provided in this Agreement. Unless otherwise agreed in writing, notice to the City must be addressed to:

**David J. Karlin, Senior Deputy City Attorney**  
**Office of the City Attorney**  
**1200 Third Avenue**  
**San Diego, CA 92101**  
**(619) 533-5816**  
**DKarlin@sandiego.gov**

and notice to the Law Firm must be addressed to:

**Cecilia O. Miller, Esq.**  
**Procopio, Cory, Hargreaves & Savitch LLP**  
**525 B Street, Suite 2200**  
**San Diego, CA 92101**

**8.2 Headings.** All article headings are for convenience only and do not affect the interpretation of this Agreement.

**8.3 Non-Assignment.** The Law Firm must not assign the obligations or any monies that become due under this Agreement, whether by express assignment or by sale of the company, without the City's prior written approval. Any assignment in violation of this paragraph constitutes a Default and is grounds for immediate termination of this Agreement. No putative assignment will create a contractual relationship between the City and any putative assignee.

**8.4 Independent Contractors.** The Law Firm and any Subcontractors employed by the Law Firm are independent contractors and not agents of the City. Any provisions of this Agreement that appear to give the City any right to direct the Law Firm concerning the details of performing the Services, or to exercise any control over the performance, mean only that the Law Firm must follow the direction of the City concerning the end results of the performance.

**8.5 Law Firm and Subcontractor Principals for Law Firm Services.** This Agreement is for unique professional Services. Retention of the Law Firm's professional Services is based on the particular professional expertise of the following member(s) of the Law Firm's organization: Cecilia O. Miller (Project Team). Neither the Law Firm nor the Project Team may delegate the performance of professional services on the Project to other members of the Law Firm's organization or to Subcontractors without the City's prior written consent. The Law Firm must not remove any Project Team member from the Project without the City's prior written approval. The City may treat the Law Firm's removal of any Project Team member without prior City approval as a material breach of this Agreement. If any member of the Project Team becomes unavailable for any reason, the Law Firm must consult the City as to any replacement. If the City does not approve of a proposed replacement, the City may terminate this Agreement pursuant to Section 2.6. Further, the City reserves the right, after consulting with the Law Firm, to require the Law Firm to remove any employee or agent from the Project.

**8.6 Compliance with Controlling Law.** The Law Firm must comply with all federal, state, and local laws and policies that apply to this Agreement. In addition, the Law Firm must comply immediately with all directives by the City or its authorized representatives under authority of any laws or regulations. The laws of the State of California govern this Agreement.

**8.7 Jurisdiction and Attorneys' Fees.** The State of California is the jurisdiction for any proceeding concerning this Agreement, and the laws of the State of California govern the interpretation or application of any of its terms. The prevailing Party in any proceeding will be entitled to a reasonable award of attorneys' fees in addition to any other award made in the proceeding. For the City Attorney's work done in any proceeding, the reasonable attorneys' fees will be \$250 per hour.

**8.8 Successors in Interest.** This Agreement, and all rights and obligations created by this Agreement, are in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement are binding on any Party's successor in interest.

**8.9 Integration.** This Agreement and the exhibits and references incorporated into this Agreement fully express all of the Parties' understandings concerning the matters covered in this Agreement. No modification of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees, is valid unless both Parties agree to the modification or understanding in writing. All prior negotiations and agreements between the Parties are merged into this Agreement.

**8.10 Counterparts.** This Agreement may be executed in counterparts, which, when taken together, are a single signed original as though all Parties had executed the same page.

**8.11 No Waiver.** The failure by either Party to insist upon the strict performance of any term of this Agreement, or to exercise any right or remedy upon a breach of any term of this Agreement, is not a waiver of the breach. No waiver of any breach will affect this Agreement, and every term of this Agreement will continue in full force and effect to any existing or subsequent breach.

**8.12 Severability.** If any part of this Agreement is held to be illegal or otherwise unenforceable, the remainder of this Agreement remains in effect.

**8.13 Additional Law Firms or Contractors.** The City reserves the right to employ, at its own expense, any additional Law Firms or contractors it deems necessary to perform work or to provide the Services.

**8.15 Employment of City Staff.** At its sole discretion, the City may unilaterally and immediately terminate this Agreement if the Law Firm employs an individual who: (a) was a City officer or employee within the twelve months before their employment by the Law Firm, and (b) in that capacity participated in, negotiated with, or otherwise had an influence on the City's selection of the Law Firm.

**8.16 Municipal Powers.** Nothing in this Agreement limits the powers of the City as a chartered city of the State of California.



**8.17 Drafting Ambiguities.** The Parties have the right to be advised by counsel on the negotiations, and the terms and conditions of this Agreement. Each Party has the sole responsibility to determine whether or not to seek advice of counsel. This Agreement must not be construed in favor of or against either Party based on the extent to which each Party participated in drafting the Agreement.

**8.18 Conflicts between Terms.** If there is an apparent conflict between the main body of this Agreement and the exhibits, the main body of this Agreement controls, except with respect to Exhibit A, which sets forth the agreed-upon Scope of Services. If a conflict exists between this Agreement and an applicable federal, state, or local law or order, the law controls. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and applicable federal, state, or local laws are not conflicts; the most stringent requirement controls. Each Party must notify the other immediately if it identifies any apparent conflict concerning this Agreement.

**8.19 Exhibits Incorporated.** All exhibits referenced in this Agreement are incorporated into the Agreement.

**8.20 Survival of Obligations.** The representations, indemnifications, and warranties made in, required by, or given in accordance with this Agreement, and all continuing obligations under this Agreement, will survive the termination or completion of the Agreement.

**8.21 Vendor Registration.** All Law Firms who wish to conduct business with the City of San Diego, or who intend to compete for City contracts, must submit a completed Vendor Registration Form (Exhibit G) to the City of San Diego's Purchasing & Contracting Department. This form must be received by the City before the Law Firm may compete for or be awarded any contract.


**8.22 Contractor Standards.** This Agreement is subject to the Contractor Standards clause of the Municipal Code, Chapter 2, Article 2, Division 30. All Law Firms are required to complete the Contractor Standards Pledge of Compliance (Exhibit H). The Contractor Standards are available online at [www.sandiego.gov/purchasing/vendor/index.shtml](http://www.sandiego.gov/purchasing/vendor/index.shtml) or by request from the Purchasing & Contracting Department by calling (619) 236-6000.

**[REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor or designee, pursuant to Council action authorizing such execution, and by the Law Firm.

The individual signing this Agreement on behalf of the Law Firm certifies that he or she has read all of this Agreement and has the legal authority to bind the Law Firm.

LAW FIRM

BY:   
Robert G. Russel, Esq. (Partner)  
Cecilia O. Miller, Esq.  
Procopio, Cory, Hargreaves &  
Savitch LLP

CITY OF SAN DIEGO  
A MUNICIPAL CORPORATION

BY: \_\_\_\_\_  
Ed Plank, Director of Purchasing  
& Contracting

DATE SIGNED February 21, 2013

DATE SIGNED \_\_\_\_\_

I APPROVE the foregoing Agreement as to form.

JAN I. GOLDSMITH, City Attorney

By: \_\_\_\_\_  
David J. Karlin  
Senior Deputy City Attorney

DATE SIGNED \_\_\_\_\_

**EXHIBITS**

**AGREEMENT FOR LEGAL SERVICES**

- Exhibit A - Scope of Services
- Exhibit B - Compensation and Fee Schedule
- Exhibit C - Insurance
- Exhibit D - City's Equal Opportunity Contracting Program Law Firm Requirements
- Exhibit E - Law Firm Certification for a Drug-Free Workplace
- Exhibit F - Vendor Registration Form
- Exhibit G - Contractor Standards Pledge of Compliance

## EXHIBIT A

### SCOPE OF SERVICES

#### **\*THIS EXHIBIT CONTAINS CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATIONS PURSUANT TO CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION 6149.**

##### A. General Legal Services/Major Legal Tasks:

The Firm agrees to accomplish the following legal tasks as efficiently and expeditiously as possible:

- (1) Management of the relationship with Chartis in relation to the 2008 bad faith settlement agreement entered by the parties in the matter of the *Insurance Company of the State of Pennsylvania v. City of San Diego*, United States District Court Case No. 02CV0693 BEN, including, but not limited to, (a) responding to Chartis coverage demands for defense materials and information, (b) updating Chartis on key litigation and settlement developments, (c) continued review and revision of *De La Fuente* defense invoices, (d) monitoring Chartis' compliance with its defense obligations and (e) documenting any non-compliance to support any future bad faith litigation.
- (2) Respond to Chartis' denial of the City's reimbursement claim for defense fees and costs in the *Otay Truck* and *Border IV* cases including, but not limited to, responding to Chartis' reservation of rights in *Otay Truck* and demonstration of exhaustion of CSAC Excess Insurance Authority's ("CSAC") Memorandum of Coverage.
- (3) Management of the relationship with United National Insurance Company in relation to its agreement to fund 20% of the defense fees in the *De La Fuente* cases up to a second occurrence limit of \$2 million.
- (4) Negotiate payment of defense fees by excess insurers, including CSAC, to fund the City's 20% defense fee obligation, including through coverage analysis, communications and negotiation.
- (5) Participate and provide insurance coverage counseling in settlement discussions including, but not limited to, formal mediation proceedings.

**EXHIBIT B**

**COMPENSATION AND FEE SCHEDULE  
& BILLING GUIDELINES**

**I. Maximum Contract Amount.**

A. The City has authorized a maximum payment of \$250,000.00 for services and out-of-pocket expenses for the term of this Agreement for the Services.

B. The City will not pay the Law Firm more than the authorized maximum amount unless the City informs the Law Firm in writing that it has authorized additional amounts.

**II. Rate.** The City agrees to pay the Firm for authorized services performed at the direction of the City under this Agreement as follows:

\$ 440 per hour for Cecilia O. Miller, Esq.

\$ 365 per hour for associate attorneys

**III. Billing.** All billing is subject to the following guidelines:

# SAN DIEGO CITY ATTORNEY'S OFFICE

## BILLING GUIDELINES FOR OUTSIDE COUNSEL

### A. Introduction.

These guidelines describe your responsibilities as a lawyer or Law Firm retained by the City. Every effort has been made to be clear and reasonable, so that you can provide excellent legal services for the lowest possible cost to the taxpayers. **PLEASE NOTE: The City will not approve any invoice without a signed Agreement for and a signed approval of the Billing Guidelines (BG).**

Each invoice you submit will be reviewed by the City's representative with these guidelines in mind. We expect your compliance and invite any questions or comments you may have about these processes. We look forward to a close and productive relationship, based on this foundation.

### B. Billing Format.

1. Each billing invoice (Invoice) must list the billing and expenses separately for each person represented.
2. Each Invoice must include the total amount of services rendered during the billing period, the fee for these services and the amount of reimbursable expenses. The Invoice must be accompanied by a separate Invoice Support Statement that: (a) describes each item of work performed, (b) identifies the person who performed the work, and (c) itemizes all reimbursable expenses. For each travel or meal expense, the Invoice Support Statement must identify the persons involved and the date and location where the expense was incurred. Receipts for all meals and travel expenses must be attached. The Invoice Support Statement must be marked "Confidential -- Attorney-Client and/or Work Product Privilege."
3. The Invoice may be subject to disclosure under the California Public Records Act; the separate Invoice Support Statement is not.
4. The billing entries on the Invoice Support Statement must be complete, discrete, and appropriate.

#### Invoice Support Statement:

##### (a) Complete

- (1) The Invoice Support Statement must identify each City person represented, and follow with all billing entries and expenses incurred related to that particular person.
- (2) Each billing entry must identify the:

- i. person or persons involved (e.g., telephone calls must include the names of all participants);
  - ii. date the work was performed;
  - iii. specific task performed; and
  - iv. the work product (e.g., “telephone call re: trial brief,” “interview in preparation for deposition”).
- (3) All time must be billed in .10 hour increments.
  - (4) The Invoice Support Statement must include each biller’s professional capacity (partner, associate, paralegal, etc.).
  - (5) The Invoice Support Statement must include a breakdown of all expenses by category, along with a receipt a receipt for each expense.
- (b) Discrete  
Narrative and block billing are unacceptable; each task must be a discrete billing entry.
- (c) Appropriate
- (1) The City does not pay for clerical support, administrative costs, overhead costs, outside expenses, or excessive expenses. For example, the City will not pay for secretarial time, word processing time, air conditioning, rental of equipment (including computers), meals served at meetings, postage, online research, or the overhead costs of sending or receiving faxes.
  - (2) Absent prior written approval, the City will not pay for delivery fees, outside photocopying, videotaping of depositions, investigative services, computer litigation support services, or overnight mail.
  - (3) Due to the nature of the City’s payment process, the City will not pay any late charges. Every effort will be made to pay bills promptly.

C. Staffing.

1. Every legal matter must have a primary responsible attorney and a paralegal assigned. Staffing is ultimately a City decision, and the City may review staffing to ensure that it will achieve the goals of the engagement at the least cost.
2. The Law Firm should use paralegals to the maximum extent possible to enhance efficiency and cost-effectiveness. All tasks typically considered “associate work” should be considered for assignment to a paralegal.
3. Once an attorney is given primary responsibility for an engagement, that attorney should continue on the legal matter until it is concluded or the attorney leaves the firm. The City will not pay the costs of bringing a new attorney up to speed.

D. Written Memoranda.

If legal research results in a written memorandum, whether formal or informal, the Law Firm must forward one hard copy and one digital copy of the written memorandum to the Office of the City Attorney.

E. Internal Conferencing.

Regardless of how many people from the Law Firm attend a meeting, only one may bill the time.

F. Travel.

The City reimburses mileage at the current IRS rate. Air travel is reimbursed at coach or lower rate. Overnight accommodations may not exceed the federal per diem amount without prior approval, except that the Parties agree that the Law Firm is authorized to lodge at the Westin Hotel at \$170.00 per night. Meals while traveling must be reasonably priced. Alcoholic beverages will not be reimbursed.

G. Hourly Rates.

The Law Firm may not increase hourly rates without the City's prior written approval. The City will approve only reasonable rates for payment.

H. Out-of-Pocket Expenses.

1. Unless expressly excluded by these guidelines, the City will reimburse out-of-pocket expenses the Law Firm charges as a standard practice to its clients according to these procedures. In any billing for expenses, the Law Firm must provide a statement breaking down the amounts by category of expense.
2. The following items will not be reimbursed without the City's prior written consent:
  - (a) Clerical, secretarial, or word processing charges, whether expressed as a dollar amount or time charge.
  - (b) Charges for storing open or closed files, rent, electricity, air conditioning, local telephone, postage, receipt or transmission of local facsimile documents, equipment rental (including computers), meals served at meetings, or any other items traditionally associated with overhead.
  - (c) Litigation support or any other service in excess of the amount the Law Firm actually expends for the service. The City will not pay for any incremental amount, whether it is intended to recover the cost of equipment and hardware or not.
  - (d) Photocopy charges in excess of \$.10 per page.
  - (e) Auto mileage rates in excess of the current IRS rates.



- (f) Overtime compensation. If a matter requires overtime, the City will consider reimbursement on a case-by-case basis. The City will not reimburse overtime incurred for the Firm's convenience where the deadline was known in advance.
- (g) Charges for equipment, books, periodicals, research materials, online research, Westlaw/Lexis, or like items.
- (h) Charges for express or overnight mail, messenger services, or the like, except in emergency situations and with the City's prior consent. The City expects these expenses to be incurred in emergency situations only. The City will consider reimbursing these services on a case-by-case basis.
- (i) Airfare in excess of economy or coach class fares.
- (j) Combined expenses for lodging, meals, and ground transportation that exceed \$250 per day.
- (k) Investigative services, outside photocopying, videotaping of depositions, or computer litigation support services.

I. Records.

The individual expense records customarily maintained by the Law Firm for billing evaluation and review purposes must be made available to the City to support the Law Firm's billings.

J. Invoices.

1. The Law Firm will send the City an Invoice and Invoice Support Statement for each one-month period of services (or, if requested by the City, each two-week period), and the City will pay the Law Firm on this basis.
2. The Law Firm will submit all monthly Invoices and Invoice Support Statements to the City's Designated Representative, as designated in the Agreement, by the 15th of each month for services rendered the previous month. Invoices must include a distinct identification number, and must comply with these Billing Guidelines. If the City questions any item on an Invoice, the Law Firm must provide all supporting information to substantiate the billing, and must make any appropriate adjustments.

K. Media Inquiries.

The Law Firm must inform the Office of the City Attorney immediately of any Media inquiries.

## EXHIBIT C

### INSURANCE

1. **Types of Insurance.** The Law Firm must maintain insurance coverage as follows throughout the term of this Agreement:

**1.1 Commercial General Liability.** Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98, or an equivalent form providing coverage at least as broad, which covers liability arising from all personal injury or property damage in the amount of \$1,000,000.00 (one million dollars) per occurrence and subject to an annual aggregate of \$2,000,000.00 (two million dollars). There must be no endorsement or modification of the CGL limiting the scope of coverage for either insured versus insured claims or contractual liability. The CGL policy must include all defense costs must be outside the limits of the policy.

**1.2 Commercial Automobile Liability.** For all of the Law Firm's automobiles, including owned, hired, and non-owned automobiles, the Law Firm must keep in full force and effect automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form, or an equivalent form providing coverage at least as broad, for bodily injury and property damage for a combined single limit of \$1,000,000.00 (one million dollars) per occurrence. The insurance certificate must reflect coverage for "any automobile."

**1.3 Workers' Compensation.** For all of the Law Firm's employees who perform work under this Agreement, and to the extent required by the applicable state or federal law, the Law Firm must keep a Workers' Compensation policy in full force and effect throughout the term of this Agreement. The policy must provide a minimum of \$1,000,000.00 (one million dollars) of employers' liability coverage, and the Law Firm must provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents, and representatives.

**1.4 Professional Liability.** For all of the Law Firm's employees who perform work under this Agreement, the Law Firm must maintain Professional Liability coverage full force and effect throughout the term of this Agreement, with a limit of \$1,000,000.00 (one million dollars) per claim and \$2,000,000.00 (two million dollars) annual aggregate. The Law Firm must ensure that: (a) the policy retroactive date is on or before the date the Services begin; and (b) the policy is in force for at least three years after the Services are substantially completed, or this Agreement is terminated, whichever occurs last. The Law Firm must not change this coverage in a manner that increases the City's exposure to loss during the time period defined above.

2. **Deductibles.** The Law Firm must pay all deductibles on any required insurance policy, and must disclose the deductibles to the City at the time it provides evidence of insurance.

### 3. Acceptability of Insurers.

**3.1** Except for the State Compensation Insurance Fund, all insurance required in this Agreement or in the Special General Conditions must be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the City. The full name of the company affording coverage must be named on the certificate of insurance.

**3.2** The City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All insurance policies carried by non-admitted carriers are subject to all of the requirements for insurance policies carried by admitted carriers described in this Exhibit.

### 4. Required Endorsements. The Law Firm must provide the following policy endorsements before it begins work under this Agreement.

#### 4.1 Commercial General Liability Insurance Endorsements

**ADDITIONAL INSURED.** To the fullest extent allowed by law, including California Insurance Code §11580.04, the policies must be endorsed to include as an Insured the City of San Diego and its elected officials, officers, employees, agents and representatives, with respect to liability arising out of: (a) ongoing operations performed by or on the Law Firm's behalf, (b) the Law Firm's products, (c) the Law Firm's work, including completed operations performed by or on behalf of the Law Firm, or (d) premises owned, leased, controlled or used by the Law Firm.

**PRIMARY AND NON-CONTRIBUTORY COVERAGE.** The Commercial General Liability policy or policies must be endorsed to provide that coverage for the Law Firm's operations is primary to any insurance or self-insurance the City maintains for City, its elected officials, officers, employees, agents and representatives. Any insurance the City maintains must be in excess of the Law Firm's insurance and will not contribute to it.

**CANCELLATION.** Except as provided under California Law, the policy or policies must be endorsed to provide that the City is entitled to thirty days prior written notice (ten days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. This notice must be addressed to the City at the address specified in Section 9.1 "Notices."

**SEVERABILITY OF INTEREST.** The policy or policies must be endorsed to provide cross-liability coverage, and must provide that the Law Firm's insurance applies separately to each insured against whom a claim is made or suit is brought, except for the aggregate limits of the insurer's liability.

#### **4.2 Automobile Liability Insurance Endorsements**

**ADDITIONAL INSURED.** To the fullest extent allowed by law, including California Insurance Code section 11580.04, the policy or policies must be endorsed to include as the City as an insured, along with the City's elected officials, officers, employees, agents and representatives, for liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Law Firm.

**CANCELLATION.** Except as provided under California law, the policy or policies must be endorsed to provide that the City is entitled to thirty days prior written notice (ten days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. This notice must be addressed to the City at the address specified in Section 9.1 "Notices."

**SEVERABILITY OF INTEREST.** The policy or policies must be endorsed to provide cross-liability coverage, and must provide that the Law Firm's insurance applies separately to each insured against whom a claim is made or suit is brought, except for the aggregate limits of the insurer's liability.

#### **4.3 Worker's Compensation and Employer's Liability Insurance Endorsements**

**CANCELLATION.** Except as provided under California law, the policy or policies must be endorsed to provide that the City is entitled to thirty days prior written notice (ten days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. This notice must be addressed to the City at the address specified in Section 9.1 "Notices."

**WAIVER OF SUBROGATION.** The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City and its elected officials, officers, employees, agents and representatives for losses paid under the terms of the policy arising from work performed by the Named Insured (Law Firm) for the City.

5. **Reservation of Rights.** The City reserves the right, from time to time, to review the Law Firm's insurance coverage, limits, deductibles and self-insured retentions to determine if they are acceptable to the City. If the City requests coverage in excess of the coverage required by this Agreement, the City will reimburse the Law Firm for the cost of the additional premium, without overhead, profit, or any other markup.
6. **Additional Insurance.** The Law Firm may obtain additional insurance not required by this Agreement.
7. **Excess Insurance.** All policies providing excess coverage to the City must follow the form of the primary policies including all endorsements.

**EXHIBIT D**

**EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)  
CONTRACTOR REQUIREMENTS**

**TABLE OF CONTENTS**

**No table of contents entries found.**

- I. **City's Equal Opportunity Commitment.** The City of San Diego (City) is strongly committed to equal opportunity for employees and subcontractors of professional service Law Firms doing business with the City. The City encourages its Law Firms to share this commitment. Prime Law Firms are encouraged to take positive steps to diversify and expand their Subcontractor solicitation base and to offer consulting opportunities to all eligible Subcontractors.
- II. **Nondiscrimination in Contracting Ordinance.** All Law Firms and professional service providers doing business with the City, and their Subcontractors, must comply with requirements of the City's *Nondiscrimination in Contracting Ordinance*, San Diego Municipal Code (Municipal Code) sections 22.3501 through 22.3517.
- A. Proposal Documents to include Disclosure of Discrimination Complaints. As part of its bid or proposal, Law Firm shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against Law Firm in a legal or administrative proceeding alleging that Law Firm discriminated against its employees, Subcontractors, vendors, or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.
- B. Contract Language. The following language shall be included in contracts for City projects between the Law Firm and any Subcontractors, vendors, and suppliers:
- Law Firm shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Law Firm shall provide equal opportunity for Subcontractors to participate in subcontracting opportunities. Law Firm understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.
- C. Compliance Investigations. Upon the City's request, Law Firm agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all Subcontractors, vendors, and suppliers that Law Firm has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Law Firm for each subcontract or supply contract. Law Firm further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's *Nondiscrimination in Contracting Ordinance*, Municipal Code sections 22.3501 through 22.3517. Law Firm understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Law Firm up to and including contract termination, debarment and other sanctions for violation of the provisions of the *Nondiscrimination in Contracting Ordinance*. Law Firm further understands and agrees that the procedures, remedies and sanctions provided for in the *Nondiscrimination in Contracting Ordinance* apply only to violations of the *Ordinance*.

**III. Equal Employment Opportunity.** Law Firms shall comply with requirements of San Diego Ordinance O-18173, section 22.2701 through 22.2707, Equal Employment Opportunity Outreach Program. Law Firms shall submit with their proposal a *Work Force Report* for approval by the Program Manager of the City of San Diego Equal Opportunity Contracting Program (EOCP).

A. Work Force Report. If, based on a review of the *Work Force Report* (Attachment AA) submitted, an EOCP staff Work Force Analysis determines there are under representation when compared to County Labor Force Availability data, then the Law Firm will also be required to submit an *Equal Employment Opportunity (EEO) Plan* to the EOCP Program Manager for approval.

B. Equal Employment Opportunity Plan. If an *Equal Employment Opportunity Plan* is required, it must include at least the following assurances that:

1. The Law Firm will maintain a working environment free of discrimination, harassment, intimidation and coercion at all sites and in all facilities at which the Law Firm's employees are assigned to work;
2. A responsible official is designated to monitor all employment related activity to ensure the Law Firm's EEO Policy is being carried out and to submit reports relating to EEO provisions;
3. Law Firm disseminates and reviews its EEO Policy with all employees at least once a year, posts the policy statement and EEO posters on all company bulletin boards and job sites, and documents every dissemination review and posting with a written record to identify the time, place, employees present, subject matter, and disposition of meetings;
4. The Law Firm reviews, at least annually, all supervisor's adherence to and performance under the EEO Policy and maintains written documentation of these reviews;
5. The Law Firm discusses its EEO Policy Statement with Subcontractors with whom it anticipates doing business, includes the EEO Policy Statement in its subcontracts, and provides such documentation to the City upon request;
6. The Law Firm documents and maintains a record of all bid solicitations and outreach efforts to and from Subcontractors, Law Firm associations and other business associations;
7. The Law Firm disseminates its EEO Policy externally through various media, including the media of people of color and women, in advertisements to recruit, maintains files documenting these efforts, and provides copies of these advertisements to the City upon request;
8. The Law Firm disseminates its EEO Policy to union and community organizations;

9. The Law Firm provides immediate written notification to the City when any union referral process has impeded the Law Firm's efforts to maintain its EEO Policy;
10. The Law Firm maintains a current list of recruitment sources, including those outreaching to people of color and women, and provides written notification of employment opportunities to these recruitment sources with a record of the organizations' responses;
11. The Law Firm maintains a current file of names, addresses and phone numbers of each walk-in applicant, including people of color and women, and referrals from unions, recruitment sources, or community organizations with a description of the employment action taken;
12. The Law Firm encourages all present employees, including people of color and women employees, to recruit others;
13. The Law Firm maintains all employment selection process information with records of all tests and other selection criteria;
14. The Law Firm develops and maintains documentation for on-the-job training opportunities and/or participates in training programs for all of its employees, including people of color and women, and establishes apprenticeship, trainee, and upgrade programs relevant to the Law Firm's employment needs;
15. The Law Firm conducts, at least annually, an inventory and evaluation of all employees for promotional opportunities and encourages all employees to seek and prepare appropriately for such opportunities;
16. The Law Firm ensures the company's working environment and activities are non-segregated except for providing separate or single-user toilets and necessary changing facilities to assure privacy between the sexes;
17. The Law Firm establishes and documents policies and procedures to ensure job classifications, work assignments, promotional tests, recruitment and other personnel practices do not have a discriminatory effect; and
18. The Law Firm is encouraged to participate in voluntary associations, which assist in fulfilling one or more of its non-discrimination obligations. The efforts of a Law Firm association, Law Firm/community professional association, foundation or other similar group of which the Law Firm is a member will be considered as being part of fulfilling these obligations, provided the Law Firm actively participates.

**IV. Equal Opportunity Contracting.** Prime Law Firms are encouraged to take positive steps to diversify and expand their Subcontractor solicitation base and to offer contracting



opportunities to all eligible Subcontractors. To support its Equal Opportunity Contracting commitment, the City has established a voluntary *Subcontractor participation level*.

A. Subcontractor Participation Level.

1. Projects valued at \$25,000 or more have a voluntary Subcontractor Participation Level goal of 15%. Goals are achieved by contracting with any combination of Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Disadvantaged Business Enterprise (DBE), Disabled Veteran Business Enterprise (DVBE) or Other Business Enterprise (OBE) level.
2. While attainment of the 15 percent Subcontractor Participation Level goal is strictly voluntary, the City encourages diversity in your outreach and selection efforts. Historical data indicates that of the overall 15 percent goal, 25 to 30 percent Disadvantaged Business Enterprise (DBE), and 1 to 3 percent Disabled Veteran Business Enterprise (DVBE) participation is attainable. The remaining percentages may be allocated to Other Business Enterprises (OBE). Participation levels may be used as a tiebreaker in cases of an overall tie between two or more firms.

B. Contract Activity Reports. To permit monitoring of the successful Law Firm's commitment to achieving compliance, *Contract Activity Reports* (Attachment BB) reflecting work performed by Subcontractors shall be submitted quarterly for any work covered under an executed contract.

V. **Demonstrated Commitment to Equal Opportunity**. The City seeks to foster a business climate of inclusion and to eliminate barriers to inclusion.

A. Law Firms are required to submit the following information with their proposals:

1. Outreach Efforts. Description of Law Firm's outreach efforts undertaken on this project to make subcontracting opportunities available to all interested and qualified firms.
2. Past Participation Levels. Listing of Law Firm's Subcontractor participation levels achieved on all private and public projects within the past three years. Include name of project, type of project, value of project, Subcontractor firm's name, percentage of Subcontractor firm's participation, and identification of Subcontractor firm's ownership as a certified Small Business, DBE, DVBE; or OBE.
3. Equal Opportunity Employment. Listing of Law Firm's strategies to recruit, hire, train and promote a diverse workforce. These efforts will be considered in conjunction with Law Firm's *Workforce Report* as compared to the County's Labor Force Availability.
4. Community Activities. Listing of Law Firm's current community activities such as membership and participation in local organizations, associations, scholarship

programs, mentoring, apprenticeships, internships, community projects, charitable contributions and similar endeavors.

B. In accordance with the City's Equal Opportunity Commitment, EOCP will evaluate the **Law Firm's** demonstrated commitment to equal opportunity including the following factors:

5. Outreach Efforts. Law Firm's outreach efforts undertaken and willingness to make meaningful subcontracting opportunities available to all interested and qualified firms on this project.
6. Past Participation Levels. Law Firm's Subcontractor participation levels achieved on all private and public projects within the past three years.
7. Equal Opportunity Employment. Law Firm's use of productive strategies to successfully attain a diverse workforce as compared to the County's Labor Force Availability.
8. Community Activities. Law Firm's current community activities.

**VI. List of Subcontractors.** Law Firms are required to submit a *Subcontractor List* with their proposal.

- A. Subcontractors List. The *Subcontractor List* (Attachment CC) shall indicate the Name and Address, Scope of Work, Percent of Total Proposed Contract Amount, Dollar Amount of Proposed Subcontract, Certification Status and Where Certified for each proposed Subcontractor. Subcontractors must be named on the *Subcontractors List* if they receive more than 0.5 percent of the Prime Law Firm's fee.
- B. Commitment Letters. Law Firm shall also submit Subcontractor *Commitment Letters* on Subcontractor's letterhead, no more than one page each, from all proposed Subcontractors to acknowledge their commitment to the team, scope of work, and percent of participation in the project.

**VII. Definitions.** Certified "**Minority Business Enterprise**" (MBE) means a business which is at least 51 percent owned by African Americans, American Indians, Asians, Filipinos, and/or Latinos and whose management and daily operation is controlled by one or more members of the identified ethnic groups. In the case of a publicly-owned business, at least 51 percent of the stock must be owned by, and the business operated by, one or more members of the identified ethnic groups.

Certified "**Women Business Enterprise**" (WBE) means a business which is at least 51 percent owned by one or more women and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least 51 percent of the stock must be owned by, and the business operated by, one or more women.

Certified "**Disadvantaged Business Enterprise**" (DBE) means a business which is at least 51 percent owned and operated by one or more socially and economically

disadvantaged individuals and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least 51 percent of the stock must be owned by, and the business operated by, socially and economically disadvantaged individuals.

Certified **“Disabled Veteran Business Enterprise” (DVBE)** means a business which is at least 51 percent owned by one or more veterans with a service related disability and whose management and daily operation is controlled by the qualifying party(ies).

**“Other Business Enterprise” (OBE)** means any business which does not otherwise qualify as Minority, Woman, Disadvantaged or Disabled Veteran Business Enterprise.

#### **VIII. Certification.**

A. The City of San Diego is a signatory to a Memorandum of Understanding (MOU) with the State of California Department of Transportation (CALTRANS), and therefore has adopted a policy regarding certification of MBE/WBE/DBE/DVBE firms. As a result of the MOU, an MBE, WBE or DBE is certified as such by any of the following methods:

1. Current certification by the City of San Diego as MBE, WBE, or DBE;
2. Current certification by CALTRANS as MBE, WBE or DBE; and
3. Current MBE, WBE or DBE certification from any participating agency in the statewide certified pool of firms known as CALCERT.

B. DVBE certification is received from the State of California’s Department of General Services, Office of Small and Minority Business ((916) 322-5060).

#### **IX. List of Attachments.**

- AA. Work Force Report
- BB. Subcontractors List
- CC. Contract Activity Report



ATTACHMENT AA

City of San Diego

EQUAL OPPORTUNITY CONTRACTING (EOC)

1200 Third Avenue • Suite 200 • San Diego, CA 92101

Phone: (619) 236-6000 • Fax: (619) 235-5209

WORK FORCE REPORT
LOCAL WORK FORCE

The objective of the Equal Employment Opportunity Outreach Program, San Diego Municipal Code sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law.

CONTRACTOR IDENTIFICATION

Type of Contractor: [ ] Construction [ ] Vendor/Supplier [ ] Financial Institution [ ] Lessee/Lessor
[ ] Law Firm [ ] Grant Recipient [ ] Insurance Company [ ] Other

Name of Company: Procopio, Cory, Hargreaves & Savitch, LLP

AKA/DBA:

Address (Corporate Headquarters, where applicable): 525 B. Street, Suite 2200

City San Diego County San Diego State CA Zip 91941

Telephone Number: ( 619 ) 525-1900 FAX Number: ( 619 )

Name of Company CEO: Thomas W. Turner, Managing Partner

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address:

City County State Zip

Telephone Number: ( ) FAX Number: ( )

Type of Business: Law Firm Type of License:

The Company has appointed: Lauren Symington

as its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate, and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: 525 B St., Suite 2200 San Diego, CA 91941

Telephone Number: 619 525 3823 FAX Number: ( )

For Firm's: [ ] San Diego Work Force and/or [X] Managing Office Work Force

I, the undersigned representative of Procopio, Cory, Hargreaves & Savitch, LLP
San Diego (County) CA (State) hereby certify that information provided

herein is true and correct. This document was executed on this 22 day of February, 2013.

[Signature]
(Authorized Signature)

Lauren Symington
(Print Authorized Signature Name)

**ATTACHMENT AA**  
**WORK FORCE REPORT - Page 2**

NAME OF FIRM: Procopio, Cory, Hargreaves & Savitch, LLP

DATE: 2/20/13

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full- or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- |  |  |
|--|--|
| (1) African-American, Black                          | (5) Filipino                                       |
| (2) Latino, Hispanic, Mexican-American, Puerto Rican | (6) Caucasian                                      |
| (3) Asian, Pacific Islander                          | (7) Other ethnicity; not falling into other groups |
| (4) American Indian, Eskimo                          |  |

OCCUPATIONAL CATEGORY	(1) African-American		(2) Latino		(3) Asian		(4) American Indian		(5) Filipino		(6) Caucasian		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Executive, Administrative, Managerial 15	1			1		2					7	4		
Professional Specialty 133	1		8	1	9	2					82	28	1	1
Engineers/Architects														
Technicians and Related Support														
Sales														
Administrative Support/Clerical 144	3	5	5	24	5	15					14	65		8
Services														
Precision Production, Craft and Repair														
Machine Operators, Assemblers, Inspectors														
Transportation and Material Moving														
Handlers, Equipment Cleaners, Helpers and Non-construction Laborers*														

\*Construction laborers and other field employees are not to be included on this page

TOTALS EACH COLUMN	5	5	13	26	14	19					103	97	1	9
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GRAND TOTAL ALL EMPLOYEES

292

INDICATE BY GENDER AND ETHNICITY THE NUMBER OF ABOVE EMPLOYEES WHO ARE DISABLED:

DISABLED														
NON-PROFIT ORGANIZATIONS ONLY:														
BOARD OF DIRECTORS														
VOLUNTEERS														
ARTISTS														

## ATTACHMENT BB SUBCONTRACTORS LIST

**INFORMATION REGARDING SUBCONTRACTORS PARTICIPATION:**

1. Subcontractor's List shall include name and complete address of all Subcontractors who will receive more than one half of one percent (0.5%) of the Prime Law Firm's fee.
2. Law Firm shall also submit Subcontractor commitment letters on Subcontractor's letterhead, no more than one page each, from Subcontractors listed below to acknowledge their commitment to the team, scope of work, and percent of participation in the project.
3. Subcontractors shall be used for scope of work listed. No changes to this Subcontractors List will be allowed without prior written City approval.

NAME AND ADDRESS SUBCONTRACTORS	SCOPE OF WORK	PERCENT OF CONTRACT	DOLLAR AMOUNT OF CONTRACT	* MBE/ WBE/DBE/ DVBE/OBE	** WHERE CERTIFIED

\* *For information only.* As appropriate, Law Firm shall identify Subcontractors as:

Certified Minority Business Enterprise	MBE
Certified Woman Business Enterprise	WBE
Certified Disadvantaged Business Enterprise	DBE
Certified Disabled Veteran Business Enterprise	DVBE
Other Business Enterprise	OBE

\*\* *For information only.* As appropriate, Law Firm shall indicate if Subcontractor is certified by:

City of San Diego	CITY
State of California Department of Transportation	CALTRANS

## ATTACHMENT CC CONTRACT ACTIVITY REPORT

Law Firms are required by contract to report Subcontractor activity in this format. Reports shall be submitted via the Project Manager to the *Equal Opportunity Contracting Program (EOCP)* no later than thirty (30) days after the close of each quarter.

**PROJECT:** \_\_\_\_\_ **PRIME CONTRACTOR:** \_\_\_\_\_

**CONTRACT AMOUNT:** \_\_\_\_\_ **INVOICE PERIOD:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

Include Additional Services Not-to-Exceed Amount

SubContractor	Indicate MBE, WBE, DBE, DVBE or OBE	Current Period		Paid to Date		Original Commitment	
		Dollar Amount	% of Contract	Dollar Amount	% of Contract	Dollar Amount	% of Contract
Prime Contractor Total:							
Contract Total:							

Completed by: \_\_\_\_\_

**EXHIBIT E**

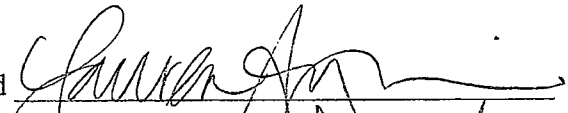
**LAW FIRM CERTIFICATION FOR A DRUG-FREE WORKPLACE**

**PROJECT TITLE:** \_\_\_\_\_  
\_\_\_\_\_

B. I hereby certify that I am familiar with the requirement of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace and that:

C. Procopio, Cory, Hargreaves & Savitch  
Name under which business is conducted

D. \_\_\_\_\_ has in place a drug-free workplace program that complies with said policy. I further certify that each Subcontract agreement for this project contains language which indicates the Subcontractor's agreement to abide by subdivisions (1) through (3) inclusive of Section 2A of the Council Policy.

Signed   
Printed Name Lauren Dymington  
Title Director, Human Resources Administration  
Date 2/20/13





**City of San Diego  
Purchasing & Contracting Department  
Contractor/Vendor Registration Form**

All prospective bidders, as well as existing contractors and vendors, are required to complete this form.

Vendor ID: \_\_\_\_\_

[ID Number will be provided by City]

**Firm Info:**

Firm Name:  
(as reported on W9)

Firm Address:

City:

State:

Zip:

Phone:

Fax:

Taxpayer ID:

Business License:

Website:

**Contact Info:**

Contact Name:

Title:

Email:

Phone:

Cell:

**Alternate Address** (if different from above) **to Receive Remittance:**

Mailing Address

City:

State:

Zip:

**Alternate Address** (if different from above) **to Receive Bid/Contract Opportunities:**

Mailing Address:

City:

State:

Zip:

**Contractor Licenses** (if applicable)

License Number:

License Type:

License Number:

License Type:

**Contractor/Vendor Registration Form – Page 2**

**Firm Name:**  
(as reported on W9)

--

**Product/Services Information:**

NIGP Codes:

*
---

\*find list of available NIGP Codes at <http://www.sandiego.gov/purchasing> OR request hard copy from Purchasing & Contracting

**The City requires this information for statistical purposes only.**

<p><b>Primary Owner of the Firm*</b> (51% ownership or more)</p>          <p>*Required</p>	<p> <input type="checkbox"/> Male      <input type="checkbox"/> Sole Proprietorship  <input type="checkbox"/> Female   or   <input type="checkbox"/> Partnership  <input type="checkbox"/> Corporation  <input type="checkbox"/> Limited Liability Partnership  <input type="checkbox"/> Limited Liability Corporation  <input type="checkbox"/> Joint Venture  <input type="checkbox"/> Non-Profit  <input type="checkbox"/> Governmental/Municipality/Regulatory Agency  <input type="checkbox"/> Utility         </p>
--	--

**Ethnicity** :

Ethnicity: \* 

--

\* select one from the following **List of Ethnicities:**

AFRICAN AMERICAN
ASIAN AMERICAN
CAUCASIAN AMERICAN
HISPANIC AMERICAN
NATIVE AMERICAN
PACIFIC ISLANDER AMERICAN

**Ownership Classification**

Classification:

\* select from the following **List of Ownership Classification Codes** (select all that apply):

WBE	(Woman Owned Business Enterprise)
OBE	(Other Business Enterprise)
DBE	(Disadvantaged Business Enterprise)
DVBE	(Disabled Veteran Business Enterprise)
SLBE*	(Small Local Business Enterprise)
8(a)	(Small Business Administration 8(a) Enterprise)
SDB	(Small Disadvantaged Business Enterprise)
LBE	(Local Business Enterprise)
MLBE	(Micro Local Business Enterprise)
SBE	(Small Business Enterprise)
MBE	(Minority Business Enterprise)
ELBE*	(Emerging Local Business Enterprise)
UDBE	(Underutilized Disadvantaged Business Enterprise)
DPBT	(Persons With A Disability or Disabilities Business Enterprise)
LGBT	(Lesbian, Gay, Bisexual, Transsexual Business Enterprise)

\* Requires certification by the City of San Diego Equal Opportunity Contracting Office.

**Certified by an Agency?**     No     Yes (enter Certification Number and Certifying Agency below)

Certification #:     Expiration Date:

Agency:

Certification #:     Expiration Date:

Agency:

California State Tax Permit #:

Please mail this form to: Purchasing & Contracting Department  
 1200 Third Avenue, Suite 200  
 San Diego, CA 92101  
 or fax to: 619-236-5904

**EXHIBIT G**

**CONTRACTOR CERTIFICATION**

---

**CONTRACTOR STANDARDS – PLEDGE OF COMPLIANCE**

**PROJECT TITLE:** \_\_\_\_\_

I declare under penalty of perjury that I am authorized to make this certification on behalf of

\_\_\_\_\_

(Name under which business is conducted)

that I am familiar with the requirements of City of San Diego Municipal Code section 22.3224 regarding Contractor Standards as outlined in INSTRUCTIONS TO BIDDERS (Contractor Standards), of the project specifications, and that \_\_\_\_\_ (Business) has complied with those requirements. I further certify that each of \_\_\_\_\_ (Business') subcontractors whose subcontracts are greater than \$50,000 in value has completed a Pledge of Compliance attesting under penalty of perjury of having complied with Municipal Code section 22.3224.

Dated \_\_\_\_\_

Signed \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

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Contractor Standards – Pledge of Compliance (Rev. January 2009)

Passed by the Council of The City of San Diego on APR 30 2013, by the following vote:

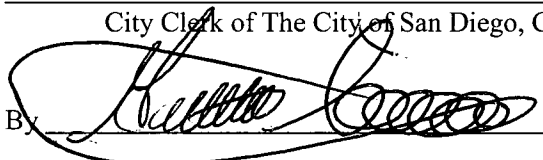
Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
District 4 (Vacant)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAY 16 2013.

AUTHENTICATED BY:

BOB FILNER  
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.  
By , Deputy

Office of the City Clerk, San Diego, California  
Resolution Number R- 308136