

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) n/a
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TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Public Utilities	DATE: 5/22/2014
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SUBJECT: Amendment 1 to the As-Needed Engineering Consultant Services 2012 – 2015 Contract with Brown and Caldwell. (H125674)

PRIMARY CONTACT (NAME, PHONE): Pete Wong, (858) 292-6475 MS 901A	SECONDARY CONTACT (NAME, PHONE): Guann Hwang, (858) 292-6476 MS 901
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COMPLETE FOR ACCOUNTING PURPOSES

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	\$0.00	0.00	0.00	0.00	0.00



FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

COST SUMMARY (IF APPLICABLE):
 \$5,000,000 (Original contract, R-308042)
 \$2,000,000 (Amendment 1, this request)
 \$7,000,000 (Total As-needed contract)

ROUTING AND APPROVALS

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Environmental Analysis	ORIG DEPT.	Sasaki, Ann	05/30/2014
Equal Opportunity Contracting	CFO		
Financial Management	DEPUTY CHIEF	Heinrichs, Tony	07/11/2014
Comptroller	COO		
Liaison Office	CITY ATTORNEY	Jung, Jeremy	07/11/2014
	COUNCIL PRESIDENTS OFFICE		

PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

1. The Mayor or his designee is authorized to execute a First amendment to the original agreement with Brown and Caldwell for as-needed engineering consultant services in Dept 2000, Public Utilities, in an amount not to

exceed \$2,000,000; and the City Council waives the requirement to competitively bid consultant contracts as set forth by the Council Policy 300-07; and

2. The Chief Financial Officer is authorized to expend an amount not to exceed \$2,000,000 in total from Dept 2000, Public Utilities, Fund 700000, Muni Sewer Revenue, Fund 700001, Metro Sewer Utility, or Fund 700011, Water Utility Operating, for the purpose of funding the additional as-needed engineering services with Brown and Caldwell; contingent upon the adoption of the Annual Appropriation Ordinance for the applicable fiscal year and contingent upon the Chief Financial Officer furnishing one or more certificates certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

STAFF RECOMMENDATIONS:

Adopt the Resolution.

SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)

COUNCIL DISTRICT(S): Citywide

COMMUNITY AREA(S): Citywide

ENVIRONMENTAL IMPACT: This activity is not a “project” and is therefore not subject to CEQA per CEQA Guidelines Section 15060(c)(2).

CITY CLERK INSTRUCTIONS: Please forward two (2) copies of the Resolution to Public Utilities Department, MS 901A (Attn. Jennifer Wolverton)

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

DATE: 5/22/2014

ORIGINATING DEPARTMENT: Public Utilities

SUBJECT: Amendment 1 to the As-Needed Engineering Consultant Services 2012 – 2015
Contract with Brown and Caldwell. (H125674)

COUNCIL DISTRICT(S): Citywide

CONTACT/PHONE NUMBER: Pete Wong/(858) 292-6475 MS 901A

DESCRIPTIVE SUMMARY OF ITEM:

This action is for approval to amend As-needed Engineering Consultant Services 2012 – 2015 with Brown and Caldwell, H125674 for an additional \$2,000,000 to continue supporting the Public Utilities Department by providing access to specialized technical services for urgent and emergency work. The new total is not to exceed \$7,000,000.

STAFF RECOMMENDATION:

Adopt the Resolution.

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

The Department uses as-needed engineering consultants to provide specialized technical services in the areas such as odor control, corrosion, instrumentation and control, civil, mechanical and electrical engineering. The original as-needed engineering agreement between the City of San Diego and Brown and Caldwell was adopted by City Council on March 19, 2013, via Resolution No. R-308042. The agreement was issued for an amount not to exceed \$5.0 million with a contract duration for three (3) years.

To date, eighteen (18) task orders have been authorized under this agreement and four (4) additional task orders are in the process of being authorize for a total of \$4.74 million which includes six (6) task orders for the Pure Water Project for \$2.28 million, two task orders for Lakes Water Quality related projects for \$0.7 million and one (1) task order for Point Loma Ocean Outfall 301(h) NPDES Application for \$0.28 million. Authorization of additional to \$2,000,000 to this contract will allow the Department access to specialized technical services for urgent and emergency works. The waiver of Council Policy 300-07 is therefore requested to provide the Department additional capacity in this As-Needed Consultant Services Contract for any unforeseen engineering works.

FISCAL CONSIDERATIONS:

If approved, this action will authorize an additional contract amount of \$2 million for a revised total contract of \$7 million. Funds for this action are or will be available in Dept 2000, Public Utilities, Fund 700000, Muni Sewer Revenue; Fund 700001, Metro Sewer Utility; or Fund 700011, Water Utility Operating; contingent upon the adoption of the Annual Appropriation Ordinance for the applicable fiscal year and contingent upon the Chief Financial Officer furnishing one or more certificates certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer. Funds are or will be allocated on a task order basis.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2702) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

This action is O&M funded and EOC review is covered through the General Government Services Billing.

Funding Agency: City of San Diego

Goals: 15% Voluntary (MBE/WBE/DBE/DVBE/OBE)

Subconsultant Participation: \$----- Certified Firms (-----%)
\$----- Other Firms (-----%)

Other: Work Force Report submitted along with an Equal Opportunity Plan. Staff will monitor plan and adherence to Nondiscrimination Ordinance.

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

The City Council approved the As-Needed Engineering Consultant Services for 2012 – 2015 (H125674) on 3/19/2013, Resolution number R308042 for the total amount not to exceed \$5,000,000.

This action will be heard at the Committee of the Environment on July 23, 2014.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Metro Participating Agencies, Environmental Protection Agency, Regional Water Quality Control Board, Water and Sewer rate payers, Environmental Groups, Department of Public Health

Sasaki, Ann

Originating Department

Heinrichs, Tony

Deputy Chief/Chief Operating Officer

DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO

DATE:

EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION

July 1, 2014

SUBJECT: Amendment 1 to the As-Needed Engineering Consultant Services 2012 – 2015 Contract with Brown and Caldwell (H125674)

GENERAL CONTRACT INFORMATION

Recommended Consultant: Brown & Caldwell (Not Certified, M –Cauc.)

Amount of this Action: \$2,000,000.00

Authorized Tasks Amount: \$3,322,804.00 (Tasks #1-18)

Cumulative Agreement Amount: \$7,000,000.00 (Not to Exceed)

Funding Source: City of San Diego

Goal: 20% Voluntary

SUBCONSULTANT PARTICIPATION

	<u>This Action</u>	<u>Percent</u>	<u>Cumulative</u>	<u>Percent</u>
Alex Home Associates (Not Certified, M – Cauc.)	\$0.00	0.00%	\$ 19,694.00	0.28%
Black & Veatch (Not Certified, M – Cauc.)	\$0.00	0.00%	\$ 671,017.00	9.59%
Blue Water Satellite (Not Certified, M – Cauc.)	\$0.00	0.00%	\$ 1,008.00	0.01%
Center for Research on Aquatic (Not Certified, M – Cauc.)	\$0.00	0.00%	\$ 6,560.00	0.03%
Water Quality Solutions (Not Certified, M – Cauc.)	\$0.00	0.00%	\$ 765,900.00	10.94%
Affinis (SLBE, M – Cauc.)	\$0.00	0.00%	\$ 3,865.00	0.05%
Bailey Environmental Associates, LLC. (Not Certified, M – Cauc.)	\$0.00	0.00%	\$ 10,200.00	0.15%
Helix (Not Certified, M – Cauc.)	\$0.00	0.00%	\$ 10,000.00	0.14%
Ninyo & Associates (MBE, M – Lat.)	\$0.00	0.00%	\$ 35,000.00	0.50%
RNT Architects (Not Certified, M – Cauc.)	\$0.00	0.00%	\$ 8,360.00	0.12%
Simon Wong (MBE – Asian Pacific.)	\$0.00	0.00%	\$ 33,196.00	0.47%
CDM Smith (Not Certified, M – Cauc.)	\$0.00	0.00%	\$ 8,035.00	0.11%
San Dieguito Engineering (SLBE/WBE, F – Cauc.)	\$0.00	0.00%	\$ 66,510.00	0.95%
Municipal Financial Services (Not Certified, M – Cauc.)	\$0.00	0.00%	\$ 19,800.00	0.28%
DDB Engineering (SWBE, F – Cauc.)	\$0.00	0.00%	\$ 97,120.00	1.39%
Michael Welch (Not Certified, M – Cauc.)	\$0.00	0.00%	\$ 289,000.00	4.13%
AirX Utility Surveyors (SLBE, F – Cauc.)	\$0.00	0.00%	\$ 1,240.00	0.02%
RF Yeager (SLBE, M – Cauc.)	\$0.00	0.00%	\$ 12,835.00	0.18%
Martin & Libby (DBE, F – Cauc.)	\$0.00	0.00%	\$ 10,510.00	0.15%
Proteus Consulting (WBE/MBE, Asian F)	\$0.00	0.00%	\$ 57,610.00	0.82%
Total Certified Participation	\$0.00	0.00%	\$ 327,886.00	4.68%
Total Non- Certified Participation	\$0.00	0.00%	\$1,949,574.00	27.85%
Total Participation	\$0.00	0.00%	\$2,277,460.00	32.53%

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required.

Brown & Caldwell submitted a Work Force Report for their San Diego employees dated, May 23, 2014 indicating 32 employees in their Administrative Work Force.

The Administrative Work Force indicates under representation in the following categories:

Latino in Management and Financial
Asian in Technical
Filipino in A&E, Science, Computer, and Technical

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

ADDITIONAL COMMENTS

This action is for approval to amend As-Needed Engineering Consultant Services 2012 – 2015 with Brown and Caldwell, H125674 for an additional \$2,000,000 to continue supporting the Public Utilities Department by providing access to specialized technical services for urgent emergency work.

KM



City of San Diego

ATTACHMENT AA

EQUAL OPPORTUNITY CONTRACTING (EOC)

1010 Second Avenue • Suite 1400 • MS 614C • San Diego, CA 92101

Phone: (619) 533-3450 • Fax: (619) 533-3633

WORK FORCE REPORT

ADMINISTRATIVE

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report (WFR)*.

CONTRACTOR IDENTIFICATION

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

Name of Company: Brown and Caldwell

AKA/DBA: _____

Address (Corporate Headquarters, where applicable): 201 North Civic Drive, Suite 115

City Walnut Creek County Contra Costa State CA Zip: 94596

Telephone Number: (925) 937-9010 FAX Number: (925) 937-9026

Name of Company CEO: Craig Goehring, PE

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

Address: 9665 Chesapeake Drive, Suite 201

City San Diego County San Diego State CA Zip 92123

Telephone Number: (858) 514-8822 FAX Number: (858) 514-8833

Type of Business: Engineering Consultants Type of License: Engineering Architecture

The Company has appointed: Dawn Lederer, Vice President of Human Resources

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

Address: 201 North Civic Drive, Walnut Creek, CA 94596

Telephone Number: (925) 937-9010 FAX Number: (925) 937-9026

- One San Diego County (or Most Local County) Work Force – Mandatory
- Branch Work Force * San Diego
- Managing Office Work Force San Diego

Check the box above that applies to this WFR.

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

I, the undersigned representative of Brown and Caldwell

(Firm Name)

San Diego

California

hereby certify that information provided

(County)

(State)

here in is true and correct. This document was executed on this 23th day of May, 2014

(Authorized Signature)

(Print Authorized Signature)

(Authorized Signature)

Marc Damikolas, P.E.
(Print Authorized Signature)

OFFICE(S) or BRANCH(ES): San Diego

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

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

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

Totals Each Column		1	1	1	2	1			1	2	10	13		
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Grand Total All Employees 32

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

Disabled														
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Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

**City of San Diego
Human Resources Department
Request for Human Resources Approval for Purchase Requisition**

Requesting Department:	Public Utilities
Vendor Name:	Brown & Caldwell
Purchase Requisition #:	TBD
Department Contact:	Guann Hwang
Date of Request:	May 13, 2014
Contract Amount:	Amendment for \$2,000,000, Total Contract \$7,000,000

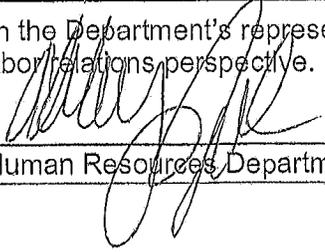
RECEIVED
MAY 13 2014

Please submit request to HumanResources@sandiego.gov or MS 56L

Question	Department Response
What is the contract for?	<p>The City of San Diego and <u>Brown Caldwell (B&C)</u> entered into an Agreement for "<u>As-Needed Engineering Consultant Services</u>", Document Number RR-308042 filed with the City Clerk on March 19, 2013 in the amount of \$5,000,000 with a contract expiration date of May 12, 2016</p> <p>This contract provides for specialized professional engineering services to support existing and future water and wastewater facilities on an as-needed basis. Tasks under the As-Needed Engineering Services vary in type including: studies, designs, engineering services during construction, and third party reviews or audits. Expertise in the following areas is required: water, wastewater, and recycled water engineering, traffic engineering, soil/geotechnical engineering, hydrogeological/geological engineering, surveying, civil engineering, electrical engineering, mechanical engineering, "fair cost estimating, architectural engineering, instrumentation and controls engineering, construction management, environmental services, secondary treatment and biosolids treatment processes, pilot study design and implementation, commercial/industrial/institutional water conservation surveys/audits and GIS/GPS services.</p> <p>In order to continue to meet the needs of the Department, Public Utilities is requesting approval to <u>amend the Agreement for an additional \$2,000,000.</u></p>
Are City employees currently performing any of the work?	No. Contract task orders are determined and authorized during the duration of the contract as needs are identified. Performance of the tasks requires <u>specialized expertise, and/or equipment, or may require independent or third party performance for validity.</u>
Will any City employees be displaced as a result of this bid?	No. This consulting work is <u>above and beyond City employees' job duties</u> and will not result in displacement of City employees.
If this is a renewal of an existing contract, how long have these services been contracted out?	This is an amendment to an existing contract to increase the contract value.
Is this a Public Works Contract?	No

(construction, reconstruction or repair of City buildings, street or other facilities)	
Is this a Tenant Improvement?	No
Was another department contacted to determine if they can or do perform this service (i.e. Streets, Facilities, etc.)? If so, please attach communication.	No, this is a continuation of services currently provided by B&C.

NOTE: If a public works construction contract and over \$100k, see City Charter Section 94.

HUMAN RESOURCES DEPARTMENT USE ONLY		<input checked="" type="checkbox"/> APPROVED
Based on the Department's representation, this contract is _____ from a labor relations perspective.		
 _____ Human Resources Department Liaison		5/19/14 _____ Date

FIRST AMENDMENT TO AGREEMENT

This First Amendment to the *As-Needed Engineering Consultant Services for 2012 – 2015 (Contract Number H125674)* dated *March 19, 2013* [Agreement], is hereby entered into by and between the City of San Diego [City], a municipal corporation, and *Brown and Caldwell* [Design Professional].

RECITALS

A. The City and Design Professional [collectively referenced herein as the “Parties”] entered into the Agreement, which is on file in the Office of the City Clerk as Document No. RR-308042, to provide **as-needed engineering consultant services** [Professional Services].

B. The City desires to execute a First Amendment to the Agreement for the Design Professional to provide additional Professional Services, for a compensation amount not to exceed **\$2,000,000** with total compensation for services provided under the Agreement not to exceed **\$7,000,000**.

C. Design Professional desires to provide the additional Professional Services.

NOW, THEREFORE, in consideration of the Recitals stated above and incorporated herein by this reference and the mutual obligations of the Parties expressed herein, the Parties agree to modify the Agreement, which is incorporated herein by reference, as follows:

1. DELETE Section 2.1 in its entirety and REPLACE with the following:

“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, this Agreement shall be effective for issuing and completing Task Orders for no more than **36** months following the date of its execution by the City, unless said duration is modified in writing by an amendment to this Agreement. If required, the duration of this Agreement can be extended up to a maximum of sixty (60) months. Any extension beyond sixty (60) months will require City Council approval via Ordinance.”

2. DELETE Section 3.1 in its entirety and REPLACE with the following:

“3.1 Amount of Compensation. The City shall pay the Design Professional for all Professional Services rendered in accordance with this Agreement, including all reasonably related expenses, in an amount not to exceed **\$7,000,000**, in accordance with the Compensation and Fee Schedule [Exhibit C].”

3. Article IV is amended to read as follows:

DELETE: **Section 4.3.3.2** in its entirety and REPLACE it with the following:

“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 Approved Surplus Lines Insurers (LASLI 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. DELETE: **Section 4.3.4.1** in its entirety and REPLACE it with the following:

“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 Additional 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.”

5. DELETE: **Section 4.3.4.2** in its entirety and REPLACE it with the following:

“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 Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of the Design Professional.”

6. DELETE: **Section 4.8** in its entirety and REPLACE it with the following:

“4.8 Title 24/Americans with Disabilities Act Requirements. Design

Professional has sole responsibility for ensuring that all design services as contained in issued Task Orders 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.”

7. DELETE: **Section 4.18** in its entirety and REPLACE it with the following:

“4.18 Storm Water Management Discharge Control. Consultant shall comply with Chapter 4, Article 3, Division 3 of the San Diego Municipal Code, Storm Water Management Discharge Control, as amended from time to time, and any and all Best Management Practice guidelines and pollution elimination requirements as may be established by the Enforcement Official. Further, the Consultant shall prepare and incorporate into the construction documents a Storm Water Pollution Prevention Plan (SWPPP) to be implemented by the contractor during construction of any project that is subject to the Construction General Permit, California State Water Resources Control Board Order No. 2009-009-DWQ, as amended from time to time. Where applicable, the SWPPP shall comply with both the California Construction General Permit and City of San Diego Municipal Separate Storm Sewer National Pollution Discharge Elimination System permit requirements and any municipal regulations adopted pursuant to those permits.”

8. ADD: **“4.20 Prevailing Wage Rates.** Prevailing wage rates apply to this Agreement.

STATE REQUIREMENTS FOR CONTRACTS SUBJECT TO STATE PREVAILING WAGE REQUIREMENTS.

In accordance with the provisions of California Labor Code Sections 1770, et seq. as amended, the Director of the Department of Industrial Relations has determined the general prevailing rate of per diem wages in accordance with the standards set forth in such Sections for the locality in which the Work is to be performed. Copies of the prevailing rate of per diem wages may be found at http://www.dir.ca.gov/dlsr/statistics_research.html. The Design Professional shall post a copy of the above determination of the prevailing rate of per diem wages at each job site and shall make them available to any interested party on request.

Pursuant to Sections 1720 et seq., and 1770 et seq., of the California Labor Code the Design Professional and any Subcontractor shall pay not less than said specified rates determined by the Director of the California Department of Industrial Relations to all workmen employed by them in the execution of the Work. This includes Work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work. Design Professional and any Subcontractor shall comply with Section 1775 (Penalties for Violations) in the event workmen are paid less than said specified rates.

The wage rates determined by the Director of Industrial Relations and published in the Department of Transportation publication entitled, "General Prevailing Wage Rates", refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, said published rate of wage shall be in effect for the life of this contract. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the Department of Industrial Relations, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this contract in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this contract, each successive predetermined wage rate shall apply to this contract on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this contract, such wage rate shall apply to the balance of the contract.

The successful Design Professional intending to use a craft or classification not shown on the prevailing rate determinations may be required to pay the rate of the craft or classification most closely related to it.

Design Professional and subcontractors must comply with Labor Code section 1776 by keeping accurate payroll records that show the name, address, social security number, work classification, straight time, and overtime hours worked each day and week by each worker, and the actual per diem wages paid to each worker employed by Design Professional or subcontractor in connection with the public works project. Each payroll record shall contain or be verified by a written declaration signed by Design Professional or subcontractor under penalty of perjury that states that: 1) the information contained in the payroll record is true and correct; and 2) Design Professional or subcontractor has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project. The payroll records must be certified. Design Professional and subcontractor(s) shall submit weekly certified payrolls online via the City's web-based labor compliance program. Design Professional shall be responsible for the compliance with these provisions by its subcontractors. City will withhold contract payments when payroll records are delinquent or deemed inadequate by City or another governmental entity, or when it is established after investigation by City or another governmental entity that underpayment has occurred.

Design Professional must abide by the requirements of Labor Code Sections 1777.5, 1777.6, and 1777.7 concerning the employment of apprentices by contractors and subcontractors performing public works contracts.”

9. DELETE Section 6.1 in its entirety and REPLACE with the following:

“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 sole willful misconduct of the Indemnified Parties.”

10. DELETE Section 9.6 in its entirety and REPLACE with the following:

“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 in the Scope of Services as described in issued Task Orders.”

11. DELETE **Exhibit C - Item II Schedule** in its entirety and REPLACE with the following:

“II Schedule. The Not-to-Exceed Contract Amount for this Agreement is \$7,000,000. Task Orders shall be issued for the services described in Exhibit A in lesser amounts not to cumulatively exceed the total Contract Amount.”

12. The Parties agree that this First Amendment to the Agreement represents the entire understanding of the Design Professional and the City and affects only those paragraphs referred to, and all other terms and conditions of the Agreement remain in full force and effect.

The remainder of this page has been intentionally left blank.

IN WITNESS WHEREOF, this First Amendment to the *As-Needed Engineering Consultant Services for 2012 – 2015 (Contract Number H125674)* is executed by the City of San Diego acting by and through its Mayor, or his designee, pursuant to Resolution No. _____ authorizing such execution, and by Consultant.

THE CITY OF SAN DIEGO
Mayor or Designee

By _____

Date: _____

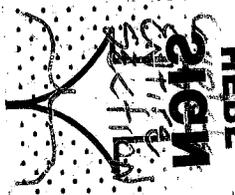
Brown and Caldwell

By: _____

Name: M. DAMIKOLAS

Title: SR. VICE PRESIDENT

Date: MAY 21, 2014



I HEREBY APPROVE the form and legality of the foregoing Amendment on this _____ day of _____, 20__.

JAN I. GOLDSMITH, City Attorney

By: _____

Jeremy Jung
Deputy City Attorney

DUPLICATE ORIGINAL
COPY

**AGREEMENT BETWEEN
THE CITY OF SAN DIEGO
AND
BROWN AND CALDWELL
FOR**

AS-NEEDED ENGINEERING CONSULTANT SERVICES FOR 2012 - 2015

FOR

**THE CITY OF SAN DIEGO
PUBLIC UTILITIES DEPARTMENT**

CONTRACT NUMBER: H125674

DOCUMENT NO. RR308042
FILED MAR 19 2013
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

AGREEMENT FOR DESIGN PROFESSIONAL SERVICES

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EXHIBITS

- Exhibit A - Scope of Services
- Exhibit B - Task Order Authorization
- Exhibit C - Compensation and Fee 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

- Exhibit L - Regarding Information Requested under the California Public Records Act
- Exhibit M - American With Disabilities Act (ADA) Compliance Certification

**AS-NEEDED AGREEMENT BETWEEN
THE CITY OF SAN DIEGO
AND BROWN AND CALDWELL
FOR DESIGN PROFESSIONAL SERVICES**

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation [City], and Brown and Caldwell to provide Professional Services to the City for engineering consultant services on an as-needed basis.

RECITALS

The City wants to retain the services of a professional engineering consultant firm to provide the Professional Services on an as-needed, hourly fee basis.

The City is concerned that one Design Professional may not be able to meet all the City's needs for the Professional Services in a timely and efficient manner and, therefore, the City may enter into an agreement with more than one Design Professional to provide the Professional Services on an as-needed, hourly basis in exchange for a guaranteed minimum amount of work with each Design Professional.

The Design Professional represents that it has the expertise, experience and personnel necessary to provide the Professional Services on an as-needed, hourly fee basis.

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 on an as-needed, hourly fee basis [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 scope of services will be determined by the City on an as-needed basis and presented to Professional as an individual Task [Task]. The Design Professional shall perform the Professional Services at the direction of the City and as generally set forth in the Scope of Services [Exhibit A] and as more specifically described in each Task Order Authorization [Task Order] [Exhibit B].

1.1.1 Task Order. Prior to beginning performance in response to a Task Order, Design Professional shall complete and execute the Task Order which must be approved in writing by the City. Each Task Order shall include a scope of Professional Services, a cost estimate, and the time for completion. The scope of Professional Services shall include all

activities or work reasonably anticipated as necessary for successful completion of each Task presented by the City.

1.1.2 Non-Exclusivity. The Design Professional agrees that this Agreement is non-exclusive and that the City may enter into agreements with other Design Professionals to perform substantially the same or similar Professional Services during the term of this Agreement.

1.2 Task Administrator. The Public Utilities Department is the task administrator for this Agreement. The Design Professional shall provide the Professional Services under the direction of a designated representative of the Public Utilities 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. Further, 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 designee, unless the Agreement specifies otherwise.

1.3 City Modification of Scope of Services. The City may, without invalidating this Agreement, order changes in any Task 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 may be made, provided that any adjustment must be approved by both Parties in writing in accordance with Section 9.1 of this Agreement.

1.4 Written Authorization. Prior to performing any Professional Services in connection with the Tasks, 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 changes to any Task, including any changes to the time for completion or the Compensation and Fee Schedule, 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 Task.

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, this Agreement shall be effective for issuing "new" Task Orders for no more than thirty-six (36) months following the date of its execution by the City, unless said duration is modified in writing by an amendment to this AGREEMENT. Furthermore, the total aggregate duration of Task Orders issued under this Agreement shall not exceed sixty (60) months from the original effective date, 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 any Task shall be set forth in the Task Order and shall not exceed the contract duration.

2.3 Notification of Delay. The Design Professional shall immediately notify the City in writing if Design Professional experiences or anticipates experiencing a delay in performing the Professional Services within the time frames set forth in the Task Order. 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 Task, 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 the 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 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 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 the Design Professional's Professional Services on all Task(s). 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 perform or adequately perform any obligation required by this Agreement, the Design Professional's failure constitutes a Default. A Default includes the Design Professional's failure to complete the Professional Services within the time for completion as set forth in the Task Order. If the Design Professional fails to satisfactorily cure a Default within ten calendar days of receiving written notice from the City specifying the nature of the Default, the City may immediately cancel and/or terminate this Agreement, and terminate each and every right of the Design Professional, and any person claiming any rights by or through the Design Professional under this Agreement. The rights and remedies of the City enumerated in this Section are

cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against the Design Professional.

ARTICLE III COMPENSATION

3.1 Amount of Compensation. The City shall pay the Design Professional for performance of all Professional Services rendered in accordance with this Agreement, including all reasonably related expenses, in an amount not to exceed \$5,000,000. The City agrees to issue at least one or more Task Orders with a minimum aggregate value of \$1,000.00 to the Design Professional.

3.2 Manner of Payment. The City shall pay the Design Professional in accordance with the Compensation and Fee Schedule [Exhibit C]. 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.

3.3 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.

3.4 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 for any Task; or (2) where the total cost for performance of the Scope of Services appears that it may be greater or less than the maximum compensation for this Agreement or for any Task.

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 engineering consultant 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 Costs, 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 services, and an estimate of all costs for the Subcontractor Services. The Design Professional may request that the City reduce the forty-five day notice period. The City agrees to consider such requests in good faith.

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

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

Furthermore, Subcontractor policy limits, and required endorsements shall be determined by the Design Professional proportionate to the services performed by the Subcontractor.

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 Consultant 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 Costs under Section 3.3. 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 Services (Exhibit A), the Design Professional shall comply with Section 43.03 of the San Diego Municipal Code, Storm Water Management Discharge Control, and any and all Best Management Practice guidelines and pollution elimination requirements as may be established by the Enforcement Official. Further, the Design Professional shall prepare and incorporate into the construction documents a Storm Water Pollution Prevention Plan (SWPPP) to be implemented by the contractor during Project construction. Where applicable, the SWPPP shall comply with both the California Regional Water Quality Control Board Statewide General Construction Storm Water permit and National Pollution Discharge Elimination System permit requirements and any municipal regulations adopted pursuant to the permits.

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

ARTICLE V RESERVED

ARTICLE VI INDEMNIFICATION

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

6.2 Design Professional Services Indemnification and Defense.

6.2.1 Design Professional Services Indemnification. To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8), with

respect to the performance of Design Professional services, Design Professional shall indemnify and hold harmless the City, its officers, or employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.

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

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

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

ARTICLE VII MEDIATION

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

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

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

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

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

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

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

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

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

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

ARTICLE VIII INTELLECTUAL PROPERTY RIGHTS

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

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

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

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

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

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

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

Professional further agrees to indemnify and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages of any type alleging or threatening that any materials, deliverables, supplies, equipment, services or Works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claims of Infringement). If a Third Party Claim of Infringement is threatened or made before Design Professional receives payment under this contract, City shall be entitled, upon written notice to Design Professional, to withhold some or all of such payment.

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

ARTICLE IX MISCELLANEOUS

9.1 Notices. In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. For the purpose of this Agreement, unless otherwise agreed in writing, notice to the City shall be addressed to: City of San Diego, Public Utilities Department, Attn: Monika Smoczynski, Project Manager, MS 901A, 9192 Topaz Way, San Diego, CA 92123, and notice to the Design Professional shall be addressed to: Brown and Caldwell, Attn: Victor Occiano, Vice President, 9665 Chesapeake Drive, Ste 201, San Diego, CA 92123.

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: Victor Occiano, Nick Kanetis, Gary Skipper, Denny Parker, Philip Wolstenholme, and Perry Schafer [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.

9.25 Public Records. This contract is public document subject to the California Public Records Act, and as such may be subject to public review per Exhibit L (Regarding Information Requested under the California Public Records Act).

The remainder of this page has been intentionally left blank.

COPY DUPLICATE ORIGINAL

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor, pursuant to R-308042, authorizing such execution, and by the Design Professional pursuant to Certificate Of Secretary dated May 18, 2012.

Dated this 8th day of May, 2013.

THE CITY OF SAN DIEGO
Mayor or Designee

By: Tony Heinrichs
Tony Heinrichs
Director of Public Works

I HEREBY CERTIFY I can legally bind Brown and Caldwell and that I have read all of this Agreement, this 12 day of SEPTEMBER, 2012.

By Marc Damikolas
Marc Damikolas, P.E.
Vice President/Principal-in-Charge

I HEREBY APPROVE the form and legality of the foregoing Agreement this 13 day of May, 2013.

JAN I. GOLDSMITH, City Attorney

By Jeremy Jung
Jeremy Jung
Deputy City Attorney

R- 308042

EXHIBITS

- Exhibit A - Scope of Services
- Exhibit B - Task Order Authorization
- Exhibit C - Compensation and Fee 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
- Exhibit L - Regarding Information Requested under the California Public Records Act
- Exhibit M - American With Disabilities Act (ADA) Compliance Certification

SCOPE OF SERVICES

AS-NEEDED ENGINEERING CONSULTANT SERVICES FOR 2012 - 2015 (H125674)

1.0 PURPOSE

The City of San Diego, Public Utilities Department has a need for professional engineering Consultant services on an as-needed basis to support the existing and future water, wastewater, and recycled water facilities

Due to the on-going program development, identifying specific tasks for the Consultant to perform will also be on-going. As specific requirements are established, the Consultant will be authorized in writing by the City to perform said requirement as an individual "Task Order".

2.0 REQUIREMENTS

As a minimum, the Consultant must be able to perform work in the anticipated areas delineated below, meeting all guidelines and regulatory requirements. These areas are not exclusive and additional areas may be identified in the future.

2.1 Soil and Geotechnical Engineering:

- 2.1.1 Prepare soil investigation reports,
- 2.1.2 Estimate construction dewatering rate, and
- 2.1.3 Conduct soil boring, well sampling and data analysis.

2.2 Traffic Engineering:

Develop construction zone traffic control plans to ensure safe movement of motorists and pedestrians through or around construction work areas.

2.3 Water, Wastewater, and Recycled Water Engineering:

- 2.3.1 Design water, sewer, and recycled water systems,
- 2.3.2 Review and/or perform specific hydraulic analysis,
- 2.3.3 Provide value engineering services as a third party review of proposed water, wastewater, and recycled water projects,
- 2.3.4 Perform condition assessment of water, wastewater, and recycled water pipelines including raw, recycled and potable water transmission pipelines, trunk sewers and force mains,
- 2.3.5 Assess water quality in source water reservoirs, including reservoir nutrient budgets, oxygen depletion, sediment nutrients, and oxygen demand; and prepare feasibility designs for oxygenation systems, circulations systems, and other in-reservoir remediation methods, and
- 2.3.6 Provide field inspection/monitoring services.

2.4 Survey Engineering:

- 2.4.1 Provide general survey, boundary and topographic survey services,
- 2.4.2 Provide aerial photogrammetric services, and
- 2.4.3 If the City elects to use its own staff to provide surveying support, the Consultant shall coordinate with City staff when necessary.

2.5 Civil Engineering:

- 2.5.1 Perform grading, drainage, analysis, and design,
- 2.5.2 Perform structural analysis and design,

EXHIBIT A

- 2.5.3 Perform road alignment analysis and road design,
- 2.5.4 Provide cost estimates and economic analysis,
- 2.5.5 Provide consulting engineering services for miscellaneous projects,
- 2.5.6 Perform planning studies,
- 2.5.7 Provide preliminary engineering,
- 2.5.8 Provide bidding assistance,
- 2.5.9 Provide support services during construction,
- 2.5.10 Provide inspection services,
- 2.5.11 Provide system startup, and
- 2.5.12 Perform project closeout.

2.6 Electrical Engineering:

- 2.6.1 Perform electrical analysis and evaluations,
- 2.6.2 Provide cost estimates, and
- 2.6.3 Perform miscellaneous projects.

2.7 Mechanical Engineering:

Perform mechanical engineering and cost estimates.

2.8 "Fair Cost" Estimates:

Prepare fair cost estimates for both design and construction phases of water, wastewater, and recycled water treatment plants, pump stations, pipelines, and appurtenances.

2.9 Architectural Engineering:

- 2.9.1 Perform architectural design services including, but not limited to, design and/or retrofitting of landscape irrigation systems using recycled water, and
- 2.9.2 Provide cost estimates.

2.10 Instrumentation and Controls Engineering:

- 2.10.1 Provide analog instrumentation-application, selection of process interface, specifications, control loop definition, ISA data sheets.
- 2.10.2 Design PLC, DCS-based, or SCADA control systems.
- 2.10.3 Develop the following:
 - Interconnection and loop diagrams,
 - Process and instrumentation diagrams (P&IDs),
 - Motor control schematics,
 - SAMA logic diagrams,
 - Ladder logic,
 - Control panel layouts and schedules,
 - Input/output point lists, and
 - Electrical cable and conduit plans for instrumentation wiring.
- 2.10.4 Perform field investigations for existing facilities, including documenting existing I&C systems with the above drawings.

EXHIBIT A

2.10.5 Write control strategies.

2.10.6 Provide communications system design in the following:

- Local Area Network (LAN) communications: Writing plans and specifications, 10BaseT, 100BaseT, single and multi mode fiber optic, and
- Wide Area Network block diagrams-T1, fiber optic, spread-spectrum radio.

2.10.7 Design the following:

- Control rooms-power, HVAC, lighting, etc.,
- Closed circuit television (CCTV) Monitoring System,
- Security card access system design,
- Fire alarm and protection system design,
- Page party communication system design,
- Load management system design,
- Load shedding control strategies for implementation in DCS software, and
- Automatic restart sequence after power failure for implementation in DVC software.

2.11 Construction Management

Provide construction management services during construction on a case by case basis.

2.12 Environmental Services

Provide expert support services in environmental compliance (including CEQA, permitting, etc.) and other services related to environmental aspects. However, if the City elects to use its own staff to provide environmental support, the Consultant shall coordinate with City staff when necessary.

2.13 Secondary Treatment Processes

Provide experience in Secondary Treatment processes and Pilot Study design and implementation.

2.14 Commercial, Industrial & Institutional (CII) Water Conservation Surveys/Audits

Provide water audit services for CII customers to assist them in evaluating their onsite water use and developing a water efficiency program to optimize water usage and savings by identifying potential water reduction alternatives.

2.15 Hydrogeological/Geological/Geotechnical Services

Provide geological and geotechnical services to assist the Public Utilities Department in evaluating and maintaining the facilities it manages, such as manufactured slopes and storm water conveyances. Tasks may include:

2.15.1 Provide physical and chemical characterizations of groundwater,

2.15.2 Evaluate slope stability, including if necessary, subsurface work,

2.15.3 Evaluate causes for erosion, slope and conveyance system

EXHIBIT A

failures,

- 2.15.4 Provide recommendations for remedying slope and conveyance system failures and undesirable erosion. May include subsurface work,
- 2.15.5 Obtain and review existing geotechnical reports and grading plans/as-built,
- 2.15.6 Evaluate the urgency to remediate (temporary and emergency) threats,
- 2.15.7 Prepare geotechnical reports consistent with City Development Services Department standards,
- 2.15.8 Provide design (conceptual through preparation of plans and specifications) of repairs/remediation of damage caused by storm water, including Best Management Practices (BMPs) and surface drainage pattern modifications,
- 2.15.9 Prepare cost estimates to implement design recommendations,
- 2.15.10 Establish a protocol/decision-making process whereby a determination can be made as to the need to involve, or not involve, engineered solutions based on slope and failure characteristics, and
- 2.15.11 Provide environmental monitoring and sampling of ground and surface water.

Geological/geotechnical tasks associated with emergency situations may require twenty-four hours/day and seven days/week availability.

2.16 GPS/GIS SERVICES

Provide equipment and staff to:

EXHIBIT A

- 2.16.1 Conduct sub-foot GPS field surveys that are electronically transferrable to the City's GIS system in a compatible format,
- 2.16.2 Analyze field data, aerial photographs, plans, legal descriptions and other sources, and electronically map Public Utilities Department assets in a format that is consistent with the City's GIS system, and
- 2.16.3 Conduct complex GIS data modeling and calculations.

END

TASK ORDER AUTHORIZATION FOR PROFESSIONAL SERVICES [TASK ORDER]

Consultant:

Agreement:

Task Order No.:

Date:

Pursuant to the Terms and Conditions of the Agreement referenced above and incorporated into this Task Order, Consultant hereby agrees to perform the Professional Services described below. The Consultant shall furnish all necessary facilities, materials, and professional, technical, and supporting personnel required by this Task Order.

Part A

Scope of Services

1.1 Professional Services rendered under this Task Order shall be performed in accordance with the Agreement. The Scope of Services shall be as set forth in Exhibit A of the Agreement and as more fully set forth below. If necessary, the Scope of Services may be more fully described on one or more separate sheets and attached to this Task Order.

Part B

Task Order Compensation

City shall pay Consultant for the Professional Services required by this Task Order in accordance with Article III of the Agreement.

The not to exceed cost for the Scope of Services for this Task Order is \$ _____ .

Part C Personnel Commitment

The Scope of Services shall be performed by Consultant's personnel in the number and classifications required by City.

Part D Time Sequence

All Professional Services to be performed under this Task Order shall be completed by _____, and as set forth in the Task Order Scope of Services.

City of San Diego

Consultant

Recommended For
Approval:

I hereby acknowledge receipt and acceptance of this
Task Order for:

Approved By:

By:

Name:
(Type)

Title:

Date:

COMPENSATION AND FEE SCHEDULE

COMPENSATION SCHEDULE

I. Professional Services Fee

City and Design Professional agree that the Professional Services Fee to be paid to Design Professional shall not exceed the Contract Amount shown in the Schedule below.

II. Schedule

The Not-to-Exceed Contract Amount for this Agreement is \$5,000,000. Task Orders shall be issued for the services described in Exhibit A in lesser amounts not to cumulatively exceed this total Contract Amount.

FEE SCHEDULE

I. Labor Billing Rates

- A. Labor billing rates shall be Design Professional's and Subcontractors' burdened rates for labor classifications listed in Schedule C-1.
- B. Design Professional represents that all indirect/overhead costs included in the billing rates are the most recently audited actual rates.
- C. Additional labor classifications may be added, subject to negotiation, and as authorized by an approved Task Order Authorization issued under the terms and conditions of this Agreement.

II. Other Direct Costs

- A. Other Direct Costs (ODC's) are Design Professional's actual costs for items negotiated and listed as ODC's on a Task Order Authorization. See Schedule C-2.
- B. ODC's shall be reimbursed at cost with no additional markup.

III. Mileage Reimbursement/Travel Expenses

- A. Mileage Reimbursement and Travel Expenses are Design Professional's actual costs for mileage and travel items negotiated and listed on a Task Order Authorization. See Schedule C-2.
- B. Mileage Reimbursement and Travel Expenses shall be reimbursed at cost with no additional markup.

IV. Subcontractor Costs

- A. Subcontractor Costs are actual costs paid to Subcontractors by Design Professional.
- B. Subcontractor costs shall be reimbursed at cost with no additional markup.

V. Economic Price Adjustment

- A. Schedule C-1, Billing Rates, are fixed and not subject to economic price adjustment prior to the end of the first twelve month Term of Agreement (Year 1). Design Professional may request an annual adjustment to the Billing Rates in this Agreement after Year 1. Such request for adjustment must be submitted in writing to the City a minimum of sixty (60) days prior to the Agreement anniversary date and must include supporting data, in a form satisfactory to the City, subject to audit. Any adjustments to labor rates shall not exceed the percent change in the Bureau of Labor Statistics (BLS) Consumer Price Index (CPI) for the previous twelve months. In no case shall a price adjustment exceed three percent (3%) in a twelve month period. The City must approve any rate adjustment in writing before it becomes effective.

Under no circumstances will an adjustment to rates be made retroactively. Billing rates under an active Task Order Authorization are fixed and not subject to economic price adjustment.

The formula for calculating the CPI adjusted allowable rate is:

$$\left[1 + \left(\frac{\text{Current CPI} - \text{Previous CPI}}{\text{Previous CPI}} \right) \right] \times \text{Previous Rate} = \text{Current Rate}$$

Definitions:

CPI: The All Urban Consumers (CPI-U), Los Angeles-Riverside-Orange CO, CA, All Items, shall be used.

Current CPI: The CPI-U as of the twelfth month after the effective date of this Agreement, or the NTP, whichever occurs later. When a request for rate adjustment is made after a twelve month period, the CPI-U as of the month of the request will be used. For subsequent price adjustments, the CPI-U as of the twelfth month after the prior adjustment, shall be used.

Previous CPI: The CPI-U as of the effective date of this Agreement, or the NTP, whichever occurs later. For subsequent price adjustments, the prior Current CPI, shall be used.

Previous Rate: The Agreement labor rate in effect during the previous twelve months.

Current Rate: The adjusted Agreement labor rate effective for the next twelve months.

- B. Design Professional shall incorporate the provisions of this Section V., Economic Price Adjustment, in all contracts entered into between Design Professional and Subcontractors (i.e. any adjustments to Subcontractor billing rates shall be subject to this Section V.).

**SCHEDULE C-1
BILLING RATES**

**Brown and Caldwell Schedule of Hourly Billing Rates
2012-2015 City of San Diego As-Needed Engineering Consultant Services**

Level	Engineering	Technical/Scientific	Administrative	Hourly Rate¹
A			Office/Support Services I	\$64
B	Drafter Trainee	Field Service Technician I	Word Processor I Office/Support Services II	\$78
C	Assistant Drafter	Field Service Technician II	Word Processor II Office/Support Services III	\$83
D	Drafter Engineering Aide Inspection Aide	Field Service Technician III	Accountant I Word Processor III Office/Support Services IV Project Coordinator I Senior Accounting Clerk	\$95
E	Engineer I Senior Drafter Senior Illustrator Assistant Designer Inspector I	Geologist/Hydrogeologist I Scientist I Senior Field Service Technician GIS Specialist I	Accountant II Word Processor IV Executive Support Services I Project Analyst Project Analyst II Project Coordinator II	\$111
F	Engineer II Inspector II Lead Drafter Lead Illustrator Designer	Geologist/Hydrogeologist II Scientist II GIS Specialist II	Accountant III Technical Writer Word Processing Supervisor Executive Support Services II Project Analyst III	\$130
G	Engineer III Inspector III Senior Designer Supervising Drafter Supervising Illustrator	Geologist/Hydrogeologist III Scientist III Health & Safety Risk Manager I		\$154
H	Senior Engineer Principal Designer Senior Construction Engineer Senior Engineer Chief Drafter	Senior Geologist/Hydrogeologist Senior Scientist Health & Safety Risk Manager II	Senior Technical Writer	\$173

(Continued on next page)

**Brown and Caldwell Schedule of Hourly Billing Rates
2012-2015 City of San Diego As-Needed Engineering Consultant Services**

Level	Engineering	Technical/Scientific	Administrative	Hourly Rate ¹
I	Principal Engineer Principal Construction Engineer Supervising Designer	Principal Geologist/Hydrogeologist Principal Scientist Health & Safety Risk Manager III		\$196
J	Supervising Engineer Supervising Construction Engineer Supervising Engineer Chief Designer	Supervising Scientist Supervising Geologist/Hydrogeologist Health & Safety Risk Manager		\$203
K	Managing Engineer	Managing Geologist/Hydrogeologist Managing Scientist Senior Health & Safety Risk Manager		\$227
L	Chief Engineer Executive Engineer	Chief Scientist Chief Geologist/Hydrogeologist		\$244
M	Vice President			\$244
N	Senior Vice President			\$244

¹ Brown and Caldwell's hourly rates include \$8.00/labor hour of Associated Project Cost (APC). The APC covers Brown and Caldwell's internal costs related to network infrastructure and IS support, computers, e-mail, telephones, cell phones, reproduction, and postage.

Subcontractor: Affinis Environmental: Cultural Resources Labor Billing Rates		Hourly Rate
Classification		
Project Manager		\$110
Project Scientist (Project Archaeologist)		\$100
Staff Scientist (Staff Archaeologist)		\$70
Historian		\$70
Field/Lab/Crew		\$65

Subcontractor: AirX Utility Surveyors		Hourly Rate
Potholing: Utilities Location		or as Noted
Labor Billing Rates		
Classification		
Project Manager/Engineer		\$125
On Site Research/Report Drafting		\$75
Locate Technician/Geophysical Locating: AirX will provide a two-man locating crew including all locating equipment and truck. Services include use of any of the following depending on conditions and reliability: Electric field and magnetic field locators, metal detectors, duct rods, sondes, ground penetrating radar, and CCTV locating camera equipment. The equipment is state of the art, but limitations exist with each piece of equipment depending on such factors as soil conditions, conductivity of the existing utility, depth of the utility, size of the utility, and congestion within the area of other utilities. USA does not mark out any gravity utilities except at the discretion of the presiding utility. This usually applies to storm drain, collector sewer and sewer laterals (gravity by nature), and some utility owners are not members of USA. For CCTV work a separate quote will be provided.		\$250/two-man crew/hour
Pothole Crewman, one each: Two to three crew members are required per pothole crew. Crewmen are specifically trained individuals in the use of hydro-excavation/vacuum equipment to remove soils in and around existing underground utilities. These individuals are certified in confined space, safety and first aid procedures, and as traffic control technicians.		\$70/one crewman/hour
Pothole vacuum/excavation rig and support truck		\$150
Survey Crewman		\$125
Traffic Control Planning/Permitting: AirX will provide traffic control and Right of Way plans drawn in accordance with policies and procedures established by applicable governing agencies and the City of San Diego. These plans are then submitted to said agencies for review and corrections prior to pulling the permits for the potholing or other utility locating work that AirX performs. These permits are required when traffic control and excavations extend into a public right of way.		\$250/sheet

(Continued on next page)

Subcontractor: AirX Utility Surveyors		Hourly Rate or as Noted
Potholing: Utilities Location		
Labor Billing Rates		
Classification		
Standard Traffic Control: AirX will provide portable, professional traffic control equipment such as signage, cones, barricades or other necessary equipment in accordance with permit requirements. This equipment excludes flagging personnel and message/sign boards.		\$150/day
Message/Sign Boards: AirX will provide solar tow-behind units that provide lighted directional signage or messaging for traffic. This equipment is frequently required as a part of the overall traffic control plan and operation by the governing agency.		\$100/day

Subcontractor: Allied Geotechnical Engineers, Inc.		Hourly Rate
Geotechnical: Hydrogeological/Geological		
Labor Billing Rates		
Classification		
Principal		\$165
Senior Professional		\$140
Project Professional		\$120
Staff Professional		\$98
Laboratory Technician		\$88
Draftsperson		\$71
Clerical/Administrative		\$55

Subcontractor: Bailey Environmental Associates, LLC		Hourly Rate
Wastewater; Recycled Water		
Labor Billing Rates		
Classification		
Consultant		\$150
Clerical		\$60

Subcontractor: Black & Veatch Water; Wastewater; Recycled Water; Civil; Electrical Labor Billing Rates		Hourly¹ Rate
Classification	Grade	
Administrative Support - ADS / 65		
General Clerk 1	ADS 001	\$64
General Clerk 2	ADS 002	\$78
Project Support Assistant 1	ADS 003	\$83
Project Support Assistant 2	ADS 004	\$95
Project Support Coordinator	ADS 005	\$130
Architecture - ARC / 07		
Architect 1	ARC 001	\$83
Architect 2	ARC 002	\$95
Architect 3	ARC 003	\$111
Architect 4	ARC 004	\$130
Architect 5	ARC 005	\$154
Architect 6	ARC 006	\$173
Architect 7	ARC 007	\$173
Architect 8	ARC 008	\$173
Architect 9	ARC 009	\$196
Architect Intern	ARC 097	\$78
Engineering & Technical Specialties (ENS/77)		
Engineer 1	ENS 127	\$111
Engineer 2	ENS 128	\$130
Engineer 3	ENS 129	\$154
Engineer 4	ENS 130	\$173
Engineer 5	ENS 131	\$203
Engineer 6	ENS 132	\$227
Engineer 7 - 10	ENS 133	\$244
Engineering Technicians (ENT / 35)		
Engineering Technician 1	ENT 125	\$83
Engineering Technician 2	ENT 126	\$95
Engineering Technician 3	ENT 127	\$111
Engineering Technician 4	ENT 128	\$120
Engineering Technician 5	ENT 129	\$130

(Continued on next page)

Subcontractor: Black & Veatch Water; Wastewater; Recycled Water; Civil; Electrical Labor Billing Rates		Hourly¹ Rate
Classification	Grade	
CAD Designer 6	ENT 130	\$154
CAD Designer 7	ENT 131	\$173
CAD Designer 8	ENT 132	\$196
CAD Designer 9	ENT 133	\$203
Engineering Specialist		
Engineering Specialist 1	ENS 127	\$111
Engineering Specialist 2	ENS 128	\$130
Engineering Specialist 3	ENS 129	\$154
Engineering Specialist 4	ENS 130	\$173
Engineering Specialist 5	ENS 131	\$203
Engineering Specialist 6	ENS 132	\$244
Engineering Specialist 7 - 8	ENS 133	\$244
Environmental Science		
Environ Scientist 1	ENS 127	\$111
Environ Scientist 2	ENS 128	\$130
Environ Scientist 3	ENS 129	\$154
Environ Scientist 4	ENS 130	\$173
Environ Scientist 5	ENS 131	\$196
Environ Scientist 6	ENS 132	\$203
Environ Scientist 7 - 9	ENS 135	\$244
Geology		
Geologist 1	ENS 127	\$111
Geologist 2	ENS 128	\$130
Geologist 3	ENS 129	\$154
Geologist 4	ENS 130	\$173
Geologist 5	ENS 131	\$203
Geologist 6	ENS 132	\$244
Geologist 7 - 9	ENS 135	\$244
Hydrology		
Hydrologist 1	ENS 127	\$118
Hydrologist 2	ENS 128	\$128
Hydrologist 3	ENS 129	\$153
Hydrologist 4	ENS 130	\$170

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Subcontractor: Black & Veatch Water; Wastewater; Recycled Water; Civil; Electrical Labor Billing Rates		Hourly¹ Rate
Classification	Grade	
Hydrologist 5	ENS 131	\$185
Hydrologist 6	ENS 132	\$195
Hydrologist 7 - 9	ENS 135	\$200
Hydrogeology		
Hydrogeologist 1	ENS 127	\$111
Hydrogeologist 2	ENS 128	\$130
Hydrogeologist 3	ENS 129	\$154
Hydrogeologist 4	ENS 130	\$173
Hydrogeologist 5	ENS 131	\$203
Hydrogeologist 6	ENS 132	\$244
Hydrogeologist 7 - 9	ENS 135	\$244
Project Scientists		
Project Scientist 1	ENS 127	\$111
Project Scientist 2	ENS 128	\$130
Project Scientist 3	ENS 129	\$154
Project Scientist 4	ENS 130	\$173
Project Scientist 5	ENS 131	\$203
Project Scientist 6	ENS 132	\$244
Project Scientist 7 - 9	ENS 135	\$244
Project Management		
Project Manager 1	PMT 001	\$227
Project Manager 2	PMT 002	\$244
Project Manager 3	PMT 003	\$244
Project Director	PMT 004	\$244

¹Black & Veatch's hourly rates include \$8.00/labor hour of Associated Project Cost (APC). The APC covers certain overhead costs such as computers, postage, reproduction and phones.

Subcontractor: Cybernet Consulting, Inc.		Hourly Rate
Instrumentation & Controls		
Labor Billing Rates		
Classification		
Principal Engineer		\$165
Senior Engineer		\$150
Engineer		\$125
CADD		\$80
Admin/Clerical		\$60

Subcontractor: Darnell & Associates, Inc.		Hourly Rate
Traffic Engineering		
Labor Billing Rates		
Classification		
Firm Principal		\$175
Principal Engineer		\$150
Senior Transportation Engineer		\$130
Senior Transportation Planner		\$115
Transportation Planner/Engineer		\$80
Traffic Engineering/Planning Technician		\$70
Word Processor		\$60

Subcontractor: DHK Engineers, Inc.		Hourly Rate
Noise/Odor Modeling; Permits; Air Quality; Energy Audits		
Labor Billing Rates		
Classification		
Principal Engineer/Project Manager		\$162
Process Engineer/Computer Simulations		\$117

Subcontractor: Garbini & Garbini Landscape Architecture, Inc.		Hourly Rate
Landscape Architecture		
Labor Billing Rates		
Classification		
Principal Landscape Architect in Charge		\$159
Principal Landscape Architect / QA QC		\$159
Landscape Architect / Project Manager		\$127
Irrigation Designer / CADD		\$105
Landscape Designer / CADD		\$93

Subcontractor: HELIX Environmental Planning Environmental Services Labor Billing Rates		Hourly Rate
Classification		
CEQA/NEPA Compliance		
Principal Environmental Planner		\$200
Sr. Project Manager III		\$180
Sr. Project Manager II		\$160
Sr. Project Manager I		\$140
Sr. Environmental Specialist		\$165
Project Manager III		\$135
Project Manager II		\$120
Project Manager I		\$105
Environmental Planner III		\$100
Environmental Planner II		\$90
Environmental Planner I		\$80
Environmental Intern		\$70
Biological Resources Studies/Habitat Management		
Principal Biologist		\$200
Sr. Scientist III		\$180
Sr. Scientist II		\$155
Sr. Scientist I		\$130
Project Manager III		\$135
Project Manager II		\$120
Project Manager I		\$105
Operations Manager		\$85
Biologist V		\$108
Biologist IV		\$97
Biologist III		\$86
Biologist II		\$76
Biologist I		\$66
Biologist Intern		\$60
Landscape Design/Habitat Restoration Design		
Senior Landscape Architect III		\$175
Senior Landscape Architect II		\$160
Senior Landscape Architect I		\$145
Landscape Architect III		\$125
Landscape Architect II		\$105
Landscape Architect I		\$90
Landscape Intern		\$70

(Continued on next page)

Subcontractor: HELIX Environmental Planning Environmental Services Labor Billing Rates		Hourly Rate
Classification		
Acoustics/Air Quality Studies		
Senior Analyst		\$175
Analyst III		\$120
Analyst II		\$100
Analyst I		\$80
Analyst Intern		\$70
Support Services for All HELIX Studies		
Sr. GIS Specialist		\$125
Senior Graphics Specialist		\$110
GIS Specialist III		\$82
GIS Specialist II		\$78
GIS Specialist I		\$69
GIS Intern		\$65
Document Coordinator/Technical Editor		\$75
Word Processor		\$65
Clerical		\$55

Subcontractor: Humanability Communications Consulting Public Outreach Labor Billing Rates		Hourly Rate
Classification		
Principal, Strategist		\$175
Principal, Project Manager		\$150
Facilitator, Strategic Advisor		\$185
Senior Associate		\$100
Art Director		\$95
Associate		\$85
Project Assistant		\$45
Translator		\$85
Technical Reviewer		\$185

Subcontractor: Martin & Libby Structural Engineering; Pilot Testing Labor Billing Rates		Hourly Rate
Classification		
P6 – Principal Engineer		\$175
P5 – Senior Structural Engineer		\$140
P4 – Project Engineer		\$110
P3 – Design Engineer		\$85
P2 – Senior Drafter		\$80
P1 – Drafter		\$65

Subcontractor: MBN Group Inc. Architectural Engineering Labor Billing Rates		Hourly Rate
Classification		
Principal		\$155
Project Manager/Project Architect		\$135
Designer		\$95
Technical Staff		\$85
Intermediate Drafter		\$65
Clerical Staff		\$50

Subcontractor: Ninyo & Moore Geotechnical Engineering Labor Billing Rates		Hourly Rate
Classification		
Principal Engineer/Geologist/Environmental Scientist		\$143
Senior Engineer/Geologist/Environmental Scientist		\$137
Senior Project Engineer/Geologist/Environmental Scientist		\$135
Project Engineer/Geologist/Environmental Scientist		\$131
Senior Staff Engineer/Geologist/Environmental Scientist		\$119
Staff Engineer/Geologist/Environmental Scientist		\$111
GIS Analyst		\$111
Field Operations Manager		\$89
Supervisory Technician		\$79
Nondestructive Examination Technician, UT, MT, LP		\$78
Senior Field/Laboratory Technician		\$73

(Continued on next page)

Subcontractor: Ninyo & Moore		Hourly
Geotechnical Engineering		Rate
Labor Billing Rates		
Classification		
Field/Laboratory Technician		\$73
ACI Concrete Technician		\$73
Special Inspector		\$73
Technical Illustrator/CAD Operator		\$72
Geotechnical/Environmental/Laboratory Assistant		\$61
Data Processing, Technical Editing, or Reproduction		\$54
<p>ODCs: Drilling and Backhoe subcontractors will be utilized on a project-by-project basis, and will be competitively bid. Laboratory fees shall be quoted on a project-by-project basis at rates no greater than Ninyo & Moore's current Schedule of Laboratory Fees.</p>		

Subcontractor: Proteus Consulting		Hourly
Wastewater; Planning, Waiver, Funding Application;		Rate
Recycled Water; Secondary Treatment		
Labor Billing Rates		
Classification		
Project Manager		\$160
Senior Engineer		\$150
Project Engineer		\$140
Field Engineer		\$130
Senior Designer		\$110
Designer		\$90
Administrative		\$60

Subcontractor: RFYeager Engineering, LLC		Hourly
Corrosion Engineering		Rate
Labor Billing Rates		
Classification		
Senior Corrosion Project Manager		\$125
Senior CADD Technician		\$75
Administrative Assistant		\$60

Subcontractor: Rocks Biological Consulting Environmental: Biological Services Labor Billing Rates		Hourly Rate
Classification		
Biological Monitor		\$90
Biologist II (general surveys, analysis, reports)		\$100
Principal Biologist (focused species surveys, wetland delineation, hearing attendance, etc.)		\$110

Subcontractor: Roesling Nakamura Terada Architects Architectural Engineering Labor Billing Rates		Hourly Rate
Classification		
Principal		\$185
Project Manager		\$160
Project Architect		\$140
Draftsperson		\$70
Clerical		\$60

Subcontractor: San Dieguito Engineering, Inc. Surveying Labor Billing Rates		Hourly Rate
Classification		
Principal Engineer		\$150
Principal Surveyor		\$150
One-man crew		\$120
Two-men crew		\$195
Assistant Engineer / Surveyor		\$100
Associate Engineer / Surveyor		\$100
Office Technician		\$60

Subcontractor: Simon Wong Engineering		Hourly
Structural Engineering		Rate
Labor Billing Rates		
Classification		
Principal Engineer		\$196
Project Manager		\$180
Senior Structural / Bridge Engineer		\$175
Senior Engineer I		\$170
Senior Engineer II / Project Engineer		\$150
Associate Engineer I		\$135
Associate Engineer II		\$125
Assistant Engineer		\$105
Engineering Intern		\$72
Senior Technician		\$155
Senior CADD Technician		\$100
CADD Technician		\$90
Clerical		\$60
Construction Manager		\$180
Resident Engineer		\$170
Inspector I		\$150
Inspector II		\$130
Inspector III		\$111

Subcontractor: Stuart Engineering		Hourly
Civil Engineering		Rate
Labor Billing Rates		
Classification		
Principal		\$195
Project Manager		\$170
Senior Engineer		\$155
Associate Engineer		\$135
Assistant Engineer		\$130
Senior Designer		\$135
Designer		\$120
Senior Draftsperson		\$115

Subcontractor: Western Pacific Pipeline Corp.	Hourly Rate
Pilot Testing Labor Billing Rates	
Classification	
Western Pacific Pipeline Corporation is a contractor added to the team to assist with constructing pilot test facilities. Fees will be determined on a project-by-project basis.	

SCHEDULE C-2

OTHER DIRECT COSTS - MILEAGE - TRAVEL EXPENSES

Other Direct Costs (ODCs)
<p>Design Professional's proposal in response to a Task Order request shall itemize and separately price each ODC required to perform the Task Order Scope of Services. Only those ODC's specifically identified and authorized on a Task Order Authorization are allowable. If requested by City, Design Professional shall provide supporting documentation substantiating the proposed price(s). Costs associated with any equipment, cell phones, and other costs which are included in Design Professional's overhead rate(s) shall not be charged to the City as a separately priced ODC under this Agreement. Receipts for all ODC's shall accompany Design Professional's invoice for payment.</p> <p>The provisions of this clause also apply to Design Professional's Subcontractors.</p>

Mileage Reimbursement
<p>Mileage reimbursement rate will be at current City of San Diego mileage rate. Mileage log identifying "To" and "From" locations, and "Start" and "End" odometer readings is required, and shall accompany Design Professional's invoice for payment. Markups are not allowed on mileage.</p> <p>Mileage reimbursement does not apply to vehicle rentals.</p> <p>The provisions of this clause also apply to Design Professional's Subcontractors.</p>

(Continued on next page)

Travel Expenses

Design Professional's proposal in response to a Task Order request shall itemize and separately price each travel expense item required to perform the Task Order Scope of Services. Only those travel expenses specifically identified and authorized on a Task Order Authorization are allowable. Travel expenses for the lowest cost effective air fare, train, and/or car rental, will be reimbursed at actual cost. Lodging and Per Diem will be reimbursed at actual cost up to the maximum allowance for the San Diego area as published/posted on the U.S. General Services Administration website (<http://www.gsa.gov/portal/category/100120>). Expenses associated with alcoholic beverages are not reimbursable. Receipts for all travel expenses shall accompany Design Professional's invoice for payment.

The provisions of this clause also apply to Design Professional's Subcontractors.

--- End of Fee Schedule ---

EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)

CONSULTANT REQUIREMENTS

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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 Services, 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 services, 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:	MBE, WBE
City of Los Angeles:	DBE, WBE, MBE
SD Regional Minority Supplier Diversity Council:	MBE, WBE

IX. List of Attachments.

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



City of San Diego

ATTACHMENT AA

EQUAL OPPORTUNITY CONTRACTING (EOC)

1010 Second Avenue • Suite 500 • San Diego, CA 92101

Phone: (619) 533-4464 • Fax: (619) 533-4474

WORK FORCE REPORT

ADMINISTRATIVE

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report (WFR)*.

CONTRACTOR IDENTIFICATION

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

Name of Company: Brown and Caldwell

AKA/DBA: _____

Address (Corporate Headquarters, where applicable): 201 North Civic Center, Suite 115

City Walnut Creek County Contra Costa State CA Zip: 94596

Telephone Number: (925) 937-9010 FAX Number: (925) 937-9026

Name of Company CEO: Craig Goehring, PE

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

Address: 9665 Chesapeake Drive, Suite 201

City San Diego County San Diego State CA Zip 92123

Telephone Number: (858) 514-8822 FAX Number: (858) 514-8833

Type of Business: Engineering Consultants Type of License: Engineering Architecture

The Company has appointed: Susy Pepper, Director of Human Resources

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

Address: 201 North Civic Center Drive, Walnut Creek, CA 94596

Telephone Number: (925) 937-9010 FAX Number: (925) 937-9026

- One San Diego County (or Most Local County) Work Force – Mandatory
- Branch Work Force *
- Managing Office Work Force

Check the box above that applies to this WFR.

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

I, the undersigned representative of Brown and Caldwell

(Firm Name)

San Diego

(County)

California

(State)

hereby certify that information provided

here in is true and correct. This document was executed on this 18th day of May, 2012

[Signature]
(Authorized Signature)

Marc G. Damikolas, P.E.
(Print Authorized Signature)

OFFICE(S) or BRANCH(ES): San Diego

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

OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Management & Financial									1		3	6		
Professional														
A&E, Science, Computer			2		2						9	4		
Technical											3	4		
Sales														
Administrative Support		1				1				2		1		
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*														

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

Totals Each Column	0	1	2	0	2	1	0	0	1	2	15	15	0	0
--------------------	---	---	---	---	---	---	---	---	---	---	----	----	---	---

Grand Total All Employees 39

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

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

Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														



CITY OF SAN DIEGO WORK FORCE REPORT – ADMINISTRATIVE

HISTORY

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

WORK FORCE & BRANCH WORK FORCE REPORTS

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

your firm from each of the three counties.^{1,2} On the other hand, if the project will be accomplished completely outside of San Diego, we ask for a Work Force Report from the county or counties where the work will be accomplished.²

MANAGING OFFICE WORK FORCE

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

TYPES OF WORK FORCE REPORTS:

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

- ¹ One San Diego County (or Most Local County) Work Force – Mandatory in most cases
- ² Branch Work Force *
- ³ Managing Office Work Force

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

Exhibit: Work Force Report Job categories

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

Management & Financial

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

Professional

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

Primary, Secondary, and Special Education School Teachers
Religious Workers
Social Scientists and Related Workers

Architecture & Engineering, Science, Computer

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

Technical

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

Sales

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

Administrative Support

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

Services

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

Personal Appearance Workers
Supervisors, Food Preparation and Serving Workers
Supervisors, Personal Care and Service Workers
Transportation, Tourism, and Lodging Attendants

Crafts

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

Operative Workers

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

Transportation

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

Laborers

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

SUBCONTRACTOR PARTICIPATION LIST

This list shall include the name and complete address of all Subcontractors who qualify as SLBEs or ELBEs. Contractors may also list participation by MBE, WBE, DBE, DBVE and OBE firms. However, no additional points will be awarded for participation by these firms, except that DVBEs that qualify as local businesses shall counted as SLBEs.

Contractor shall also submit Subcontractor commitment letters on Subcontractor's letterhead, no more than one page each, from Subcontractors listed below to acknowledge their commitment to the team, scope of work, and percent of participation in the project.

Subcontractors shall be used in the percentages listed. No changes to this Participation List will be allowed without prior written City approval.

NAME AND ADDRESS SUBCONTRACTORS	SCOPE OF WORK	PERCENT OF CONTRACT	SLBE/ELBE (*MBE/ WBE/DBE/ DVBE/OBE)	** WHERE CERTIFIED
Affinis 847 Jamacha Road El Cajon, CA 92019	Environmental: Cultural Resources	0.5	SLBE	City of San Diego
Air-X Utility Surveyors 2534 East El Norte Parkway Ste. C Escondido, CA 92027	Potholing; Utilities Location	1	SLBE WBE	City of San Diego CPUC
Allied Geotechnical Engineers, Inc. 9500 Cuyamaca Street, Suite 102 Santee, CA 92071	Geotechnical; Hydrogeologic/Geologi cal	2	ELBE SW/M/DBE	City of San Diego LA County Metro Transportation Authority
Bailey Environmental Associates, LLC (Harold E. Bailey, PhD, PE) 4220 Eastridge Drive La Mesa, CA 91941	Wastewater Recycled Water	1	SLBE (approval pending) SBE	City of San Diego SDWWA
Black & Veatch 300 Rancheros Drive, Suite 250 San Marcos, CA 92069	Water; Wastewater; Recycled Water; Civil; Electrical	31	OBE	N/A
CyberNet Consulting, Inc. 2244 Faraday Avenue, Suite 188 Carlsbad, CA 92008	Instrumentation & Controls	1	SLBE	City of San Diego
Darnell & Associates, Inc. 1446 Front Street, Suite 300 San Diego, CA 92101	Traffic Engineering	1.5	SLBE SBE	City of San Diego California DGS
DHK Engineers, Inc. 1851 Skyhill Place Escondido, CA 92026	Noise/Odor Modeling; Permits; Air Quality; Energy Audits	2	ELBE	City of San Diego
Garbini & Garbini Landscape Architecture, Inc. 715 J Street, Suite 307 San Diego, CA 92101	Landscape Architecture	1	ELBE	City of San Diego
Helix Environmental Planning 7578 El Cajon Boulevard, Suite 200 La Mesa, California 91942	Environmental Services	1	OBE	N/A
Humanability Communications Consulting P. O. Box 1188 Escondido, CA 92033	Public Outreach	0.5	SLBE	City of San Diego
Libby Engineers, Inc. dba Martin & Libby 4452 Glacier Avenue, Suite D San Diego, CA 92120	Structural Engineering; Pilot Testing	4	SLBE DBE WBE	City of San Diego CUCP/Caltrans CPUC

CONSULTANT CERTIFICATION FOR A DRUG-FREE WORKPLACE

PROJECT TITLE: As-Needed Engineering Consultant Services for 2012 - 2015 (H125674)

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:

FIRM NAME: Brown and Caldwell

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

Signed



Printed Name Marc G. Damikolas, P.E.

Title Vice President

Date May 18, 2012

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: City of San Diego
Public Utilities Department
2. Name of Specific Consultant & Company: Brown and Caldwell
Victor Occiano
3. Address, City, State, ZIP 9665 Chesapeake Drive, Suite 201
San Diego, CA 92123
4. Project Title (as shown on 1472, "Request for Council Action") As-Needed Engineering Consultant
Services for 2012-2015
5. Consultant Duties for Project: Provide professional engineering consultant
services on an as-needed basis to support existing
and future water and wastewater facilities
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.**]

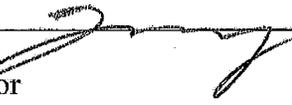


Full: Disclosure is required pursuant to the broadest disclosure category in the
appropriate Conflict of Interest Code.

- or -



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


Guann Hwang
Deputy Director
Public Utilities Department
Engineering and Program Management Division

Date

8/3-12

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.

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

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.

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).

EXHIBIT G

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:

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

EXHIBIT G

by carcinogens, volatile organic compounds, fungi, molds, bacteria, and other known toxins.

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

OUTREACH / EDUCATION:

1. An education and outreach effort will be implemented to make the community aware of the benefits of "Green Building" practices.
2. The City will sponsor a recognition program for innovative Green Building projects implemented in the public as well as private sector in an effort to encourage and recognize outstanding environmental protection and energy conservation projects.

IMPLEMENTATION:

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

LEGISLATION:

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

REFERENCES:

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

HISTORY:

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

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				
Adherence 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:

Product/Services Description:

Firm Name: Brown and Caldwell

A full-service environmental management and consulting engineering firm.

Product/Services Information:

NIGP Codes: *
90735, 90738, 90740, 90775, 91842, 91843, 91846, 92500, 92517, 92528, 92531, 92533,
92534, 92535, 92567, 92583, 92587, 92596, 92597, 92600, 92629, 92630, 92652, 92683,
92685, 92688, 92690, 92693, 92695, 92696, 92849, 95812, 95826

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

The City requires this information for statistical purposes only.

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

* 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:

As-Needed Engineerig Consultant Services for 2012 -- 2015 (H125674)

City of San Diego, Public Utilities Department

B. BIDDER/CONTRACTOR INFORMATION:

Brown and Caldwell

Legal Name

DBA

9665 Chesapeake Drive, Suite 201

San Diego

CA

92123

Street Address

City

State

Zip

Marc G. Damikolas, Vice President and Office Manager

(858) 514-8822

(858) 514-8833

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: 11/07/1958 California

List corporation's current officers: President: James R. Miller
Vice Pres: _____
Secretary: Robert S. Leichtner
Treasurer: Valorie B. Feher

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

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

E. FINANCIAL RESOURCES AND RESPONSIBILITY:

1. Is your firm in preparation for, in the process of, or in negotiations toward being sold?

Yes No

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

2. In the past five (5) years, has your firm been denied bonding?

Yes No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances; include bonding company name.

3. In the past five (5) years, has a bonding company made any payments to satisfy claims made against a bond issued on your firm's behalf or a firm where you were the principal?

Yes No

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

F. PERFORMANCE HISTORY:

1. In the past five (5) years, has your firm been found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for defaulting or breaching a contract with a government agency?

Yes No

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

2. In the past five (5) years, has a government agency terminated your firm's contract prior to completion?

Yes No

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

G. COMPLIANCE:

1. In the past five (5) years, has your firm or any firm owner, partner, officer, executives or management been criminally penalized or found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement for violating any federal, state or local law in performance of a contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws which affect employees?

Yes No

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

2. In the past five (5) years, has your firm been debarred or determined to be non-responsible by a government agency?

Yes No

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

H. BUSINESS INTEGRITY:

1. In the past five (5) years, has your firm been convicted of or found liable in a civil suit for making a false claim or material misrepresentation to a private or governmental entity?
 Yes No

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

2. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a crime, including misdemeanors, or been found liable in a civil suit involving the bidding, awarding, or performance of a government contract?
 Yes No

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

I. TYPE OF SUBMISSION:

This document is submitted as:

- Initial submission of *Contractor Standards Pledge of Compliance*.
 Update of prior *Contractor Standards Pledge of Compliance* dated: / /

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

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

- (a) To comply with all applicable local, State and Federal laws, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.
- (b) To notify the Purchasing Agent within fifteen (15) calendar days upon receiving notification that a government agency has begun an investigation of the Contractor that may result in a finding that the Contractor is or was not in compliance with laws stated in paragraph (a).
- (c) To notify the Purchasing Agent within fifteen (15) calendar days when there has been a finding by a government agency or court of competent jurisdiction of a violation by the Contractor of laws stated in paragraph (a).
- (d) To provide the Purchasing Agent updated responses to the *Contractor Standards Pledge of Compliance* within thirty (30) calendar days if a change occurs which would modify any response.
- (e) To notify the Purchasing Agent within fifteen (15) days of becoming aware of an investigation or finding by a government agency or court of competent jurisdiction of a violation by a subcontractor of laws stated in paragraph (a).
- (f) To cooperate fully with the Purchasing Agent and the City during any investigation and to respond to a request for information within ten (10) working days from the request date.

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

Marc G. Damikolas, P.E.
Vice President/Office Manager

Print Name, Title



Signature

May 18, 2012

Date

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

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

NA

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.

Marc G. Damikolas, P.E.
Vice President/Office Manager

Print Name, Title



Signature

May 18, 2012

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: Brown and Caldwell	Contact Name: Marc Damikolas
Company Address: 9665 Chesapeake Drive, Suite 201	Contact Phone: 858.514.8822
San Diego, CA 92123	Contact Email: mdamikolas@brwnncald.com

CONTRACT INFORMATION

Contract Title: As-Needed Engineering Consultant Services for 2012 - 2015	Start Date: TBD
Contract Number (if no number, state location): H125674	End Date: TBD

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.

Marc Damikolas, Vice President

May 18, 2012

Name/Title of Signatory

Signature

Date

FOR OFFICIAL CITY USE ONLY

Receipt Date: _____ EBO Analyst: _____ Approved Not Approved – Reason: _____

REGARDING INFORMATION REQUESTED UNDER THE
CALIFORNIA PUBLIC RECORDS ACT

The undersigned duly authorized representative, on behalf of the named Contractor declares and acknowledges the following:

The contents of this contract and any documents pertaining to the performance of the contract requirements/Scope of Services resulting from this contract are public records, and therefore subject to disclosure unless a specific exemption in the California Public Records Act applies.

If a Contractor submits information **clearly marked** confidential or proprietary, the City of San Diego (City) may protect such information and treat it with confidentiality only to the extent permitted by law. However, it will be the **responsibility of the Contractor** to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the California Public Records Act, should the City choose to withhold such information.

General references to sections of the California Public Records Act will not suffice. Rather, the Contractor must provide a **specific and detailed legal basis, including applicable case law** that **clearly establishes** the requested information is exempt from the disclosure requirements of the California Public Records Act.

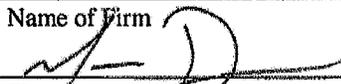
If the Contractor does not provide a specific and detailed legal basis for withholding the requested information within a time specified by the City, the City will release the information as required by the California Public Records Act and the **Contractor will hold the City harmless** for release of this information.

It will be the **Contractor's obligation to defend**, at Contractor's expense, any legal actions or challenges seeking to obtain from the City any information requested under the California Public Records Act withheld by the City at the Contractor's request. Furthermore, the Contractor shall **indemnify** the City and **hold it harmless** for any claim or liability, and **defend any action** brought against the City, resulting from the City's refusal to release information requested under the Public Records Act withheld at Contractor's request.

Nothing in this Agreement creates any obligation for the City to notify the Contractor or obtain the Contractor's approval or consent before releasing information subject to disclosure under the California Public Records Act.

Brown and Caldwell

Name of Firm


Signature of Authorized Representative

Marc G. Damikolas, P.E., Vice President

Printed/Typed Name

May 18, 2012

Date

CONSULTANT CERTIFICATION

AMERICAN WITH DISABILITIES ACT (ADA) COMPLIANCE CERTIFICATION

PROJECT TITLE: As Needed Engineering Consultant Services for 2012 - 2015 (H125674)

I hereby certify that I am familiar with the requirements of San Diego City Council Policy No. 100-4 regarding the American With Disabilities Act (ADA) outlined in Article IV, "ADA Certification", of the Agreement, and that;

Brown and Caldwell

(Name under which business is conducted)

has in place workplace program that complies with said policy. I further certify that each subcontract agreement for this project contains language which indicates the subcontractor's agreement to abide by the provisions of the policy as outlined.

Signed 
Printed Name Marc G. Damikolas, P.E.
Title Vice President

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO TO AUTHORIZE AN AMENDMENT TO AN AGREEMENT WITH BROWN AND CALDWELL FOR AS-NEEDED ENGINEERING CONSULTANT SERVICES FOR FISCAL YEARS 2012-2015, AND TAKING RELATED ACTIONS.

WHEREAS, the Council of the City of San Diego (Council) adopted Resolution No. R-308042 on March 19, 2013, which authorized execution of an agreement with Brown and Caldwell (Agreement No. H125674) for as-needed engineering consultant services for a total amount not to exceed \$5,000,000 and for a term spanning fiscal years 2012-2015; and

WHEREAS, the Public Utilities Department has urgent need for continued engineering consultant services from Brown and Caldwell and seeks to amend the Brown and Caldwell Agreement in order to increase the total maximum expenditure from \$5,000,000 to \$7,000,000; and

WHEREAS, the Brown and Caldwell Agreement was awarded pursuant to a competitive solicitation process that specified the scope of work as services for a duration of three years and with a maximum compensation of \$5,000,000 and thus an increase in the maximum compensation amount under the Brown and Caldwell Agreement constitutes a change in scope that would ordinarily require a new contract pursuant to a new solicitation; and

WHEREAS, the aforementioned requirement for a new solicitation is because of Council Policy 300-7, which can be waived by the Council; 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, for and on behalf of the City, the first amendment to the Brown and Caldwell Agreement for As-Needed Engineering Consultant Services for fiscal years 2012-2015 (H125674) to increase the total expenditures by \$2,000,000 and to make other changes as more fully set forth in that document on file with the City Clerk as Document No. RR- _____, and that for the purposes of this first amendment compliance with Council Policy 300-7 is hereby waived.

2. That the Chief Financial Officer is authorized to appropriate and expend an amount not to exceed \$2,000,000 from Dept 2000, Public Utilities, Fund 700000, Muni Sewer Revenue, Fund 700001, Metro Sewer Utility, or Fund 700011, Water Utility Operating for the purpose of funding this first amendment to the Brown and Caldwell Agreement, contingent upon the adoption of the Annual Appropriation Ordinance for the applicable fiscal year and provided that the Chief Financial Officer first furnishes one or more certificates demonstrating that the funds for this expenditure are, or will be, on deposit in the City Treasury.

APPROVED: JAN I. GOLDSMITH, City Attorney

By _____
Jeremy A. Jung
Deputy City Attorney

JAJ:cw
07/11/14
Or.Dept: Public Utilities
CC No.: N/A
Doc. No.: 821360

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

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor