

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) 3000007743
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TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Public Works/Engineering	DATE: 12/9/2014
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SUBJECT: El Camino Real – Half-Mile to Via de la Valle – Authorize Second Amendment to the Consultant Agreement with RECON Environmental, Inc.

PRIMARY CONTACT (NAME, PHONE): Abi Palaseyed, (619) 533-4654, MS 908A	SECONDARY CONTACT (NAME, PHONE): Brad Johnson, (619) 533-5120, MS 908A
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COMPLETE FOR ACCOUNTING PURPOSES

FUND	400169				
FUNCTIONAL AREA	OTHR-00000000-TR				
COST CENTER	2113120013				
GENERAL LEDGER ACCT	512034				
WBS OR INTERNAL ORDER	S-00856.02.03				
CAPITAL PROJECT No.	S-00856				
AMOUNT	\$83,397.00	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): RECON Environmental
 Previous actions: \$270,000
 This action: \$83,397
 Total Amount: \$353,397

ROUTING AND APPROVALS

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Environmental Analysis	ORIG DEPT.	Gibson, Marnell	03/04/2015
Equal Opportunity Contracting	CFO		
Financial Management	DEPUTY CHIEF		
Liaison Office	COO		
Comptroller	CITY ATTORNEY	Gerrity, Ryan	
	COUNCIL PRESIDENTS OFFICE		

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

1. Authorizing the Mayor or his designee to execute the Second Amendment to the Agreement with RECON

Environmental, Inc. for environmental services in CIP S-00856, El Camino Real – Half Mile to Via de la Valle, in the amount not to exceed \$83,397; and

2. Authorizing the Chief Financial Officer to expend an amount not to exceed \$83,397 from CIP S-00856, El Camino Real – Half Mile to Via de la Valle from Fund 400169, Transnet for the purpose of executing this Second Amendment to the Agreement with RECON Environmental, Inc.; and

3. Determining that this activity is statutorily exempt from CEQA pursuant to State CEQA Guidelines, Section 15262 (Feasibility and Planning Studies).

STAFF RECOMMENDATIONS:
 Adopt the Ordinances.

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

COUNCIL DISTRICT(S):	Lightner (1)
COMMUNITY AREA(S):	North County Future Urbanizing Area Sub Area II & Fairbanks Ranch Country Club
ENVIRONMENTAL IMPACT:	This activity is statutorily exempt from CEQA pursuant to State CEQA Guidelines, Section 15262 (Feasibility and Planning Studies).
CITY CLERK INSTRUCTIONS:	This Item is subject to Charter Section 99 requirements (10 day public noticing and 6 votes required). Upon Mayoral approval, please return one copy of the executed Council Action, two (2) signed original Second Amendment to the Agreement for RECON Environmental, Inc. and a copy of the Ordinance to Brad Johnson, Right of Way Division, MS 908A.

COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE: 12/9/2014

ORIGINATING DEPARTMENT: Public Works/Engineering

SUBJECT: El Camino Real – Half-Mile to Via de la Valle – Authorize Second Amendment to the Consultant Agreement with RECON Environmental, Inc.

COUNCIL DISTRICT(S): Lightner (1)

CONTACT/PHONE NUMBER: Abi Palaseyed/ (619) 533-4654, MS 908A

DESCRIPTIVE SUMMARY OF ITEM:

Executing the Second Amendment to the Agreement with RECON Environmental, Inc. for \$83,397 to complete California Environmental Quality Act (CEQA) requirements for El Camino Real – Half-Mile to Via de la Valle project.

STAFF RECOMMENDATION:

Adopt the Ordinances.

EXECUTIVE SUMMARY OF ITEM BACKGROUND

The El Camino Real – Half-Mile to Via de La Valle project proposes to modify the segment of El Camino Real between Via de la Valle and San Dieguito Road in order to improve the structural integrity of the bridge over the San Dieguito River, alleviate problems associated with high flood events, improve pedestrian and vehicular access to nearby coastal and recreational resources, relieve traffic congestion, and improve consistency with the adopted land use plan for the project area. The proposed improvements include raising and widening El Camino Real roadway and replacing the bridge with a structure that is also raised and wider. Approximately 1,000 feet of Via de la Valle also would be widened to accommodate new turn lanes from El Camino Real, and drainage improvements would be constructed along the southern edge of Via de la Valle, from existing El Camino Real to El Camino Real North.

In 2006, the City prepared and issued for Public Review a draft Environmental Impact Report (DEIR). Comments were received, however, the technical studies became outdated before the document was finalized and the decision was made to update the studies.

The original agreement with RECON Environmental, Inc. was to update the technical studies and produce an updated DEIR for Public Review. During this time a new Modified Eastern Alignment Alternative was developed that would have a narrower pavement width from curb to curb. In addition, another alternative with roundabouts at the four affected intersections was developed and is supported by the Carmel Valley Community Planning Group. The First Amendment with RECON Environmental, Inc. was needed to perform and update the technical studies to reflect these additional alternatives.

The Second Amendment with RECON Environmental, Inc. is needed to address additional reviews required that relate to biological issues and construction sequencing. The Second

Amendment will complete the DEIR in accordance with CEQA guidelines, including incorporation of the roundabout alternative and data from the updated studies. The Second Amendment will also extend the time of the contract to June 30, 2016.

CITY STRATEGIC PLAN GOAL(S)/OBJECTIVES(S):

Goal#2: Work in partnership with all of our communities to achieve safe and livable neighborhoods.

Objective #3: Invest in infrastructure.

FISCAL CONSIDERATIONS:

\$83,397 is available to fund the Second Amendment to the Consultant Agreement with RECON Environmental, Inc. to complete the CEQA requirements for the project and is available from Fund 400169, Transnet. This amendment will increase the total contract amount to \$353,397.

EQUAL OPPORTUNITY CONTRACTING INFORMATION:

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

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

Council Resolution R-303294 dated January 18, 2008 authorized the expenditure of \$200,000 for the execution of the original consultant contract with RECON Environmental, Inc.

Council Ordinance O-20015 dated January 18, 2011 authorized acceptance, appropriation and expenditure of \$1,428,000 of Federal Grant Funds and authorized expenditures of \$197,130 for the execution of a First Amendment to the agreement with Rick Engineering, Inc. and \$70,000 for the execution of a First Amendment to the agreement with RECON Environmental, Inc.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Meetings were held with the Carmel Valley Community Planning Group from 2004-2006 and with the San Dieguito Western River Valley Task Force in 2006-2007. Meetings with the Carmel Valley Community Planning Group and San Dieguito Riverpark Joint Powers Authority were conducted in 2009 and 2010. An update was provided at the San Dieguito Planning Group meeting on February 6, 2014. Residents, business and property owners along the corridor attended these meetings. The City of San Diego, along with its consultants will continue to attend Carmel Valley Planning Group meetings during the environmental process.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders include the Community of Carmel Valley, Recon Environmental, Inc., Hon Consulting, Inc. and Nordby Biological Consulting.

Gibson, Marnell
Originating Department

Deputy Chief/Chief Operating Officer



DOCKET SUPPORTING INFORMATION CITY OF SAN DIEGO EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION	DATE: March 17, 2015
SUBJECT: El Camino Real – Half Mile to Via de la Valle – Authorize Second Amendment to the Consultant Agreement with RECON Environmental, Inc.	

GENERAL CONTRACT INFORMATION

Recommended Consultant: RECON Environmental Inc. (Not Certified, M - Cauc.)

Amount of this Action: \$ **83,397.00**
 Previous Actions: \$270,000.00
 Cumulative Amount: \$353,397.00

Funding Source: City of San Diego

Goal: 15% Voluntary

SUBCONSULTANT PARTICIPATION

	<u>This Action</u>	<u>Percent</u>	<u>Cumulative</u>	<u>Percent</u>
Hon Consulting, Inc. (ELBE, DVBE, DBE, F - Cauc.)	\$ 0.00	0.00%	\$ 86,650.00	24.52%
Tierra Environmental (DBE, MBE, M - Hisp.)	\$ 0.00	0.00%	\$ 15,930.00	4.51%
KTU+A (WBE, F- Cauc.)	\$	0.00%	\$ 21,905.00	6.20%
Norby Biological Consulting (DBE, M – Afr.)	\$ 9,200.00	11.03%	\$ 25,525.00	7.22%
Total Certified Participation	\$ 0.00	0.00%	\$150,010.00	42.45%
Total Non-Certified Participation	\$ 0.00	0.00%	\$ 0.00	0.00%
Total Subcontractor Participation	\$ 9,200.00	11.03%	\$150,010.00	42.45%

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required

RECON Environmental, Inc. submitted a Work Force Report for their San Diego employees dated, August 4, 2014 indicating 103 employees in their Administrative Work Force.

The Administrative/Trade indicates under representation in the following categories:

- Black in Professional
- Asian in Management and Financial; Professional; and Technical
- Filipino in Management and Financial; Professional; Technical; and Administrative Support
- Female in Professional; and Technical

Based on the under representations in the workforce noted above, staff has an approved Equal Employment Opportunity (EEO) Plan on file as of August 28, 2014. Staff will continue to monitor the firm's efforts to implement their EEO plan.

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

(H084154)

KM

**City of San Diego
Human Resources Department
Request for Human Resources Approval for Purchase Requisition 2014**

Requesting Department: Public Works
 Vendor Name: Recon Environmental, Inc.
 Purchase Requisition #: N/A
 Department Contact: Dean Marsden, 533-4608
 Date of Request: 7/28/2014
 Contract Amount: \$ 74,547 amendment (\$344,547 total contract amount)

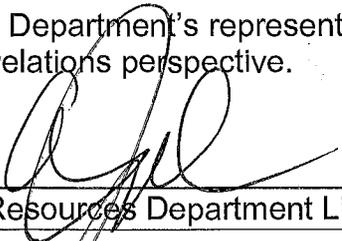
Please submit request to HumanResources@saniego.gov or MS 56L

Question	Department Response
What is the contract for? Provide a brief description of the activity and what work the contract would be doing	Consultant environmental services for bridge project. Amendment required to complete EIR and address comments from public review period. <i>why can't city forces do this?</i>
Are City employees currently performing any of the work?	City staff managing consultant contracts and in a Deputy City Engineer capacity enforcing standards.
Will any City employees be displaced as a result of this contract?	No
If this is a renewal of an existing contract, how long have these services been contracted out?	<u>2nd Amendment to Original Agreement</u> which is dated January 8, 2008. <u>1st Amendment</u> is dated April 11, 2011. <u>Need contract time extended and additional scope due to complexity of environmental issues with Project.</u>
Is this a Public Works Contract? (construction, reconstruction or repair of City buildings, street or other facilities)	No
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 <i>see 8/5/14 email from Manuel Gibson complete of EIR work to do with house</i>

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

HUMAN RESOURCES DEPARTMENT USE ONLY

Based on the Department's representation, this contract is from a labor relations perspective.



 Human Resources Department Liaison

Approved

8/20/14

 Date

NMI 7-29-14

SECOND AMENDMENT TO AGREEMENT

This Second Amendment to the *EIR for El Camino Real Bridge and Road Widening (Contract Number H084154)* dated *January 8, 2008* [Agreement], is hereby entered into by and between the City of San Diego [City], a municipal corporation, and *RECON Environmental, Inc.* [Consultant].

RECITALS

A. The City and Consultant [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-303294, to provide *environmental consulting services for El Camino Real Bridge and Road Widening Project* [Project].

B. The Parties entered into a First Amendment to the Agreement, which is on file in the Office of the City Clerk as Document No. OO-20015, to provide additional services beyond the original scope of the project

C. The Parties entered into an Agreement to provide professional consulting services with regard to the Project; and WHEREAS, the term of this agreement was set to expire on March 1, 2013; and WHEREAS the Parties having since continued their performance of the contract now desire to retroactively amend the Agreement to include services provided since March 2, 2013; and WHEREAS, the Parties now desire to add additional services to the agreement in order to complete Project.

D. The City now desires to execute a Second Amendment to the Agreement for the Consultant to provide additional Professional Services, as indicated in the expanded Scope of Services [Exhibit A-2], for a compensation amount not to exceed \$83,397 (*consisting of \$58,812 for Scope of Services and \$24,585 for Additional Services*), with total compensation for services

provided under the Agreement not to exceed *\$353,397 (consisting of \$309,159 for Scope of Services and \$44,238 for Additional Services)*.

E. Consultant desires to provide the services required under this Second Amendment.

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. Section 1.1 is amended to read as follows:

ADD: "The Consultant shall perform Professional Services as set forth in the written Scope of Services [Exhibit A-2] at the direction of the City as specifically enumerated in the Compensation and Fee Schedule [Exhibit B-2], and in accordance to the Time Schedule [Exhibit C-2]."

2. 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, it shall be effective until completion of the Scope of Services or **June 30, 2016** whichever is the earliest but not to exceed five years unless approved by City ordinance."

3. Section 3.1 is amended to read as follows:

ADD: "The City shall pay the Consultant for all Professional Services and all expenses related to performance under this Second Amendment to the Agreement, in an amount not to exceed *\$83,397* as set forth in the Compensation and Fee Schedule [Exhibit B-2]. The Consultant shall be entitled to compensation for Professional Services under this Second Amendment to the Agreement, whether within the Scope of Services or as Additional Services, based on the Compensation and Fee Schedule. For the duration of this Second Amendment to the Agreement, the Consultant shall not be entitled to fees which exceed the Compensation and Fee Schedule. The Total Compensation to Consultant under this Agreement shall not exceed *\$353,397*."

4. Section 3.2 (Additional Services) is amended to read as follows:

ADD: "If the City requires additional Professional Services [Additional Services] beyond the Scope of Services performed pursuant to this Second Amendment to the Agreement, except for additional costs as described in Section 3 of this Agreement, the City shall pay Design Professional an additional fee not to exceed *\$24,585*. The City and the Design Professional must

agree in writing upon such fee for a specific task based on the Fee Schedule prior to the Design Professional beginning the Additional Services.”

5. Article IV is amended to read as follows:

DELETE Section 4.3.3.1 in its entirety and REPLACE with the following:

“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.”

6. DELETE Section 4.3.4.1 in its entirety and REPLACE 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 Consultant’s insurance and shall not contribute to it.”

7. DELETE Section 4.3.4.2 in its entirety and REPLACE 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 Consultant.”

8. ADD: **“4.20 Prevailing Wage Rates.** Prevailing wage rates apply to this Agreement. Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Agreement is subject to State

prevailing wage laws. For construction work performed under this Agreement cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Agreement cumulatively exceeding \$15,000, the Design Professional and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.”

4.20.1. Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, the Design Professional and its subcontractors shall ensure that all workers who perform work under this [Agreement or Contract] are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

4.20.1.1. Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Design Professional and its subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

4.20.1.2. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Agreement. 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 DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Agreement 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 Agreement, each successive predetermined wage rate shall apply to this Agreement 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 Agreement, such wage rate shall apply to the balance of the Agreement.

4.20.2. Penalties for Violations. Design Professional and its subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed.

4.20.3. Payroll Records. Design Professional and its subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Design Professional shall require its subcontractors to also comply with section 1776. Design Professional and its subcontractors shall submit weekly certified payroll records online via the City’s web-based Labor Compliance Program. Design Professional is responsible for ensuring its subcontractors submit certified payroll records to the City.

4.20.4. Apprentices. Design Professional and its subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Design Professional shall be held responsible for the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.

4.20.5. Working Hours. Design Professional and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on Design Professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

4.20.6. Required Provisions for Subcontracts. Design Professional shall include at a minimum a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

4.20.7. Labor Code Section 1861 Certification. Design Professional in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Agreement, Design Professional certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this agreement."

4.20.8. Labor Compliance Program. The City has its own Labor Compliance Program as authorized by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred."

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

“6.1 Indemnification and Hold Harmless Agreement. With respect to any liability, including but not limited to claims asserted or costs, losses, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the Consultant, or Consultant's employees, agents, and officers, arising out of any services performed under this Agreement, the Consultant agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers, and employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents or officers, or any third party. The Consultant's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active or sole negligence or sole willful misconduct of the City, its agents, officers or employees.”

10. DELETE Section 9.24 in its entirety and REPLACE with the following:

“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 J**. 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.”

11. The following attachments are incorporated herein by reference as follows: Exhibits A-2 (Scope of Services), B-2 (Compensation and Fee Schedule), C-2 (Time Schedule), and J (Equal Benefits Ordinance Certification of Compliance).

12. The Parties agree that this Second Amendment to the Agreement represents the entire understanding of the Consultant 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.

IN WITNESS WHEREOF, this Second Amendment to the *EIR for El Camino Real Bridge and Road Widening (Contract Number H084154)* is executed by the City of San Diego acting by and through its Mayor, or his designee, pursuant to Ordinance No. _____ authorizing such execution, and by Consultant.

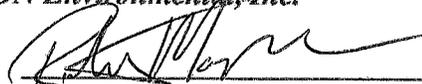
THE CITY OF SAN DIEGO
Mayor or Designee

By _____

W. Downs Prior
Principal Contract Specialist
Public Works Contracts

Date: _____

RECON Environmental, Inc.

By:  _____

Name: Robert MacAller

Title: President

Date: 9/9/14

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

JAN I. GOLDSMITH, City Attorney

By: _____

Ryan Kohut
Deputy City Attorney

ATTACHMENT A-2: SCOPE OF WORK

Task 1C: Third Screencheck Draft EIR

RECON and Hon will complete minor revisions in response to City cycle comments. RECON will submit a 3rd screencheck Draft EIR to the City of San Diego.

Deliverables:

- Comment Matrix indicating revision and/or response to City comments on the 2nd screencheck Draft EIR (April 2014)
- Five (5) hard copies of the 3rd screencheck Draft EIR (Volume I) and fifteen (15) CDs of the 3rd screencheck Draft EIR (Volume I-III) for Engineering and DSD staff review
- Electronic files (.docx and/or .pdf) posted on an ftp site for Project Team review

Task 2C: Public Review Draft EIR

Following the City's review and approval of the biology section, RECON and Hon will complete minor and editorial revisions for consistency in the document. All technical reports are complete and no major revisions or new analysis will be added to the Draft EIR. RECON will subcontract with Hon to conduct an editorial review of the changes to the Draft EIR. RECON will prepare a draft EIR for final check before public review and then public review draft copies for City circulation.

Deliverables:

- Two (2) hard copies of a pre-print Public Review Draft EIR (Volume 1) for review and approval
- Fifteen (15) copies of the executive summary and fifteen (15) CDs of the Draft EIR (Volumes I-III) for submittal to the State Clearinghouse
- Fifteen (15) hard copies of the Draft EIR (Volume 1), one (1) copy of the technical appendices (Volumes II-III), and fifty (50) CDs of the Public Review Draft EIR (Volumes I-III) Note: due to oversize graphics, hard copies of Volume III: Hydraulic Study may be produced outside RECON.

Task 3C: Responses to Comments

RECON will review the compiled letters and comments prepared by Hon under the original authorization and assist with the preparation of up to 20 comment letters (or 80 distinct comments) received during public review.

Deliverables:

- Draft responses to comments

Task 4C: Final EIR

Prepare one round of revisions on responses based on City comments and corresponding edits to the Draft Final EIR, including the mitigation monitoring and reporting program as necessary based on comments from the public review. RECON and Hon will prepare the CEQA Findings and Statement of Overriding Considerations if necessary. RECON and Hon will prepare one set of revisions and resubmit the Final EIR to the City.

Deliverables:

- Draft Final EIR
- Final EIR

Task 5C: Meetings and Coordination

RECON, Hon, and NBS will attend up to six meetings on the project. These meetings are anticipated to correspond to the following: Task 1C (resolution of biology issues and review of the 2nd screencheck Draft EIR), Task 2C (preparation and noticing for the public review draft), Task 3C (draft responses to comments), and 4C (final EIR Preparation). In addition, RECON, Hon, and NBS will attend up to two hearings for the project. For project team meetings, RECON will prepare and circulate and agenda and meeting notes for the team.

Deliverables:

- Attendance at up to four (4) Project Development Team meetings with City staff

- Four (4) meeting agendas and meeting notes
- Attendance at up to two (2) hearings for the project

Additional Services:

An additional services budget has been included in the event that additional project support is required. This budget would only be used with written authorization and can include optional tasks such as additional revisions, responses to public comment letters, and or meetings and coordination (e.g., RECON or its subcontractors [Hon, NBS, and/or KTU+A] may attend additional meetings and/or hearings for the project).

ATTACHMENT B-2: COST ESTIMATE

The following task by task budget breakdown is for your convenience and budgeting purposes only. RECON proposes to perform these services on a lump sum basis.

Task	Rate	Hon	NBS	RECON			Total
		Principal	Principal	Principal	Senior PM	Production	
		110	130	210	173	73	
1C	3rd Draft EIR	45	20	20	15	15	\$15,440.00
2C:	Public Review	25	5	15	5	25	\$ 9,240.00
3C:	RTC	0	30	15	40	10	\$14,700.00
4C:	Final EIR	30		10	10	20	\$ 8,590.00
5C:	Meetings	15	15	25	4	0	\$ 9,542.00
	Total Hours	115	70	85	74	70	
	Total Labor	\$12,650	\$9,100	\$17,850	\$12,802	\$5,110	\$57,512
	Expenses	\$0	\$100	\$0	\$0	\$1,200	\$1,300
	Subtotal						\$68,812
	Additional Services						\$24,585
Grand Total							\$83,397

RATES

Principal	\$210.00
Senior Project Manager	\$173.00
Senior	\$172.00
Associate Project Manager	\$141.00
Associate	\$140.00
Analyst	\$119.00
Assistant	\$100.00
GIS Specialist	\$93.00
Production Supervisor	\$80.00
Production Specialist	\$73.00
Resource Monitor II	\$75.00
Resource Monitor I	\$64.00

ATTACHMENT C-2: SCHEDULE

The following schedule has been updated to reflect the extended review and preparation time needed for the Natural Environment Study (NES) and a 3rd Screencheck Draft EIR submittal. Progress reports submitted with invoices will serve to update this schedule as needed throughout the completion of the project.

Task	Timeline
1C: Respond to City cycle comments on 2 nd DEIR, incorporate NES and complete biology section, and submit 3 rd screencheck DEIR	1 month with work estimated to begin upon finalization of the NES
2C: City review of 3 rd screencheck DEIR and pre-print public review draft	2 months with work estimated to begin upon submittal of the 3 rd screencheck draft
2C: Public review	45 days with work estimated to begin upon finalization of public review draft
3C: Respond to comments with City review of draft responses	2 months with work estimated to begin upon completion of public review period
4C: Revise responses and prepare Draft FEIR	1 month with work estimated to begin one week upon receipt of comments from City
4C: City Review FEIR, Finalize FEIR	1 month with work estimated to begin upon receipt of Final EIR submittal

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: RECON Environmental, Inc.	Contact Name: Robert MacAller
Company Address: 1927 Fifth Avenue, San Diego, CA 92101	Contact Phone: (619) 308-9333
	Contact Email: rmacaller@reconenvironmental.com

CONTRACT INFORMATION

Contract Title: EIR for El Camino Real Bridge and Road Widening	Start Date: 1/8/2008
Contract Number (if no number, state location): H084154	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 (Will initiate at first open enrollment period)
 - 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.

Robert MacAller, President

Name/Title of Signatory

Signature

7/16/14

Date

FOR OFFICIAL CITY USE ONLY

Receipt Date:	EBO Analyst:	<input type="checkbox"/> Approved <input type="checkbox"/> Not Approved – Reason:
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The City of San Diego
COMPTROLLER'S CERTIFICATE

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING **CC 3000007743**
 DEPT. NO.: **2112**

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____

Purpose: _____

Date: _____ By: _____
 COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Funded Program	Fund	Grant Number	G/L Account	Functional Area	Business Area	Fund Center or Cost Center	Internal Order or WBS Element	Original Amount
TOTAL AMOUNT									

FUND OVERRIDE

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$83,397.00

Vendor: RECON Environmental, Inc

Purpose: To authorize the expenditure of funds not to exceed \$83,397.00 to RECON Environmental, Inc for the Second Amendment to the Agreement for the El Camino Real - Half-Mile to Via de la Valle project

Date: April 8, 2015 By: James Long
 COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Funded Program	Fund	Grant Number	G/L Account	Functional Area	Business Area	Fund Center or Cost Center	Internal Order or WBS Element	Original Amount
1	S00856	400169		512034	OTHR-00000000-TR	2113		S-00856.02.03	\$83,397.00
TOTAL AMOUNT									\$83,397.00

FUND OVERRIDE

FIRST AMENDMENT TO AGREEMENT

H089154

This First Amendment to the *Agreement for Consulting Services - EIR for El Camino Real Bridge and Road Widening* dated *January 8, 2008*[Agreement], is hereby entered into by and between the City of San Diego [City], a municipal corporation, and *RECON Environmental, Inc.* [Consultant].

RECITALS

A. The City and Consultant [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-303294**, to provide *Environmental Services for El Camino Real Road and Bridge Widening Project* [Project].

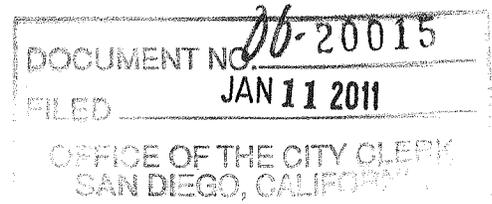
B. The City desires to execute a First Amendment to the Agreement for the Consultant to provide additional Professional Services, as indicated in the expanded Scope of Services [Exhibit A-1], for a compensation amount not to exceed **\$70,000**, with total compensation for services provided under the Agreement not to exceed **\$270,000**.

C. Consultant desires to provide the services required under this First Amendment.

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. Section 1.1 is amended to read as follows:

ADD: "The Consultant shall perform Professional Services as set forth in the written Scope of Services [Exhibit A-1] at the direction of the City on a lump sum basis as specifically enumerated in the Compensation and Fee Schedule [Exhibit B-1], and in accordance to the Time Schedule [Exhibit C-1]."



2. Section 2.1 is amended to read as follows:

Delete Section 2.1 in its entirety and;

ADD: “**2.1 Term of Agreement.** This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40. Unless otherwise terminated, it shall be effective until completion of the Scope of Services or March 1, 2013 whichever is the earliest but not to exceed five years unless approved by City ordinance.”

3. Section 3.1 is amended to read as follows:

ADD: “The City shall pay the Consultant for all Professional Services and all expenses related to performance under this First Amendment to the Agreement, in an amount not to exceed **\$70,000**, as set forth in the Compensation and Fee Schedule [Exhibit B-1]. The Consultant shall be entitled to compensation for Professional Services under this First Amendment to the Agreement, whether within the Scope of Services or as Additional Services, based on the Compensation and Fee Schedule. For the duration of this First Amendment to the Agreement, the Consultant shall not be entitled to fees which exceed the Compensation and Fee Schedule. The Total Compensation to Consultant under this Agreement shall not exceed **\$270,000.**”

4. Section 3.2 (additional services) is amended to read as follows:

ADD: “If the City requires additional Professional Services [Additional Services] beyond the Scope of Services performed pursuant to this First Amendment to the Agreement, except for additional costs as described in Section 3 of this Agreement, the City shall pay Consultant an additional fee not to exceed **\$9,653**. The City and the Consultant must agree in writing upon such fee for a specific task based on the Fee Schedule prior to the Consultant beginning the Additional Services.”

5. Article IV is amended to read as follows:

DELETE Section 4.3 in its entirety replace with the following;

“**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."

6. ADD: "4.9.5 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."

7. ADD: "**4.14 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."

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

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

13. Article IX is amended to read as follows:

ADD: "9.23 Vendor Registration. All consultants wishing to conduct business with the City of San Diego, or those intending to compete for City contracts, must submit a completed Vendor Registration Form (Exhibit H) to the City of San Diego's Purchasing & Contracting Department. This form must be received by the City prior to competing for or being awarded any contracts."

14. **ADD: "9.24 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 I. 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."

15. **ADD: 9.24 Equal Benefits.** 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.

16. The following attachments are incorporated herein by reference as follows:
Exhibits A-1 (Scope of Services), B-1 (Compensation and Fee Schedule), C-1 (Time Schedule), H (Vendor Registration) and I (Contractor Standards Pledge of Compliance).

17. The Parties agree that this First Amendment to the Agreement represents the entire understanding of the Consultant 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.

16. The Parties agree that this First Amendment to the Agreement represents the entire understanding of the Consultant 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.

IN WITNESS WHEREOF, this First Amendment to the *Agreement for Consulting Services - EIR for El Camino Real Bridge and Road Widening* is executed by the City of San Diego acting by and through its Mayor, or his designee, pursuant to Ordinance No. 20015 authorizing such execution, and by Consultant.

THE CITY OF SAN DIEGO
Mayor or Designee

By: [Signature] 3/28/11
W. Downs Prior
Principal Contract Specialist
Purchasing & Contracting

RECON Environmental, Inc.
By: [Signature]
Name: Robert T. MacAller
Title: President

Date: 8/23/10

I HEREBY APPROVE the form and legality of the foregoing Amendment on this 1st day of April, 2011.

JAN I. GOLDSMITH, City Attorney
By: [Signature]
Ryan Kohut
Deputy City Attorney

0-20015

With this understanding, our effort under this change order will focus on

- 1) Elimination of the Task Force Alternative (3-lane configuration) from the alternatives considered for detailed analysis in the scopes of work for RECON, Hon Consulting, and KTU+A. Rather, pursuant to Section 15126.6(c) of the CEQA Guidelines, a brief discussion describing the Task Force Alternative (3-lane configuration) and explaining the reasons underlying the determination that the alternative was found to be infeasible will be developed.
 - 2) Inclusion of the impact analysis of the new Roundabout Alternative in the Draft EIR as an alternative considered for detailed analysis
 - 3) Preparation by RECON or its subconsultants of the following new or revised technical studies or assessments in support of the impact analysis of all project alternatives:
 - * Air Quality
 - * Greenhouse Gases
 - * Noise
 - * Visual/Aesthetics
- Preparation of these studies (except for visual/aesthetics) will use traffic data from the new traffic study to be provided by the City. It is assumed that this traffic study will include traffic data for all of the alternatives considered in the EIR.
- 4) Updating the impact analyses in the Draft EIR based on the aforementioned technical studies and on select technical reports to be provided by the City including:
 - * Biological Resources (including a wetland delineation)
 - * Hydrology and Hydraulics/Water Quality
 - * Traffic/Circulation
 - 5) Ongoing project coordination.

Further, it is assumed that the following technical studies will not require revision for the CEQA EIR:

- Natural Environment Study Report for the El Camino Real Road/Bridge Widening Project, Tierra Environmental Services, 2006.
- Cultural Resource Inventory for the El Camino Real Road/Bridge Widening, Tierra Environmental Services, 2005.
- Historical and Architectural Assessment of the El Camino Real Bridge (Local Agency Bridge No. 57C0042), City of San Diego, Stacey Jordan of Mooney Jones and Stokes, 2006.
- Revised Geotechnical Report El Camino Real/San Dieguito River Bridge Project, Ninyo & Moore, original August 1998, revised June 2005.
- Final Geotechnical Report El Camino Real Roadway Widening, Ninyo & Moore, original August 1998, revised January 2006.

RECON has included in this proposal new or revised scope of work summaries for RECON and each of the subconsultants. Below is a summary of the changes in the attached scope and cost spreadsheets.

RECON

RECON will manage the subconsultants on this contract, provide production support, and oversee the Draft EIR process. Certain scope items and costs related to project coordination were prepared in response to the extended project timeline. RECON's original schedule anticipated receipt of technical information in September of 2009 and a completed project by June 2010. Based on discussions with you, we understand that the project timeline will proceed into late 2010 and possibly even into 2011. This requires extended project coordination for RECON which is reflected in the scope items.

In addition, sections in the project EIR that have been revised by Hon Consulting to reflect changes in the project description for the Modified Eastern Alignment Alternative and reviewed by RECON will be revisited to include the Roundabout Alternative.

Finally, RECON included preparation of technical studies related to noise, air quality, and greenhouse gases.

Hon Consulting

At a project meeting held at the City of San Diego on September 3, 2009, RECON's project team confirmed information related to the project and alternatives for the Draft EIR for the El Camino Real Road/Bridge Widening Project. In our discussion with City staff, RECON and Hon Consulting confirmed that the Task Force Alternative does not require detailed environmental analysis in the Draft EIR. Hon Consulting credited a portion of the budget related to this alternative but budgeted time to include this alternative in the Draft EIR as an alternative considered but rejected.

Hon Consulting included a task related to the project description and analysis of the new Roundabout Alternative in the Draft EIR as an alternative considered for detailed analysis. Analysis of certain resource issues (e.g., traffic, noise, air quality, and greenhouse gases) are being updated for all alternatives, therefore Hon Consulting included in the tasks updating the environmental issue sections in the Draft EIR for all alternatives.

KTU+A

Since the Task Force Alternative does not require detailed environmental analysis, visual simulations are not needed for this alternative. However, additional visual simulations are needed because the Modified Eastern Alignment Alternative involves two options (retain the existing bridge or demolish the existing bridge). Due to the time that has passed, updated site photos were also needed. As such, a meeting was held between Hon Consulting, KTU+A, and RECON on September 25, 2009 to review the April 2008 KTU+A scope of work in relation to project changes that had occurred since KTU+A's scope of work was approved. As a result of this meeting, it was determined that many of the items in the April 2008 KTU+A scope of work were no longer pertinent and a new list of tasks was developed.

Task 1 of the current proposed KTU+A scope of work reflects descoping the entire original April 2008 KTU+A scope of work. Task 2 of the KTU+A change order reflects the refined list of work related to visual simulations in the Draft EIR based on project changes from the City and input from RECON and Hon Consulting about the visual analysis. We note that Task 2 does not include the additional visual simulations required for the Roundabout Alternative as discussed below.

The majority of the work related to the visual simulations for the Roundabout Alternative is contained within Tasks 3 and 4 of KTU+A's proposed scope of work. These tasks involve computer modeling using AutoCAD files of the proposed features in the Roundabout Alternative. The scope of work presented by KTU+A is to complete realistic visual simulations to aid in the

analysis presented in the Draft EIR. The attached proposal includes a new simulation for each of the four proposed roundabouts

Nordby Biological Consulting

In response to the extended timeline associated with the El Camino Real Road/Bridge Widening Project for the preparation of the EIR, Nordby Biological Consulting requests to modify the billing rates for the remaining task items under the approved scope of work for the El Camino Real Road/Bridge Widening Project. Nordby Biological Consulting submitted a revised cost breakdown to reflect updated billing rates for the remainder of the contract, however, there is no increase in the total contract amount for this subconsultant. They will be able to complete the remaining task items with updated billing rates, and have not requested additional funds.

RECON has also included the exhibits for the contract amendment as an attachment. The total estimated cost for is the work described in the attached scope of work is \$60,347.00. The breakdown of costs under each task includes expenses. If you would like to proceed with the work please issue the appropriate authorization incorporating the above changes and forward to the attention of Theresa Robinson, trobenson@reconenvironmental.com.

Scope of Work

Task 1.0 Environmental Impact Report

The following scope of work addresses incorporation of the Roundabout Alternative into the project EIR, as well as revising the impact analysis for certain resource issues as detailed below for all alternatives.

- 1.1 RECON will subcontract with Hon Consulting, Inc. to update the project EIR and include analysis of the proposed Roundabout Alternative and all other prior alternatives in accordance with the attached Hon Consulting, Inc. scope of work
 - * Analysis of the issues of Visual/Aesthetics, Air Quality, Greenhouse Gases, and Noise will be based on technical studies or assessments performed under this scope by RECON or its subconsultants.
 - * Analysis of the issues of Hydrology and Hydraulics/Water Quality, Biological, and Jurisdictional Water Resources will be based on reports and studies provided by the City.
 - * Other impact issues to be addressed include Land Use, Historic Resources, Farmland/Agricultural Lands, Public Utilities/Services, Geology/Seismicity/Soils, and Paleontological Resources.
- 1.2 RECON will prepare noise, air quality, and greenhouse gas (global climate change) technical studies for all the alternatives to be incorporated into the EIR in accordance with the detailed technical study scopes of work provided below.
- 1.3 RECON will subcontract with KTU+A to prepare visual simulations relating to the new Roundabout Alternative and other alternatives to be incorporated into the EIR in accordance with the attached KTU+A scope of work.
- 1.4 Provide project oversight to ensure timely submittal and review of all technical studies and analyses prepared by RECON subconsultants.
- 1.5 Coordinate and provide general team and agency meeting support during preparation of the EIR (up to 48 hours).
- 1.6 Provide production and graphics support for the project EIR to include new figures related to the Roundabout Alternative and selected technical report figures (including formatting of new visual simulations, noise figure, traffic graphics, and biology figures).

Cost: \$37,462 (includes expenses)

2.0 Air Quality

- 2.1 Obtain the new traffic study for all the alternatives from the City
- 2.2 Determine the existing air quality conditions in the air basin based on data available from the California Air Resources Board for nearby monitoring stations. Review the federal, state, and local standards and regulatory review requirements. Update the data in the EIR to reflect results for the last three to five years from the nearest monitoring station.
- 2.3 Calculate expected emissions for carbon monoxide, nitrogen oxides, and other criteria pollutants using standard vehicular emission factors for all the alternatives. These emission factors will be based on the URBEMIS 2007 computer model, AP-42 emission factors from the U.S. Environmental Protection Agency, or other appropriate emissions models.
- 2.4 Address air quality impacts that would result during the construction phase of the project. Information for this discussion will be based on secondary sources. The significance of any air quality impacts for all the alternatives will be assessed and control strategies identified.
- 2.5 Prepare a CO Hotspot analysis using Caline 4 or other appropriate model for traffic at the four project intersections for El Camino Real, Via de la Valle, San Dieguito Road, and Horse Park/Polo Fields for the alternatives.
- 2.6 Prepare an air quality technical report describing existing conditions, air quality impacts, the methodology employed to determine these impacts, and mitigation measures/control strategies to reduce significant impacts to acceptable levels. Provide one set of revisions based on City comments and resubmit to the City.

Cost: \$6,424

Task 3.0 Greenhouse Gases

- 3.1 Obtain the new traffic study for all the alternatives from the City.
- 3.2 Develop an introductory discussion of global climate change for all alternatives including the most recent information regarding the current understanding of the mechanisms behind global climate change, greenhouse gas emissions, current conditions and trends, and the broad environmental issues related to global climate change. Incorporate sample or preferred language prepared by the City and current international and domestic legislation, plans, policies, and programs pertinent to global climate change. SW 1040/GV1053

- 3.3 Based on documents prepared by the California Air Resources Board and the California Attorney General's Office, discuss thresholds for evaluating the project's potential contribution to global climate change. GW1100
- 3.4 Using projected traffic prepared by the City's traffic consultant associated with the proposed project and provided by the City, estimate the emissions of carbon dioxide, methane, and nitrous oxide for each of the project alternatives. It is anticipated that emissions of fluorinated greenhouse gases would be negligible for each of the alternatives. GW1100/1001
- 3.5 Compare the projected greenhouse gas emissions for construction and post-construction to the significance thresholds and provide a discussion of project features as they relate to the reduction of greenhouse gas emissions. GW 1050
- 3.6 Prepare a global climate change Technical Appendix/EIR Section detailing the results of the analyses and identifying mitigation recommendations. Provide one set of revisions based on City comments and resubmit to the City. GW 1100

Cost: \$7,324

4.0 Noise

- 4.1 Obtain the new traffic study for all the alternatives from the City.
- 4.2 Obtain mapping of the proposed project that shows existing and proposed grading including the profiles and alignment of the roadways for all the alternatives, from the City. Mapping shall be supplied in CADD format if available. NO 1040
- 4.3 Measure existing noise levels at various locations along the project site. Measurement locations will be selected to provide an understanding of the variability of existing traffic noise levels in the project vicinity. NO1050
- 4.4 Estimate future vehicular traffic noise levels using the Federal Highway Administration (FHWA) Traffic Noise Model for all the alternatives. The study will analyze noise caused by future traffic on El Camino Real and Via de la Valle. The results of the model will be expressed in community noise equivalent levels (CNEL) or other appropriate metrics (eq., *Ldn*, *Leq*). Assess the potential for an impact to the Fairbanks Ranch County Club Golf Course due to the change in noise threshold standards for golf courses in the new City General Plan. NO1060
- 4.5 Conduct an analysis of construction activities to assess potential noise impacts at adjacent properties, including the Fairbanks Ranch Country Club Golf Course, based on equipment types and operations provided by the City or the City's designated agent. NO1085

- 4.6 Determine appropriate mitigation measures for potentially significant impacts to noise sensitive uses. The analysis will calculate the necessary barrier heights, or other mitigation options, to reduce noise levels to the standards set by the City NOI 1990
- 4.7 Prepare a noise technical report that describes the study methods and results outlined above and specifies any noise mitigation measures that may be needed. Provide one set of revisions based on City comments and resubmit to City NOI 1990

Cost: \$9,137

Total Cost: \$60,347

Job Name
 Job Number
 Date

El Camino Real Road/Bridge Widening Project
 4256.1 - Change Order #1/Roundabout Alternative
 Revised May 28, 2010

Task	Principal	Senior	Analyst	Production	Graphics	Total Hours	Total Cost
Task 1.0 Environmental Impact Report	185	153	193	73	81		
11 Subcontract with Hon Consulting	66	75		12	51	203	\$28,507
12 Subcontract with KTU+A	0	0	0	0	0	0	\$0
13 Prepare Technical Reports	0	0	0	0	0	0	\$0
14 Project Oversight/Review	0	0	0	0	0	0	\$0
15 Meeting Support	45	45	0	0	0	90	\$15,210
16 Production Support	20	25	0	2	1	48	\$7,752
Task 2.0 Air Quality	0	5	0	10	50	65	\$5,545
21 Obtain Traffic Study	10		40	4	2	56	\$6,424
22 Existing Conditions	1	0	0	0	0	1	\$185
23 Calculate Emissions	1	0	4	0	0	5	\$397
24 Construction Analysis	0	0	8	0	0	8	\$824
25 Hotspot Modeling	2	0	6	0	0	8	\$988
26 Prepare Technical Report	2	0	6	0	0	8	\$988
Task 3.0 Greenhouse Gases	4	0	6	0	0	10	\$988
31 Introductory Discussion	24	0	18	4	2	26	\$3,642
32 Discussion of Thresholds	8	0	28	0	0	32	\$7,324
33 Estimate Emissions	8	0	4	0	0	12	\$1,892
34 Discussion of Analysis	0	0	2	0	0	2	\$1,686
35 Add to Technical Report	0	0	4	0	0	4	\$618
Task 4.0 Noise	8	0	12	0	0	20	\$412
41 Chain Traffic Study	6	0	62	6	8	85	\$2,718
42 Chain Mapping	1	0	2	0	0	3	\$91
43 Noise Measurements	1	0	0	0	0	2	\$391
44 Estimate Future Traffic Noise	0	0	8	0	0	8	\$824
45 Construction Analysis	0	0	24	0	0	24	\$2,472
46 Mitigation Analysis	1	0	2	0	0	3	\$391
47 Prepare Technical Report	2	0	8	0	0	10	\$1,194
Subcontractors	108	75	130	22	51	349	\$3,474
Hon Consulting							\$51,382
KTU+A							\$4,000
Total Subcontractors							\$4,705
Expenses							\$8,705
Subtotal							\$9,500
Additional Services							\$69,347
Total							\$9,553
							\$70,000

EL CAMINO REAL ADDITIONAL SIMULATIONS

Support Services for a Visual Simulations
KTUYA COST PROPOSAL SUMMARY

	Principal Landscape Architect \$100.00	GIS Analyst Graphic Artist \$100.00	Subtotal Cost
1 Descoped Original Sub-Agreement Dated 4/28/2008			
1.1 Add the Task Force Alternative similar to Simulation #1 in the DEIR			
1.2 Add modified Eastern Bridge to either replace or supplement Simulation #3	3	30	(\$2,480)
1.3 Add side view of Modified Eastern Alignment similar to Simulation #8	3	20	(\$2,480)
1.4 Add new or replace Simulation #10; existing bridge to be removed	2	12	(\$1,520)
1.5 Add or revise Simulation #11 to reflect Task Force Alt	0	0	\$0
1.6 Revise Simulation #12 for modified Eastern Alignment	2	11	(\$1,420)
1.7 Add intersection simulation like Simulation #12 for the Task Force Alternative	1.5	15	(\$1,740)
1.8 Add a simulation of the "new" mitigation concept should one be chosen	1.5	15	(\$1,740)
1.9 Additional tasks	4.5	21	(\$5,820)
	15	8	(\$2,000)
2 Proposed Revised Scope of Work to Reflect Current Alternatives (not including Roundabout Alt.)			(\$17,200)
2.1 Replace modified Eastern Bridge for Simulation #3	3	28	\$3,280
2.2 Remove existing bridge from Simulation #3b	3	12	\$1,680
2.3 Replace Modified Eastern Alignment for Simulation #4b	2	12	\$1,520
2.4 Revise Simulation #10	0	6	\$600
2.5 Revise Simulation #12 for modified Eastern Alignment	1.5	15	\$1,740
2.6 Site Visit	4	4	\$1,040
2.7 Integrate findings into CEQA document (DEIR text, tables & maps)	20	12	\$4,400
Subtotal			\$14,280
Net (credit)			(\$2,920)

	Principal Landscape Architect \$165.00	GIS Analyst Graphic Artist \$105.00	Subtotal Cost
Additional Tasks Related to Roundabout Alternative			
3 Project Setup & Viewshed			
3.1 Collect, process and locate project elements from CAD file	0	2	\$210
3.2 Site visit, gps coordination & photography	0	2	\$210
3.3 Integrate CAD files into landform model	0	4	\$420
3.4 Generate extruded elements in landform model	0	4	\$420
3.5 Compile recommended keyview locations (8 possible)	1	4	\$585
			(\$1,845)
4 Visual Simulations			
4.1 Overlay project elements in 4 keyview photos	0	4	\$420
4.2 Add detail, shading, interceding elements in computer model	0	16	\$1,680
4.3 Complete 4 realistic visual simulations	1	24	\$2,685
4.4 Integrate findings into CEQA document (DEIR text, tables & maps)	2	0	\$330
4.5 Submit Draft Screencheck simulations	0.5	2	\$293
4.6 Submit Final Screencheck simulations	0.5	2	\$293
			\$5,700

Roundabout Subtotal Labor **\$7,545**

MATERIALS (mileage, plots, exhibits, reports) **\$100**

Roundabout Total **\$7,645**

Credit **-\$2,920**

GRAND TOTAL \$4,725

City of San Diego El Camino Real Road/Bridge Project
Scope of Work for Hon Consulting, Inc.
Additional Work for Roundabout Alternative

Task	Hours Principal @ \$100/hour	Cost
1. <i>Eliminate Task Force Alternative from Detailed Analysis</i>	(130)	(\$15,000.00)
2. <i>Add Task Force Alternative as an Alternative Considered But Eliminated from Detailed Analysis</i>		
2.1 Review Task Force Document	2	\$200
2.2 Prepare Draft Description	6	\$600
2.3 Incorporate changes from City comments	2	\$200
3. <i>Incorporate New Roundabout Alternative</i>		
3.1 Strategize with City environmental staff on changes to the EIR.	10	\$1,000.00
3.2 Coordinate with project engineers on the design features of the Roundabout Alternative.	10	\$1,000.00
3.3 Revise the EIR text, including project description for the Roundabout Alternative and each technical discussion section in underline-strike-out format for all alternatives. Incorporate changes from City comments.	80	\$10,000.00
3.4 Incorporate discussion of new graphics (all assumed to be produced by others) to illustrate the new alternative.	10	\$1,000.00
3.5 Coordinate with RECON production staff for preparation of produced document. This includes providing a set of electronic files of the modified text for final production by others.	10	\$1,000.00
3.6 Attend an assumed 10 additional meetings at 4 hours each (including preparation and travel time) with City staff, prime consultant, and/or technical consultants.	40	\$4,000.00
NET TOTAL	20	\$4,000.00

TIME SCHEDULE

Prepare First Screencheck Draft Environmental Impact Report (Hon/RECON)	6 months *
Prepare Draft Air Quality Technical Report (RECON)	2.5 **
Prepare Draft Greenhouse Gases Technical Report (RECON)	3 months **
Prepare Draft Noise Technical Report (RECON)	2 months **
Visual Simulations (KTU+A)	3 months **

*from receipt of all technical information on all alternatives, including the Roundabout Alternative (including but not limited to final project descriptions and AutoCAD files, mitigation design(s), biological impacts, traffic studies, and hydraulic/hydrology analysis) from the City

** from receipt of Notice to Proceed and receipt of final traffic studies for all alternatives and Roundabout Alternative

CONSULTANT CERTIFICATION FOR A DRUG-FREE WORKPLACE

PROJECT TITLE: El Camino Real Road/Bridge Widening Project EIR

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:

RECON Environmental, inc
Name under which business is conducted

has in place a drug-free workplace program that complies with said policy. I further certify that each subcontract agreement for this project contains language which indicates the Subcontractors agreement to abide by the provisions of Section 4.9.1 subdivisions A through C of the policy as outlined.

Signed 
Printed Name Robert MacAller
Title President
Date May 28, 2010

DISCLOSURE DETERMINATION FOR CONSULTANT

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

1. Department / Board / Commission / Agency Name:

2. Name of Specific Consultant & Company:

RECON Environmental, Inc.

3. Address, City, State, ZIP

1927 Fifth Avenue, San Diego, CA 92101

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

El Camino Real Road/Bridge Widening Project

5. Consultant Duties for Project:

6. Disclosure Determination [select applicable disclosure requirement]:



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

- or -



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



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

- or -



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

By: Robert MacAllister, President

[Name/Title]*



May 28, 2010

[Date]

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



EXHIBIT H

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

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

Vendor ID:

[ID Number will be provided by City]

Firm Info:

Firm Name:

Doing Business As:

Firm Address:

City: State: Zip:

Phone: Fax:

Taxpayer ID: Business License:

Website:

Contact Info:

Contact Name:

Title:

Email:

Phone: Cell:

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

Mailing Address:

City: State: Zip:

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

Mailing Address:

City: State: Zip:

Contractor Licenses (if applicable)

License Number: License Type:

License Number: License Type:

License Number: License Type:

Contractor/Vendor Registration Form – Page 2

Firm Name: RECON Environmental, Inc.

Product/Services Description:

RECON Environmental, Inc. is a company of specialists dedicated to providing outstanding & responsive environmental consulting services since 1972. We are headquartered in San Diego, California with offices in Tucson, Arizona & Austin, Texas. Our staff provides expertise in CEQA/NEPA documentation, biological & cultural resources, resource agency permitting assistance, air quality/acoustics, land use planning, landscape architecture, endangered species studies, ethnography studies, habitat conservation planning, habitat & ecosystem restoration, environmental planning, mitigation & monitoring programs, construction monitoring, natural resources, public services & utilities, resource management plans, feasibility & constraint studies, visual & scenic resources, GIS mapping & analysis, agricultural resources analysis, & a native plant nursery that includes native plant sales & contract growing.

Product/Services Information:

NAICS Codes: *541620, 562910, 541712, 541990, 541720, 541690, 111421, 113210, 115112, 115310, 111998, 424910, 541370, 561730

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

The City requires this information for statistical purposes only.

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

Ethnicity: * N/A

* select one from the following List of Ethnicities:

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

Ownership Classification

Classification:

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

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

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

Certification #:

Agency:

Certification #:

Agency:

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

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

or fax to: 619/ 236-5904

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

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

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

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

A. PROJECT TITLE:

El Camino Real Road/Bridge Widening Project

B. BIDDER/CONTRACTOR INFORMATION:

Legal Name: RECON Environmental, Inc.		DBA: RECON	
Street Address: 1927 5 th Avenue	City: San Diego	State: CA	Zip: 92101
Contact Person, Title: Robert MacAller, President	Phone: 619-308-9333	Fax: 619-308-9334	

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: 02/07/1977 State of incorporation: California

List corporation's current officers: President: Robert MacAller
Vice Pres: Paul Fromer
Secretary: Loretta Gross
Treasurer: Diane Pearson

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:

N/A

Limited Liability Company Date formed: ___/___/___ State of formation: _____

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

N/A

Partnership Date formed: ___/___/___ State of formation: _____

List names of all firm partners:

N/A

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:

N/A

Joint Venture Date formed: ___/___/___

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

N/A

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 - N/A

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.

Robert MacAller, President



June 7, 2010

Print Name, Title

Signature

Date

City of San Diego Purchasing & Contracting Department
CONTRACTOR STANDARDS

Pledge of Compliance Attachment "A"

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

[Empty rectangular box for providing additional information.]

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.

Robert MacAller, President
Print Name, Title


Signature

June 7, 2010
Date



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 [x] Consultant [] Grant Recipient [] Insurance Company [] Other

Name of Company: RECON Environmental, Inc.

AKA/DBA: RECON

Address (Corporate Headquarters, where applicable): 1927 Fifth Avenue

City San Diego County San Diego State CA Zip 92101

Telephone Number: (619) 308-9333 FAX Number: (619) 308-9334

Name of Company CEO: Robert MacAller

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

Address:

City County State Zip

Telephone Number: () FAX Number: ()

Type of Business: Consulting Type of License:

The Company has appointed: Cindy Senge

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

Address:

Telephone Number: () FAX Number: ()

- [x] 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 RECON Environmental, Inc.

(Firm Name)

San Diego, CA hereby certify that information provided (County) (State)

herein is true and correct. This document was executed on this twenty-eighth day of May, 2010

Robert MacAller (Authorized Signature)

Robert MacAller (Print Authorized Signature)

WORK FORCE REPORT NAME OF FIRM: RECON Environmental, Inc. DATE: May 28, 2010

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											7	3		
Professional		1		4		1					11	22		
A&E, Science, Computer														
Technical				10							4			
Sales														
Administrative Support		2	1	3		1					2	6		
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*			34	5										

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

Totals Each Column	3	45	12	2				24	31					
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Grand Total All Employees: 118

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

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

Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

SUBCONTRACTORS LIST

INFORMATION REGARDING SUBCONTRACTORS PARTICIPATION:

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

NAME AND ADDRESS SUBCONTRACTORS	SCOPE OF WORK	PERCENT OF CONTRACT	DOLLAR AMOUNT OF CONTRACT	*MBE/WBE/ DBE/DVBE/ OBE	**WHERE CERTIFIED
Hon Consulting, Inc. 2226 Dwight Street San Diego, CA 92104	Prepare separate EIR; Incorporate modified eastern alignment alternative; Prepare additional response to comments; Analysis of new Roundabout Alternative in Draft EIR	5.71%	\$4,000	WBE, OBE	CALTRANS
KTU+A 3916 Normal Street San Diego, CA 92103	Visual Simulations for the Roundabout Alternative	6.72%	\$4,705	WBE, OBE	CALTRANS

**For information only.* As appropriate, Proposer shall identify Subcontractors as:

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

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

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

DUPPLICATE
ORIGINAL

COPY

**AGREEMENT FOR CONSULTING SERVICES
FOR
THE CITY OF SAN DIEGO
ENGINEERING AND CAPITAL PROJECTS**

LUMP SUM AGREEMENT
FOR
CONSULTANT SERVICES

THE CITY OF SAN DIEGO
AND
Recon Environmental, Inc.

Contract Number: H084154

DOCUMENT NO. <u>2303294</u>
FILED <u>JAN 08 2008</u>
OFFICE OF THE CITY CLERK SAN DIEGO, CALIFORNIA

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- Exhibit B - Compensation and Fee Schedule
- Exhibit C - Time Schedule
- Exhibit D - City's Equal Opportunity Contracting Program Consultant Requirements
 - (AA) Work Force Report
 - (BB) Subcontractors List
 - (CC) Contract Activity Report
- Exhibit E - Consultant Certification for a Drug-Free Workplace
- Exhibit F - Consultant Evaluation Form

**LUMP SUM AGREEMENT BETWEEN
THE CITY OF SAN DIEGO
AND RECON ENVIRONMENTAL, INC.
FOR CONSULTANT SERVICES**

THIS Agreement is made and entered into between the *City of San Diego*, a municipal corporation [City], and *Recon Environmental, Inc.* [Consultant] for the Consultant to provide Services to the City for Environmental Services.

RECITALS

The City wants to retain the services of an *Environmental Consulting* firm to provide *environmental* services [the Services].

The Consultant has the expertise, experience and personnel necessary to provide the Services. The City and the Consultant [Parties] want to enter into an Agreement whereby the City will retain the Consultant to provide, and the Consultant shall provide, the Services .

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

ARTICLE I

CONSULTANT SERVICES

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

1.1 Scope of Services. The Consultant shall perform the Services as set forth in the written Scope of Services [Exhibit A] at the direction of the City

1.2 Contract Administrator. The *Engineering and Capital Projects Department* is the contract administrator for this Agreement. The Consultant shall provide the Services under the direction of a designated representative of the *Engineering and Capital Projects Department*. The City's designated representative will communicate with the Consultant on all matters related to the administration of this Agreement and the Consultant's performance of the Services rendered hereunder. When this Agreement refers to communications to or with the City, those communications will be with the designated representative, unless the designated representative or the Agreement specifies otherwise. However, when this Agreement refers to an act or approval to be performed by City, that act or approval shall be performed by the Mayor or his designee, unless the Agreement specifies otherwise.

1.3 City Modification of Scope of Services. The City may, without invalidating this Agreement, order changes in the Scope of Services by altering, adding to or deducting from the Professional Services to be performed. All such changes shall be in writing and shall

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

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

1.5 Confidentiality of Services. All Services performed by the Consultant, including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by the Consultant, 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 Consultant, at the time that it was disclosed to the Consultant by the City, (b) subsequently becomes publicly known through no act or omission of the Consultant, or (c) otherwise becomes known to the Consultant 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. If applicable, the Consultant shall comply with the following: Consultant shall ensure that any plans, specifications, studies, or reports prepared, required, or recommended under this Agreement allow for competitive bidding. The Consultant shall prepare such plans, specifications, studies, or reports so that procurement of services, labor or materials are not available from only one source, and shall not prepare plans, specifications, studies, or reports 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 Consultant shall submit this written justification to the City prior to beginning work on such plans, specifications, studies, or reports. Whenever the Consultant recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Project.

ARTICLE II

DURATION OF AGREEMENT

2.1 Term of Agreement. This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in

accordance with San Diego Charter Section 40. Unless otherwise terminated, it shall be effective until completion of the Scope of Services or **April 1, 2009**, whichever is the earliest but not to exceed five years unless approved by City ordinance.

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

2.3 Notification of Delay. The Consultant shall immediately notify the City in writing if the Consultant experiences or anticipates experiencing a delay in performing the Services within the time frames set forth in the Time Schedule (Exhibit C). The written notice shall include an explanation of the cause for, and a reasonable estimate of the length of the delay. If in the opinion of the City, the delay affects a material part of the City's requirements for the Services, 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 Services are caused by unforeseen events beyond the control of the Parties, such delay may entitle the Consultant to a reasonable extension of time, but such delay shall not entitle the Consultant 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 Consultant's work; inability to obtain materials, equipment, or labor; required additional Services; or other specific reasons agreed to between the City and the Consultant; provided, however, that: (a) this provision shall not apply to, and the Consultant shall not be entitled to an extension of time for, a delay caused by the acts or omissions of the Consultant; and (b) a delay caused by the inability to obtain materials, equipment, or labor shall not entitle the Consultant to an extension of time unless the Consultant furnishes the City, in a timely manner, documentary proof satisfactory to City of the Consultant'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 Consultant's performance of the 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 Consultant 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 Consultant a sum equivalent to the reasonable value of the Services the Consultant has satisfactorily performed up to the date of suspension. Thereafter, the City may rescind such suspension by giving written notice of rescission to the Consultant. The City may then require the Consultant to resume performance of the Services in compliance with the terms and conditions of this Agreement; provided, however, that the Consultant 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 Services agreed to pursuant to this Agreement by giving written notice of such termination to the Consultant. Such notice shall be delivered by certified mail with return receipt for delivery to the City. The termination of the Services shall be effective upon receipt of the notice by the Consultant. After termination of

this Agreement, the Consultant shall complete any and all additional work necessary for the orderly filing of documents and closing of the Consultant's Services under this Agreement. For services satisfactorily rendered in completing the work, the Consultant shall be entitled to fair and reasonable compensation for the Services performed by the Consultant before the effective date of termination. After filing of documents and completion of performance, the Consultant shall deliver to the City all documents or records related to the Consultant's Services. By accepting payment for completion, filing and delivering documents as called for in this paragraph, the Consultant 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 Consultant fails to satisfactorily perform any obligation required by this Agreement, the Consultant's failure constitutes a Default. A Default includes the Consultant's failure to adhere to the Time Schedule. If the Consultant 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 Consultant, and any person claiming any rights by or through the Consultant 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 Consultant.

ARTICLE III

COMPENSATION

3.1 Amount of Compensation. The City shall pay the Consultant for performance of all Services rendered in accordance with this Agreement, including reasonably related expenses, in a lump sum amount not to exceed **\$200,000.00**. The compensation for the Scope of Services shall not exceed **\$190,000.00**, and the compensation for Additional Services (described in Section 3.2), if any, shall not exceed **\$10,000.00**.

3.2 Additional Services. The City may require that the Consultant perform additional Services beyond those described in the Scope of Services [Additional Services]. Prior to the Consultant's performance of Additional Services, the City and the Consultant must agree in writing upon a fee for the Additional Services, including reasonably related expenses, in accordance with the Compensation and Fee Schedule (Exhibit B). The City will pay the Consultant for the performance of Additional Services in accordance with Section 3.3.

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

date, as required by the City. The City will pay undisputed portions of invoices within thirty calendar days of receipt.

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

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

ARTICLE IV

CONSULTANT'S OBLIGATIONS

4.1 Industry Standards. The Consultant agrees that the Services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent *environmental consulting* 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 Consultant 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 Consultant's and any Subcontractor's premises to review and audit the Consultant'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 Consultant's premises, of any and all records related to the Services provided hereunder 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 Consultant or Subcontractor is in compliance with all requirements under this Agreement.

4.2.2.1 Cost Audit. If there is a claim for additional compensation or for Additional Services, the City's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the City determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

4.2.2.1.1 Accounting Records. The Consultant and all subcontractors shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. The Consultant and Subcontractors shall make available to the City for review and audit, all Service related accounting records and documents, and any other financial data. Upon the City's request, the Consultant 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 Consultant 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 Consultant'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 Consultant shall not begin the Services under this Agreement until it has: (a) obtained, and provided to the City, insurance certificates reflecting evidence of all insurance as set forth herein; however, the City reserves the right to request, and the Consultant shall submit, copies of any policy upon reasonable request by the City; (b) obtained City approval of each company or companies as required in Section 4.3.3 of this Agreement; and (c) confirmed that all policies contain the specific provisions required in Section 4.3.4 of this Agreement. Consultant's liabilities, including but not limited to Consultant'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 Consultant'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 Consultant 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 Consultant 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 Consultant's automobiles including owned, hired and non-owned automobiles, the Consultant 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 Consultant's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Consultant 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 Consultant 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 Professional Liability. For all of the Consultant's employees who are subject to this Agreement, the Consultant 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 Consultant 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 Consultant 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. All defense costs shall be outside the limits of the policy.

4.3.2 Deductibles. All deductibles on any policy shall be the responsibility of the Consultant 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 Consultant's insurance and shall not contribute to it.

CANCELLATION. Except as provided for under California Law, the policy or policies must be endorsed to 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. Such notice shall be addressed to the City at the address specified in Section 9.1 "Notices."

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that the Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

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 automobile owned, leased, hired or borrowed by or on behalf of the Consultant.

CANCELLATION. Except as provided for under California Law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payments of premium) of cancellation or non-renewal of the policy or policies. Such notice shall be addressed to the City at the address specified in Section 9.1 "Notices."

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

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

CANCELLATION. Except as provided for under California law, the policy or policies must be endorsed to 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. Such notice shall be addressed to the City at the address specified in Section 9.1 "Notices."

WAIVER OF SUBROGATION. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City and its 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.

4.3.4.4 Professional Liability Insurance

CANCELLATION. Except as provide for under California Law, the policy or policies must be endorsed to 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. Such notice shall be addressed to the City at the address specified in Section 9.1 "Notices."

4.3.5 Reservation of Rights. The City reserves the right, from time to time, to review the Consultant's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to the City. The City will reimburse the Consultant 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 Consultant 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 Consultant's hiring or retaining of any third parties [Subcontractors] to perform Services [Subcontractor Services] is subject to prior approval by the City. The Consultant shall list on the Subcontractor List [Exhibit D Attachment BB] all Subcontractors known to the Consultant at the time this Agreement is entered. If at any time after this Agreement is entered into the Consultant identifies a need for additional Subcontractor Services, the Consultant 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 Consultant's notice shall include a justification, a description of the scope of work, and an estimate of all costs for the Subcontractor Services. The Consultant 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 Consultant and any Subcontractor shall contain the information as described in Sections 4.6, 4.7, 4.10.2, and 4.18, and shall also provide as follows:

4.4.1.1 Each Subcontractor shall obtain insurance policies which shall be kept in full force and effect during any and all work on this Agreement. Each Subcontractor shall obtain, and the Consultant shall require the Subcontractor to obtain, all policies described in Section 4.3.1 in the amounts required by the City, which shall not be greater than the amounts required of the Consultant.

4.4.1.2 The Consultant is obligated to pay the Subcontractor, for Consultant and City-approved invoice amounts, out of amounts paid by the City to the Consultant, not later than fourteen working days from the Consultant's receipt of payment from the City. Nothing in this paragraph shall be construed to impair the right of the Consultant 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 Consultant 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 Consultant shall pay the Subcontractor the amount withheld within fourteen working days of the Consultant's receipt of the City's next payment.

4.4.1.4 In any dispute between the Consultant and Subcontractor, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The Consultant agrees to defend and indemnify the City as described in Article VI of this Agreement in any dispute between the Consultant 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 Consultant 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 Consultant shall provide an invoice from each Subcontractor listed in the report. The Consultant 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 Consultant shall comply with the City's Equal Opportunity Contracting Program Consultant Requirements [Exhibit D]. The Consultant shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Consultant shall provide equal opportunity in all employment practices. The Consultant shall ensure that its Subcontractors comply with the City's Equal Opportunity Contracting Program Consultant Requirements. Nothing in this Section shall be interpreted to hold the Consultant liable for any discriminatory practice of its Subcontractors.

4.6.2 Non-Discrimination Ordinance. The Consultant shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of Subcontractors, vendors or suppliers. The Consultant shall provide equal opportunity for Subcontractors to participate in subcontracting opportunities. The 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. This language shall be in contracts between the Consultant and any Subcontractors, vendors and suppliers.

4.6.3 Compliance Investigations. Upon the City's request, the Consultant 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 Consultant 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 Consultant for each subcontract or supply contract. The Consultant 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 Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Consultant up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. The

Consultant 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 Consultant 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 Consultant 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 Consultant's Notice to Employees. The Consultant 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 Consultant shall establish a drug-free awareness program to inform employees about all of the following:

4.7.2.1 The dangers of drug abuse in the work place.

4.7.2.2 The policy of maintaining a drug-free work place.

4.7.2.3 Available drug counseling, rehabilitation, and employee assistance programs.

4.7.2.4 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 Consultant shall post the drug-free policy in a prominent place.

4.7.4 Subcontractor's Agreements. The Consultant further certifies that each contract for Subcontractor Services for this Agreement 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. Consultants and Subcontractors shall be individually responsible for their own drug-free work place program.

4.8 Product Endorsement. The Consultant 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.

4.9 Conflict of Interest. The Consultant 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.

4.9.1 If, in performing the Services set forth in this Agreement, the Consultant 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 Consultant shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the Consultant's relevant financial interests.

4.9.1.1 Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. The Consultant shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that the Consultant is subject to a conflict of interest code. The Consultant 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 Consultant was subject to a conflict of interest code.

4.9.1.2 If the City requires the Consultant to file a statement of economic interests as a result of the Services performed, the Consultant 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.

4.9.2 The Consultant 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.

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

4.9.4 If the Consultant 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 Consultant to liability to the City for attorneys fees and all damages sustained as a result of the violation.

4.10 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the Services provided under this Agreement, upon the City's request, the Consultant, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The Consultant'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.

4.11 Compensation for Mandatory Assistance. The City will compensate the Consultant for fees incurred for providing Mandatory Assistance as Additional Services 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 Consultant, its agents, officers, and employees, the Consultant shall reimburse the City. The City is then entitled to reimbursement of all fees paid to the Consultant, its agents, officers, and employees for Mandatory Assistance.

4.12 Attorney Fees related to Mandatory Assistance. In providing the City with dispute or litigation assistance, the Consultant or its agents, officers, and employees may incur expenses and/or costs. The Consultant 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.

4.13 Notification of Increased Construction Cost. If applicable, at any time prior to the City's approval of the final plans, specifications, studies, or report, the Consultant anticipates that the total construction cost will exceed the estimated construction budget, the Consultant shall immediately notify the City in writing. This written notification shall include an itemized cost estimate and a list of recommended revisions which the Consultant 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).

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 2.5-2.8 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 [Administrator], 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. 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 Consultant, including its employees, agents, talent, and independent Subcontractor(s), may not use any such Product mentioned in this article for purposes unrelated to Consultant's work on behalf of the City without prior written consent of the City.

8.3 Intellectual Property Rights Assignment Consultant, 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 Consultant, 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 Consultant, its employees, agents, talent, and independent Subcontractor(s), may now have or which may accrue to Consultant, 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 of the 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 Consultant 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 Consultant 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. Consultant may not publish or reproduce any Deliverable Materials, for purposes unrelated to Consultant's work on behalf of the City without prior written consent of the City.

8.7 Intellectual Property Warranty and Indemnification. Consultant 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 Consultant to produce, at Consultant'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. Consultant 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 Consultant receives payment under this contract, City shall be entitled, upon written notice to Consultant, to withhold some or all of such payment.

8.8 Enforcement Costs. The Consultant 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.

8.9 Ownership of Documents. Once the Consultant has received any compensation for the Professional Services performed under this Agreement, all documents, including but not limited to, original plans, maps, studies, sketches, drawings, computer printouts and disk files, and specifications prepared in connection with or related to the Scope of Services or Professional Services, shall be the property of the City.

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: *1010 Second Avenue, Suite 1200, San Diego, CA 92101* and notice to the Consultant shall be addressed to: *1927 Fifth Avenue, San Diego, CA 92101*

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

9.3 Non-Assignment. The Consultant 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 Consultant and any Subcontractors employed by the Consultant 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 Consultant concerning the details of performing the Services, or to exercise any control over such performance, shall mean only that the Consultant shall follow the direction of the City concerning the end results of the performance.

9.5 Consultant and Subcontractor Principals for Consultant Services. It is understood that this Agreement is for unique Professional Services. Retention of the Consultant's Professional Services is based on the particular professional expertise of the following members of the Consultant's organization: *David Gottfredson* [Project Team]. Accordingly, performance of Professional Services on the Project may not be delegated to other members of the Consultant'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 vide may be considered a default of the terms and conditions of this Agreement by the Consultant. 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 Consultant, to require any of the Consultant's employees or agents to be removed from the Project.

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

9.7 Compliance with Controlling Law. The Consultant shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement. In addition, the Consultant 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.

9.8 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.

9.9 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.

9.10 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.

9.11 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.

9.12 No Waiver. No failure of either the City or the Consultant 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 to any existing or subsequent breach.

9.13 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.

9.14 Additional Consultants or Contractors. The City reserves the right to employ, at its own expense, such additional Consultants or contractors as the City deems necessary to perform work or to provide the Services.

9.15 Employment of City Staff. This Agreement may be unilaterally and immediately terminated by the City, at its sole discretion, if the Consultant 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 Consultant.

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 Signing Authority. The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

9.19 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.

9.20 Consultant Evaluation. City will evaluate Consultant's performance of Services using the Consultant Evaluation Form [Exhibit F].

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

9.22 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.

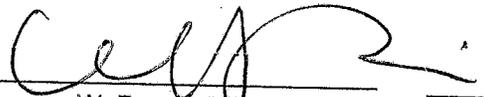
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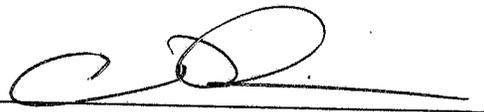
IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor, pursuant to **SDMC Section 22.3223**, authorizing such execution, and by the Design Professional *Certificate of Secretary*.

Dated this 19th day of February, 2008

THE CITY OF SAN DIEGO
Mayor or Designee

By: 
W. Downs PNor
Principal Contract Specialist

I HEREBY CERTIFY I can legally bind *Recon Environmental, Inc.* and that I have read all of this Agreement, this 12th day of December, 2007.

By: 
Charles S. Bull
President

I HEREBY APPROVE the form and legality of the foregoing Agreement this 7th day of March, 2008

MICHAEL J. AGUIRRE, City Attorney


By: Ryan Kehut
Deputy City Attorney

CONSULTANT LUMP SUM AGREEMENT EXHIBITS

- Exhibit A - Scope of Services
- Exhibit B - Compensation and Fee Schedule
- Exhibit C - Time Schedule
- Exhibit D - City's Equal Opportunity Contracting Program Consultant Requirements
 - (AA) Work Force Report
 - (BB) Subcontractors List
 - (CC) Contract Activity Report
- Exhibit E - Consultant Certification for a Drug-Free Workplace
- Exhibit F - Consultant Evaluation Form

EXHIBIT A

SCOPE OF SERVICES

Scope of Work

Environmental Impact Report

- 1A. RECON will subcontract with Hon Consulting, Inc. in accordance with the attached Hon Consulting, Inc. scope of work to:
 - i. incorporate into the EIR the Modified Eastern Alignment Alternative;
 - ii. incorporate into the EIR the Task Force Alternative;
 - iii. complete the Final EIR;
- 2A. RECON will subcontract with Tierra Environmental Services (Tierra) for additional biological services related to the Modified Eastern Alignment Alternative, Task Force Alternative, and new biological mitigation design in accordance with the attached Tierra scope of work.
- 3A. RECON will subcontract with KTU+A to prepare additional and revised visual simulations relating to the Modified Eastern Alignment and Task Force Alternatives to be incorporated into the EIR in accordance with the attached KTU+A scope of work.
- 4A. Field truth GIS biological wetland data previously generated for the project. Assess biological impacts related to the Modified Eastern Alignment and the Task Force Alternatives.
- 5A. RECON will participate in the development of a new biological mitigation plan intended to replace or supplement the mitigation plan described in the public review DEIR. This task includes meetings and informal consultation with the wildlife agencies.
- 6A. Provide project oversight and review of all RECON sub consultants.
- 7A. Coordinate and provide general team and agency meeting support during preparation of the EIR.
- 8A. Provide production and graphics support for the EIR for the tasks outlined in Items 1A through 3A above.
- 9A. Provide a camera ready copy of the Final EIR to the City for printing and distribution.

\$60,000

\$15,930

\$17,200

\$6,960

\$39,316

\$25,933

\$9,072

\$10,480

\$5,052

Additional Tasks if City Chooses to Recirculate a revised Draft EIR

- 10A. Produce and provide a camera ready copy of the revised Draft EIR for public circulation.
- 11A. RECON will subcontract with Hon Consulting, Inc. in accordance with the attached ^{\$10,000} Hon Consulting, Inc. scope of work to provide written responses to comments received during recirculation of the revised Draft EIR.

Assumptions

1. The City Development Services Department (DSD) will be the lead agency for the EIR.
2. The scope of work assumes that the project addressed in the EIR will be that as described in the public review Draft EIR with the addition of the Modified Eastern Alignment Alternative and the Task Force Alternative.
3. If it is determined that an alternative(s) is required in addition to those described in Assumption 2 above, work associated with that alternative(s) would be performed under additional authorization.
4. The scope of work includes the additional task of responding to new comments should the City decide to recirculate a revised Draft EIR for public review.
5. The City will prepare and publish all public notices.
6. Under a separate non-City contract (e.g., a contract with Black Mountain Ranch LLC), Rick Engineering will be incorporating the changes to the water quality report already requested by Caltrans (confirmed by E. Camerino, Rick Engineering, 4/19/2007).
7. Under a separate non-City contract (e.g., a contract with Black Mountain Ranch LLC), Rick Engineering will be providing all traffic, hydrology, water quality, and other engineering support and services for the development of the revised biological mitigation plan, preparation of the Final EIR and revision of the Draft EIR (if required); confirmed by E. Camerino, Rick Engineering, 4/19/2007).
8. Except for biological resources as outlined in the Tierra Environmental and the RECON scope of work, it is assumed that the Modified Eastern Alignment and the Task Force Alternatives will not require modifications to any technical study.
9. It is assumed that the City will print and distribute the FEIR. The City will print and distribute the recirculated Draft EIR if the City determines that a revised Draft EIR is to be recirculated.
10. The City will pursue the Coastal Zone Permit and interface with the Coastal Commission. As such, the current scope of work does not include RECON support for this task. If the City should desire assistance with this effort, we recommend that a specialist in Coastal Commission processing (for example, Nancy Lucast) be retained to assist with this effort. RECON has not contacted Ms. Lucast or any other coastal specialist in connection with this scope of work. However, based on previous experience, we have drafted the following sample scope, which may be

representative of the effort that would be involved should the City desire assistance with the Coastal Commission process.

1. **CLIENT** retains CONSULTANT as an independent contractor to perform the following tasks with respect to said contract:
 - a. Review the project description and consult/strategize with the City/Applicant to identify major issues during preparation of the EIR, coordinate with Coastal staff, and provide general guidance for the resolution of potential issues.
 - b. Assist with the preparation of the Coastal Development Permit (CDP) package for the project.
 - c. Review the final Coastal Development Permit (CDP) package for accuracy.
 - d. Coordinate and attend meetings with Coastal Commission staff during the processing of the permit.
 - e. Coordinate and prepare briefing information with the Coastal Commission staff during the hearing preparation process.
 - f. Attend Coastal Commission Hearings as needed or as required by the Project Manager.

EXHIBIT B

COMPENSATION AND FEE SCHEDULE

EXHIBIT B

COMPENSATION AND FEE SCHEDULE

RECON Environmental, Inc.	
Task 1A: Final EIR ¹ (Hon Consulting – sub to RECON)	\$60,000
Task 2A: Biological Support (Tierra Environmental – sub to RECON)	\$15,930
Task 3A: Additional Visual Simulations (KTU+A – sub to RECON)	\$17,200
Task 4A: Biological Support	\$6,960
Task 5A: Develop new mitigation plan	\$39,316
Task 6A: Project Oversight and Coordination	\$25,933
Task 7A: Meetings and Coordination	\$9,072
Task 8A: Production Support	\$10,480
Task 9A: Internal review EIR copying and camera ready final EIR	\$5052
Additional Tasks if DEIR Recirculated ¹	
Task 10A: Camera ready copy draft EIR	\$57
Task 11A: Responses to comments on recirculated DEIR (Hon Consulting – sub to RECON)	\$10,000
Total Contract Amount	\$200,000

¹If the City chooses to recirculate the draft EIR, Tasks 1A through 9A will be the completion of the DEIR, and additional Tasks 10A and 11A will be implemented to complete the FEIR.

EXHIBIT C

TIME SCHEDULE

El Camino Real Bridge Widening EIR Estimated Processing Schedule

October 19, 2007

Schedule below assumes that draft EIR will be recirculated and includes an estimate for the amount of time that will be required to work out new biological mitigation with the wildlife agencies. RECON does not have control over agency actions/timeline. Therefore, the actual schedule may vary from that shown.

Task	Time Line
Authorization to Proceed.....	NA
Biology Schedule	
Agency meeting	2 weeks
Develop new mitigation strategy and plan	8 weeks*
Agency review	4 weeks
RECON prepare new Screencheck draft EIR.....	8 weeks
City staff review of new Screencheck draft EIR.....	4 weeks
RECON makes final changes to draft EIR	2 weeks
RECON provides camera ready copy of draft EIR for public review	1 week
City prints and distributes draft EIR.....	1 week
Public review of draft EIR (45 calendar days)	7 weeks
RECON review public comments on draft EIR and meet with City	1 week
RECON submit draft responses to comments.....	3 weeks
City review of draft responses to comments.....	2 weeks
RECON submit final EIR revisions and finalize responses.....	2 weeks
City review and approve final EIR	2 weeks
RECON provides camera ready copy of final EIR for distribution.....	1 week
Total Time Estimate	48 weeks**

*Timeline for development of new biological mitigation strategy and plan is dependent upon developing concurrence from/with USFWS, CDF&G, and USACE. Actual timeline could be longer.

**Work weeks; does not include holidays

EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)
CONTRACTOR REQUIREMENTS

TABLE OF CONTENTS

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I. **City's Equal Opportunity Commitment.** The City of San Diego (City) is strongly committed to equal opportunity for employees and subconsultants of professional service consultants doing business with the City. The City encourages its consultants to share this commitment. Prime consultants are encouraged to take positive steps to diversify and expand their subconsultant solicitation base and to offer consulting opportunities to all eligible subconsultants.

II. **Nondiscrimination in Contracting Ordinance.** All consultants and professional service providers doing business with the City, and their subconsultants, must comply with requirements of the City's *Nondiscrimination in Contracting Ordinance*, San Diego Municipal Code Sections 22.3501 through 22.3517.

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

Consultant shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors,

vendors, or suppliers. Consultant shall provide equal opportunity for subconsultants to participate in subconsulting opportunities. Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.

- C. Compliance Investigations. Upon the City's request, Consultant agrees to provide to the City, within sixty (60) calendar days, a truthful and complete list of the names of all Subconsultants, vendors, and suppliers that Consultant has used in the past five (5) years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Consultant for each subcontract or supply contract. Consultant further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's *Nondiscrimination in Contracting Ordinance*, Municipal Code Sections 22.3501 through 22.3517. Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Consultant up to and including contract termination, debarment and other sanctions for violation of the provisions of the *Nondiscrimination in Contracting Ordinance*. Consultant further understands and agrees that the procedures, remedies and sanctions provided for in the *Nondiscrimination in Contracting Ordinance* apply only to violations of the *Ordinance*.

III. Equal Employment Opportunity. Consultants shall comply with requirements of San Diego Ordinance No. 18173, Section 22.2701 through 22.2707, Equal Employment Opportunity Outreach Program. Consultants shall submit a *Work Force Report* or an *Equal Employment Opportunity (EEO) Plan* to the Program Manager of the City of San Diego Equal Opportunity Contracting Program (EOCP) for approval.

- A. Work Force Report. If a *Work Force Report* (Attachment AA) is submitted, and an EOCP staff Work Force Analysis determines there are under representation when compared to County Labor Force Availability data, Consultant will be required to submit an *Equal Employment Opportunity Plan*.
- B. Equal Employment Opportunity Plan. If an *Equal Employment Opportunity Plan* is submitted, it must include at least the following assurances that:
1. The Consultant will maintain a working environment free of discrimination, harassment, intimidation and coercion at all sites and in all facilities at which the Consultant's employees are assigned to work;
 2. A responsible official is designated to monitor all employment related activity to ensure the Consultant's EEO Policy is being carried out and to submit reports relating to EEO provisions;

3. Consultant disseminates and reviews its EEO Policy with all employees at least once a year, posts the policy statement and EEO posters on all company bulletin boards and job sites, and documents every dissemination review and posting with a written record to identify the time, place, employees present, subject matter, and disposition of meetings;
4. The Consultant reviews, at least annually, all supervisor's adherence to and performance under the EEO Policy and maintains written documentation of these reviews;
5. The Consultant discusses its EEO Policy Statement with subconsultants with whom it anticipates doing business, includes the EEO Policy Statement in its subcontracts, and provides such documentation to the City upon request;
6. The Consultant documents and maintains a record of all bid solicitations and outreach efforts to and from subconsultants, consultant associations and other business associations;
7. The Consultant disseminates its EEO Policy externally through various media, including the media of people of color and women, in advertisements to recruit, maintains files documenting these efforts, and provides copies of these advertisements to the City upon request;
8. The Consultant disseminates its EEO Policy to union and community organizations;
9. The Consultant provides immediate written notification to the City when any union referral process has impeded the Consultant's efforts to maintain its EEO Policy;
10. The Consultant maintains a current list of recruitment sources, including those outreaching to people of color and women, and provides written notification of employment opportunities to these recruitment sources with a record of the organizations' responses;
11. The Consultant maintains a current file of names, addresses and phone numbers of each walk-in applicant, including people of color and women, and referrals from unions, recruitment sources, or community organizations with a description of the employment action taken;
12. The Consultant encourages all present employees, including people of color and women employees, to recruit others;
13. The Consultant maintains all employment selection process information with records of all tests and other selection criteria;

14. The Consultant develops and maintains documentation for on-the-job training opportunities and/or participates in training programs for all of its employees, including people of color and women, and establishes apprenticeship, trainee, and upgrade programs relevant to the Consultant's employment needs;
15. The Consultant conducts, at least annually, an inventory and evaluation of all employees for promotional opportunities and encourages all employees to seek and prepare appropriately for such opportunities;
16. The Consultant ensures the company's working environment and activities are non-segregated except for providing separate or single-user toilets and necessary changing facilities to assure privacy between the sexes;
17. The Consultant establishes and documents policies and procedures to ensure job classifications, work assignments, promotional tests, recruitment and other personnel practices do not have a discriminatory effect; and
18. The Consultant is encouraged to participate in voluntary associations, which assist in fulfilling one or more of its non-discrimination obligations. The efforts of a consultant association, consultant/community professional association, foundation or other similar group of which the Consultant is a member will be considered as being part of fulfilling these obligations, provided the Consultant actively participates.

IV. Equal Opportunity Contracting. Prime consultants are encouraged to take positive steps to diversify and expand their subconsultant solicitation base and to offer contracting opportunities to all eligible subconsultants. To support its Equal Opportunity Contracting commitment, the City has established a voluntary *subconsultant participation level*.

A. Subconsultant Participation Level

1. Projects valued at \$25,000 or more have a voluntary Subconsultant Participation Level goal of 15%. Goals are achieved by contracting with any combination of Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Disadvantaged Business Enterprise (DBE), Disabled Veteran Business Enterprise (DVBE) or Other Business Enterprise (OBE) level.
2. While attainment of the 15% Subconsultant Participation Level goal is strictly voluntary, the City encourages diversity in your outreach and selection efforts. Historical data indicates that of the overall 15% goal,

25% to 30% Disadvantaged Business Enterprise (DBE) and 1% to 3% Disabled Veteran Business Enterprise (DVBE) participation is attainable. The remaining percentages may be allocated to Other Business Enterprises (OBE). Participation levels may be used as a tiebreaker in cases of an overall tie between two or more firms.

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

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

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

1. Outreach Efforts. Description of Proposer's outreach efforts undertaken on this project to make subconsulting opportunities available to all interested and qualified firms.
2. Past Participation Levels. Listing of Proposer's subconsultant 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, subconsultant firm's name, percentage of subconsultant firm's participation, and identification of subconsultant firm's ownership as a certified Small Business, Disadvantaged Business Enterprise, Disabled Veteran Business Enterprise, or Other Business Enterprise.
3. Equal Opportunity Employment. Listing of Proposer's strategies to recruit, hire, train and promote a diverse workforce. These efforts will be considered in conjunction with Proposer's *Workforce Report* as compared to the County's Labor Force Availability.
4. Community Activities. Listing of Proposer's current community activities such as membership and participation in local organizations, associations, scholarship programs, mentoring, apprenticeships, internships, community projects, charitable contributions and similar endeavors.

B. Consultant selection panels will consider and evaluate the Proposer's demonstrated commitment to equal opportunity including the following factors:

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

2. Past Participation Levels. Proposer's subconsultant participation levels achieved on all private and public projects within the past three (3) years.
3. Equal Opportunity Employment. Proposer's use of productive strategies to successfully attain a diverse workforce as compared to the County's Labor Force Availability.
4. Community Activities. Proposer's current community activities.

VI. List of Subconsultants. Consultants are required to submit a *Subconsultant List* with their proposal.

A. Subconsultants List. The *Subconsultant List* (Attachment BB) shall indicate the Name and Address, Scope of Work, Percent of Total Proposed Contract Amount, Dollar Amount of Proposed Subcontract, Certification Status and Where Certified for each proposed subconsultant.

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

B. Commitment Letters. Proposer shall also submit subconsultant *Commitment Letters* on subconsultant's letterhead, no more than one page each, from all proposed subconsultants to acknowledge their commitment to the team, scope of work, and percent of participation in the project.

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

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

Certified "**Disadvantaged Business Enterprise**" (DBE) means a business which is at least fifty-one percent (51%) owned and operated by one or more socially and economically disadvantaged individuals and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, socially and economically disadvantaged individuals.

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

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

VIII. Certification.

- A. The City of San Diego is a signatory to a Memorandum of Understanding (MOU) with the California Department of Transportation (CALTRANS), and therefore has adopted a policy regarding certification of MBE/WBE/DBE/DVBE firms. As a result of the MOU, an MBE, WBE or DBE is certified as such by any of the following methods:
1. Current certification by the City of San Diego as MBE, WBE, or DBE;
 2. Current certification by the State of California Department of Transportation (CALTRANS) as MBE, WBE or DBE;
 3. Current MBE, WBE or DBE certification from any participating agency in the statewide certified pool of firms known as CALCERT.
- B. DVBE certification is received from the State of California’s Department of General Services, Office of Small and Minority Business (916) 322-5060.

IX. List of Attachments.

- AA - *Work Force Report*
- BB - *Subconsultants List*
- CC - *Contract Activity Report*

WORK FORCE REPORT - NAME OF FIRM: RECON Environmental

DATE: 1/19/2007

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

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		6	5		
Professional				3							9	13		
A&E, Science, Computer														
Technical				15	5				1		4	4		
Sales														
Administrative Support		2		4								6		
Services														
Crafts														
Operative Workers														
Transportation				1										
Laborers*				17							1			

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

Totals Each Column	2		33	12					1	1	20	28		
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Grand Total All Employees 97

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 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

ENCLOSURE -SUB CONSULTANTS SCOPES OF WORK

	Subcontract <u>Amount</u>	Percent of <u>Contract</u>
Hon Consulting, Inc – Completion of the Final EIR	\$60,000	30%
<i>Optional: Responses to comments on recirculated Draft EIR</i>	<i>\$10,000</i>	<i>5%</i>
Tierra Environmental Services – Biological Assessment	\$15,930	7.965%
KTU+A – Preparation of Additional Visual Simulation	<u>\$17,200</u>	<u>8.6%</u>
	\$103,130	51.565%

F105
V8

RESOLUTION NUMBER R- 303294

DATE OF FINAL PASSAGE JAN 18 2008

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING TO EXECUTE AN AGREEMENT WITH RECON ENVIRONMENTAL, INC. FOR THE EL CAMINO REAL BRIDGE/ROAD WIDENING IN THE CARMEL VALLEY PLANNING AREA.

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor be and he is hereby authorized and empowered to execute, for and on behalf of said City, an agreement with Recon Environmental, Inc. [Agreement], for the purpose of completing the Environmental Impact Report under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No. RR 303294.

BE IT FURTHER RESOLVED, that the expenditure of an amount not to exceed \$200,000 from Fund No. 30300, TransNet, CIP No. 52-479.0, El Camino Real Bridge/Road Widening, is authorized for the purpose of providing funds for the above referenced Agreement.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller, upon advice from the administering department, is authorized to transfer excess funds, if any, to the appropriate reserves.

BE IT FURTHER RESOLVED, that this activity is not a "project" and is therefore exempt from CEQA pursuant to State CEQA Guidelines Section 15060(c)(3).

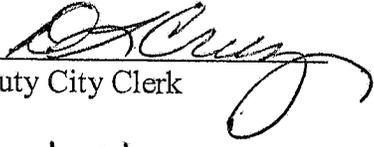
APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Peter A. Mesich
Peter A. Mesich
Deputy City Attorney

PAM:cfq
11/27/07
Or.Dept:E&CP
Aud.Cert.:2800408
R-2008-481

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JAN 8 2008.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 1.18.08
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

