THE CITY OF SAN DIEGO

REPORT TO THE CITY COUNCIL

DATE ISSUED: April 14, 2010 REPORT NO. 10-053

ATTENTION: Land Use & Housing Committee
Agenda of April 21, 2010

SUBJECT: AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND KIMLEY-HORN & ASSOCIATES UPTOWN, NORTH PARK & GOLDEN HILL TRANSPORTATION PLANNING & ANALYSIS SERVICES

REQUESTED ACTION: Recommend City Council approval of the Agreement

STAFF RECOMMENDATION:

1. RECOMMEND authorizing the Mayor, or his designee, to execute an agreement with Kimley-Horn & Associates, Inc. to provide transportation planning and analysis services for the Uptown-Greater North Park-Greater Golden Hill Community Plan Updates in the amount of $346,600.

2. RECOMMEND authorizing the expenditure of $246,600 from Fund 100000 for the purpose of executing this agreement.

3. RECOMMEND authorizing the Chief Financial Officer to accept an amount not to exceed $100,000 from the Redevelopment Agency, into Fund 200356, RDA Contributions – NP, and to expend for transportation planning and analysis services for the Uptown-Greater North Park-Greater Golden Hill Community Plan Updates.

SUMMARY:

Background:

The City Planning & Community Investment Department (CPCI) has embarked on concurrent updates of the community plans for Uptown, Greater North Park, and Greater Golden Hill. As part of the work program for the community plan updates, supplemental professional services

representing the fields of public outreach, historic resource preservation, urban design, transportation planning, and Environmental Impact Report (EIR) preparation have been identified in the CPCI FY 10 and FY11 budgets. These services will be provided by consultants working as extensions of department staff responsible for the plan updates. The City has completed a competitive bidding process for public outreach, urban design services, historic resource preservation, and transportation planning. The EIR consultant selection process will be begin in later in FY10.

The update to the community plans will be guided by the vision, goals and policies of the recent update to the City's General Plan. The community plans are long range plans established as essential components of the General Plan to provide the community-specific detail, relevant policies, and implementation strategies necessary to fulfill General Plan objectives. The Uptown, Greater North Park and Greater Golden Hill communities are some of the oldest in the City and share similar challenges of minimally coordinated infill development, aging, outdated infrastructure and preservation of neighborhood character and historic resources. The community plans for each of these three communities are over 20 years old. Because the recent update to the General Plan shifts focus from how to develop vacant land to how to design infill development and reinvest in existing communities, the update of these community plans is a priority.

ENVIRONMENTAL ANALYSIS:
Executing an agreement for transportation planning and analysis services is statutorily exempt from CEQA pursuant to State CEQA Guidelines, Section 15262. The technical studies resulting from this agreement will be used in the environmental review for processing of the community plan updates.

FISCAL CONSIDERATION:
A total of $246,600 would be made available for the consultant to work on the project from Fund 100000 and a total not to exceed $100,000 would be made available to the consultant from Fund 200356, RDA Contributions-NP to complete the scope of services.

EQUAL OPPORTUNITY CONTRACTING INFORMATION:
This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

PREVIOUS COUNCIL and/or COMMITTEE ACTION:
None.

COMMUNITY PARTICIPATION and PUBLIC OUTREACH EFFORTS:
The City Planning & Community Investment Department and the consultant has been working closely with the Uptown Planners, North Park Planning Committee, the Greater Golden Hill Planning Committee, and other interested stakeholders throughout the community plan update effort. In the fall of 2009, Community Plan Update Stakeholder Advisory Committees were established for each community planning area. Consisting of planning group members and stakeholders representing other public interests, these committees have been providing input into the process and convening the public discussion on the plan update.

KEY STAKEHOLDERS and PROJECTED IMPACTS (if applicable):
Kimley-Horn & Associates, Inc. and other stakeholders listed above.

Respectfully submitted,

Mary P. Wright, AICP
Deputy Director
City Planning & Community Investment

William Anderson, FAICP
Director
City Planning & Community Investment

MPW/WA/mip

Attachment(s): 1. DRAFT Agreement between the City of San Diego and Kimley-Horn & Associates, Inc. for Uptown, North Park & Golden Hill Transportation Planning & Analysis services

DRAFT

AGREEMENT BETWEEN

THE CITY OF SAN DIEGO

AND

KIMLEY-HORN & ASSOCIATES, INC.

FOR

UPTOWN, NORTH PARK & GOLDEN HILL
TRANSPORTATION PLANNING & ANALYSIS
SERVICES

CONTRACT NUMBER: H094540

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LUMP SUM AGREEMENT BETWEEN

THE CITY OF SAN DIEGO
AND KIMLEY-HORN & ASSOCIATES, INC.
FOR DESIGN PROFESSIONAL SERVICES

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation [City], and Kimley-Horn & Associates, Inc. [Design Professional] for the Design Professional to provide Professional Services to the City for the Uptown, North Park & Golden Hill Transportation Planning & Analysis Services (H094540) [Project].

RECITALS

The City wants to retain the services of a professional Transportation Planning firm to provide Transportation Planning services [Professional Services].

The Design Professional represents that it has the expertise, experience and personnel necessary to provide the Professional Services for the Project.

The City and the Design Professional [Parties] want to enter into an Agreement whereby the City will retain the Design Professional to provide, and the Design Professional shall provide, the Professional Services for the Project [Agreement].

In consideration of the above recitals and the mutual covenants and conditions set forth, herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby set forth their mutual covenants and understandings as follows:

ARTICLE I

DESIGN PROFESSIONAL SERVICES

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

1.1 Scope of Services. The Design Professional shall perform the Professional Services as set forth in the written Scope of Services (Exhibit A) at the direction of the City

1.2 Contract Administrator. The City Planning & Community Investment Department is the contract administrator for this Agreement. The Design Professional shall provide the Professional Services under the direction of a designated representative of the City Planning & Community Investment Department. The City's designated representative will communicate with the Design Professional on all matters related to the administration of this Agreement and the Design Professional's performance of the Professional Services rendered hereunder. When this Agreement refers to communications to or with the City, those communications will be with the designated representative, unless the designated representative or the Agreement specifies otherwise. However, when this Agreement refers to an act or

approval to be performed by City, that act or approval shall be performed by the Mayor or his designee, unless the 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 Professional Services to be performed. All such changes shall be in writing and shall be performed in accordance with the provisions of this Agreement. If any such changes cause an increase or decrease in the Design Professional's cost of, or the time required for, the performance of any of the Professional Services, the Design Professional shall immediately notify the City. If the City deems it appropriate, an equitable adjustment to the Design Professional's compensation or time for performance may be made, provided that any adjustment must be approved by both Parties in writing in accordance with Section 9.1 of this Agreement.

1.4 Written Authorization. Prior to performing any Professional Services in connection with the Project, the Design Professional shall obtain from the City a written authorization to proceed. Further, throughout the term of this Agreement, the Design Professional shall immediately advise the City in writing of any anticipated change in the Scope of Services (Exhibit A), Compensation and Fee Schedule (Exhibit B), or Time Schedule (Exhibit C), and shall obtain the City's written consent to the change prior to making any changes. In no event shall the City's consent be construed to relieve the Design Professional from its duty to render all Professional Services in accordance with applicable laws and accepted industry standards.

1.5 Confidentiality of Services. All Professional Services performed by the Design Professional, including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by the Design Professional, pursuant to this Agreement, are for the sole use of the City, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the City. This provision does not apply to information that (a) was publicly known, or otherwise known to the Design Professional, at the time that it was disclosed to the Design Professional by the City, (b) subsequently becomes publicly known through no act or omission of the Design Professional, or (c) otherwise becomes known to the Design Professional other than through disclosure by the City. Except for Subcontractors covered by Section 4.4, neither the documents nor their contents shall be released to any third party without the prior written consent of the City.

1.6 Competitive Bidding. The Design Professional shall ensure that any plans and specifications prepared, required, or recommended under this Agreement allow for competitive bidding. The Design Professional shall design such plans or specifications so that procurement of services, labor or materials are not available from only one source, and shall not design plans and specifications around a single or specific product, piece of major equipment or machinery, a specific patented design, or a proprietary process, unless required by principles of sound engineering practice and supported by a written justification that has been approved in writing by the City. The Design Professional shall submit this written justification to the City prior to beginning work on such plans or specifications. Whenever the Design Professional recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Project.

ARTICLE II

DURATION OF AGREEMENT

2.1 Term of Agreement. This Agreement shall be effective on the date it is executed 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, it shall be effective until completion of the Scope of Services or January 1, 2012 whichever is the earliest but not to exceed five years unless approved by City ordinance.

2.2 Time of Essence. Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement. The time for performance of the Scope of Services (Exhibit A) is set forth in the Time Schedule (Exhibit C).

2.3 Notification of Delay. The Design Professional shall immediately notify the City in writing if the Design Professional experiences or anticipates experiencing a delay in performing the Professional Services within the time frames set forth in the Time Schedule (Exhibit C). The written notice shall include an explanation of the cause for, and a reasonable estimate of the length of the delay. If in the opinion of the City, the delay affects a material part of the Project, the City may exercise its rights under Sections 2.5-2.7 of this Agreement.

2.4 Delay. If delays in the performance of the Professional Services are caused by unforeseen events beyond the control of the Parties, such delay may entitle the Design Professional to a reasonable extension of time, but such delay shall not entitle the Design Professional to damages or additional compensation. Any such extension of time must be approved in writing by the City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the Design Professional's work; inability to obtain materials, equipment, or labor; required additional Professional Services; or other specific reasons agreed to between the City and the Design Professional; provided, however, that: (a) this provision shall not apply to, and the Design Professional shall not be entitled to an extension of time for, a delay caused by the acts or omissions of the Design Professional; and (b) a delay caused by the inability to obtain materials, equipment, or labor shall not entitle the Design Professional to an extension of time unless the Design Professional furnishes the City, in a timely manner, documentary proof satisfactory to City of the Design Professional's inability to obtain materials, equipment, or labor.

2.5 City's Right to Suspend for Convenience. The City may, at its sole option and for its convenience, suspend all or any portion of the Design Professional's performance of the Professional Services, for a reasonable period of time not to exceed six months. In accordance with the provisions of this Agreement, the City will give written notice to the Design Professional of such suspension. In the event of such a suspension, in accordance with the provisions of Article III of this Agreement, the City shall pay to the Design Professional a sum equivalent to the reasonable value of the Professional Services the Design Professional has satisfactorily performed up to the date of suspension. Thereafter, the City may rescind such suspension by giving written notice of rescission to the Design Professional. The City may then require the Design Professional to resume performance of the Professional Services in compliance with the terms and conditions of this Agreement; provided, however, that the Design

Professional shall be entitled to an extension of time equal to the length of the suspension, unless otherwise agreed to in writing by the Parties.

2.6 City's Right to Terminate for Convenience. The City may, at its sole option and for its convenience, terminate all or any portion of the Professional Services agreed to pursuant to this Agreement by giving written notice of such termination to the Design Professional. Such notice shall be delivered by certified mail with return receipt for delivery to the City. The termination of the Professional Services shall be effective upon receipt of the notice by the Design Professional. After termination of this Agreement, the Design Professional shall complete any and all additional work necessary for the orderly filing of documents and closing of the Design Professional's Professional Services under this Agreement. For services satisfactorily rendered in completing the work, the Design Professional shall be entitled to fair and reasonable compensation for the Professional Services performed by the Design Professional before the effective date of termination. After filing of documents and completion of performance, the Design Professional shall deliver to the City all drawings, plans, calculations, specifications and other documents or records related to both the Project and to the Design Professional's Professional Services on the Project. By accepting payment for completion, filing and delivering documents as called for in this paragraph, the Design Professional 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. If the Design Professional fails to satisfactorily perform any obligation required by this Agreement, the Design Professional's failure constitutes a Default. A Default includes the Design Professional's failure to adhere to the Time Schedule. If the Design Professional 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 cancel and/or terminate this Agreement, and terminate each and every right of the Design Professional, and any person claiming any rights by or through the Design Professional under this Agreement. The rights and remedies of the City enumerated in this Section are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against the Design Professional.

ARTICLE III

COMPENSATION

3.1 Amount of Compensation. The City shall pay the Design Professional for performance of all Professional Services rendered in accordance with this Agreement, including reasonably related expenses, in a lump sum amount not to exceed $457,800. The compensation for the Scope of Services shall not exceed $346,600, and the compensation for Additional Services (described in Section 3.2), if any, shall not exceed $111,200.

3.2 Additional Services. The City may require that the Design Professional perform additional Professional Services [Additional Services or Optional Tasks] beyond those described in the Scope of Services (Exhibit A). Prior to the Design Professional's performance of Additional Services, the City and the Design Professional must agree in writing upon a fee for the Additional Services, including reasonably related expenses, in accordance with the

Compensation and Fee Schedule (Exhibit B). The City will pay the Design Professional for the performance of Additional Services in accordance with Section 3.3.

3.3 Manner of Payment. The City shall pay the Design Professional in accordance with the Compensation and Fee Schedule (Exhibit B). For the duration of this Agreement, the Design Professional shall not be entitled to fees, including fees for expenses, that exceed the amounts specified in the Compensation and Fee Schedule. The Design Professional shall submit one invoice per calendar month in a form acceptable to the City in accordance with the Compensation and Fee Schedule. The Design Professional shall include with each invoice a description of completed Professional Services, reasonably related expenses, if any, and all other information, including but not limited to: the progress percentage of the Scope of Services and/or deliverables completed prior to the invoice date, as required by the City. The City will pay undisputed portions of invoices within thirty calendar days of receipt.

3.4 Additional Costs. Additional Costs are those costs that can be reasonably determined to be related to the Design Professional's errors or omissions, and may include Design Professional, City, or Subcontractor overhead, construction, materials, demolition, and related costs. The Design Professional shall not be paid for the Professional Services required due to the Design Professional's errors or omissions, and the Design Professional shall be responsible for any Additional Costs associated with such errors or omissions. These Additional Costs may be deducted from monies due, or that become due, the Design Professional. Whether or not there are any monies due, or becoming due, the Design Professional shall reimburse the City for Additional Costs due to the Design Professional's errors or omissions.

3.5 Eighty Percent Notification. The Design Professional shall promptly notify the City in writing of any potential cost overruns. Cost overruns include, but are not limited to the following: (1) where anticipated costs to be incurred in the next sixty calendar days, when added to all costs previously incurred, will exceed 80 percent of the maximum compensation for this Agreement; or (2) where the total cost for performance of the Scope of Services (Exhibit A) appears that it may be greater than the maximum compensation for this Agreement.

ARTICLE IV

DESIGN PROFESSIONAL'S OBLIGATIONS

4.1 Industry Standards. The Design Professional agrees that the Professional Services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent professional Transportation Planning firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by the City, the Mayor or his designee, or other representatives of the City is required, it is understood to be general approval only and does not relieve the Design Professional of responsibility for complying with all applicable laws, codes, and good consulting practices.

4.2 Right to Audit.

4.2.1 Access. The City retains the right to review and audit, and the reasonable right of access to Design Professional's and any Subcontractor's premises to review and audit the Design Professional's or Subcontractor's compliance with the provisions of this Agreement [City's Right]. The City's Right includes the right to inspect and photocopy same, and to retain copies, outside of the Design Professional's premises, of any and all Project-related records with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. This information shall be kept by the City in the strictest confidence allowed by law.

4.2.2 Audit. The City's Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the City determines are necessary to discover and verify that the Design Professional or Subcontractor is in compliance 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 books, records, documents, and any and all other evidence and accounting procedures and practices that the City determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

4.2.2.2 Accounting Records. The Design Professional and all Subcontractors shall maintain complete and accurate records in accordance with Generally Accepted Accounting Practices in the industry. The Design Professional and Subcontractors shall make available to the City for review and audit; all Project related accounting records and documents, and any other financial data. Upon the City's request, the Design Professional and Subcontractors shall submit exact duplicates of originals of all requested records to the City.

4.2.3 City's Right Binding on Subcontractors. The Design Professional shall include the City's Right as described in Section 4.2, in any and all of their subcontracts, and shall ensure that these sections are binding upon all Subcontractors.

4.2.4 Compliance Required before Mediation or Litigation. A condition precedent to proceeding with mandatory mediation and further litigation provided for in Article VII is the Design Professional's and Subcontractors full compliance with the provisions of this Section 4.2 within sixty days of the date on which the City mailed a written request to review and audit compliance.

4.3 Insurance. The Design Professional shall not begin the Professional Services under this Agreement until it has: (a) obtained, and provided to the City, insurance certificates and endorsements reflecting evidence of all insurance required in Article IV, Section 4.3.1; however, the City reserves the right to request, and the Design Professional shall submit, copies of any policy upon reasonable request by the City; (b) obtained City approval of each company or companies as required by Article IV, Section 4.3.3; and (c) confirmed that all policies contain the specific provisions required in Article IV, Section 4.3.4. Design Professional's liabilities, including but not limited to Design Professional's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of

specified insurance coverage is a material element of this Agreement and Design Professional's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by the City.

Further, the Design Professional shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement.

4.3.1 Types of Insurance. At all times during the term of this Agreement, the Design Professional shall maintain insurance coverage as follows:

4.3.1.1 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 shall cover liability arising from any and all personal injury or property damage in the amount of $1 million per occurrence and subject to an annual aggregate of $2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

4.3.1.2 Commercial Automobile Liability. For all of the Design Professional's automobiles including owned, hired and non-owned automobiles, the Design Professional shall 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 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

4.3.1.3 Workers' Compensation. For all of the Design Professional's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Design Professional shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of $1 million of employers' liability coverage, and the Design Professional shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

4.3.1.4 Architects & Engineers Professional Liability. For all of the Design Professional's employees who are subject to this Agreement, the Design Professional shall keep in full force and effect, Professional Liability coverage for professional liability with a limit of $1 million per claim and $2 million annual aggregate. The Design Professional shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the Project; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Project or termination of this Agreement whichever occurs last. The Design Professional agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the City's exposure to loss.

4.3.2 Deductibles. All deductibles on any policy shall be the responsibility of the Design Professional and shall be disclosed to the City at the time the evidence of insurance is provided.

4.3.3 Acceptability of Insurers.

4.3.3.1 Except for the State Compensation Insurance Fund, all insurance required by this Contract or in the Special General Conditions shall only 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.

4.3.3.2 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 policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

4.3.4 Required Endorsements.

The following endorsements to the policies of insurance are required to be provided to the City before any work is initiated under this Agreement.

4.3.4.1 Commercial General Liability Insurance Endorsements.

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of Design Professional's insurance and shall not contribute to it.

4.3.4.2 Automobile Liability Insurance Endorsements

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Design Professional.

4.3.4.3 Worker's Compensation and Employer's Liability Insurance Endorsements.

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 respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the City.

4.3.5 Reservation of Rights. The City reserves the right, from time to time, to review the Design Professional's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to the City. The City will reimburse the Design Professional for the cost of the additional premium for any coverage requested by the City in excess of that required by this Agreement without overhead, profit, or any other markup.

4.3.6 Additional Insurance. The Design Professional may obtain additional insurance not required by this Agreement.

4.3.7 Excess Insurance. All policies providing excess coverage to the City shall follow the form of the primary policy or policies including but not limited to all endorsements.

4.4 Subcontractors. The Design Professional's hiring or retaining of any third parties [Subcontractors] to perform services related to the Project [Subcontractor Services] is subject to prior approval by the City. The Design Professional shall list on the Subcontractor List (Exhibit D Attachment BB) all Subcontractors known to the Design Professional at the time this Agreement is entered. If at any time after this Agreement is entered into the Design Professional identifies a need for additional Subcontractor Services, the Design Professional shall give written notice to the City of the need, at least forty-five days before entering into a contract for such Subcontractor Services. The Design Professional's notice shall include a justification, a description of the scope of work, and an estimate of all costs for the Subcontractor Services. The Design Professional may request that the City reduce the forty-five day notice period. The City agrees to consider such requests in good faith.

4.4.1 Subcontractor Contract. All contracts entered into between the Design Professional and any Subcontractor shall contain the information as described in Sections 4.6, 4.7, 4.10.2, and 4.18, and shall also provide as follows:

4.4.1.1 Each Subcontractor shall obtain insurance policies which shall be kept in full force and effect during any and all work on this Project and for the duration of this Agreement. Each Subcontractor shall obtain, and the Design Professional shall require the Subcontractor to obtain, all policies described in Section 4.3.1.

4.4.1.2 The Design Professional is obligated to pay the Subcontractor, for Design Professional and City-approved invoice amounts, out of amounts paid by the City to the Design Professional, not later than fourteen working days from the Design Professional's receipt of payment from the City. Nothing in this paragraph shall be construed to impair the right of the Design Professional and any Subcontractor to negotiate fair and reasonable pricing and payment provisions among themselves.

4.4.1.3 In the case of a deficiency in the performance of Subcontractor Services, the Design Professional shall notify the City in writing of any withholding of payment to the 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 Design Professional shall pay the Subcontractor the amount withheld within fourteen working days of the Design Professional's receipt of the City's next payment.

4.4.1.4 In any dispute between the Design Professional and Subcontractor, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The Design Professional agrees to defend and indemnify the City as described in Article VI of this Agreement in any dispute between the Design Professional and Subcontractor should the City be made a party to any judicial or administrative proceeding to resolve the dispute in violation of this position.

4.4.1.5 The Subcontractor is bound to the City's Equal Opportunity Contracting Program covenants set forth in Article IV, Section 4.6 and Exhibit D of this Agreement.

4.4.1.6 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 Design Professional shall submit statistical information to the City as requested in the City's Contract Activity Report (Exhibit D Attachment CC). The statistical information shall include the amount of subcontracting provided by firms during the period covered by the Contract Activity Report. With the Contract Activity Report, the Design Professional shall provide an invoice from each Subcontractor listed in the report. The Design Professional agrees to issue payment to 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.

4.6 Non-Discrimination Requirements.

4.6.1 Compliance with the City's Equal Opportunity Contracting Program. The Design Professional shall comply with the City's Equal Opportunity Contracting Program Design Professional Requirements (Exhibit D). The Design Professional shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Design Professional shall provide equal opportunity in all employment practices. The Design Professional shall ensure that its Subcontractors comply with the City's Equal Opportunity Contracting Program Design Professional Requirements. Nothing in this Section shall be interpreted to hold the Design Professional liable for any discriminatory practice of its Subcontractors.

4.6.2 Non-Discrimination Ordinance. The Design Professional 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. The Design Professional shall provide equal opportunity for Subcontractors to participate in subcontracting opportunities. The Design Professional 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. This language shall be in contracts between the Design Professional and any Subcontractors, vendors and suppliers.

4.6.3 Compliance Investigations. Upon the City's request, the Design Professional 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 the Design Professional 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 the Design Professional for each subcontract or supply contract. The Design Professional further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance (San Diego Municipal Code sections 22.3501-22.3517) The Design Professional 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 Design Professional up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. The Design Professional further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

4.7 Drug-Free Workplace. The Design Professional agrees to comply with the City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference. The Design Professional shall certify to the City that it will provide a drug-free workplace by submitting a Consultant Certification for a Drug-Free Workplace form (Exhibit E).

4.7.1 Design Professional's Notice to Employees. The Design Professional shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition.

4.7.2 Drug-Free Awareness Program. The Design Professional shall establish a drug-free awareness program to inform employees about : (1) the dangers of drug abuse in the work place; (2) the policy of maintaining a drug-free work place; (3) available drug counseling, rehabilitation, and employee assistance programs; (4) the penalties that may be imposed upon employees for drug abuse violations.

4.7.3 Posting the Statement. In addition to Section 4.7.1 above, the Design Professional shall post the drug-free policy in a prominent place.

4.7.4 Subcontractor's Agreements. The Design Professional further certifies that each contract for Subcontractor Services for this Project shall contain language that binds the Subcontractor to comply with the provisions of Article IV, Section 4.7 of this Agreement, as required by Sections 2.A.(1) through (3) of Council Policy 100-17. Design Professionals and Subcontractors shall be individually responsible for their own drug-free work place program.

4.8 Title 24/Americans with Disabilities Act Requirements. Design Professional has sole responsibility for ensuring that all Project plans and other design services comply with all accessibility requirements under Title 24 of the California Code of Regulations, known as the California Building Code (Title 24), and under the Americans with Disabilities Act Accessibility Guidelines (ADAAG) in effect at the time the designs are submitted to the City for review. When a conflict exists between Title 24 and ADAAG, the most restrictive requirement shall be followed by Design Professional (i.e., that which provides the most access). Design Professional warrants and certifies that any and all plans and specifications prepared for the City in accordance with this agreement shall meet all requirements under Title 24 and ADAAG. Design Professional understands that while the City will be reviewing Design Professional's designs for compliance in specific and certain areas under Title 24 and ADAAG prior to acceptance of Design Professional's designs, Design Professional understands and agrees that the City's access review process and its acceptance of Design Professional's designs in no way limits the Design Professional's obligations under this agreement to prepare designs that comply with all requirements under Title 24 and ADAAG.

4.9 Product Endorsement. The Design Professional acknowledges and agrees to comply with the provisions of City of San Diego Administrative Regulation 95.65, concerning product endorsement. Any advertisement identifying or referring to the City as the user of a product or service requires the prior written approval of the City.

4.10 Conflict of Interest. The Design Professional is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq. and 81000, et. seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at sections 27.3501 to 27.3595.

4.10.1 If, in performing the Professional Services set forth in this Agreement, any member of the Design Professional's organization 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 individual shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the individual's relevant financial interests. The determination as to whether any individual members of the Design Professional's organization must make disclosures of relevant financial interests is set forth in the Determination Form (Exhibit F).

4.10.1.1 If a determination is made that certain individuals must disclose relevant financial interests, the statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. The individual shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that the individuals are subject to a conflict of interest code. Each year thereafter, the individuals shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the individual was subject to a conflict of interest code. A Form 700 (Leaving Office Statement) shall also be filed when the individual discontinues services under this Agreement.

4.10.1.2 If the City requires an individual member of the Design Professional's organization to file a statement of economic interests as a result of the Professional Services performed, the individual shall be considered a "City Official" subject to the provisions of the City of San Diego Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Agreement.

4.10.2 The Design Professional shall establish and make known to its employees and agents appropriate safeguards to prohibit employees 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.

4.10.3 The Design Professional and its Subcontractors having subcontracts amounting to 1% or more of the value of the Professional Services agreed to under this Agreement are precluded from participating in design services on behalf of the contractor, construction management, and any other construction services related in any way to these Professional Services without the prior written consent of the City.

4.10.4 The Design Professional's personnel employed on the Project shall not accept gratuities or any other favors from any Subcontractors or potential Subcontractors. The Design Professional shall not recommend or specify any product, supplier, or contractor with whom the Design Professional has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

4.10.5 If the Design Professional violates any conflict of interest law or any of the provisions in this Section 4.10, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects the Design Professional to liability to the City for attorney's fees and all damages sustained as a result of the violation.

4.11 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the Professional Services provided under this Agreement, upon the City's request, the Design Professional, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The Design Professional's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

4.12 Compensation for Mandatory Assistance. The City will compensate the Design Professional for fees incurred for providing Mandatory Assistance as Additional Services under Section 3.2. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of the Design Professional, its agents, officers, and employees, the Design Professional shall reimburse the City. The City is then entitled to reimbursement of all fees paid to the Design Professional, its agents, officers, and employees for Mandatory Assistance.

4.13 Attorney Fees related to Mandatory Assistance. In providing the City with dispute or litigation assistance, the Design Professional or its agents, officers, and employees may incur expenses and/or costs. The Design Professional agrees that any attorney fees it may incur as a result of assistance provided under Section 4.11 are not reimbursable. The Parties

agree this provision does not in any way affect their rights to seek attorney fees under Article VIII, Section 8.8 of this Agreement.

4.14 Energy Conservation Specifications. Technological advances in energy conservation devices such as Lighting and Heating, Ventilation, and Air Conditioning (HVAC), enable additional energy savings over that required by the State of California's Energy Efficiency Standards (Title 24, Part 6 of the California Code of Regulations). The Design Professional shall model the energy performance of the building using an acceptable computer model such as Energy Pro, EQuest, DOE-2, Power DOE, HAP 3.22, etc. and present the summary data to the City at or prior to 100 percent design. This analysis should include life cycle cost analysis showing recovery of construction costs through operation and maintenance costs (e.g., electricity and gas savings.) The Design Professional shall prepare a cost savings matrix that lists each device being considered and one, three, five and ten-year Project savings. The comparison shall include, but not be limited to, the following equipment: Lighting, HVAC, Water Heating, and Motors.

The Design Professional shall contact the SDG&E New Construction Program at (858) 636-5725 or the San Diego Regional Energy Office at (619) 595-5634 to integrate them into the design process to ensure maximum energy performance and access to technical resources. Design Professional shall endeavor to obtain from SDG&E a UTIL-1 (Utility Incentive Worksheet) to estimate energy savings and incentives available based on the design team energy modeling.

4.15 Notification of Increased Construction Cost. If, at any time prior to the City's approval of the final plans and specifications, the Design Professional anticipates that the total construction cost will exceed the estimated construction budget, the Design Professional shall immediately notify the City in writing. This written notification shall include an itemized cost estimate and a list of recommended revisions which the Design Professional believes will bring the construction cost to within the estimated construction budget. The City may either: (1) approve an increase in the amount authorized for construction; or (2) delineate a project which may be constructed for the budget amount; or (3) any combination of (1) and (2).

4.16 Sustainable Building Policy. The Project design and construction shall comply with City Council Green Building Policy 900-14 (Exhibit G). All new or significantly remodeled City facilities shall be designed and constructed to achieve at a minimum the Leadership in Energy and Environmental Design (LEED) "Silver" Level Certification.

4.17 Design-Build Competition Eligibility. Any architectural firms, engineering firms, Design Professionals, or individuals retained by the City to assist the City with developing criteria or preparing the preliminary design or the request for proposals for a Design-Build competition shall not be eligible to participate with any Design-Build Entity in that Design-Build competition. Additionally, the City may determine in its sole discretion that a Subcontractor hired to assist with a Design-Build competition, regardless of whether the Subcontractor was hired by the City or hired by an architectural firm, engineering firm, Design Professional, or individual retained by the City, has a competitive advantage and as such is ineligible to participate in that Design-Build competition.

4.18 Storm Water Management Discharge Control. Unless specifically removed from the Scope of Work (Exhibit A), the Design Professional shall comply with Section 43.03 of the San Diego Municipal Code, Storm Water Management Discharge Control, and any and all Best Management Practice guidelines and pollution elimination requirements as may be established by the Enforcement Official. Further, the Design Professional shall prepare and incorporate into the construction documents a Storm Water Pollution Prevention Plan (SWPPP) to be implemented by the contractor during Project construction. Where applicable, the SWPPP shall comply with both the California Regional Water Quality Control Board Statewide General Construction Storm Water permit and National Pollution Discharge Elimination System permit requirements and any municipal regulations adopted pursuant to the permits.

4.19 ADA Certification. The Consultant hereby certifies that it agrees to comply with the City's Americans With Disabilities Act Compliance/City Contracts requirements set forth in Council Policy 100-04, adopted by San Diego Resolution R-282153 and incorporated into this Agreement by this reference.

ARTICLE V

RESERVED

ARTICLE VI

INDEMNIFICATION

6.1 Indemnification. Other than in the performance of design professional services which shall be solely as addressed in Section 6.2 below, to the fullest extent permitted by law, Design Professional shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees [Indemnified Parties] from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Design Professional or its Subcontractors), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by the Design Professional, any Subcontractor, anyone directly or indirectly employed by them, or anyone that they control. The Design Professional's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties.

6.2 Design Professional Services Indemnification and Defense.

6.2.1 Design Professional Services Indemnification. To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8), with respect to the performance of design professional services, Design Professional shall indemnify and hold harmless the City, its officers, or employees, from all claims, demands or liability that

arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.

6.2.2 Design Professional Services Defense. Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.

6.3 Insurance. The provisions of this Article are not limited by the requirements of Section 4.3 related to insurance.

6.4 Enforcement Costs. The Design Professional agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in this Article.

ARTICLE VII

MEDIATION

7.1 Mandatory Non-binding Mediation. With the exception of Sections 2.5-2.7 of this Agreement, if a dispute arises out of, or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, prior to the initiation of any litigation, the Parties agree to attempt to settle the dispute in an amicable manner, using mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association (AAA) or any other neutral organization agreed upon before having recourse in a court of law.

7.2 Mandatory Mediation Costs. The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator [Mediator], and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the Parties, unless they agree otherwise.

7.3 Selection of Mediator. A single Mediator that is acceptable to both Parties shall be used to mediate the dispute. The Mediator will be knowledgeable in construction aspects and may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party. If the Mediator is selected from a list provided by AAA, the initiating Party shall concurrently file with 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.

7.3.1 If AAA is selected to coordinate the mediation, within ten working days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order after striking any Mediators to which they have any factual objection, and a preference for available dates. If the opposing Party strikes all of initiating Party's preferred Mediators, opposing Party shall submit a list of three preferred Mediators listed in preference order to initiating Party and Administrator. Initiating Party shall file a list of preferred Mediators listed in preference order, after striking any Mediator

to which they have any factual objection. This process shall continue until both sides have agreed upon a Mediator.

7.3.2 The Administrator will appoint or the Parties shall agree upon the highest, mutually preferred Mediator from the individual Parties' lists who is available to serve within the designated time frame.

7.3.3 If the Parties agree not to use AAA, then a Mediator, date and place for the mediation shall be mutually agreed upon.

7.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

7.4.1 Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

7.4.2 Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

ARTICLE VIII

INTELLECTUAL PROPERTY RIGHTS

8.1 Work For Hire. All original designs, plans, specifications, reports, documentation, and other informational materials, whether written or readable by machine, originated or prepared exclusively for the City pursuant to this Agreement (Deliverable Materials) is "work for hire" under the United States Copyright law and shall become the sole property of the City and shall be delivered to the City upon request. The Contractor, including its employees, and independent Subcontractor(s), shall not assert any common law or statutory patent, copyright, trademark, or any other intellectual proprietary right to the City to the deliverable Materials.

8.2. Rights in Data. All rights (including, but not limited to publication(s), registration of copyright(s), and trademark(s) in the Deliverable Materials, developed by the Contractor, including its employees, agents, talent and independent Subcontractors pursuant to this Agreement are the sole property of the City. The Design Professional, including its employees, agents, talent, and independent Subcontractor(s), may not use any such Product mentioned in this article for purposes unrelated to Design Professional's work on behalf of the City without prior written consent of the City.

8.3 Intellectual Property Rights Assignment. Design Professional, its employees, agents, talent, and independent Subcontractor(s) agree to promptly execute and deliver, upon request by City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials; and cooperate and assist in the prosecution of any action or opposition proceeding involving said rights and any adjudication of the same.

8.4 Moral Rights. Design Professional, its employees, agents, talent, and independent Subcontractor(s) hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Deliverable Materials which Design Professional, its employees, agents, talent, and independent Subcontractor(s), may now have or which may accrue to Design Professional, its employees, agents, talent, and independent Subcontractor(s)' benefit under U.S. or foreign copyright laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. The term "Moral Rights" shall mean any and all rights of paternity or integrity in or to the Deliverable Materials and the right to object to any modification, translation or use of said content, and any similar rights existing under judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

8.5 Subcontracting. In the event that Design Professional utilizes a Subcontractor(s) for any portion of the Work that is in whole or in part of the specified Deliverable(s) to the City, the agreement between Design Professional and the Subcontractor [Subcontractor Agreement] shall include a statement that identifies that the Deliverable/Work product as a "work-for hire" as defined in the Act and that all intellectual property rights in the Deliverable/Work product, whether arising in copyright, trademark, service mark or other belongs to and shall vest solely with the City. Further, the Subcontractor Agreement shall require that the Subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to the City, all titles, rights and interests in and to said Work/Deliverable, including all copyrights and other intellectual property rights. City shall have the right to review any Subcontractor agreement for compliance with this provision.

8.6 Publication Design. Professional may not publish or reproduce any Deliverable Materials, for purposes unrelated to Design Professional's work on behalf of the City without prior written consent of the City.

8.7 Intellectual Property Warranty and Indemnification. Design Professional represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this contract are either original, not encumbered and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Design Professional to produce, at Design Professional's own expense, new non-infringing materials, deliverables or Works as a means of remedying any claim of

infringement in addition to any other remedy available to the City under law or equity. Design Professional further agrees to indemnify and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages of any type alleging or threatening that any materials, deliverables, supplies, equipment, services or Works provided under this contract infringe the copyright, trademark, patent or other 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 Design Professional receives payment under this contract, City shall be entitled, upon written notice to Design Professional, to withhold some or all of such payment.

8.8 Enforcement Costs. The Design Professional agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in Article 8, including but not limited to, attorney's fees.

ARTICLE IX

MISCELLANEOUS

9.1 Notices. In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. For the purpose of this Agreement, unless otherwise agreed in writing, notice to the City shall be addressed to: City Planning & Community Investment Department, c/o Marlon Pangilinan, MS 4A, 202 C Street, San Diego, CA 92101, and notice to the Design Professional shall be addressed to: Kimley-Horn & Associates, Inc., 401 B Street, Suite 600, San Diego, CA 92101-4218.

9.2 Headings. All article headings are for convenience only and shall not affect the interpretation of this Agreement.

9.3 Non-Assignment. The Design Professional shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without the City's prior written approval. Any assignment in violation of this paragraph shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of the City. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee.

9.4 Independent Contractors. The Design Professional and any Subcontractors employed by the Design Professional shall be independent contractors and not agents of the City. Any provisions of this Agreement that may appear to give the City any right to direct the Design Professional concerning the details of performing the Professional Services, or to exercise any control over such performance, shall mean only that the Design Professional shall follow the direction of the City concerning the end results of the performance.

9.5 Design Professional and Subcontractor Principals for Professional Services. It is understood that this Agreement is for unique Professional Services. Retention of the Design

Professional's Professional Services is based on the particular professional expertise of the following members of the Design Professional's organization: Dave Sorenson, Adam Dankberg, Jim Daisa, John Morris, Bil Dvorak, Jon Collins, Leo Espelet, Mychal Loomis, Brandon Jacobsen, Mike Washkowiak, Cassie Cerin, and Edgar Torres [Project Team]. Accordingly, performance of Professional Services on the Project may not be delegated to other members of the Design Professional's organization or to Subcontractors without the prior written consent of the City. It is mutually agreed that the members of the Project Team are the principal persons responsible for delivery of all Professional Services and may not be removed from the Project without the City's prior written approval. Removal of any member of the Project Team without notice and approval by the City may be considered a default of the terms and conditions of this Agreement by the Design Professional. In the event any member of the Project Team becomes unavailable for any reason, the City must be consulted 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 of this Agreement. Further, the City reserves the right, after consultation with the Design Professional, to require any of the Design Professional's employees or agents to be removed from the Project.

9.6 Additional Design Professionals or Contractors. The City reserves the right to employ, at its own expense, such additional Design Professionals or contractors as the City deems necessary to perform work or to provide the Professional Services on the Project.

9.7 Employment of City Staff. This Agreement may be unilaterally and immediately terminated by the City, at its sole discretion, if the Design Professional employs an individual who, within the last twelve months immediately preceding such employment did, in the individual's capacity as an officer or employee of the City, participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council or Mayor in connection with the selection of the Design Professional.

9.8 Covenants and Conditions. All provisions of this Agreement expressed as either covenants or conditions on the part of the City or the Design Professional, shall be deemed to be both covenants and conditions.

9.9 Compliance with Controlling Law. The Design Professional shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor Code section 1720 relating to the payment of prevailing wages during the design and preconstruction phases of a project, including inspection and land surveying work. In addition, the Design Professional shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

9.10 Jurisdiction and Attorney Fees. The jurisdiction and applicable laws for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in accordance with the laws of the State of California. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney fees in addition to any other award made in such suit or proceeding.

9.11 Successors in Interest. This Agreement and all rights and obligations created by this Agreement shall be 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 shall be vested and binding on any Party's successor in interest.

9.12 Integration. This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, amendment, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties. All prior negotiations and agreements are merged into this Agreement.

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

9.14 No Waiver. No failure of either the City or the Design Professional to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

9.15 Severability. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

9.16 Municipal Powers. Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.

9.17 Drafting Ambiguities. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

9.18 Conflicts Between Terms. If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

9.19 Design Professional Evaluation. City will evaluate Design Professional's performance of Professional Services on the Project using the Consultant Evaluation Form (Exhibit H).

9.20 Exhibits Incorporated. All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

9.21 Survival of Obligations. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with this Agreement, as well as all continuing obligations indicated in this Agreement, shall survive, completion and acceptance of the Professional Services and termination or completion of the Agreement.

9.22 Vendor Registration. All consultants wishing to conduct business with the City of San Diego, or those intending to compete for City contracts, must submit a completed Vendor Registration Form (Exhibit I) to the City of San Diego's Purchasing & Contracting Department. This form must be received by the City prior to competing for or being awarded any contracts.

9.23 Contractor Standards. This Agreement is subject to the Contractor Standards clause of the Municipal Code Chapter 2, Article 2, Division 32 adopted by Ordinance No. O-19383. All consultants are required to complete the Contractor Standards Pledge of Compliance included herein as (Exhibit J). The Contractor Standards are available online at www.sandiego.gov/purchasing/vendor/index.shtml or by request from the Purchasing & Contracting Department by calling (619) 236-6000.

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IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor, pursuant to R - _____, authorizing such execution, and by the Design Professional pursuant to the Full Contract Signing Authority Document.

Dated this _____ day of_____, _____.

THE CITY OF SAN DIEGO
Mayor or Designee

By_____

I HEREBY CERTIFY I can legally bind Kimley-Horn & Associates, Inc. and that I have read all of this Agreement, this _____ day of_____, _____.

By_____
Dennis Landaal, P.E.
Senior Vice-President

I HEREBY APPROVE the form and legality of the foregoing Agreement this _____ day of_____, _____.

JAN I. GOLDSMITH, City Attorney

By_____
Deputy City Attorney

DESIGN PROFESSIONAL LUMP SUM AGREEMENT EXHIBITS

Exhibit A - Scope of Services

Exhibit B - Compensation and Fee Schedule

Exhibit C - Time Schedule

Exhibit D - City's Equal Opportunity Contracting Program Consultant Requirements
(AA) Work Force Report
(BB) Subcontractors List
(CC) Contract Activity Report

Exhibit E - Consultant Certification for a Drug-Free Workplace

Exhibit F - Determination Form

Exhibit G - City Council Green Building Policy 900-14

Exhibit H - Consultant Evaluation Form

Exhibit I - Vendor Registration Form

Exhibit J - Contractor Standards Pledge of Compliance

EXHIBIT A

SCOPE OF SERVICES

The primary components of the consulting work program include: (1) Project Management and Public Hearings, (2) Community Outreach and Participation, and (3) Mobility Analysis and Mobility Planning, and (4) CEQA Mobility Analysis. The core requirements of these components, deliverables, and other requirements are stated in this Scope of Services (SOS). Two optional tasks have been developed that may be exercised at the City's request. These tasks involve assessing traffic conditions on 6th Avenue during special events at Balboa Park and evaluating a historic streetcar between downtown and North Park.

1.0 PROJECT MANAGEMENT

1.1 The Consultant shall communicate regularly with City staff to review the project status and budget, prepare for upcoming workshops, obtain required City approval, make decisions and discuss issues that have the potential of adversely affecting the overall project budget, schedule, or product. This will include email and phone contact, as well as attending project status meetings with City staff on an as needed basis. (Assumes 2 hours per month for 18 months).

1.2 The Consultant shall develop, maintain, and provide to the City project manager monthly progress memos as well as biweekly verbal updates that address the progress of work, mobility planning and analysis schedule, project budget, information/decisions required to maintain the project schedule and complete deliverables, problems encountered that may affect the schedule, budget, or work products, and anticipated work, action items, and review activities for the following month (Assumes 2 hours per month for 18 months).

1.3 A percentage (%) estimate of any prime- and sub-consultant time anticipated for completing each task/deliverable related to the Community Plan Update scope

of work. Further, the Consultant team shall provide the City's Project Manager with quarterly reports summarizing and verifying prime- and sub-consultant charges for completing various Community Plan Update tasks. (Assumes 1 hour per month for 18 months).

1.4 The Consultant shall provide quality control of all products prior to submittal to the City, and shall ensure that all work is completed and deliverables provided on time according to the project schedule, and thaCt all analyses are technically accurate and all work products are of high quality. The Consultant Team shall identify the person responsible for internal quality control for the project and include it on the project schedule. It is recommended that quality control be performed by a senior member of the consultant staff who is not a member of the project team (Time for this effort is reflected in individual tasks).

1.5 The Consultant shall participate in up to four (4) meetings with the Community Plan Update Technical Working Group (TWG). Further, the Consultant shall attend up to two (2) Planning Commission meetings and two (2) City Council meetings to present and respond to questions regarding the Mobility Analysis, as needed.

2.0 COMMUNITY OUTREACH AND PARTICIPATION

2.1 The Consultant shall coordinate and work with other consultants and consultants teams as part of this effort. As part of the plan update process, the City will be hiring other consultants to provide professional services for the various components of the plan update effort.

2.2 The Consultant shall work with various public participants and stakeholders during community meetings, charrettes, and workshops to increase understanding of transportation and land use relationships. The Consultant, together with the City of San Diego and Facilitator (to be hired by the City), shall work with three Project Stakeholder Committees and one Cluster Update Advisory Committee, which the City of San Diego will organize dates/times of

the workshops will be scheduled in coordination with City Project Manager and Facilitator to achieve the greatest level stakeholders and public participation. For purposes of this estimate, it is expected that the consultant will attend the following meetings (or equivalent): one (1) three day charrette (one person), up to four (4) community planning group and/or stakeholder committee meetings (one person per meeting), and up to one cluster committee meeting (one person per meeting).

3.0 MOBILITY ANALYSIS/TRAFFIC STUDY

The Consultant shall conduct a Mobility Analysis/Traffic Study. The study shall contain the following components:

3.1 RESEARCH AND DATA COLLECTION

3.1.1 It is anticipated that the Consultant team will primarily rely on information provided by the City of San Diego and San Diego Association of Governments (SANDAG), as well as the general public to gain an understanding of the existing conditions and the opportunities and constraints of the Uptown, Greater North Park, and Greater Golden Hill community planning areas. Information to be provided by the City of San Diego include any previous studies, design plans for public and private projects in the vicinity of the planning area, base documents including the Uptown, Greater North Park, and Greater Golden Hill community plans, the North Bay Redevelopment Project Area Plan, North Park Redevelopment Project Area Plan, Environmental Impact Reports for projects and programs in the vicinity of the planning area, the Hillcrest Corridor Mobility Strategy (funded through a Community-Based Transportation Planning grant by Caltrans), University Avenue Mobility Plan, SANDAG's Regional Transportation Plan and Coordinated Plan, Centre City Development Corporation's Community Plan Update Traffic Study proposed mitigations and subsequent studies stemming from this (such as the Transit Alternatives Study), the Airport Master Plan and Destination Lindberg efforts, Five Points Parking and Circulation Report, California High Speed Rail EIS/EIR Regional Study

Technical Report, SANDAG's Downtown Transit Study, SANDAG's Urban Core Transit Study, Balboa Park Master Plan, and all related transportation studies in and around the Plan Update area. The Consultant will provide a brief (about ½ page) summary of relevant data/findings from these studies.

3.1.2 The Consultant will compile and collect existing conditions data along the street network providing for traffic circulation and regional access as well as transit service and pedestrian and bicycle circulation. Specific information to be collected/compiled includes:

3.1.2.1 24-hour average daily traffic (ADT) counts. This includes up to 115 1-day weekday ADT counts and up to 20 1-day weekend ADT counts.

3.1.2.2 Morning and evening peak-hour intersection turning movement counts including pedestrian and bicycle counts. This includes up to 75 weekday AM & PM peak hour intersection turning movement counts including pedestrians and bicycles, up to 39 weekday intersection AM & PM peak hour pedestrian- and bicycle-only counts, and up to 30 weekend 4-hour intersection turning movement counts including pedestrians and bicycles.

3.1.2.3 Intersection lane geometrics, control and phasing at up to 120 intersections.

3.1.2.4 Existing traffic count data on Caltrans freeways and on-ramps (to be provided to Consultant by Caltrans).

3.1.2.5 Traffic collision summaries (to be provided to the Consultant by City staff)

3.1.2.6 Traffic speed data (if needed, to be provided by the City)

3.1.2.7 Existing traffic signal timing data (to be provided by the City)

3.1.2.8 Transit service and ridership data (as available in MTS's database).

3.1.2.9 Inventory of existing MTS bus stop facilities within the Community Plan areas, noting the presence of seating, lighting, signage, and trash receptacles at each location

3.1.3 The Consultant shall provide previously specified existing traffic counts determined by City staff to calibrate the traffic model. These counts are assumed to be included in the ADT count quantity specified in Task 3.1.2. City staff will calibrate and run SANDAG's transportation models for this cluster community plan update.

3.1.4 At the conclusion of Tasks 3.1.1 to 3.1.3, the Consultant shall prepare two project binders, along with two electronic versions (on CDs) summarizing the research and data collection effort. One binder and two CDs of the data will be submitted to City staff for their use in the planning effort.

3.2 EXISTING CONDITIONS AND MOBILITY ASSESSMENTS

3.2.1 The Consultant team shall conduct a mobility assessment study of existing conditions. This task entails, but is not limited to, the following:

3.2.1.1 Pedestrian Facilities - Review and assess pedestrian safety, accessibility, connectivity, walkability in accordance with the Pedestrian Master Plan methods. For the communities of Greater North Park, Uptown, and Greater Golden Hill, incorporate the findings of the Pedestrian Master Plan Phase 2 project into the plan updates. Pedestrian routes shall be determined according to the Pedestrian Master Plan definitions

and in consultation with the communities.

3.2.1.2 Bicycle Facilities - Evaluate bicycle needs, accessibility, safety, connectivity, convenience, and level of service at key intersections and key roadway segments along identified bicycle routes within the Cluster Update area.

3.2.1.3 Transit Facilities – Measure the effectiveness and level of service of transit serving infrastructure, transit service(s), and transit performance based on the data provided by MTS in task 3.1.2 and in consultation with MTS and SANDAG staff. Evaluate transit accessibility and transit-land use linkages. (Transit facilities will be evaluated using the multi-modal LOS techniques at up to 15 locations).

3.2.1.4 Traffic Circulation – Analyze vehicular traffic circulation and regional accessibility and evaluate accident history, capacity, control devices, and level of service for up to 150 classified roadway segments in the Uptown, Greater North Park, and Greater Golden Hill community planning areas and Balboa Park; and at up to 120 intersections for morning and evening peak period conditions. Analyze conditions at up to 18 freeway segments along freeways adjacent to the planning areas. Prepare ramp meter analysis at up to 20 on-ramps providing regional freeway access from the community planning areas based on traffic data and meter rates provided by Caltrans. All Caltrans controlled intersections will be evaluated using ILV methods in addition to Synchro. The Consultant will coordinate with Caltrans staff to identify freeway and interchange operational performance.

3.2.1.5 Parking – Assess all types of on-street parking demand and

supply (curb utilization) within the plan update area based on the policies set forth in the Mobility Element of the General Plan. The analysis should include an evaluation of factors related to costs associated with parking demand and supply. The analysis should also include identifying and evaluating factors affecting parking demand and parking utilization, establishing levels of parking impact areas (up to 20 person hours of effort is assumed in collecting field observations of parking occupancy).

3.2.1.6 Provide maps to supplement available mapping in the three communities. (16 hours of effort is assumed in preparing supplemental mapping).

3.2.2 The Consultant shall coordinate with the consultants for the Hillcrest Corridor Mobility Strategy, University Avenue Mobility Plan, and the Redevelopment Agency's Traffic Study for the administrative update to obtain any available existing conditions and mobility data, and not duplicate previous efforts.

3.2.3 The Consultant shall draft the Existing Conditions chapters of the Traffic Study. Three paper copies and one electronic copy will be prepared for City review, including all electronic analysis files. Based on consolidated City comments, the Consultant will address and incorporate these comments into the revised Existing Conditions chapters.

3.3 TRAVEL FORECASTING

3.3.1 This task requires close coordination with the City's Travel Forecasting section and will include the Consultant's review of the existing and future transportation network. This includes roadway classifications, roadway segment lane configurations, transit services, and land use inputs in the Cities/County Travel Forecasting Model for the base year,

build-out year, and up to eight alternative scenarios. The Travel Forecasting section will calibrate the transportation model for the study area by running a base year forecast and comparing the results to existing traffic counts. The Travel Forecasting section will also run build-out travel forecasts without and with identified transportation network improvements or land use scenarios (up to eight), and select link/zone analysis in order to determine traffic patterns, origin-destination, and mode share.

The Travel Forecast section will also provide the selected link/zone forecasted daily traffic volume, if needed, to obtain the origin-to-destination travel pattern of a specific location. Intersection peak hour turning volumes from the model may be provided if requested. However, the turning volumes from the model will not be calibrated and the consultant is required to review and make adjustments based on the factors including, but not limited to, land use inputs, transportation network, and travel patterns. In addition, mode share information from the model for the study area will be provided upon requested.

3.3.2 The Consultant shall coordinate with the City's consultants for the Hillcrest Corridor Mobility Strategy, University Avenue Mobility Plan, and the amendment to the Greater North Park Redevelopment Plan traffic study to obtain any existing counts, forecasts or alternative analysis that might have been done for this project.

3.3.3 The Consultant and City staff shall prepare documentation of the travel forecast inputs, including calibration techniques and results, land use and transportation network assumptions, and mode split results, traffic model plots, and all other relevant model assumptions for each alternative. The Consultant shall be responsible for documenting future land use, network changes, and trip generation. The City shall be responsible for documenting model calibration techniques and results.

3.4 FUTURE CONDITIONS ANALYSIS

The future conditions shall be evaluated for same general network as evaluated under existing conditions, while also considering new transportation facilities. It is assumed that up to three land use plans will be evaluated. The Consultant shall analyze future conditions for the following:

3.4.1 Pedestrian Facilities – The consultant team shall evaluate factors affecting pedestrian safety, accessibility, connectivity, and walkability within the cluster update area for future conditions including, but not limited to, proposed transportation improvements and increases to residential densities and mixed use and any light-industrial development that is developed as part of the land use alternatives and preferred land use plan.

3.4.2 Bicycle Facilities – The consultant team shall evaluate bicycle facilities in relation to those included in the City's Bicycle Master Plan and address deficiencies in the bicycle facilities based on future needs.

3.4.3 Transit Facilities – The consultant team shall measure the effectiveness and level of service of transit serving infrastructure, transit service(s), and transit performance for future conditions. The consultant team shall also evaluate future transit accessibility and transit-land use linkages. The Consultant is expected to coordinate with MTS and SANDAG when developing recommendations for future service changes. Future level of service calculations for transit, if needed, will be calculated using multi-modal LOS techniques and limited to up to 16 locations.

3.4.4 Traffic Circulation – Analyze vehicular future traffic circulation and regional accessibility and evaluate capacity, control devices and level of service for the roadway segments, intersections, freeways and on-ramps analyzed in the Existing Conditions report and up to ten key intersections of future transportation facilities for morning and evening peak period conditions. All Caltrans controlled intersections will be

evaluated using ILV techniques in addition to Synchro. For up to eight traffic circulation corridors, the analysis should also include transportation system performance measures including future system and corridor delays, and forecast arterial speeds.

3.4.5 Parking – Assess all types of on-street and off-street parking demand and supply (curb utilization) set forth in the Mobility Element of the City's adopted General Plan. The analysis may assess changes to parking requirements for certain use designations, such as mixed use. The analysis will not evaluate the parking adequacy for individual uses. The analysis should include an evaluation of costs associated with providing any additional recommend parking.

3.4.6 Preparation of Conceptual Street Design

The Consultant shall prepare up to 5 conceptual streetscape designs including 3-D perspectives or plan views, and up to 20 cross sections of traveled ways, sidewalks, and parkways, to illustrate identified improvements that will be included in the updated community plans.

3.4.7 The Consultant shall prepare figures, tables, exhibits, analyses worksheets and a briefing paper summarizing the analysis and results of the future year conditions evaluation. This effort will include producing maps and potentially a PowerPoint presentation of the briefing paper.

3.5 DRAFT MOBILITY POLICIES AND RECOMMENDATIONS

Based on the existing and future conditions analyses and assessments, the Consultant shall develop mobility improvement recommendations that address existing and future mobility deficiencies within the plan update area to assist City staff, who will prepare the Mobility Element chapter of the Community Plan. The recommendations shall not only tier off, but shall implement the

policies and objectives included in the General Plan's Mobility Element. This task entails, but is not limited to, the following:

- Evaluating the adequacy of transportation systems as a whole as well as along key corridors and intersections.
- Evaluating regional accessibility within the update cluster area.
- Developing both short- and long-term Mobility recommendations within the Community Plan update area.
- Identifying cost-effective measures that address shortfalls in pedestrian/bicycle mobility and are supportive of transit use.
- Identifying cost-effective intersection and roadway improvements to address transit, bicycle, and pedestrian needs.
- Identifying cost-effective measures to improve vehicular traffic circulation needs.
- Identifying cost-effective measures to address public and private parking demand and optimize parking supply.

3.6 ANALYSIS AND REVISIONS TO THE DRAFT MOBILITY POLICIES AND RECOMMENDATIONS

Based on analysis, traffic engineering principles, feasibility, relative costs, benefits, and potential impacts, and community input, the Consultant and City staff shall propose potential alternatives (including multiple alternatives where appropriate) to the draft Mobility Policies and Recommendations with the goals of balancing the transportation needs of all residents, visitors, business owners, and employees with access to all modes of transportation and providing a

transportation system that meets land use needs and contributes to a high quality of life. This language shall be consistent with the policies and objectives included in the General Plan's Mobility Element.

3.6.1 Refining the Mobility Policies and Recommendations

The Consultant shall analyze up to three transportation forecast network alternatives to the draft Mobility Policies and Recommendations in order to develop Refined Mobility Policies and Recommendations that balances service levels for all modes of transportation and has community support. These final recommendations will be included in the Mobility Elements for the Plan Updates. This language shall be consistent with the policies and objectives included in the General Plan's Mobility Element.

3.6.2 Preparation of Planning Level Cost Estimates

The Consultant shall prepare up to 30 planning level cost estimates of the improvements identified in the Refined Mobility Policies and Recommendations. These improvements shall be based on the preferred land use plan and will be included in the Implementation Element and the respective community's Public Facilities Financing Plan. The Consultant shall work with the City's Facilities Financing section of the City Planning & Community Investment Department to include these improvements and cost estimates within each of the community's Public Facilities Financing Plans, which will be updated as part of the update process.

3.6.3 Implementation Plan Development

The City shall develop an implementation plan and funding strategy based on the preferred land use plan that addresses phasing of both short- and long-term improvements and identifies potential funding sources. The Consultant shall work with the City's Facilities Financing section of the City Planning & Community Investment Department to

include these improvements and cost estimates within each of the community's Public Facilities Financing Plans, which will be updated as part of the update process.

3.6.4 Mobility Working Papers

The consultant team shall draft working paper(s) that documents the project process, existing study area conditions, travel forecasts, future conditions analyses, the draft mobility policies and recommendations, the analysis of the draft mobility policies and recommendations, potential revisions and associated alternatives analysis, the refined mobility policies and recommendations along with draft CEQA analysis (limited to the study extents cited previously), analysis of the refined mobility study, cost estimates, and proposed implementation plan. Five copies of the working papers will be prepared for City review. The Consultant will update the working papers based on consolidated City staff comments. It is envisioned that several working papers will be produced, creating an iterative review process, allowing for incremental review of assumptions, analysis and findings.

3.6.5 Mobility Element

The City shall draft the Community Mobility Element (including relevant information from the study that will become part of the Community Plan). The Consultant shall prepare graphics and tables to support the City's efforts, as well as provide suggestions on concepts and recommendations.

3.6.6 Traffic Impact Analysis Report and CEQA Analysis

The Consultant shall provide a traffic impact analysis report based on previously prepared analysis, text, and tables. This analysis will include the analysis included in Tasks 3.1 through 3.6.4 for the transportation and parking sections of the cluster update environmental document. A draft report, including five copies will be prepared. The Consultant will update the report based on consolidated City staff

comments. The Consultant will also provide up to 24 hours of coordination with the CEQA document preparers.

Optional Tasks

1. Balboa Park Special Events Evaluation

This task involves an assessment of the traffic and parking impacts of special events at Balboa Park in order to evaluate capacity during times when Balboa Park holds large events that affect the surrounding communities. These affects can include a large infusion of people, parking spill-over onto community streets, and street closures. The purpose of this evaluation is to assess how these events affect potential community plan mobility recommendations.

1.1. Research and Observations

Consultant will meet with the City and potentially the community or cluster committee to identify up to four representative events for study. Consultant will work with City staff to obtain information on permits or special traffic/shuttle/parking requirements for the event. Consultant will qualitatively observe operations of the event for 12 staff hours (assumes two people for six hours each). Consultant will write a short summary of observations for each event.

1.2. Draft White Paper

Consultant will prepare a white paper summarizing the observations at all events observed, focusing on transportation operations during the event along the 4th/5th/6th Avenue corridors.

1.3. Evaluation of Community Plan Alternatives

Consultant will qualitatively evaluate each of the proposed transportation network alternatives for the 4th/5th/6th Avenue corridors given the special event observations made in Tasks 1.1 and 1.2. Consultant will qualitatively assess the ability of each of these alternatives to handle Balboa Park event traffic. This assessment will be incorporated into the white paper prepared in Task 1.2.

1.4. Meetings and Review

A total of up to 8 staff hours for attendance at meetings is assumed for this task. These meetings may include meetings with community groups or the cluster committee, other City departments such as Parks and Recreations or Police, and transit providers.

1.5. Final White Paper

Based on comments received, a final white paper on Balboa Park special events will be produced. It is envisioned that this paper would be used to inform the stakeholders and to refine certain Community Plan Mobility Element recommendations.

2. Historic Streetcar Concept Study

This study would evaluate the cost, feasibility and potential impacts associated with implementing a historic streetcar operating between downtown San Diego and North Park. To the extent possible, Consultant will rely on research conducted for other similar applications, and focus our efforts on corridor specific recommendations.

2.1. Integration with Community Plan Update

Review the land use and transportation network alternatives and Mobility Element recommendations developed for the Community Plan Update to determine if there are any ramifications on the proposed streetcar route or viability.

2.2. Transit Network Integration

Evaluate the potential connectivity of the streetcar with the existing and proposed downtown transit network. This would include proposed downtown shuttles, BRT routes and transit hubs.

2.3. Identify a Potential Alignment

Up to two alignment options would be considered on a preliminary basis. It is presumed that one of these options would be Sixth Avenue/University Avenue. Within this route and a yet-to-be-determined alternative alignment, the location of the streetcar within the street would be identified. The streetcar placement within the street would be qualitatively evaluated for impact to traffic, bike, pedestrian and other transit modes.

2.4. Identify Potential Stops and Stations

For each alignment, identify potential locations for station stops. Considerations will be based on nearby attractions and available space. Determine typical station treatments, furnishings and designs. Determine where within the street the station would be located. Determine the approximate range of costs for typical stations.

2.5. Determine Vehicle Type

Consultant will prepare a comparison of various types of vehicles that may be available or able to be replicated. Consultant will also provide a generalized comparison to other vehicle types such as light rail and rubber tire vehicles. A vehicle cost comparison will be provided.

2.6. Determine Method of Propulsion

Consultant will investigate methods of vehicle propulsion, including overhead contact systems and ground level contact systems. A matrix summarizing the costs and issues associated with these methods will be compared.

2.7. Determine Maintenance Facility Requirements

Identify the vehicle maintenance needs. Determine the facility size and potential locations for a maintenance facility along the route. Determine an approximate cost for the facility.

2.8. Identify Potential Traffic Impacts (Included in Budget as Option 2A)

The traffic impacts of the historic streetcar will be evaluated through the use of VISSIM. VISSIM is a micro-simulation model that will be used to simulate the operation of the streetcar along with vehicular traffic. This tool will be used to quantify the impacts of streetcar operation on traffic, and where possible, suggest design enhancements to off-set any impacts. It is presumed that just one alignment would be evaluated using this micro-simulation using one future year scenario. The VISSIM model study area would be limited to the proposed alignment. Traffic volumes, signal timing data, transit routes and roadway geometrics would be based entirely on data collected as part of the Community Plan Update process.

2.9. Reports and Meetings

2.9.1. Draft Report

A draft report will be prepared that summarizes research, findings, costs and recommendations will be prepared. A pre-draft of the report (three copies) will be prepared for internal City staff review. Based on comments received, a draft

report will be prepared for review by the public (stakeholder members). One electronic copy will be posted on the project's web site and 25 copies of the report will be produced.

2.9.2. Meetings

An allocation of 30 hours for meetings associated with the streetcar task has been assumed.

2.9.3. Final Report

Upon receipt of comments, a final report will be produced. The report will be posted on the project web site and 25 bound copies and one original copy will be produced.

EXHIBIT B

COMPENSATION AND FEE SCHEDULE

Task Description	Total KHA Hours	KHA Labor Fee	KHA Expenses	KTU+A	True Count	Total Fee
1.1 Coordination and Status Meetings	36	$ 8,602		$ 500		$ 9,400
1.2 Progress Updates	36	$ 6,482				$ 6,700
1.3 Progress Coordination with City	18	$ 2,348				$ 2,400
1.4 Quality Control (included with each task)						
1.5 City Meetings						
1.5.a Community Plan Update TWG Meetings (4)	12	$ 2,867				$ 3,000
1.5.b Planning Commission Meetings (2)	10	$ 2,390				$ 2,500
1.5.c City Council Meetings (2)	10	$ 2,390				$ 2,500
Task 1	*122*	*$ 25,079*	*$ 960*	*$ 500*	*$ -*	*$ 26,500*
2.1 Coordination with other consultants	36	$ 6,341		$ 500		$ 7,100
2.2 Community Meetings						
2.2.a Charrette (3-day, 1 person)	12	$ 2,867				$ 3,000
2.2.b Cluster Committee (1)	3	$ 717				$ 700
2.2.c CPG Meetings (4)	16	$ 3,823		$ 1,000		$ 5,000
Task 2	*67*	*$ 13,748*	*$ 530*	*$ 1,500*	*$ -*	*$ 15,800*
3.1 Research and Data Collection						
3.1.1 Research & Summarize Past Studies	46	$ 6,504				$ 6,800
3.1.2 Data Collection						
3.1.2.1 ADT Counts	11	$ 936			$ 13,500	$ 14,500
3.1.2.2 Intersection Counts	13	$ 1,129			$ 30,135	$ 31,300
3.1.2.3 Intersection Geometrics	73	$ 7,690				$ 8,000
3.1.2.4 Caltrans Counts	8	$ 847				$ 900
3.1.2.5 Collision Data	23	$ 1,418				$ 1,500
3.1.2.6 Speed Data	3	$ 290				$ 300
3.1.2.7 Existing Signal Timing Data	13	$ 1,331				$ 1,400
3.1.2.8 Transit Service & Ridership Data	13	$ 1,411				$ 1,500
3.1.2.9 Inventory of Bus Stops	30	$ 3,140				$ 3,300
3.1.3 Transit Data	3	$ 338				$ 300
3.1.4 Summary Binders	10	$ 1,143				$ 1,200
3.2 Existing Condtions and Mobility Assess.						
3.2.1 Existing Conditions Analysis						
3.2.1.1 Pedestrian Facilities	40	$ 5,775		$ 3,000		$ 9,100
3.2.1.2 Bicycle Facilities	12	$ 2,114		$ 3,000		$ 5,200
3.2.1.3 Transit Facilities	38	$ 4,949				$ 5,300
3.2.1.4 Traffic Circulation	205	$ 23,055				$ 25,200
3.2.1.5 Parking	26	$ 3,309				$ 3,600
3.2.1.6 Bike and Ped Maps	3	$ 528		$ 2,000		$ 2,500
3.2.2 Coordinate with consultants for other studies	4	$ 814				$ 800
3.2.3 Draft Chapters & Revisions	82	$ 10,314				$ 10,800
3.3 Travel Forecasting						
3.3.1 Coordinate on Forecast Activities	66	$ 9,719				$ 10,300
3.3.2 Compare Results to Hillcrest & University	12	$ 2,443				$ 2,500
3.3.3 Review City's Model Documentation	12	$ 2,362				$ 2,500
3.4 Future Conditions Analysis						
3.4.1 Pedestrian	30	$ 3,855				$ 4,300
3.4.2 Bicycle	12	$ 2,114		$ 5,000		$ 7,200

Task Description	Total KHA Hours	KHA Labor Fee	KHA Expenses	KTU+A	True Count	Total Fee
3.4.3 Transit	24	$ 3,120				$ 3,400
3.4.4 Traffic Circulation	242	$ 28,155				$ 30,500
3.4.5 Parking	70	$ 9,788				$ 10,400
3.4.6 Preparation of Conceptual Street Designs	20	$ 2,887		$ 11,000		$ 14,100
3.4.7 Summary Paper(s)	90	$ 10,765				$ 11,500
3.5 Draft Mobility Element Policies & Recomm.	36	$ 6,729				$ 7,000
3.6 Analysis and Revisions to Draft Mobility Element						
3.6.1 Refining Mobility Policies and Recomm	16	$ 3,069		$ 5,000		$ 8,200
3.6.2 Preparation of Planning Level Cost Est.	64	$ 10,716				$ 11,100
3.6.3Implementation Plan Development	20	$ 3,648				$ 3,800
3.6.4 Mobility Working Papers	92	$ 11,034				$ 11,900
3.6.6 Mobility Element	44	$ 7,361		$ 3,000		$ 10,800
3.6.7 Transportation/Parking CEQA Analysis	185	$ 20,470				$ 21,300
Task 3 Subtotal	*1691*	*$ 215,270*	*$ 13,480*	*$ 32,000*	*$ 43,635*	*$ 304,300*
Optional Task 1 - Balboa Park Special Events						
1.1 Research and Observations	52	$ 8,680	$ 330			$ 9,000
1.2 Draft White Paper	10	$ 1,222	$ 160			$ 1,400
1.3 Evaluation of Community Plan Alternatives	18	$ 2,792	$ 110			$ 2,900
1.4 Meetings and Review	13	$ 1,966	$ 80			$ 2,000
1.5 Final White Paper	10	$ 1,222	$ 160			$ 1,400
Subtotal Optional Task 1	*103*	*$ 15,881*	*$ 840*	*$ -*	*$ -*	*$ 16,700*
Optional Task 2- Historic Streetcar						
2.1 Integration with Community Plan Update	14	$ 2,083	$ 80			$ 2,200
2.2 Transit Network Integration	30	$ 4,602	$ 180			$ 4,800
2.3 Identify Alignment	106	$ 14,174	$ 1,120			$ 15,300
2.4 Identify Potential Stations and Stops	36	$ 5,157	$ 350			$ 5,500
2.5 Vehicle Type Determination	28	$ 4,116	$ 160			$ 4,300
2.6 Method of Propulsion	24	$ 3,665	$ 140			$ 3,800
2.7 Determine Maintenance Facility Requirements	32	$ 4,567	$ 180			$ 4,700
2.8 Identify Potential Traffic Impacts	235	$ 25,507	$ 3,980			$ 29,500
2.9 Reports and Meetings			$ -			
2.9.1 Draft Report	78	$ 10,278	$ 830			$ 11,100
2.9.2 Meetings	30	$ 4,897	$ 190			$ 5,100
2.9.3 Final Report	50	$ 7,367	$ 790			$ 8,200
Subtotal Optional Task 2	*663*	*$86,413*	*$8,000*	*$0*	*$0*	*$94,500*
SCOPE OF SERVICES (Task 1-3)	**1880**	**$ 254,097**	**$ 14,970**	**$ 34,000**	**$ 43,635**	**$ 346,600**
ADDITIONAL SERVICES (OPTIONAL TASKS)	**766**	**$102,294**	**$8,840**	**$0**	**$0**	**$111,200**
TOTAL (SCOPE OF SERVICES + ADDITIONAL SERVICES)	**2646**	**$356,391**	**$23,810**	**$34,000**	**$43,635**	**$457,800**

EXHIBIT C

TIME SCHEDULE

Major Milestones	Anticipated Start	Completion
Draft Existing Conditions Report	May 1, 2010	May 31, 2010
Traffic Model Calibration*	May 3, 2010	June 18, 2010
Conduct Future Year Travel Forecasts*	August 2, 2010	Sept. 8, 2010
Preliminary Future Year Analysis (WP)	August 2, 2010	Sept. 22, 2010
Travel Forecast Documentation (WP)	Sept. 22, 2010	Oct. 11, 2010
Draft Mobility Improvements (WP)	Oct. 4, 2010	Oct. 29, 2010
Draft Cost Estimates (WP)	Oct. 18, 2010	Nov. 13, 2010
Draft Mobility Element*	Oct. 4, 2010	Oct. 29, 2010
Final Mobility Element*	Nov. 27, 2010	Dec. 20, 2010
Draft Traffic Impact Study	Dec. 6, 2010	Dec. 27, 2010
Final Implementation Plan and Cost Est. (WP)	Dec. 20, 2010	Jan. 14, 2011
Final Traffic Impact Study	Dec. 27, 2010	Feb. 14, 2011

Notes
(WP) indicates that product is a working paper
(*) indicates that City of SD is responsible for producing, with assistance from Consultant .

EXHIBIT D

EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP) CONTRACTOR REQUIREMENTS

TABLE OF CONTENTS

I. City's Equal Opportunity Commitment.....1

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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 consultants doing business with the City. The City encourages its consultants to share this commitment. Prime consultants 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 consultants 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 Sections 22.3501 through 22.3517.

A. Proposal Documents to include Disclosure of Discrimination Complaints. As part of its bid or proposal, Proposer shall provide to the City a list of all instances within the past ten (10) years where a complaint was filed or pending against Proposer in a legal or administrative proceeding alleging that Proposer 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 consultant and any Subcontractors, vendors, and suppliers:

> Consultant 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. Consultant shall provide equal opportunity for Subcontractors to participate in subconsulting opportunities. Consultant 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, Consultant agrees to provide to the City, within sixty (60) calendar days, a truthful and complete list of the names of all Subcontractors, vendors, and suppliers that Consultant has used in the past five (5) years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Consultant for each subcontract or supply contract. Consultant 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. Consultant 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 Consultant up to and including contract termination, debarment and other sanctions for violation of the provisions of the *Nondiscrimination in Contracting Ordinance.* Consultant 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. Consultants shall comply with requirements of San Diego Ordinance No. 18173, Section 22.2701 through 22.2707, Equal Employment Opportunity Outreach Program. Consultants shall submit a *Work Force Report* or an *Equal Employment Opportunity* (EEO) *Plan* to the Program Manager of the City of San Diego Equal Opportunity Contracting Program (EOCP) for approval.

A. Work Force Report. If a *Work Force Report* (Attachment AA) is submitted, and an EOCP staff Work Force Analysis determines there are under representation when compared to County Labor Force Availability data, Consultant will be required to submit an *Equal Employment Opportunity Plan.*

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

1. The Consultant will maintain a working environment free of discrimination, harassment, intimidation and coercion at all sites and

in all facilities at which the Consultant's employees are assigned to work;

2. A responsible official is designated to monitor all employment related activity to ensure the Consultant's EEO Policy is being carried out and to submit reports relating to EEO provisions;

3. Consultant 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 Consultant reviews, at least annually, all supervisor's adherence to and performance under the EEO Policy and maintains written documentation of these reviews;

5. The Consultant 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 Consultant documents and maintains a record of all bid solicitations and outreach efforts to and from Subcontractors, consultant associations and other business associations;

7. The Consultant 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 Consultant disseminates its EEO Policy to union and community organizations;

9. The Consultant provides immediate written notification to the City when any union referral process has impeded the Consultant's efforts to maintain its EEO Policy;

10. The Consultant 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 Consultant 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 Consultant encourages all present employees, including people of color and women employees, to recruit others;

13. The Consultant maintains all employment selection process information with records of all tests and other selection criteria;

14. The Consultant 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 Consultant's employment needs;

15. The Consultant 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 Consultant 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 Consultant 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 Consultant is encouraged to participate in voluntary associations, which assist in fulfilling one or more of its non-discrimination obligations. The efforts of a consultant association, consultant/community professional association, foundation or other similar group of which the Consultant is a member will be considered as being part of fulfilling these obligations, provided the Consultant actively participates.

IV. Equal Opportunity Contracting. Prime consultants are encouraged to take positive steps to diversify and expand their Subcontractor solicitation base and to offer contracting opportunities to all eligible Subcontractor. 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% 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% goal, 25% to 30% Disadvantaged Business Enterprise (DBE) and 1% to 3% 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 Consultant's commitment to achieving compliance, *Contract Activity Reports* (Attachment CC) 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. Proposers are required to submit the following information with their proposals:

1. Outreach Efforts. Description of Proposer's outreach efforts undertaken on this project to make subconsulting opportunities available to all interested and qualified firms.

2. Past Participation Levels. Listing of Proposer's Subcontractor participation levels achieved on all private and public projects within the past three (3) 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, Disadvantaged Business Enterprise, Disabled Veteran Business Enterprise, or Other Business Enterprise.

3. Equal Opportunity Employment. Listing of Proposer's strategies to recruit, hire, train and promote a diverse workforce. These efforts will be considered in conjunction with Proposer's *Workforce Report* as compared to the County's Labor Force Availability.

4. Community Activities. Listing of Proposer'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. Consultant selection panels will consider and evaluate the Proposer's demonstrated commitment to equal opportunity including the following factors:

1. Outreach Efforts. Proposer's outreach efforts undertaken and willingness to make meaningful subconsulting opportunities available to all interested and qualified firms on this project.

2. Past Participation Levels. Proposer's Subcontractor participation levels achieved on all private and public projects within the past three (3) years.

3. Equal Opportunity Employment. Proposer's use of productive strategies to successfully attain a diverse workforce as compared to the County's Labor Force Availability.

4. Community Activities. Proposer's current community activities.

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

A. Subcontractors List. The *Subcontractor List* (Attachment BB) 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.

1. Subcontractors must be named on the *Subcontractors List* if they receive more than one-half of one percent (0.5%) of the Prime Consultant's fee.

B. Commitment Letters. Proposer 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 fifty-one percent (51%) 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 fifty-one percent (51%) 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 fifty-one percent (51%) 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 fifty-one percent (51%) 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 fifty-one percent (51%) 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 fifty-one percent (51%) 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 fifty-one percent (51%) 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 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 the State of California Department of Transportation (CALTRANS) as MBE, WBE or DBE;

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*

City of San Diego.
EQUAL OPPORTUNITY CONTRACTING (EOC)
1010 Second Avenue • Suite 500 • San Diego, CA 92101
Phone: (619) 533-4464 • Fax: (619) 533-4474

ATTACHMENT AA

WORK FORCE REPORT

ADMINISTRATIVE

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. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report (WFR).*

CONTRACTOR IDENTIFICATION

Type of Contractor: G Construction G Vendor/Supplier G Financial Institution G Lessee/Lessor
G Consultant G Grant Recipient G Insurance Company G Other

Name of Company: _____

AKA/DBA: _____

Address (Corporate Headquarters, where applicable): _____

City _____ County _____ State _____ Zip _____

Telephone Number: (___) _____ FAX Number: (___) _____

Name of Company CEO: _____

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: _____ Type of License: _____

The Company has appointed: _____

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: _____

Telephone Number: (___) _____ FAX Number: (___) _____

G One San Diego County (or Most Local County) Work Force - Mandatory

G Branch Work Force *

G Managing Office Work Force

Check the box above that applies to this WFR.

**Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

I, the undersigned representative of _____
(Firm Name)

_____ , _____ hereby certify that information provided
(County) *(State)*

herein is true and correct. This document was executed on this _____ day of _____, 20_____.

_____ _____
(Authorized Signature) *(Print Authorized Signature)*

WORK FORCE REPORT – NAME OF FIRM: _____ DATE: _____

OFFICE(S) or BRANCH(ES):_____ COUNTY:_____

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

OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Management & Financial														
Professional														
A&E, Science, Computer														
Technical														
Sales														
Administrative Support														
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*														

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

Totals Each Column														

Grand Total All Employees	

Indicate by Gender and Ethnicity the Number of Above Employees Who Are Disabled

Disabled														

Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

CITY OF SAN DIEGO WORK FORCE REPORT – ADMINISTRATIVE

HISTORY

The Work Force Report (WFR) is the document that allows the City of San Diego to analyze the work forces of all firms wishing to do business with the City. We are able to compare the firm's work force data to County Labor Force Availability (CLFA) data derived from the United States Census. CLFA data is a compilation of lists of occupations and includes the percentage of each ethnicity we track (Black, Hispanic, Asian, American Indian, Filipino) for each occupation. Currently, our CLFA data is taken from the 2000 Census. In order to compare one firm to another, it is important that the data we receive from the consultant firm is accurate and organized in the manner that allows for this fair comparison.

WORK FORCE & BRANCH WORK FORCE REPORTS

When submitting a WFR, especially if the WFR is for a specific project or activity, we would like to have information about the firm's work force that is actually participating in the project or activity. That is, if the project is in San Diego and the work force is from San Diego, we want a San Diego County Work Force Report.[1] By the same token, if the project is in San Diego, but the work force is from another county, such as Orange or Riverside County, we want a Work Force Report from that county.[2] For example, if participation in a San Diego project is by work forces from San Diego County, Los Angeles County and Sacramento County, we will ask for separate Work Force Reports representing the work forces of your firm from each of the three counties.[1,2] On the other hand, if the project will be accomplished completely outside of San Diego, we ask for a Work Force Report from the county or counties where the work will be accomplished.[2]

MANAGING OFFICE WORK FORCE

Equal Opportunity Contracting may occasionally ask for a Managing Office Work Force (MOWF) Report. This may occur in an instance where the firm involved is a large national or international firm but the San Diego or other local work force is very small. In this case, we may ask for both a local and a MOWF Report.[1,3] In another case, when work is done only by the Managing Office, only the MOWF Report may be necessary.[3]

TYPES OF WORK FORCE REPORTS:

Please note, throughout the preceding text of this page, the superscript numbers one [1], two [2] & three [3]. These numbers coincide with the types of work force report required in the example. See below:

[1] One San Diego County (or Most Local County) Work Force – Mandatory in most cases

[2] Branch Work Force *

[3] Managing Office Work Force

**Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county*

Exhibit: Work Force Report Job categories

Refer to this table when completing your firm's Work Force Report form(s).

Management & Financial

Advertising, Marketing, Promotions, Public Relations, and Sales Managers
Business Operations Specialists
Financial Specialists
Operations Specialties Managers
Other Management Occupations
Top Executives

Professional

Art and Design Workers
Counselors, Social Workers, and Other Community and Social Service Specialists
Entertainers and Performers, Sports and Related Workers
Health Diagnosing and Treating Practitioners
Lawyers, Judges, and Related Workers
Librarians, Curators, and Archivists
Life Scientists

Media and Communication Workers
Other Teachers and Instructors
Postsecondary Teachers
Primary, Secondary, and Special Education School Teachers
Religious Workers
Social Scientists and Related Workers

Architecture & Engineering, Science, Computer

Architects, Surveyors, and Cartographers
Computer Specialists
Engineers
Mathematical Science Occupations
Physical Scientists

Technical

Drafters, Engineering, and Mapping Technicians
Health Technologists and Technicians
Life, Physical, and Social Science Technicians
Media and Communication Equipment Workers

Sales

Other Sales and Related Workers
Retail Sales Workers
Sales Representatives, Services
Sales Representatives, Wholesale and Manufacturing
Supervisors, Sales Workers

Administrative Support

Financial Clerks
Information and Record Clerks
Legal Support Workers
Material Recording, Scheduling, Dispatching, and Distributing Workers
Other Education, Training, and Library Occupations
Other Office and Administrative Support Workers
Secretaries and Administrative Assistants
Supervisors, Office and Administrative Support Workers

Services

Building Cleaning and Pest Control Workers
Cooks and Food Preparation Workers
Entertainment Attendants and Related Workers
Fire Fighting and Prevention Workers
First-Line Supervisors/Managers, Protective Service Workers
Food and Beverage Serving Workers
Funeral Service Workers
Law Enforcement Workers
Nursing, Psychiatric, and Home Health Aides
Occupational and Physical Therapist Assistants and Aides
Other Food Preparation and Serving Related Workers
Other Healthcare Support Occupations
Other Personal Care and Service Workers
Other Protective Service Workers
Personal Appearance Workers
Supervisors, Food Preparation and Serving Workers
Supervisors, Personal Care and Service Workers
Transportation, Tourism, and Lodging Attendants

Crafts

Construction Trades Workers
Electrical and Electronic Equipment Mechanics, Installers, and Repairers
Extraction Workers
Material Moving Workers
Other Construction and Related Workers
Other Installation, Maintenance, and Repair Occupations
Plant and System Operators
Supervisors of Installation, Maintenance, and Repair Workers
Supervisors, Construction and Extraction Workers
Vehicle and Mobile Equipment Mechanics, Installers, and Repairers
Woodworkers

Operative Workers

Assemblers and Fabricators
Communications Equipment Operators
Food Processing Workers
Metal Workers and Plastic Workers
Motor Vehicle Operators
Other Production Occupations
Printing Workers
Supervisors, Production Workers
Textile, Apparel, and Furnishings Workers

Transportation

Air Transportation Workers
Other Transportation Workers
Rail Transportation Workers
Supervisors, Transportation and Material Moving Workers
Water Transportation Workers

Laborers

Agricultural Workers
Animal Care and Service Workers
Fishing and Hunting Workers
Forest, Conservation, and Logging Workers
Grounds Maintenance Workers
Helpers, Construction Trades
Supervisors, Building and Grounds Cleaning and Maintenance Workers
Supervisors, Farming, Fishing, and Forestry Workers

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 Consultant's fee.

2. Proposer 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, Proposer 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, Proposer shall indicate if Subcontractor is certified by:

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

ATTACHMENT CC

CONTRACT ACTIVITY REPORT

Consultants 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

CONSULTANT CERTIFICATION FOR A DRUG-FREE WORKPLACE

PROJECT TITLE: _____

_____

I hereby certify that I am familiar with the requirement of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace as outlined in the request for proposals, and that:

_____
Name under which business is conducted

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 Subcontractors agreement to abide by the provisions of Section 4.9.1 subdivisions A through C of the policy as outlined.

Signed _____

Printed Name _____

Title _____

Date _____

EXHIBIT F

INSTRUCTION SHEET FOR

DISCLOSURE DETERMINATION FOR CONSULTANT (Form CC-1671)

Use the "Disclosure Determination for Consultant" form (CC-1671) to report the disclosure requirement for any consultant hired to provide services to the City of San Diego or the boards, commissions and agencies that fall under the City of San Diego's jurisdiction.

2 California Code of Regulations defines a "consultant" as an individual who, pursuant to a contract with a state or local government agency, either makes a governmental decision or serves in a staff capacity with the state or local government agency and in that capacity participates in making a governmental decision. For the complete definition of "consultant", refer to Government Code section 18701(a)(2). This section can be located at:

http://www.fppc.ca.gov/index.html?ID=52&r_id=/legal/regs/18701.htm

The "Disclosure Determination for Consultant" form is completed for all consultants under contract with the City of San Diego or the boards, commissions and agencies that fall under the City of San Diego's jurisdiction. Please follow the step-by-step directions:

1. List the department, board, commission or agency requesting the consultant service.
2. List the consulting company. If known, also list the individual(s) who will be providing the consultant services.
3. List the mailing address.
4. List the e-mail address of individual(s) providing the consultant service.
5. Provide the date the individual(s) will start providing the consultant service.
6. List all duties/responsibilities the consultant will have. This list will enable you to determine the disclosure requirement for the consultant.
7. Determine the consultant's disclosure category. Your consultant should be required to disclose only those economic interests which could potentially create a conflict of interest as he/she performs his/her contractual obligations. For ideas about possible disclosure categories, review those in your department's, board's, commission's or agency's conflict of interest code, available at:

   www.sandiego.gov/city-clerk/elections/eid/codes.shtml

Please fill out the entire "Disclosure Determination for Consultant" form, and have it signed by the appropriate authority. (Individuals with signing authority are described in your conflict of interest code as part of the disclosure requirement for Consultants.) Forward the original form to the City Clerk's Office, MS 2A.

DISCLOSURE DETERMINATION FOR CONSULTANT

**Must be signed by department director, agency president or other individual authorized by the appropriate conflict of interest code regarding consultants.*

1. Department / Board / Commission / Agency Name: _____

2. Name of Specific Consultant & Company: _____

3. Address, City, State, ZIP _____

4. E-mail Address: _____

5. Date of Assuming Office: _____

6. Project Title (as shown on 1472, "Request for Council Action") _____

7. Consultant Duties for Project: _____

8. Disclosure Determination [**select applicable disclosure requirement**]:

☐ Consultant will not be "making a governmental decision" or "serving in a staff capacity." No disclosure required.

- or -

☐ Consultant will be "making a governmental decision" or "serving in a staff capacity." Consultant is required to file a Statement of Economic Interests with the City Clerk of the City of San Diego in a timely manner as required by law. [**Select consultant's disclosure category.**]

☐ Full: Disclosure is required pursuant to the broadest disclosure category in the appropriate Conflict of Interest Code.

- or -

☐ Limited: Disclosure is required to a limited extent. [**List the specific economic interests the consultant is required to disclose.**]

_____

By: _____ _____

[Name/Title]* [Date]

Once completed, with all questions answered and an authorized signature affixed, please forward the original form to the City Clerk's Office, MS 2A. Keep a copy with the contract.

CC-1671 (12/07)

DEFINITION OF "CONSULTANT"

2 California Code of Regulations defines a "consultant" as an individual who, pursuant to a contract with a state or local government agency:

(A) Makes a governmental decision whether to:

1. Approve a rate, rule or regulation;
2. Adopt or enforce a law;
3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
4. Authorize the City to enter into, modify, or renew a contract provided it is the type of contract that requires City approval;
5. Grant City approval to a contract that requires City approval and to which the City is a party, or to the specifications for such a contract;
6. Grant City approval to a plan, design, report, study, or similar item;
7. Adopt, or grant City approval of, policies, standards, or guidelines for the City, or for any subdivision thereof; or

(B) Serves in a staff capacity with the City and in that capacity participates in making a governmental decision as defined in Regulation 18702.2 or performs the same or substantially all the same duties for the City that would otherwise be performed by an individual holding a position specified in the City's Conflict of Interest Code.

An individual "serves in a staff capacity" if he or she performs substantially all the same tasks that normally would be performed by staff member of a governmental entity. In most cases, individuals who work on only one project or a limited range of projects for an agency are not considered to be working in a "staff capacity." The length of the individual's service to the agency is relevant. Also, the tasks over the relevant period of time must be substantially the same as a position that is or should be specified in the City's conflict of interest code.

An individual "participates in making a governmental decision" if he or she: (1) negotiates, without substantive review, with a governmental entity or private person regarding the decision; or (2) advises or makes recommendations to the decision-maker, by conducting research or an investigation, preparing or presenting a report, analysis or opinion which requires the exercise of judgment on the part of the individual and the individual is attempting to influence the decision.

Regulation 18701 (a)(2)
http://www.fppc.ca.gov/index.html?ID=52&r_id=/legal/regs/18701.htm
1/28/2006

EXHIBIT G

CITY OF SAN DIEGO, CALIFORNIA

COUNCIL POLICY

SUBJECT: SUSTAINABLE BUILDING POLICY
POLICY NO.: 900-14
EFFECTIVE DATE: May 20, 2003

BACKGROUND:

Existing buildings and the building development industry consume nearly half of the total energy used in the United States. The City of San Diego's commitment to become increasingly efficient with resources, including energy, water, and materials associated with construction projects, is demonstrated in Council Policy 900-14 "Green Building Policy" adopted in 1997, Council Policy 900-16 "Community Energy Partnership," adopted in 2000, and the updated Council Policy 900-14"Sustainable Buildings Expedite Program" adopted in 2001.

On April 16, 2002, the Mayor and City Council adopted CMR 02-060 which requires City projects to achieve the U.S. Green Building Council's LEED silver standard for all new buildings and major renovations over 5,000 square feet. This places San Diego among the most progressive cities in the nation in terms of sustainable building policies.

As a participant in the International Council for Local Environmental Initiatives (ICLEI) Cities for Climate Protection Program, as a Charter member in the California Climate Action Registry and as an active member of the U.S. Green Building Council, the City of San Diego is committed to reducing greenhouse gas emissions by implementing more sustainable practices, including green building technologies.

PURPOSE:

The purpose of this policy is to reassert the City's commitment to green building practices in City facilities, and to provide leadership and guidance in promoting, facilitating, and instituting such practices in the community.

POLICY:

The following principles will be required for all newly constructed facilities and major building renovation projects for City facilities:

LEED (Leadership in Energy and Environmental Design):

The LEED (Leadership in Energy and Environmental Design) Green Building Rating System is a voluntary, consensus-based national standard for developing high-performance, sustainable
uildings. Members of the U.S. Green Building Council representing all segments of the building industry developed LEED and continue to contribute to its evolution.

The City of San Diego is committed to achieving LEED "Silver" Level Certification for all new City facilities and major building renovation projects over 5,000 square feet.

SUSTAINABLE BUILDING MEASURES:

In addition to achieving LEED "Silver" Level Certification, Council Policy 900-14 encourages the following sustainable building measures for all newly constructed facilities and major renovation projects regardless of square footage:

1. Design and construct mechanical and electrical systems to achieve the maximum energy efficiency achievable with current technology. Consultants shall use computer modeling programs, (Energy Pro) to analyze the effects of various design options and select the set of options producing the most efficient integrated design. Energy efficiency measures shall be selected to achieve energy efficiencies at least 22.51% better than California's Title 24.2001 standards for both new construction and major renovation projects.

2. Incorporate self-generation using renewable technologies to reduce environmental impacts associated with fossil fuel energy use. Newly constructed City facilities shall generate a minimum of 10%, with a goal of 20% from renewable technologies (e.g., photovoltaic, wind and fuel cells).

3. Eliminate the use of CFC based refrigerants in newly constructed facilities and major building renovations and retrofits for all heating, ventilation, air conditioning and refrigerant-based building systems.

4. Incorporate additional commissioning and measurement and verification procedures as outlined by LEED 2.0 Rating System, Energy and Atmospheres, credit 3 and credit 5 for all projects over 20,000 sq. ft.

5. Reduce the quantity of indoor air contaminates that are odorous or potentially irritating to provide installer(s) and occupant(s) health and comfort. Low-emitting materials will include adhesives, paints, coatings carpet systems, composite wood and agri-fiber products.

6. In order to maximize energy efficiency measures within these requirements, projects will combine energy efficiency measures requiring longer payback periods, with measures requiring shorter payback periods to determine the overall project period.

7. Comply with the storm water development requirements in the Storm Water Management and Discharge Control Ordinance (Municipal Code § 43.03), and the City's grading and drainage regulations and implementing documents (MC § 142.01 and 142.02, respectively).

In addition to achieving the minimum sustainable building measure this Council Policy encourages the following measures be incorporated into newly constructed facilities and major renovation projects whenever possible:

1. Use high efficiency irrigation technology, drought tolerant native plants and recycled site water to reduce potable water for irrigation by 50%. Additionally, building water consumption should be reduced by 30%.

2. Limit disruption of natural water flows and minimize storm water runoff by minimizing building footprints and other impervious areas, increasing on-site infiltration, preserving and/or restoring natural drainage systems, and reducing contaminates introduced into San Diego's bays, beaches and the ocean.

3. Facilitate the reduction of waste generated by building occupants that is hauled to and disposed of in landfills. Provide an easily accessible area that serves the entire building and is dedicated to the separation, collection and storage of materials for recycling. Recycling should include paper, glass, plastic and metals at a minimum.

4. Incorporate building products that have recycled content reducing the impacts resulting from the extraction of new materials. Newly constructed City facilities shall have a minimum of 25% of building materials that contain in aggregate, a minimum weighted average of 20% post consumer recycled content materials.

5. Reduce the use and depletion of finite raw and long-cycle renewable materials by replacing them with rapidly renewable materials. Newly constructed City facilities should consider incorporating rapidly renewable building materials for 5% of the total building materials.

6. Establish minimum indoor air quality (IAQ) performance to prevent the development of indoor air quality problems in buildings, maintaining the health and well being of the occupants. Newly constructed City facilities will comply with IAQ by conforming to ASHRAE 62-1999.

7. City buildings will be designed to take the maximum advantage of passive and natural sources of heat, cooling, ventilation and light.

The Environmental Services Department, Energy Conservation and Management Division has been designated by this Council Policy as the clearing authority for issues relating to energy for the City of San Diego. The Energy Conservation and Management Division will enter into a Memorandum of Understanding with those City Departments who design, renovate and build new city owned facilities to insure all new City facilities reflect the intent of Council Policy 900-14.

PRIVATE-SECTOR/INCENTIVES:

It shall be the policy of the City Council to expedite the ministerial process for projects which meet the following criteria:

1. Residential projects that provide 50% of their projected total energy use utilizing renewable energy resources, (e.g., photovoltaic, wind and fuel cells).

2. Commercial and industrial projects that provide 30% of their projected total energy use utilizing renewable energy resources, (e.g., photovoltaic, wind and fuel cells).

3. Residential and commercial and industrial projects that exceed the State of California Title 24 energy requirements by:

   a. 15% better than California's Title 24.2001 for Residential Buildings.
   b. 10% better than California's Title 24.2001 for Commercial and Industrial Buildings.

It shall be the policy of the City Council to expedite the discretionary process for projects which meet the following criteria:

1. Incorporate the U.S. Green Building Council, Leadership in Energy and Environmental Design (LEED) 2.0 Rating System "Silver" Level Certification for commercial development projects.

2. Incorporate self-generation through renewable technologies (e.g., photovoltaic, wind and fuel cells) to reduce environmental impacts associated with fossil fuel energy use for commercial and industrial projects generating a minimum of 30% or more of the designed energy consumption from renewable technologies such as photovoltaic, wind and fuel cells.

3. Residential discretionary projects of 4 units or more within urbanized communities as defined in the Progress Guide and General Plan that provide 50% of their projected total energy use utilizing renewable energy resources.

HEALTH AND RESOURCE CONSERVATION:

1. Projects will be designed to avoid inflicting permanent adverse impact on the natural state of the air, land and water, by using resources and methods that minimize pollution and waste, and do not cause permanent damage to the earth, including erosion.

2. Projects will include innovative strategies and technologies such as porous paving to conserve water, reduce effluent and run-off, thus recharging the water table.

3. When feasible, native plants will be used in landscaping to reduce pesticide, fertilizer, and water usage.

4. Buildings will be constructed and operated using materials, methods, mechanical and electrical systems that ensure a healthful indoor air quality, while avoiding contamination by carcinogens, volatile organic compounds, fungi, molds, bacteria, and other known toxins.

5. Projects will be planned to minimize waste through the use of a variety of strategies such as: a) reuse of materials or the highest practical recycled content; b) raw materials derived from sustainable or renewable sources; c) materials and products ensuring long life/durability and recyclability; d) materials requiring the minimum of energy and rare resources to produce and use; and e) materials requiring the least amount of energy to transport to the job site.

OUTREACH / EDUCATION:

1. An education and outreach effort will be implemented to make the community aware of the benefits of "Green Building" practices.

2. The City will sponsor a recognition program for innovative Green Building projects implemented in the public as well as private sector in an effort to encourage and recognize outstanding environmental protection and energy conservation projects.

IMPLEMENTATION:

The City will seek cooperation with other governmental agencies, public interest organizations, and the private sector to promote, facilitate, and implement Green Building and energy efficiency in the community.

LEGISLATION:

The City will support State and Federal legislation that promotes or allows sustainable development, conservation of natural resources, and energy efficiency technology.

REFERENCES:

Related existing Council Policies:
400-11, Water Conservation Techniques
400-12, Water Reclamation/Reuse
900-02, Energy Conservation and Management
900-06, Solid Waste Recycling

HISTORY:
Adopted by Resolution R-289457 11/18/1997
Amended by Resolution R-295074 06/19/2001
Amended by Resolution R-298000 05/20/2003

City of San Diego

EXHIBIT H

Consultant Performance Evaluation

The purpose of this form is to provide historical data to City staff when selecting consultants.

Section I

1. PROJECT DATA	2. CONSULTANT DATA
1a. Project (title, location and CIP No.):	2a. Name and address of Consultant:
1b. Brief Description:	2b. Consultant's Project Manager:
1c. Budgeted Cost:	Phone ( ) _____

3. CITY DEPARTMENT RESPONSIBLE	
3a. Department (include division):	3b. Project Manager (address & phone):

4. CONTRACT DATA (DESIGN AND CONSTRUCTION)

4. **Design**

4a. Agreement Date: _____ Resolution #: _____ $_____

4b. Amendments: $_____ / # _____ (City) $_____ / # _____ (Consultant)

4c. Total Agreement (4a. & 4b.): $_____

4d. Type of Work (design, study, etc.):

4e. Key Contract Completion Dates:

	____%	____%	____%	____%	____%	100 %
Agreement						
Delivery						
Acceptance						

5. **Construction**

5a. Contractor _____ Phone ( ) _____
(name and address)

5b. Superintendent _____

5c. Notice to Proceed _____ (date)

5d. Working days _____ (number)

5e. Actual Working days _____ (number)

5f. Change Orders:
Errors/Omissions _____% of const. cost $_____
Unforeseen Conditions _____% of const. cost $_____
Changed Scope _____% of const. cost $_____
Changes Quantities _____% of const. cost $_____
Total Construction Cost $_____

6. OVERALL RATING (Please ensure Section II is completed)

	Excellent	Satisfactory	Poor
6a. Plans/specification accuracy.....	_____	_____	_____
Consistency with budget.....	_____	_____	_____
Responsiveness to City Staff.....	_____	_____	_____

6b. Overall Rating _____

7. AUTHORIZING SIGNATURES

7a. Project Manager _____ Date _____

7b. Deputy Director _____ Date _____

Section II **SPECIFIC RATINGS**

PLANS / SPECIFICATION ACCURACY	EXCELLENT	SATISFACTORY	POOR	N/A	RESPONSIVENESS TO STAFF	EXCELLENT	SATISFACTORY	POOR	N/A
Plan/Specification clear and precise					Timely Responses				
Plans/Specs Coordination					Attitude toward Client and review bodies				
Plans/Specs properly formatted					Follows direction and chain of responsibility				
Code Requirements covered					Work product delivered on time				
Adhered to City Standard Drawings/Specs					Timeliness in notifying City of major problems				
Drawings reflect existing conditions					Resolution of Field problems				
As-Built Drawings					CONSISTENCY WITH BUDGET	EXCELLENT	SATISFACTORY	POOR	N/A
Quality Design					Reasonable Agreement negotiation				
Change Orders due to design deficiencies are minimized					Adherance to fee schedule				
					Adherance to project budget				
					Value Engineering Analysis				

Section III **SUPPLEMENTAL INFORMATION**

Please ensure to attach additional documentation as needed.

Item _____ : _____

_____

Item _____ : _____

_____

Item _____ : _____

_____

Item _____ : _____

_____

Item _____ : _____

_____

Item _____ : _____

(*Supporting documentation attached yes _____ no _____)

EXHIBIT I

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:

Doing Business As:

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:

License Number: License Type:

Contractor/Vendor Registration Form – Page 2

Firm Name:

Product/Services Description:

Product/Services Information:

NAICS Codes: *

*find list of available NAICS Codes at http://www.census.gov/epcd/www/naics.html and select 2007 NAICS codes 6 digit only OR request hard copy from Purchasing & Contracting

The City requires this information for statistical purposes only.

Primary Owner of the Firm (51% ownership or more)	☐ Male ☐ Female or	☐ Sole Proprietorship ☐ Partnership ☐ Corporation ☐ Limited Liability Partnership ☐ Limited Liability Corporation ☐ Joint Venture ☐ Non-Profit ☐ Governmental/Municipality/Regulatory Agency ☐ Utility

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)
	DPBT	(Persons With A Disability Or Disabilities Business Enterprise)
	LGBT	(Lesbian, Gay, Bisexual, Transsexual Business Enterprise)

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

Certification #:

Agency:

Certification #:

Agency:

Information regarding a vendor's racial or gender ownership status will not be used as a factor in the City's selection process for any contract.

Please mail this form to: Purchasing & Contracting Department
1200 Third Avenue, Suite 200
San Diego, CA 92101

or fax to: 619/ 236-5904

City of San Diego Purchasing & Contracting Department

CONTRACTOR STANDARDS

Pledge of Compliance

Effective December 24, 2008, the Council of the City of San Diego adopted Ordinance No. O-19808 to extend the Contractor Standards Ordinance to all contracts greater than $50,000. The intent of the Contractor Standards clause of San Diego Municipal Code §22.3224 is to ensure the City of San Diego conducts business with firms that have the necessary quality, fitness and capacity to perform the work set forth in the contract.

To assist the Purchasing Agent in making this determination and to fulfill the requirements of §22.3224(d), each bidder/proposer must complete and submit this *Pledge of Compliance* with the bid/proposal. If a non-competitive process is used to procure the contract, the proposed contractor must submit this completed *Pledge of Compliance* prior to execution of the contract. A submitted *Pledge of Compliance* is a public record and information contained within will be available for public review for at least ten (10) calendar days, except to the extent that such information is exempt from disclosure pursuant to applicable law.

All responses must be typewritten or printed in ink. If an explanation is requested or additional space is required, respondents must use the *Pledge of Compliance Attachment "A"* and sign each page. The signatory guarantees the truth and accuracy of all responses and statements. Failure to submit this completed *Pledge of Compliance* may make the bid/proposal non-responsive and disqualified from the bidding process. If a change occurs which would modify any response, Contractor must provide the Purchasing Agent an updated response within thirty (30) calendar days.

A. PROJECT TITLE:

_____

_____

_____

B. BIDDER/CONTRACTOR INFORMATION:

Legal Name		DBA	
Street Address	City	State	Zip
Contact Person, Title	Phone	Fax	

C. OWNERSHIP AND NAME CHANGES:

1. In the past five (5) years, has your firm changed its name?
   ☐ **Yes** ☐ **No**

   If **Yes**, use *Pledge of Compliance Attachment "A"* to list all prior legal and DBA names, addresses and dates when used. Explain the specific reasons for each name change.
2. In the past five (5) years, has a firm owner, partner or officer operated a similar business?
   ☐ **Yes** ☐ **No**

   If **Yes**, use *Pledge of Compliance Attachment "A"* to list names and addresses of all businesses and the person who operated the business. Include information about a similar business only if an owner, partner or officer of your firm holds or has held a similar position in another firm.

D. BUSINESS ORGANIZATION/STRUCTURE: Indicate the organizational structure of your firm. Check one only on this page. Use *Pledge of Compliance Attachment "A"* if more space is required.

☐ **Corporation** Date incorporated: ____/____/_____ State of incorporation: _____

List corporation's current officers: President: _____
Vice Pres: _____
Secretary: _____
Treasurer: _____

Is your firm a publicly traded corporation? ☐ **Yes** ☐ **No**

If **Yes**, name those who own five percent (5%) or more of the corporation's stocks:

_____
_____
_____
_____

☐ **Limited Liability Company** Date formed: ____/____/_____ State of formation: _____

List names of members who own five percent (5%) or more of the company:

_____
_____
_____
_____

☐ **Partnership** Date formed: ____/____/_____ State of formation: _____

List names of all firm partners:

_____
_____
_____
_____

☐ **Sole Proprietorship** Date started: _____/_____/_____

List all firms you have been an owner, partner or officer with during the past five (5) years. Do not include ownership of stock in a publicly traded company:

_____
_____
_____
_____

☐ **Joint Venture** Date formed: _____/_____/_____

List each firm in the joint venture and its percentage of ownership:

_____
_____
_____
_____

Note: Each member of a Joint Venture must complete a separate *Contractor Standards Pledge of Compliance* for a Joint Venture's submission to be considered responsive.

E. FINANCIAL RESOURCES AND RESPONSIBILITY:

1. Is your firm in preparation for, in the process of, or in negotiations toward being sold?
   ☐ **Yes** ☐ **No**

   If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances, including name of the buyer and principal contact information.
2. In the past five (5) years, has your firm been denied bonding?
   ☐ **Yes** ☐ **No**

   If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances; include bonding company name.
3. In the past five (5) years, has a bonding company made any payments to satisfy claims made against a bond issued on your firm's behalf or a firm where you were the principal?
   ☐ **Yes** ☐ **No**

   If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances.

F. PERFORMANCE HISTORY:

1. In the past five (5) years, has your firm been found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for defaulting or breaching a contract with a government agency?
   ☐ **Yes** ☐ **No**

   If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances.
2. In the past five (5) years, has a government agency terminated your firm's contract prior to completion?
   ☐ **Yes** ☐ **No**

   If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances and provide principal contact information.

G. COMPLIANCE:

1. In the past five (5) years, has your firm or any firm owner, partner, officer, executives or management been criminally penalized or found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement for violating any federal, state or local law in performance of a contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws which affect employees?
   ☐ **Yes** ☐ **No**

   If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances surrounding each instance; include name of entity involved, specific infraction(s) or violation(s), dates of instances, and outcome with current status.
2. In the past five (5) years, has your firm been debarred or determined to be non-responsible by a government agency?
   ☐ **Yes** ☐ **No**

   If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances of each instance; include name of entity involved, specific infraction, dates, and outcome.

H. BUSINESS INTEGRITY:

1. In the past five (5) years, has your firm been convicted of or found liable in a civil suit for making a false claim or material misrepresentation to a private or governmental entity?

   ☐ **Yes** ☐ **No**

   If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances of each instance; include the entity involved, specific infraction(s) or violation(s), dates, outcome and current status.

2. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a crime, including misdemeanors, or been found liable in a civil suit involving the bidding, awarding, or performance of a government contract?

   ☐ **Yes** ☐ **No**

   If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances of each instance; include the entity involved, specific infraction(s), dates, outcome and current status.

I. TYPE OF SUBMISSION: This document is submitted as:

☐ Initial submission of *Contractor Standards Pledge of Compliance*.

☐ Update of prior *Contractor Standards Pledge of Compliance* dated _____/_____/_____.

Complete all questions and sign below. Each *Pledge of Compliance Attachment "A"* page must be signed.

Under penalty of perjury under the laws of the State of California, I certify I have read and understand the questions contained in this *Pledge of Compliance* and that I am responsible for completeness and accuracy of responses and all information provided is true to the best of my knowledge and belief. I further certify my agreement to the following provisions of San Diego Municipal Code §22,3224:

(a) To comply with all applicable local, State and Federal laws, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.

(b) To notify the Purchasing Agent within fifteen (15) calendar days upon receiving notification that a government agency has begun an investigation of the Contractor that may result in a finding that the Contractor is or was not in compliance with laws stated in paragraph (a).

(c) To notify the Purchasing Agent within fifteen (15) calendar days when there has been a finding by a government agency or court of competent jurisdiction of a violation by the Contractor of laws stated in paragraph (a).

(d) To provide the Purchasing Agent updated responses to the *Contractor Standards Pledge of Compliance* within thirty (30) calendar days if a change occurs which would modify any response.

(e) To notify the Purchasing Agent within fifteen (15) days of becoming aware of an investigation or finding by a government agency or court of competent jurisdiction of a violation by a subcontractor of laws stated in paragraph (a).

(f) To cooperate fully with the Purchasing Agent and the City during any investigation and to respond to a request for information within ten (10) working days from the request date.

Failure to sign and submit this form with the bid/proposal shall make the bid/proposal non-responsive.

_____	_____	_____
Print Name, Title	Signature	Date

City of San Diego Purchasing & Contracting Department
CONTRACTOR STANDARDS
Pledge of Compliance Attachment "A"

Provide additional information in space below. Use additional *Pledge of Compliance Attachment "A"* pages as needed; sign each page. Print in ink or type responses and indicate question being answered. Information provided will be available for public review, except if exempt from disclosure pursuant to applicable law.

Under penalty of perjury under the laws of the State of California, I certify I have read and understand the questions contained in this *Contractor Standards Pledge of Compliance* and that I am responsible for completeness and accuracy of responses on this *Pledge of Compliance Attachment "A"* page and all information provided is true to the best of my knowledge.

Print Name, Title	Signature	Date