

**COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO**

DATE: 03/11/2011

ORIGINATING DEPARTMENT: ECP/Arch Eng and Parks

SUBJECT: Agreement for Professional Services - NTC Aquatic Center Project

COUNCIL DISTRICT(S): 2 (Faulconer)

CONTACT/PHONE NUMBER: Darren Greenhalgh/533-6600

DESCRIPTIVE SUMMARY OF ITEM:

Approve the Agreement with Architects Richard Bundy & David Thompson, Inc. and the expenditure of \$300,000 for professional services for the NTC Aquatic Center project.

STAFF RECOMMENDATION:

Adopt the resolutions.

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

Project is to develop a new aquatic facility center at the Naval Training Center (NTC) Park. The proposed facility will be including, but not limited to, recreational and competitive pools; a leisure pool with playground features for small children; supporting facility, and associated site improvements.

This agreement between the City and Architects Richard Bundy & David Thompson, Inc. is intended to cover a full range of professional services necessary for the preparation of General Development Plan, design development, construction documents and construction support. There are multi-disciplinary professions as part of this design team including architectural design, aquatic design and engineering, landscape architecture, structural, geotechnical, civil, mechanical and electrical engineering necessary for this new aquatic facility.

The scope of services are identified in three phases: 1) General Development Plan/schematic design, 2) design development and construction documents, 3) construction administration which will be awarded once additional funding available via city council appropriations and authorization for expenditures. Phase I of the agreement in the amount of \$300,000 is feasible with the current budget funded by Naval Training Center Redevelopment Agency Contribution to CIP.

Total project cost and design fees for all three phases are listed in the Cost Summary.

FISCAL CONSIDERATIONS:

Funds in the amount of \$300,000 are available from CIP S-10000, NTC Aquatic Center, Fund 200619, NTC Redevelopment Agency Contribution to CIP. Funding for the remaining design working phases and construction contract has not been identified. Funding for maintenance will be requested when park is constructed.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 2.2701 through 22.27-8) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

Prior to award, a work force report, and if necessary, an Equal Opportunity Plan shall be submitted. Staff will monitor the Plan and adherence to the Nondiscrimination Ordinance. EOC staff will evaluate the bidder's compliance with identified mandatory goals or submission of Good Faith Efforts. Failure to comply with mandatory goals or successfully submit required Good Faith Efforts will lead to the bid being declared non-responsive. This contract was advertised in the San Diego Daily Transcript, the City of San Diego's website, or the E-Bid Board.

Funding Agency: City of San Diego's Redevelopment Agency
Prevailing Wages: State and Federal's Prevailing wages do not apply.

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee):

NTC Park Improvement Agreement, July 26, 2000 (Agency Resolution N. R-03175) and June 26, 2000 (Council Resolution No. R-293410).

First Amendment to the NTC Park Improvement Agreement, May 24, 2005 (Agency Resolution No. R-303698).

Second Amendment to the NTC Park Improvement Agreement, May 19, 2008 (Agency Resolution No. R-04270 and Council Resolution No. R-303698).

NTC Park Aquatic Center Planning and Design Funding, July 15, 2008 (Agency Resolution No. R-04301 and Council Resolution No. R-303918).

Third Amendment to the NTC Park Improvement Agreement; Amendment to the Fiscal Year 2010 Capital Improvement Program Budget by adding CIP No. S10000, NTC Aquatic Center Project; the appropriation and expenditure of the funds, June 09, 2010 (Council Resolution No. R-305882).

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

This activity is to execute a consultant agreement for professional services necessary for the design and development of NTC Aquatic Center. The project will be designed in accordance with City Council 600-33, Community Notification and Input for City-Wide Park Development Projects.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Peninsula Community
Park & Recreation advisory committees and Board
Park and Recreation Department
NTC Redevelopment Agency

Architects Richard Bundy & David Thompson

Heinrichs, Tony

Originating Department

Goldstone, Jay

Deputy Chief/Chief Operating Officer

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY
OF SAN DIEGO AUTHORIZING A PHASE FUNDED
AGREEMENT WITH RICHARD BUNDY AND DAVID
THOMPSON ARCHITECTURAL DESIGN SERVICES,
INC. FOR THE DESIGN OF A NEW AQUATIC FACILITY
CENTER AT THE NAVAL TRAINING CENTER PARK.

WHEREAS, a project to develop a new aquatic facility center at the Naval Training Center (NTC) has been proposed; and

WHEREAS, the proposed facility will include recreational and competitive pools, a leisure pool with playground features for small children, supporting facilities, and associated site improvements; and

WHEREAS, the phase funded agreement between the City and Architects Richard Bundy and David Thompson, Inc., is intended to cover a full range of professional services necessary for the preparation of General Development Plan, design development, construction documents, and construction support; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That the Mayor, or his designee, is authorized to execute a phase funded agreement with Architects Richard Bundy and David Thompson, Inc. for professional services required for the NTC Aquatic Center (Project) for a total amount not to exceed \$1,270,118, contingent upon the City Comptroller furnishing one or more certificates certifying that the funds necessary for expenditure under established contract funding phases are, or will be, on deposit with the City Treasurer and under the terms and conditions set forth in the Agreement, on file with the City Clerk as Document No. RR-_____.

2. That the Chief Financial Officer is authorized to appropriate and expend an amount not to exceed \$300,000 from Fund 200619, NTC Redevelopment Agency Contribution to CIP, CIP S-10000, NTC Aquatic Center, solely and exclusively to provide funds for Phase I of the Agreement, and is authorized to appropriate and expend the following amounts for the corresponding phases, contingent upon the City Comptroller furnishing one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer and contingent upon the City Council approving sufficient funding:

Phase I:	\$ 300,000	Schematic Design/General Development Plan
Phase II:	\$709,452	Design Development/Construction Documents
Phase III:	\$260,736	Construction Administration

APPROVED: JAN I. GOLDSMITH, City Attorney

By Christina L. Rae
Christina L. Rae
Deputy City Attorney

CLR:cla:mb
07/18/11
Or.Dept:ECP

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at its meeting of _____.

ELIZABETH S. MALAND, City Clerk

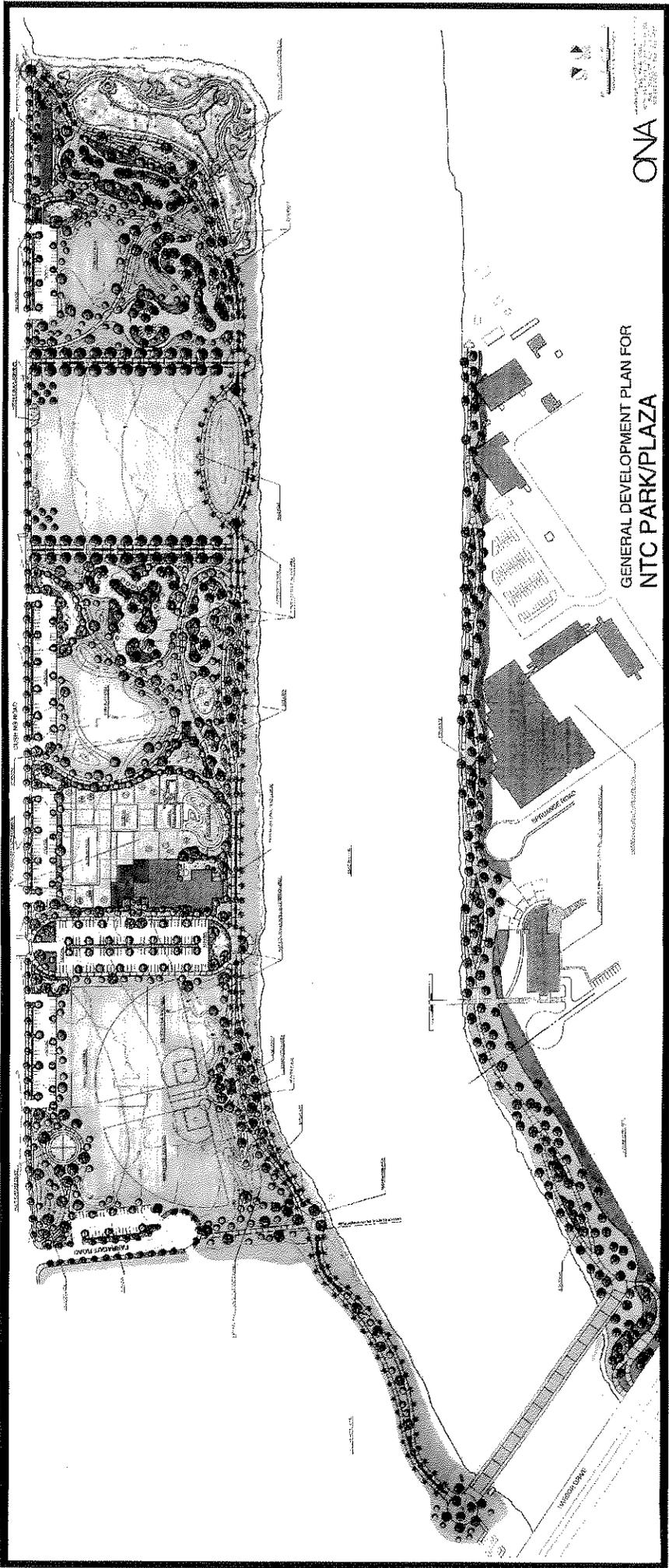
By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor



GENERAL DEVELOPMENT PLAN FOR
NTC PARK/PLAZA

ONA

**PHASE FUNDED AGREEMENT BETWEEN
THE CITY OF SAN DIEGO
AND
ARCHITECTS RICHARD BUNDY & DAVID THOMPSON, INC.**

**FOR
NTC PARK AQUATIC CENTER**

CONTRACT NUMBER: H094786

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**PHASE FUNDED AGREEMENT BETWEEN
THE CITY OF SAN DIEGO
AND ARCHITECTS RICHARD BUNDY & DAVID THOMPSON, INC.
FOR DESIGN PROFESSIONAL SERVICES**

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation [City], and Architects Richard Bundy & David Thompson, Inc. [Design Professional] for the Design Professional to provide Professional Services to the City for the NTC Park Aquatic Center (H094786) [Project].

RECITALS

The City wants to retain the services of a professional architectural firm to provide professional 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 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 Engineering & Capital Projects 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 Engineering & Capital Projects 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 the 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 9.12 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 **August 31st, 2016**; 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 total compensation payable by the City to the Design Professional for performance of all Professional Services rendered in accordance with this Agreement, including reasonably related expenses, shall not exceed **\$1,270,188** (one million two hundred seventy thousand one hundred eighty-eight dollars) as set forth in the Compensation and Fee Schedule (Exhibit B) and Funding Phases as described in Section 3.1.1 of this Agreement. The compensation for the Scope of Services shall not exceed **\$1,058,490** (one million fifty eight thousand four hundred ninety dollars) and the compensation for Additional Services (described in Section 3.2) and reimbursable expenses, if any, shall not exceed **\$211,698** (two hundred eleven thousand six hundred ninety-eight dollars). Moreover, the total compensation to be paid to the Design Professional by the City for all work performed under each phase of this Agreement shall not exceed the amount for each phase as specified in the Phased Funding Schedule in Section 3.1.1 unless said amount is modified in writing by an amendment to this Agreement.

3.1.1 Phased Funding Schedule. The work to be performed under this Agreement shall be performed during three separate and specific phases as identified in the Compensation and Fee Schedule (Exhibit B) and the following Phased Funding Schedule.

PHASED FUNDING SCHEDULE

Phase	Duration	Compensation	Reimbursable	Additional services	Total Compensation
I	FY12	250,000.00	12,500.00	37,500.00	300,000.00
II	TBD- upon funds being made available	591,210.00	29,560.50	88,681.50	709,452.00
III	TBD – upon funds being made available	217,280.00	10,864.00	32,592.00	260,736.00

Total for all phases: an amount not to exceed 1,270,188.00

3.1.2 It is expressly understood by and between the City and the Design Professional that the work and compensation for each Funding Phase is subject to funds being appropriated and authorized by the City Council for said services and compensation. The City’s obligations and the Design Professional’s obligations under this multi-phase contract which shall be funded by multi-phase funding authorizations are as follows:

a. The amount of funds available at time of contract award is not considered sufficient for the performance required for any Funding Phase other than Funding Phase I. When additional funds are available for the full requirements of the next Funding Phase, the City shall so notify the Design Professional in writing. The City shall also modify the amount of funds as available for contract performance as described in the Funding Schedule. This procedure shall apply for each successive Funding Phase.

b. The City is not obligated to the Design Professional for any amount over that specified in the Funding Schedule as available for contract performance and authorized by the City Council.

c. The Design Professional is not obligated to incur costs for the performance of work required for any Funding Phase after the first phase; unless and until written notification is received from the City of an increase in availability of funds. If so notified, the Design Professional’s obligation shall increase only to the extent contract performance is required for the additional Funding Phase for which funds are made available.

d. If the Agreement is terminated under Section 2.6 “City’s Right to Terminate for Convenience”, the settlement proposal shall be determined pursuant to procedures established in that section. The Design Professional shall be entitled to compensation for only those Services provided under those specific Funding Phases for which funds have been made available. If the Agreement is terminated for default, the City’s rights under this Agreement shall apply to the entire multi-phase requirements.

e. Notification to the Design Professional of an increase or decrease in the funds available for performance of this Agreement under another clause (e.g., an “option” or “changes” clause), shall not constitute the notification contemplated by subparagraph *a* above.

3.2 Additional Services. The City may require that the Design Professional perform additional Professional Services [Additional Services] 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 architectural 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, 4.10.3, 4.17, 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 Design Professional 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 Design Professional, 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

Design Professional, 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: **Engineering & Capital Projects Department, c/o Debbie Van Martin, MS 908A, 600 B Street, Suite 800**, and notice to the Design Professional shall be addressed to: **Architects Richard Bundy & David Thompson, Inc., 715 J Street, Suite 207, San Diego, CA 92101**.

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: **David Thompson** [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, subconsultants, contractors, subcontractors and vendors 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.

Registration will be a prerequisite for the following:

- a) Submission of contract or subcontract proposals for City projects,
- b) Acceptance of all consultant and vendor bills and invoices to the City, and
- c) Award of all contracts issued by the City.

Contractor/Vendor Registration shall remain valid for 2 years from the date the registration form is submitted, and must be renewed at the time.

It shall be the Prime Consultant's responsibility to ensure that all its proposed subcontractors submit the Contractor/Vendor Registration form prior to the award of the agreement. Electronic copy of the Contractor/Vendor Registration form is available for download from the following site: <http://www.sandiego.gov/purchasing/vendor/index.shtml>.

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.

9.24 Equal Benefits Ordinance. This Agreement is subject to the Equal Benefits Ordinance [EBO]. All consultants are required to complete the Equal Benefits Ordinance Certification of Compliance included herein as Exhibit K. Effective January 1, 2011, any contract awarded from this solicitation is subject to the City of San Diego's Equal Benefits Ordinance [EBO], Chapter 2, Article 2, Division 43 of the San Diego Municipal Code [SDMC].

In accordance with the EBO, contractors must certify they will provide and maintain equal benefits as defined in SDMC §22.4302 for the duration of the contract [SDMC §22.4304(f)]. Failure to maintain equal benefits is a material breach of the contract [SDMC §22.4304(e)]. Contractors must notify employees of their equal benefits policy at the time of hire and during open enrollment periods and must post a copy of the following statement in an area frequented by employees:

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

Contractors also must give the City access to documents and records sufficient for the City to verify the contractors are providing equal benefits and otherwise complying with EBO requirements. Full text of the EBO and the Rules Implementing the Equal Benefits Ordinance are posted on the City's website at www.sandiego.gov/purchasing/ or can be requested from the Equal Benefits Program at (619) 533-3948.

The remainder of this page has been intentionally left blank.

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 Corporate Resolution of Richard Bundy & David Thompson, Incorporated.

Dated this _____ day of _____, _____.

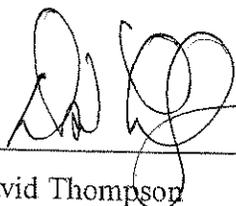
THE CITY OF SAN DIEGO
Mayor or Designee

By _____

Downs Prior

Principal Contracts Specialist

I HEREBY CERTIFY I can legally bind **Architects Richard Bundy & David Thompson, Inc.** and that I have read all of this Agreement, this 15TH day of JULY, 2011.

By  _____

David Thompson

Firm Principal/Architect

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 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 K- Equal Benefits Ordinance Certification of Compliance
-

SCOPE OF SERVICES



EXHIBIT A
SCOPE OF SERVICES

1. General

- 1.1 Under the supervision of the Mayor or his designated representative, ARCHITECTS Richard Bundy & David Thompson (Design Professional) shall provide professional services for the NTC Park Aquatic Center Project including: land survey; geotechnical engineering; civil engineering; environmental engineering; landscaping; architecture; aquatic engineering; structural engineering; mechanical engineering; electrical engineering; sustainable design; and, cost estimating, as necessary to complete the project.
- 1.2 The Design Professional shall design the project in accordance with the Consultant's Guide to Park Design & Development, as produced by the City of San Diego's Park and Recreation Department and dated November 2010.
- 1.3 The Design Professional shall research and obtain available as-built drawings from the City's Maps and Records Section, however, the Design Professional shall not be responsible for inaccurate or unavailable as-built information.
- 1.4 The Design Professional shall undertake a limited survey and evaluation of existing Building 619, located on the project site, in order to consider the potential for the adaptation and incorporation of this structure into the project. In the event of a subsequent determination that the existing structure will be incorporated into the project, additional survey work may be required and may be subject to an additional services agreement.
- 1.5 The Design Professional shall work interactively with the City to define the project scope, schedule and budget. Subject to confirmation through a public workshop process and potential revision, it is assumed that:
 - 1.5.1 the project will include an outdoor competitive pool (50 M x 25Y) with a temporary seating deck; a leisure pool; a wet playground featuring two water slides, a spray bar, a current channel, and water vortex; a bath house facility of approximately 9,400 s.f.; and, site improvements to include parking, security and safety features.
 - 1.5.2 the project construction will be phased.
 - 1.5.3 the total construction cost will be approximately \$29,000,000.00 based upon an anticipated bid in 2014.
- 1.6 In support of the Design Professional's efforts, the City will:
 - 1.6.1 make the Contract Administrator (or designated alternate) reasonably available to the Design Professional, by phone, during normal City of San Diego business hours.

- 1.6.2 provide a copy of all drawings used in the construction of the surrounding improvements known as NTC Park, including all available as-built updates.
- 1.6.3 provide access to Building 619.
- 1.6.4 coordinate and make timely arrangements for:
 - 1.6.4.1 meetings between the Design Professional and City Staff members as needed to exchange information pertinent to the design of the project.
 - 1.6.4.2 public workshops for interactive meetings between the Design Professional, interested citizens, City Staff, members of City advisory committees and/or Public Officials for the purpose of identifying project goals and objectives, and defining the project scope and budget.
 - 1.6.4.3 presentations by the Design Professional to City advisory committees and boards as required for project approvals.
 - 1.6.4.4 incremental scope and technical reviews by City Staff of designated incremental progress submittals.
- 1.6.5 prepare and process all documents in order to amend the existing mitigated negative declaration to the Initial (Environmental) Study for the NTC Park project (with technical assistance from the Design Professional).
- 1.6.6 pay fees related to permit applications, building permit fees, LEED certification or other similar fees.
- 1.6.7 organize, administer and pay expenses related to the solicitation of construction bids.
- 1.6.8 select providers of and payment of fees for special inspection and testing services during construction of the project.

2 General Development Plan

2.1 Project Initiation

2.1.1 Services

- 2.1.1.1 At the outset of the project, the Design Professional will secure general information needed to initiate project design, including: the preparation of a measured topographic and utilities survey of the site; a general survey of Building 619 to record the basic building layout, construction systems and condition; the collection of existing environmental documentation; and, will undertake an analysis of site opportunities and site constraints.

- 2.1.1.2 The Design Professional will prepare graphic materials to be used for reference during Community Workshop #1, including (but not limited to):
 - 2.1.1.2.1 base maps of NTC, NTC Park and the project site;
 - 2.1.1.2.2 a site analysis drawing showing influences on the forthcoming project design;
 - 2.1.1.2.3 site and context photographs;
 - 2.1.1.2.4 photographs of example aquatic facilities; and,
 - 2.1.1.2.5 a park amenities survey form
 - 2.1.1.3 The Design Professional will facilitate Community Workshop #1 to include the following activities:
 - 2.1.1.3.1 general presentation on overall project schedule and anticipated budget.
 - 2.1.1.3.2 general presentation on site boundaries, site features, a menu of potential aquatic features, a list of design considerations.
 - 2.1.1.3.3 open brainstorming session to collect initial ideas, concerns, goals and objectives
 - 2.1.1.3.4 breakout session(s) [in smaller groups] to develop initial goals and implementation concepts.
 - 2.1.1.3.5 plenary session to discuss results of breakout session(s), summarize ideas and to define goals/objectives.
 - 2.1.1.3.6 documentation of all workshop comments/ideas
 - 2.1.1.4 Following Community Workshop #1, the Design Professional will meet with City Engineering & Capital Projects (E&CP) Department and City Park & Recreation Department representatives to discuss the outcome of the workshop and the direction of forthcoming design efforts.
- 2.1.2 Deliverables
- 2.1.2.1 Topographic/Utilities Survey (full size) - 1 copy
 - 2.1.2.2 As Built Layouts of Building 619 (full size) - 1 copy
 - 2.1.2.3 Workshop 1 Reference Graphics (reduced to 8.5" x 11") -1 set
 - 2.1.2.3.1 Base Map of NTC
 - 2.1.2.3.2 Base Map of NTC Park
 - 2.1.2.3.3 Base Map of Project Site
 - 2.1.2.3.4 Site Analysis
 - 2.1.2.3.5 site and context photographs

- 2.1.2.4 Workshop 1 Summary of Comments - 1 copy
- 2.1.2.5 Workshop 1 activity notes (reduced to 8.5" x 11") - 1 set

2.2 Concept Design

2.2.1 Services

- 2.2.1.1 Based upon the results of Community Workshop #1, the Design Professional will develop 3 - 4 draft concept alternatives, including site and building layouts.
- 2.2.1.2 The draft concept alternatives will be distributed to the design team members for the development of draft system concepts and to prepare for a collaborative team meeting.
- 2.2.1.3 The design team will meet to discuss draft system concepts and to determine direction for the development of the concept alternatives.
- 2.2.1.4 The design team will participate in a LEED workshop in order to identify potential sustainable design features, to establish initial achievement status against LEED Rating System for New Construction and to assign follow-up activities.
- 2.2.1.5 Based upon the results of the design team meeting, the Design Professional and the Aquatic Engineer will collaborate to refine the concept alternatives to include preliminary site plans and floor plans.
- 2.2.1.6 The refined concept alternatives will be distributed to the members of the design team for review and comment.
- 2.2.1.7 The design team will prepare cost estimates for the concept alternatives
- 2.2.1.8 The Design Professional will prepare graphic materials to be used for reference during Community Workshop #2.
- 2.2.1.9 The Design Professional will facilitate Community Workshop #2 to include the following activities:
 - 2.2.1.9.1 Workshop #1 recap, overview of interim activities and summary of response to workshop #1 comments.
 - 2.2.1.9.2 Overview of concept alternatives.
 - 2.2.1.9.3 Planning breakout session(s) [smaller groups] to collect review comments and ideas for refinement.

2.2.1.9.4 Plenary session to share comments from breakouts and to identify preferred alternative or hybrid preferences.

2.2.1.9.5 Documentation of all workshop comments/ideas.

2.2.1.10 Following Community Workshop #2, the Design Professional will meet with E&CP and P&R representatives to discuss the outcome of the workshop and the direction of forthcoming design efforts.

2.2.2 Deliverables

2.2.2.1 Draft LEED Scorecard - 1 copy

2.1.2.2 Workshop 2 Reference Graphics (reduced to 8.5" x 11") -1 set

2.1.2.2.1 Response to Workshop 1 Comments

2.1.2.2.2 Drawings of Concept Alternatives

2.1.2.2.3 Cost Estimates for Concept Alternatives

2.1.2.3 Workshop 2 Summary of Comments - 1 copy

2.1.2.4 Workshop 2 Activity Notes (reduced to 8.5" x 11") - 1 set

2.3 Schematic Design

2.3.1 Services

2.3.1.1 Based upon the results of Community Workshop #2, the Design Professional and Aquatic Engineer will develop the preferred concept alternate or a hybrid of components of multiple concepts.

2.3.1.2 The Design Professional will undertake a geotechnical investigation based upon the preferred/hybrid concept.

2.3.1.3 The Design Professional will undertake an analysis of site utilities in order to determine the scope of improvements and to initiate planning requests to the utility service providers.

2.3.1.4 The Design Professional and design team will prepare schematic designs for all disciplines.

2.3.1.5 The design team will meet to coordinate between design disciplines and to update the LEED scorecard.

2.3.1.6 The Design Professional and design team will crosscheck the evolving design against the Consultant's Guide to Park Design & Development.

- 2.3.1.7 The Design Professional and design team will prepare a cost estimate for evolving schematic design.
- 2.3.1.8 The Design Professional will meet with E&CP and P&R to review the evolving schematic design, to advise on the anticipated level of achievement under the LEED Certification process, and to secure review comments.
- 2.3.1.9 Based upon comments from E&CP and P&R (including comments relating to LEED achievement level), the design team will update the schematic design and cost estimate.
- 2.3.1.10 The Design Professional will prepare graphic materials to be used for reference during Community Workshop #3.
- 2.3.1.11 The Design Professional will facilitate Community Workshop #3 to include the following activities:
 - 2.3.1.11.1 Workshop #2 recap, overview of interim activities and summary of response to workshop #2 comments.
 - 2.3.1.11.2 Presentation of Schematic Design
 - 2.3.1.11.3 Breakout sessions (rotating) to review components
 - 2.3.1.11.3.1 Aquatic Design
 - 2.3.1.11.3.2 Building Design
 - 2.3.1.11.3.3 Site Design
 - 2.3.1.11.4 Plenary session to secure comments
 - 2.3.1.11.5 Documentation of all workshop comments/ideas
- 2.3.1.12 Following Community Workshop #3, the Consultant will meet with E&CP and P&R representatives to discuss the outcome of the workshop and to secure direction for the preparation of the General Development Plan (GDP) documents.
- 2.3.1.13 Project Design Review and Approval
 - 2.3.1.13.1 The Design Professional will prepare hydraulic calculation and a stormwater technical report
 - 2.3.1.13.2 The Design Professional will provide development information to the City Land Development Review Division for use in their preparation of an amended negative declaration.

- 2.3.1.13.3 The Design Professional and design team will prepare draft GDP documents to reflect community workshop commentary and the directives of E&CP and P&R.
- 2.3.1.13.4 The Design Professional will make a presentation of the draft GDP documents to the Park and Recreation Area Committee, then make refinements to the design directed by their review.
- 2.3.1.13.5 The Design Professional will make a presentation to the refined draft GDP documents to the City Design Review Committee, then make refinements to the design directed by their review.
- 2.3.1.13.6 The Design Professional will make a presentation of the updated refined GDP documents to the City Accessibility Committee, then make refinements to the design directed by their review.
- 2.3.1.13.7 The Design Professional will make a presentation to the Coastal Commission for approval and make any refinements to the design required by that approval.
- 2.3.1.13.8 The Design Professional will make a presentation of the final GDP documents to the Park & Recreation Board for approval.
- 2.3.1.13.9 Upon approval of the GDP documents, the Design Professional will make a formal submittal of same to the City.
- 2.3.1.13.10 The Design Professional will meet with EC&P and P&R to discuss the results of the formal approval process and to confirm direction for the ensuing design work.

2.3.2 Deliverables

- 2.3.2.1 Geotechnical Investigation Report - 1 copy
- 2.3.2.2 Site Utilities Analysis - 1 copy
- 2.3.2.3 Updated LEED Scorecard - 1 copy
- 2.3.2.4 Workshop 3 Reference Graphics (reduced to 8.5" x 11") - 1 set
 - 2.3.2.4.1 Response to Workshop 2 Comments
 - 2.3.2.4.2 Schematic Design Drawings
 - 2.3.2.4.3 Schematic Design Cost Estimate

- 2.3.2.5 Workshop 3 Summary of Comments - 1 copy
- 2.3.2.6 Workshop 3 Activity Notes (reduced to 8.5" x 11") - 1 set
- 2.3.2.7 Response to Workshop 3 Comments - 1 set
- 2.3.2.8 Hydraulic Calculations - 1 copy
- 2.3.2.9 Stormwater Technical Report - 1 copy
- 2.3.2.10 General Development Plan Drawings (full size) - 1 set
- 2.3.2.11 General Development Plan Cost Estimate - 1 copy

3 Design Development

3.1 Services

- 3.1.1 At the outset of this phase of work and following approval of the General Development Plan by the City, the Design Professional and design team will meet to review the results of the GDP review process and to coordinate the ensuing design work.
- 3.1.2 The design team will undertake the formal engineering design for all site, building and aquatic systems.
- 3.1.3 The Design Professional will update the topographic/ utility survey, as needed.
- 3.1.4 The Design Professional and design team will prepare detailed design drawings and outline specifications for all site, building and aquatic systems.
- 3.1.5 The Design Professional and design team will meet to coordinate between design disciplines and to update the LEED scorecard.
- 3.1.6 The Design Professional and design team will update the construction cost estimate.
- 3.1.7 The Design Professional and design team will crosscheck the evolving design against the Consultant's Guide to Park Design & Development.
- 3.1.8 The Design Professional will review the documents for general coordination.

3.1.9 The Design Professional will submit the documents completed under this phase of the work to the City for its progress review and comment. [60% submittal]

3.1.10 At the completion of the City review, the Design Professional will meet with E&CP and P&R to receive their review comments.

3.2 Deliverables

3.2.1 Design Development Drawings (full size) - 1 set

3.2.2 Design Development Outline Specifications - 1 set

3.2.3 Design Development Cost Estimate - 1 copy

3.2.4 Design Development LEED Worksheets - 1 copy

4. Construction Documents

4.1 Services

4.1.1 At the outset of this phase of work, the Design Professional and design team will meet to review the City's review comments on the work of the previous phase and to coordinate the ensuing work.

4.1.2 The Design Professional and design team will prepare construction drawings and specifications for all site, building and aquatic systems.

4.1.3 The Design Professional and design team will meet to coordinate between design disciplines and to update the LEED scorecard.

4.1.4 The Design Professional and design team will update the construction cost estimate.

4.1.5 The Design Professional will review the documents for general coordination and completeness.

4.1.6 Following the coordination and completeness review, the Design Professional will submit the construction documents to the City for its review and comment. [100% submittal]

4.2 Deliverables

- 4.2.1 Construction Documents (100%) Drawings - 1 set
- 4.2.2 Construction Documents (100%) Specifications - 1 set
- 4.2.3 Construction Documents (100%) Cost Estimate - 1 copy
- 4.2.4 Construction Documents LEED Worksheets - 1 copy
- 4.2.5 Construction Documents (Final) Drawings (full size) - 1 set
- 4.2.6 Construction Documents (Final) Specifications - 1 set
- 4.2.7 Construction Documents (Final) Cost Estimate - 1 copy
- 4.2.8 Construction Documents (Final) Electronic Drawing and Specification Files (PDF Format) - 1 copy

5 LEED Application Submittal/Processing

5.1 Services

- 5.1.1 Upon the completion of the construction documents, as noted above, the Design Professional will make application to the United States Green Building Council (USGBC) for LEED certification based upon the previously identified level of achievement.
- 5.1.2 The Design Professional will respond to the comments issued by the USGBC in order to facilitate it's review of the LEED application.
- 5.1.3 The Design Professional and design team will modify the construction documents to reflect the requirements of the USGBC as needed to maintain project eligibility to receive the level of certification approved by the City as part of the GDP approval.

5.2 Deliverables

- 5.2.1 LEED Application - 1 copy

6 Permit Processing/Document Completion

6.1 Services

- 6.1.1 Upon the completion of the construction documents, as noted above, and concurrent with the City's review, the Design Professional will make application to the City of San Diego and the County of San Diego for a building permit and a health permit, respectively.
- 6.1.2 The Design Professional will monitor the progress of the permit review process, collect review comments, distribute review comments to the design team (as needed) and coordinate the responses from the design team as needed to secure permit approvals.
- 6.1.3 The Design Professional will collect review comments from E&CP relative to it's review of the 100% submittal and distribute those comments to the design team (as needed).
- 6.1.4 The Design Professional and design team will modify and coordinate the construction documents to reflect the requirements of the City and County relative to the building and health permits.
- 6.1.5 The Design Professional and design team will also modify and coordinate the construction documents to reflect responses to the 100% submittal comments from E&CP.
- 6.1.6 Upon approval of the building and health permit applications and the integration of responses to the 100% submittal comments, the Design Professional will submit the completed construction documents to the City. [Final submittal.]

6.2 Deliverables

- 6.2.1 Plan Review Comments and Responses
- 6.2.2 Updated Construction Documents (reflecting response to plan review comments) (PDF Format) - 1 copy

7 Bid Phase

7.1 Services

- 7.1.1 During the bidding phase of the project, the Design Professional and Design Team will provide recommended responses to bid inquiries related to the design and technical aspects of the project. Where appropriate, the Design Professional and design team will prepare addenda to be issued to the bidders as part of the bid solicitation.

7.1.2 Upon the City's receipt of bids, the Design Professional and design team will assist the City in its analysis of the bids received and make recommendations concerning the selection of a construction contractor.

7.2 Deliverables

7.2.1 Addenda (as required)

7.2.2 Bid Analysis/Commentary - 1 copy

8 Construction Services

8.1 Services

8.1.1 During the construction phase of the project, the Design Professional and design team will provide the following services:

8.1.1.1 General consultation to the City relative to matters pertaining to the design and technical aspects of project construction.

8.1.1.2 Responses to contractor inquiries related to design and technical aspects of the project.

8.1.1.3 Review of submittals required by the technical sections of the construction specifications.

8.1.1.4 Support of the process relating to LEED Certification.

8.1.1.5 Preparation of supplemental instructions as needed to clarify the extent of construction.

8.1.1.6 Preparation of proposal requests, field orders or other instruments needed to define improvements that were incompletely addressed or omitted in the construction documents (excludes elective changes initiated by the City after its approval of the Final Construction Documents).

8.1.1.7 Weekly site visits by the Architect to attend progress meetings with the City and Construction Contractor and to generally observe the progress of construction.

8.1.1.8 Intermittent site visits, as appropriate to the stage of construction, by the Geotechnical Engineer, Civil Engineer, Landscape Architect, Aquatic Consultant (and subconsultants), Structural Engineer, Mechanical Engineer and Electrical Engineer to review the general progress of the construction.

8.1.1.9 Review of the project at the completion of construction in order to advise the City on the conformance of the construction work with the requirements of the construction documents.

8.2 Deliverables

8.2.1 Submittal Review Comments

8.2.2 Responses to Requests for Information

8.2.3 Site Observation Reports - 1 copy

8.2.4 Architect's Supplemental Instructions (as needed)

8.2.5 Completion Review (Punch) Lists

9 Post Construction

9.1 Services

9.1.1 Following completion of the construction, the Design Professional and design team will provide the following services:

9.1.1.1 Modification of the construction drawings to reflect the 'as-built' mark ups presented by the Construction Contractor.

9.1.1.2 Provision of hard copies of the drawings plotted onto mylar sheets

9.1.1.3 Conversion and provision of the modified electronic drawing files into Portable Document Files (PDF)

9.2 Deliverables

9.2.1 As Built Drawings (Mylar/Full Size) - 1 copy

COMPENSATION AND FEE SCHEDULE



EXHIBIT B
COMPENSATION AND FEE SCHEDULE

Compensation Schedule

Phase I

Project Initiation	\$	53,200.00
Concept Design	\$	63,700.00
Schematic Design	\$	133,100.00
Subtotal	\$	250,000.00
Reimbursables (5%)	\$	12,500.00
Additional Service Allowance (15%)	\$	37,500.00
Total Phase I	\$	300,000.00

Phase II

Design Development	\$	251,005.00
Construction Documents	\$	289,135.00
LEED Application Submittal/Processing	\$	14,200.00
Permit Processing/Document Completion	\$	36,870.00
Subtotal	\$	591,210.00
Reimbursables (5%)	\$	29,560.50
Additional Service Allowance (15%)	\$	88,681.50
Total Phase II	\$	709,452.00

Phase III

Bid Phase Services	\$	20,330.00
Construction Services	\$	158,050.00
Post Construction Services	\$	<u>38,900.00</u>
Subtotal	\$	217,280.00
Reimbursables (5%)	\$	10,864.00
Additional Service Allowance (15%)	\$	32,592.00
Total Phase III	\$	260,736.00

Total Service Fees	\$	1,058,490.00
Total Reimbursables	\$	52,924.50
Total Additional Service Allowance	\$	158,773.50
Total Contract Amount	\$	1,270,188.00

Exhibit B
Compensation and Fee Schedule
page 2

Fee Rates

Architects Richard Bundy & David Thompson

Richard S. Bundy	\$	120.00/hr.
David C. Thompson	\$	110.00/hr.
Designer	\$	90.00/hr.
Clerical/Staff	\$	65.00/hr.

Alta Land Surveying

Principal Land Surveyor	\$	125.00/hr.
Land Surveyor	\$	100.00/hr.
One-Man Survey Crew	\$	135.00/hr.
Two-Man Survey Crew	\$	175.00/hr.
Three-Man Survey Crew	\$	200.00/hr.
GPS Two-Man Survey Crew	\$	250.00/hr.
Two-Man Survey Crew (Prevailing Wage)	\$	225.00/hr.
Office Computer Support/Survey Calc	\$	95.00/hr.
Drafting	\$	85.00/hr.

G-Force

Principal Structural Engineer	\$	155.00/hr.
Principal Civil Engineer/Geologist	\$	140.00/hr.
Senior Structural Engineer	\$	140.00/hr.
Senior Civil Engineer/Geologist	\$	130.00/hr.
Project Engineer/Geologist	\$	120.00/hr.
Senior staff engineer/Geologist	\$	110.00/hr.
Staff Engineer/Geologist/Field Supervisor	\$	90.00/hr.
Structural CADD Manager	\$	85.00/hr.
Sr. Draftsman	\$	65.00/hr.
Clerical	\$	50.00/hr.

Enginuity Consulting

Professional Engineer/Principal	\$	135.00/hr.
Project Design Engineer	\$	120.00/hr.
Permit Expediter	\$	65.00/hr.
CAD Designer	\$	50.00/hr.
Technical Assistant	\$	45.00/hr.

Garbini & Garbini

Principal Landscape Architect	\$	155.00/hr.
Landscape Architect/Project Manager	\$	110.00/hr.
Project Manager/Senior Designer	\$	90.00/hr.
Job Captain/Designer	\$	81.00/hr.
Graphic Support 1/Design	\$	76.00/hr.
Intern/Graphic Support	\$	61.00/hr.
Administrative	\$	65.00/hr.

Exhibit B
 Compensation and Fee Schedule
 page 3

ROWLEY International	
Principal/Project Director	\$ 160.00/hr.
Project Manager	\$ 135.00/hr.
CAD Designer	\$ 100.00/hr.
Draftsperson	\$ 50.00/hr.
Bender + Dean Engineering	
Principal Engineer	\$ 155.00/hr.
Senior Engineer	\$ 135.00/hr.
Engineer	\$ 110.00/hr.
Designer	\$ 90.00/hr.
Drafter	\$ 70.00/hr.
Clerical	\$ 60.00/hr.
Kruse & Associates	
Engineer	\$ 95.00/hr.
Drafter/Engineering Technician	\$ 65.00/hr.
Clerical	\$ 30.00/hr.
Drew George & Partners	
Senior LEED Project Manager	\$ 160.00/hr.
LEED Project Manager	\$ 135.00/hr.
LEED Project Engineer	\$ 115.00/hr.
LEED Coordinator	\$ 105.00/hr.
Research Assistant	\$ 95.00/hr.
Hunter Pacific	
Principal/Senior Estimator	\$ 160.00/hr.
Senior Scheduler	\$ 160.00/hr.
Project Estimator	\$ 120.00/hr.
Clerical	\$ 72.00/hr.

Reimbursables

Photocopy and Reproduction	Cost + 15%
Plotting	Cost + 15%
Messenger/Delivery	Cost + 15%
Mileage	\$0.60/mile

01/14/11		Phase II										Phase III		
Fee Summary		design dev	perm	can docs	perm	LEED ap	bid	const	post	total	percentage			
NTC Park Aquatic Center														
	\$6,300.00	\$1,500.00									\$7,800.00	0.74%		
	\$6,400.00	\$24,500.00	\$3,550.00					\$16,500.00	\$6,000.00	\$56,950.00	5.38%			
	\$4,642.00	\$8,642.00	\$13,872.00			\$3,240.00		\$4,354.00	\$2,957.00	\$80,120.00	7.57%			
		\$5,400.00								\$5,400.00	0.51%			
	\$2,660.00	\$14,260.00	\$17,840.00	\$5,030.00		\$1,460.00		\$14,198.00	\$3,072.00	\$83,850.00	7.92%			
Architecture	\$9,345.00	\$17,345.00	\$41,801.00	\$6,743.00		\$4,400.00		\$64,100.00	\$6,449.00	\$200,700.00	18.96%			
Aquatics	\$12,453.00	\$30,453.00	\$135,747.00	\$19,627.00		\$3,200.00		\$30,578.00	\$9,022.00	\$385,940.00	36.46%			
Structural	\$3,200.00	\$3,300.00	\$18,475.00			\$2,520.00		\$8,820.00	\$1,300.00	\$53,980.00	5.10%			
Mechanical	\$2,200.00	\$3,000.00	\$15,100.00			\$1,900.00		\$5,700.00	\$1,900.00	\$46,000.00	4.35%			
Electrical	\$2,000.00	\$3,200.00	\$28,800.00	\$1,600.00		\$1,250.00		\$4,800.00	\$3,200.00	\$60,430.00	5.71%			
LEED	\$2,000.00	\$4,000.00	\$7,000.00	\$2,000.00		\$3,400.00		\$9,000.00	\$5,000.00	\$45,400.00	4.29%			
	\$2,000.00	\$7,000.00	\$6,950.00	\$1,870.00		\$1,360.00				\$31,920.00	3.02%			
total	\$53,200.00	\$133,100.00	\$289,135.00	\$36,870.00		\$14,200.00		\$158,050.00	\$38,900.00	\$1,058,490.00	100.00%			
cumulative	\$53,200.00	\$250,000.00	\$790,140.00	\$827,010.00		\$841,210.00		\$1,019,590.00	\$1,058,490.00					
percentage	5.03%	12.57%	27.32%	3.48%		1.34%		14.93%	3.68%	100.00%				
cum. percent	5.03%	23.62%	74.65%	78.13%		79.47%		96.32%	100.00%					
exp percent		8.82%	10.94%	10.48%	100.00%									
exp cumulative		8.82%	19.75%	30.23%	100.00%									

TIME SCHEDULE

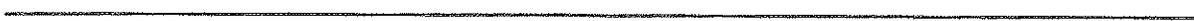


EXHIBIT C
TIME SCHEDULE

Time Schedule

Project Initiation	40	working days
Concept Design	50	working days
Schematic Design	60	working days
Project Design Review and Approval	40	working days
Design Development	80	working days
Construction Documents	100	working days
Permit Processing/Document Completion	60	working days
Bid Phase Services	30	working days
Construction Services	280	working days
Post Construction Services	<u>20</u>	working days
	760	working days

EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)

CONSULTANT REQUIREMENTS

TABLE OF CONTENTS

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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 Consultants doing business with the City. The City encourages its Consultants to share this commitment. Consultants are encouraged to take positive steps to diversify and expand their Subcontractor solicitation base and to offer consulting opportunities to all eligible Subcontractors. *Failure to submit the required EOCP documentation indicated below shall result in a determination of the Consultant being non-responsive.*
- II. **Nondiscrimination in Contracting Ordinance.** All Consultants 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, Consultant shall provide to the City a list of all instances within the past ten (10) years where a complaint was filed or pending against Consultant in a legal or administrative proceeding alleging that Consultant 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:

Contractor 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 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. Contract Disclosure Requirements. 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 County of San Diego, 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.

III. **Equal Employment Opportunity Outreach Program**. Consultants shall comply with requirements of San Diego Municipal Code Sections 22.2701 through 22.2707. Consultants shall submit with their proposal a Work Force Report for approval by the Program Manager of the City of San Diego Equal Opportunity Contracting Program (EOCP).

- A. Nondiscrimination in Employment. Consultant shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Consultants shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Consultant liable for any discriminatory practice of its subcontractors.
- B. Work Force Report. If based on a review of the Work Force Report (Attachment AA) submitted an EOCP staff Work Force Analysis determines there are under representations when compared to County Labor Force Availability data, then the Consultant will also be required to submit an Equal Employment Opportunity (EEO) Plan to the Program Manager of the City of San Diego Equal Opportunity Contracting Program (EOCP) for approval.
- C. Equal Employment Opportunity Plan. If an Equal Employment Opportunity Plan is required, the Program Manager of EOCP will provide a list of plan requirements to Consultant.

IV. **Small and Local Business Program Requirements.** The City has adopted a Small and Local Business Enterprise (SLBE) program for consultant contracts. SLBE program requirements for consultant contracts are set forth Council Policy 100-10.

A. SLBE and ELBE Participation for Contracts Valued Over \$50,000:

1. For proposals ranking as qualified or acceptable, or any higher ranking, the City shall apply a maximum of 12 additional points for SLBE or ELBE participation. Points will be awarded as follows:

- a. 20% participation – 5 points
- b. 25% participation – 10 points
- c. SLBE or ELBE as prime contractor – 12 points

2. All professional services contracts valued over \$50,000 or more have a voluntary SLBE/ELBE goal of 20%. For the purposes of this Council Policy, the subcontractor requirement may be met by a provider of materials or supplies. Details can be found at <http://www.sandiego.gov/eoc/boc/slbe.shtml>.

B. Subcontractor Participation List. The Subcontractor Participation List (Attachment BB) shall indicate the Name and Address, Scope of Work, Percent of Total Proposed Contract Amount, Certification Status and Where Certified for each proposed Subcontractor/Subconsultant.

C. Commitment Letters. Consultant 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.

D. Contract Activity Reports. To permit monitoring of the winning Consultant's commitment to achieving compliance, *Contract Activity Reports* (Attachment CC) reflecting work performed by Subcontractors/Subconsultants/Vendors 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. Consultants are required to submit the following information with their proposals:

1. Outreach Efforts. Description of Consultant's outreach efforts undertaken on this project to make subcontracting opportunities available to all interested and qualified firms including SLBE/ELBE/DBE/MBE/WBE/DVBE/OBE.
2. Past Participation Levels. Listing of Consultant'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 or Emerging Local Business Enterprise, Woman Business Enterprise, Disadvantaged Business Enterprise, Disabled Veteran Business Enterprise, or Other Business Enterprise.

3. Equal Opportunity Employment. Listing of Consultant's strategies to recruit, hire, train and promote a diverse workforce. These efforts will be considered in conjunction with Consultant's *Workforce Report* as compared to the County's Labor Force Availability.
4. Community Activities. Listing of Consultant's current community activities such as membership and participation in local organizations, associations, scholarship programs, mentoring, apprenticeships, internships, community projects, charitable contributions and similar endeavors.

B. In accordance with the City's Equal Opportunity Commitment, the City will consider the four factors described above as part of the evaluation process. A maximum of 13 additional points will be awarded based on consideration of these four factors. Points awarded based on Consultants demonstrated commitment to equal opportunity will be in addition to any points awarded for SLBE or ELBE participation as described in Section IV.

VI. 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(s). 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(s). 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(s).

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

Emerging Local Business Enterprise (ELBE) – Any for-profit enterprise that is not a broker, that is independently owned and operated; that is not a subsidiary of another business; that meets the definition of a local business; and that is not dominant in its field of operation whose average gross annual receipts in the prior three fiscal years do not exceed:

- \$2.75 million – Construction
- \$1.5 million – Specialty Construction
- \$1.5 million – Goods/Materials/Services
- 1.0 million – Trucking
- \$750,000 – Professional Services and Architect/Engineering

If a business has not existed for 3 years, the gross sales limits described above shall be applied based upon the annual averages over the course of the existence of the business.

Local Business Enterprise (LBE) – A firm having a Principal Place of Business and a Significant Employment Presence in San Diego City or County, California that has been in operation for 12 consecutive months and a valid business tax certificate. This definition is subsumed within the definition of Small Local Business Enterprise.

Small Local Business Enterprise (SLBE) – Any for-profit enterprise that is not a broker, that is independently owned and operated; that is not a subsidiary of another business; that meets definition of a local business; and that is not dominant in its field of operation whose average gross annual receipts in the prior three fiscal years do not exceed:

- \$5.0 million – Construction
- \$3.0 million – Specialty Construction
- \$3.0 million – Goods/Materials/Services
- \$2.0 million – Trucking
- \$1.5 million – Professional Services and Architect/Engineering

California State certified Micro and Disabled Veteran Owned business enterprises shall also satisfy the requirements to be defined as a Small Business Enterprise.

If a business has not existed for 3 years, the employment and gross sales limits described above shall be applied based upon the annual averages over the course of the existence of the business.

VIII. Certification.

Below are the EOC – accepted certification agencies along with certifiable groups:

City of San Diego:

ELBE, SLBE

Caltrans:

DBE, SMBE, SWBE

Dept. of General Services:

DVBE

CA Public Utilities Commission:
City of Los Angeles:
SD Regional Minority Supplier Diversity Council:

MBE, WBE
DBE, WBE, MBE
MBE, WBE

IX. List of Attachments.

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

WORK FORCE REPORT – Page 2

NAME OF FIRM: ARCHITECTS Richard Bundy & David Thompson, Inc. DATE: 05/10/2011

OFFICE(S) or BRANCH(ES): 715 j Street, #207, San Diego, California COUNTY: San Diego

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

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

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

Totals Each Column												2	1	
--------------------	--	--	--	--	--	--	--	--	--	--	--	---	---	--

Grand Total All Employees 3

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

Disabled														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

WORK FORCE REPORT – Page 3

NAME OF FIRM: ARCHITECTS Richard Bundy & David Thompson, Inc. DATE: 05/10/2011

OFFICE(S) or BRANCH(ES): 715 J Street, #207, San Diego, California COUNTY: San Diego

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

TRADE OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
	Brick, Block or Stone Masons													
Carpenters														
Carpet, Floor & Tile Installers Finishers														
Cement Masons, Concrete Finishers														
Construction Laborers														
Drywall Installers, Ceiling Tile Inst														
Electricians														
Elevator Installers														
First-Line Supervisors/Managers														
Glaziers														
Helpers; Construction Trade														
Millwrights														
Misc. Const. Equipment Operators														
Painters, Const. & Maintenance														
Pipelayers, Plumbers, Pipe & Steam Fitters														
Plasterers & Stucco Masons														
Roofers														
Security Guards & Surveillance Officers														
Sheet Metal Workers														
Structural Metal Fabricators & Fitters														
Welding, Soldering & Brazing Workers														
Workers, Extractive Crafts, Miners														

Totals Each Column														
--------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Grand Total All Employees 3

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

Disabled														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--



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

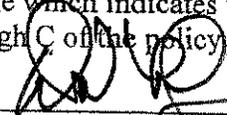
CONSULTANT CERTIFICATION FOR A DRUG-FREE WORKPLACE

PROJECT TITLE: NTC PAPER AQUATIC CENTER

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:

ARCHITECTS RICHARD BUNDY & DAVID THOMPSON, INC.
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 DAVID THOMPSON
Title FIRM PRINCIPAL / ARCHITECT
Date 7/15/2011

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: ENGINEERING & CAPITAL PROJECTS
 2. Name of Specific Consultant & Company: ARCHITECTS ROBERT BUNDY & DAVID THOMPSON, INC.
 3. Address, City, State, ZIP: 715 J STREET / #207, SAN DIEGO, CA 92101
 4. Project Title (as shown on 1472, "Request for Council Action"): HTC PARK AQUATIC CENTER
 5. Consultant Duties for Project: PROFESSIONAL SERVICES
6. 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: DARREN GREENHAGEN
[Name/Title]*
DEPUTY DIRECTOR

7/15/11
[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.

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.

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 buildings. 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 contaminants 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.

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

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 contaminants 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:

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

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.

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

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

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					Adherence to fee schedule				
					Adherence to project budget				
					Value Engineering Analysis				

Section III

SUPPLEMENTAL INFORMATION

Please ensure to attach additional documentation as needed.

Item _____ :

(*Supporting documentation attached yes _____ no _____)



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:

NIGP Codes:

*

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

The City requires this information for statistical purposes only.

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

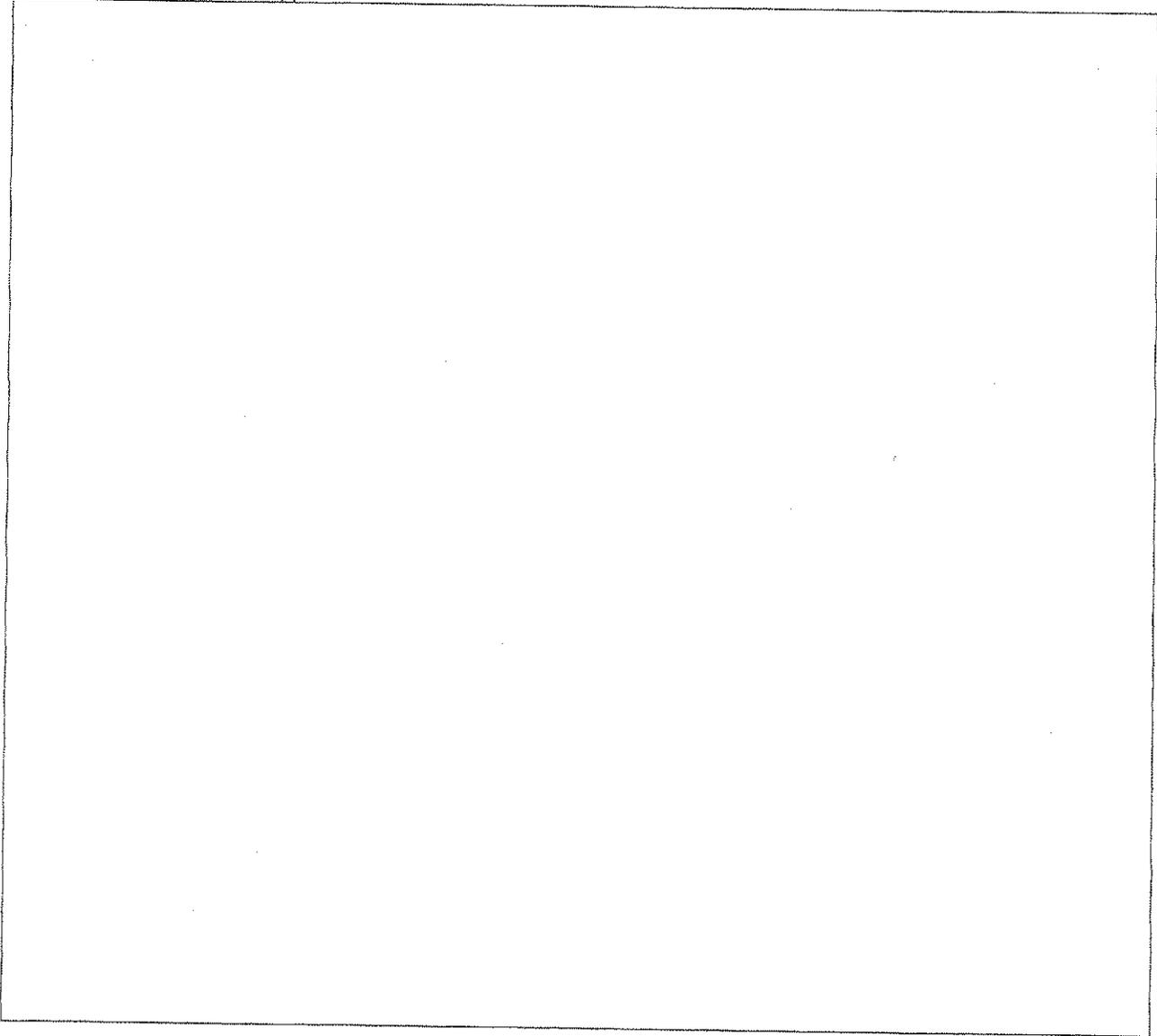
2. In the past five (5) years, has your firm been debarred or determined to be non-responsible by a government agency?
 Yes No

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.

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

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

EQUAL BENEFITS ORDINANCE
CERTIFICATION OF COMPLIANCE

EQUAL BENEFITS ORDINANCE CERTIFICATION OF COMPLIANCE



For additional information, contact:
CITY OF SAN DIEGO
EQUAL BENEFITS PROGRAM
 202 C Street, MS 9A, San Diego, CA 92101
 Phone (619) 533-3948 Fax (619) 533-3220

COMPANY INFORMATION

Company Name:	Contact Name:
Company Address:	Contact Phone:
	Contact Email:

CONTRACT INFORMATION

Contract Title:	Start Date:
Contract Number (if no number, state location):	End Date:

SUMMARY OF EQUAL BENEFITS ORDINANCE REQUIREMENTS

The Equal Benefits Ordinance [EBO] requires the City to enter into contracts only with contractors who certify they will provide and maintain equal benefits as defined in San Diego Municipal Code §22.4302 for the duration of the contract. To comply:

- Contractor shall offer equal benefits to employees with spouses and employees with domestic partners.
 - Benefits include health, dental, vision insurance; pension/401(k) plans; bereavement, family, parental leave; discounts, child care; travel/relocation expenses; employee assistance programs; credit union membership; or any other benefit.
 - Any benefit not offered to an employee with a spouse, is not required to be offered to an employee with a domestic partner.
- Contractor shall post notice of firm's equal benefits policy in the workplace and notify employees at time of hire and during open enrollment periods.
- Contractor shall allow City access to records, when requested, to confirm compliance with EBO requirements.
- Contractor shall submit *EBO Certification of Compliance*, signed under penalty of perjury, prior to award of contract.

NOTE: This summary is provided for convenience. Full text of the EBO and its Rules are posted at www.sandiego.gov/administration.

CONTRACTOR EQUAL BENEFITS ORDINANCE CERTIFICATION

Please indicate your firm's compliance status with the EBO. The City may request supporting documentation.

- I affirm **compliance** with the EBO because my firm (*contractor must select one reason*):
 - Provides equal benefits to spouses and domestic partners.
 - Provides no benefits to spouses or domestic partners.
 - Has no employees.
 - Has collective bargaining agreement(s) in place prior to January 1, 2011, that has not been renewed or expired.
- I request the City's approval to pay affected employees a **cash equivalent** in lieu of equal benefits and verify my firm made a reasonable effort but is not able to provide equal benefits upon contract award. I agree to notify employees of the availability of a cash equivalent for benefits available to spouses but not domestic partners and to continue to make every reasonable effort to extend all available benefits to domestic partners.

It is unlawful for any contractor to knowingly submit any false information to the City regarding equal benefits or cash equivalent associated with the execution, award, amendment, or administration of any contract. [San Diego Municipal Code §22.4307(a)]

Under penalty of perjury under laws of the State of California, I certify the above information is true and correct. I further certify that my firm understands the requirements of the Equal Benefits Ordinance and will provide and maintain equal benefits for the duration of the contract or pay a cash equivalent if authorized by the City.

Name/Title of Signatory	Signature	Date
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FOR OFFICIAL CITY USE ONLY

Receipt Date:	EBO Analyst:	<input type="checkbox"/> Approved	<input type="checkbox"/> Not Approved – Reason:
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