

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) 3000009374
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TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Transportation&Storm Water Dept	DATE: 9/23/2016
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SUBJECT: Consultant agreement with Kimley-Horn and Associates, Inc. to provide professional engineering services for As-Needed Intelligent Transportation Systems (ITS) Consulting Services

PRIMARY CONTACT (NAME, PHONE): Eddie Flores, (619) 533-3761 MS 608	SECONDARY CONTACT (NAME, PHONE): Linda J. Marabian, (619) 533-3082 MS 608
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COMPLETE FOR ACCOUNTING PURPOSES

FUND	400265				
FUNCTIONAL AREA	OTHR-00000000-TR				
COST CENTER	2113120011				
GENERAL LEDGER ACCT	512059				
WBS OR INTERNAL ORDER	A-IL.00002				
CAPITAL PROJECT No.	A-IL.00002				
AMOUNT	\$1,000.00	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): The total not-to-exceed amount of the As-Needed Agreement is \$10,000,000. The minimum required contract amount is \$1,000.

ROUTING AND APPROVALS

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Environmental Analysis	ORIG DEPT.	McFadden, Kris	10/05/2016
Equal Opportunity Contracting	CFO		
Comptroller	DEPUTY CHIEF	Gomez, Paz	10/20/2016
Liaison Office	COO		
Financial Management	CITY ATTORNEY		
	COUNCIL PRESIDENTS OFFICE		

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

1. Authorize the Mayor or his designee to execute an agreement with Kimley-Horn and Associates, Inc. to provide As-Needed ITS Consulting services in an amount not-to-exceed \$10,000,000.00 in accordance with the terms and conditions set forth in the Agreement; and contingent upon the Chief Financial Officer first furnishing one or more certificates certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer; and

2. The Chief Financial Officer is authorized to expend an amount not-to-exceed \$10,000,000.00 over five years for the purpose of funding the As-Needed ITS Consulting Services Agreement with Kimley-Horn and Associates, Inc. contingent upon the adoption of the Annual Appropriation Ordinance for the applicable fiscal year and contingent upon the Chief Financial Officer furnishing one or more certificates certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer; and

3. The Chief Financial Officer is authorized to expend an amount not to exceed \$1,000.00 from Annual Allocation AIL00002, Install T/S Interconnect Systems, Fund 400265, GFCIP Contributions, for the purpose of executing this agreement and meeting the minimum contract requirements; and

4. Determine that this activity, the award of an As-Needed ITS Consulting Services contract, is exempt from CEQA pursuant to CEQA Guidelines Section 15301 (Existing Facilities).

STAFF RECOMMENDATIONS:

Adopt the resolutions.

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

COUNCIL DISTRICT(S): All

COMMUNITY AREA(S): Citywide

ENVIRONMENTAL IMPACT: This activity (Award of an As-Needed ITS Consulting Services contract) is not a “project” as it involves only the performance of as-needed consultant services which on its own accord will not cause any significant environmental impacts. As such, this activity is not subject to CEQA pursuant to Section 15060(c)(3). Future projects will require review in accordance with the City's LDC and CEQA. This determination is predicated on Section 15004 of CEQA, which provides direction to lead agencies on the appropriate timing for environmental review.

CITY CLERK INSTRUCTIONS: Please provide a copy of the adopted resolution to Eddie Flores (MS 608).

COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE: 9/23/2016

ORIGINATING DEPARTMENT: Transportation&Storm Water Dept

SUBJECT: Consultant agreement with Kimley-Horn and Associates, Inc. to provide professional engineering services for As-Needed Intelligent Transportation Systems (ITS) Consulting Services

COUNCIL DISTRICT(S): All

CONTACT/PHONE NUMBER: Eddie Flores/ (619) 533-3761 MS 608

DESCRIPTIVE SUMMARY OF ITEM:

Council approval to award As-Needed ITS Consulting Services contract to Kimley-Horn and Associates, Inc. to support the Transportation & Storm Water Department in an amount not-to-exceed \$10,000,000. The As-Needed consultant will be used to provide specialized technical services in areas such as traffic signal communications, ITS, traffic, and civil engineering.

STAFF RECOMMENDATION:

Adopt the resolutions.

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

The City of San Diego completed its first Traffic Signal Communications Master Plan (Master Plan) in December 2014. This Master Plan identified deficiencies, needs, and enhancements to the City's traffic signal communications network. The Master Plan also identified new ITS elements and technologies such as adaptive traffic control systems, advanced data collection systems, and video monitoring systems, which can become extremely valuable traffic management tools when added onto a robust and efficient communications system. The enhanced communications system and ITS elements will primarily serve the City's Transportation & Storm Water Department which will provide staff with modern tools to better serve the public utilizing the City's various transportation modes. In addition, these network enhancements and new ITS elements will also create greater connectivity opportunities for other Departments within the City. This action is for the purpose of hiring a consultant to assist staff with the implementation of the Master Plan.

Currently, most traffic engineering design services are provided by in-house City personnel. However, the nature of the work required to complete the various elements in the Master Plan is so specialized that it is necessary to utilize an as-needed engineering firm to complete these tasks in a manner that will meet and/or exceed today's standards. In addition, the Department's goal is to complete the installation of the new traffic signal communications network and various ITS elements over the next 10 years, pending available funding. In order to achieve this goal, and to keep current with the rapid changing technology, the design work and installation of these components needs to take place at a fast pace by experts in these fields. Therefore, the Department will use the as-needed consultant, in support of City staff, to provide the specialized technical services it needs in the areas of traffic signal communications, ITS, traffic, and civil engineering.

In late January 2015, the Department requested proposals from qualified firms for the As-Needed ITS Consultant Services contract. In March 2015, a total of three engineering firms submitted proposals pursuant to the Request for Proposal. The Department determined that all three engineering firms were highly qualified to participate in the interview process. Therefore, in April 2015, the Selection Panel interviewed all three firms. In May 2015, based on the selection rating criteria and procedure, the Department selected STC Traffic, Inc. as the most qualified firm. The As-Needed ITS Consultant Services Agreement with STC Traffic, Inc. was approved by City Council Resolution R-310063 on November 10, 2015. In late July 2016, the California FPPC determined that the contract with STC Traffic, Inc. created a conflict of interest prohibited by California Government Code Section 1090 (Attachment 1). Therefore, as a matter of law, the contract with STC Traffic, Inc. became void. As a result, City staff recommends that the As-Needed ITS Consultant Services Agreement contract be awarded to the second most highly qualified firm, Kimley-Horn and Associates, Inc.

The proposed As-Needed ITS Consultant Services Agreement with Kimley-Horn and Associates, Inc. has a minimum aggregate value of \$1,000 and a total not-to-exceed amount of \$10,000,000 for a duration of five years effective from the date of City Council approval.

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

Goal 1: Provide high quality public service. Objective 4: Ensure equipment and technology are in place so that employees can achieve high quality public service.

FISCAL CONSIDERATIONS:

Funding for future tasks will be from the Capital Improvement Program project requiring these services contingent upon the City Comptroller furnishing a certificate certifying that funds are, or will be, on deposit with the City Treasurer.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

This agreement is subject to the City's Equal Employment Opportunity Outreach Program (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): The Master Plan was presented to the Infrastructure Committee as an information item on July 22, 2015. The As-Needed ITS Consultant Services Agreement with STC Traffic, Inc. was approved by City Council Resolution R-310063 on November 10, 2015.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Asset owning departments, other City departments, and potentially, other local agencies in need of a more robust and reliable communications network.

McFadden, Kris

Originating Department

Gomez, Paz
Deputy Chief/Chief Operating Officer



THE CITY OF SAN DIEGO

SUBMIT

Request for Human Resources Approval for Purchase Requisition (Contracting Out Review Request Form)

JAN 05 2015

Requesting Department: Transportation & Storm Water/TEO

Vendor Name: TBD

WBS No. or Project Title As-Needed Intelligent Transportation Systems (ITS) Consulting Services

Purchase Requisition # (if available): N/A

Department Contact: Eddie Flores

Date of Request: 01/05/2015

Contract Amount/Estimate: \$ 10,000,000.00

Contract/Service Duration: Five (5) Years

*NOTE: Please provide a description of the activity/services requested and what the request to contract out work will cover.
(Please use plain language for the terms/definitions)*

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

Question	Department Response
What is the contract/service for? (Please be specific as to the scope of work)	The City is seeking to hire a highly qualified consultant to provide Intelligent Transportation Systems (ITS) consulting services for an estimated \$10,000,000 contract amount over a 5-year period. The City's recently completed Traffic Signal Communications Master plan will serve as a guide for the enhancement and expansion of the City's traffic signal communication system and the installation of new ITS devices. The selected consultant will provide design, specifications and construction management for: new fiber optic systems, communications network development and integration, ITS field devices such as video surveillance cameras, data collection systems & changeable message signs, adaptive traffic control systems, traffic signal interconnect, and traffic signal upgrades to expand the City's traffic signal communication system and deploy new ITS technologies.
What is the location of the project/service?	City of San Diego (Citywide)
Are City employees currently performing any of the work?	No
Do City employees currently have the expertise to do this work in-house? If not, why not?	No. ITS is a highly specialized field and the City does not have a team specifically dedicated to the design of traffic signal communication systems, network integration, and the deployment of new ITS technologies.

Will any City employees be displaced as a result of this contract/service?	No
If this is a renewal of an existing contract, how long have these services been contracted out?	N/A
Is this a Public Works project? * (i.e. construction, reconstruction or repair of City buildings, street or other facilities)	Yes
Is this a Tenant Improvement project? * (i.e. changes to the interior of a City facility, such as floors, wall coverings, shelves, ceilings, windows, partitions, etc.)	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. If not, why was another Department not contacted?	<p>No, this is very specialized work that integrates traffic signal systems, dynamic message signs, video surveillance cameras, fiber optic, copper, and wireless technologies to provide a safer and more efficient transportation system. No other City department is familiar with these systems.</p> <div data-bbox="1284 1514 1567 1591" style="border: 1px solid black; padding: 5px; text-align: center;">ATTACH</div>

**NOTE: If Public Works project (\$100,000 in labor costs or less) or Tenant Improvement project (\$250,000 in labor costs or less) requires HR review/approval. All other contracts require HR review/approval regardless of dollar amount. Remember – Departments cannot intentionally bundle services to avoid the threshold labor costs.*

HUMAN RESOURCES DEPARTMENT USE ONLY

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

V. David

1-7-15

Human Resources Department Liaison

Date

July 27, 2016

Mr. Jason Stack, Principal Manager
Stack Traffic Consulting, Inc.
2794 Loker Avenue West, Suite 102
Carlsbad, CA 92010

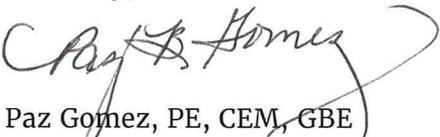
Subject: As-Needed Intelligent Transportation Systems (ITS) Consulting Services
Contract No. H156417

Dear Mr. Stack:

This letter is to inform you that the City cannot proceed with the above referenced contract. The Fair Political Practices Commission (FPPC) has determined that proceeding with the contract creates a conflict of interest prohibited by California Government Code Section 1090. The FPPC opinion is attached (No. A-16-090; July 14, 2016). As a matter of law, the contract awarded to your firm is therefore void and unenforceable. The City must award the contract to another firm and intends to do so.

Please contact Mr. Kris McFadden, Director of Transportation & Storm Water, at (619) 236-6594 or kmcfadden@sandiego.gov if you have any questions.

Sincerely,



Paz Gomez, PE, CEM, GBE
Deputy Chief Operating Officer, Infrastructure/Public Works

Attachment

cc: Kris McFadden, Director, Transportation & Storm Water Department
James Nagelvoort, Director, Public Works Department and City Engineer
Vic Bianes, Assistant Director, Transportation & Storm Water Department
Linda Marabian, Deputy Director, Transportation & Storm Water Department
Al Rechany, Deputy Director, Public Works Department
Kenneth So, Deputy City Attorney
Thomas Zeleny, Deputy City Attorney



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

RECEIVED JUL 21 2016

July 14, 2016

Scott Chadwick
Chief Operating Officer
City of San Diego
202 C Street, MS 94
San Diego, CA 92101

Re: Your Request for Advice
Our File No. A-16-090

Dear Mr. Chadwick:

This letter responds to your request for advice regarding Government Code Section 1090.¹ On June 8, 2016, you requested that we consider additional information provided by the Kaufman Legal Group representing Stack Traffic Consulting, Inc. (STC).² On June 24, 2016, we received additional information and argument from George Yin representing STC which is also considered herein. We have also forwarded your request to the Attorney General's Office and the San Diego County District Attorney's Office and we did not receive a written response from either entity. (See Section 1097.1(c)(4).)

Please note that we do not advise on any other area of law, including Public Contract Code or common law conflicts of interest. We are also not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. Finally, Section 1090 advice is not admissible in a criminal proceeding against any individual other than the requestor. (See Section 1097.1(c)(5).)

QUESTION

Would STC's performance of the City's Traffic Signal Communications Master Plan contract in 2014 (*Contract #1*) create a Section 1090 conflict of interest for STC in contracting with the City to provide as-needed consulting services contract based on the Master Plan ("*Contract #2*").

CONCLUSION

Yes. Section 1090 prohibits the City from contracting with STC to provide as-needed consulting services under *Contract #2* since STC created the Traffic Signal Communications Master Plan on which a substantial part of the as-needed consulting services contract is based.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² You noted that Stack Traffic Consulting, Inc. and STC Traffic, Inc. are, and have been since 2015, the same company. Thus, any reference to STC covers both Stack Traffic Consulting, Inc. and STC Traffic, Inc.

FACTS

*Contract #1.*³ On January 27, 2014, the City executed a contract with STC to prepare the City's Traffic Signal Communications Master Plan. According to the summary of the contract in your letter requesting advice, under *Contract #1*, STC was required to:

- (1) Take inventory of the existing communications infrastructure.
- (2) Compile infrastructure records and map them on Geographic Information Systems ("GIS") using Environmental Systems Research Institute ("ESRI") software.
- (3) Identify the communications infrastructure necessary to connect the approximately 500 existing offline signals. You stated items (1), (2), and (3) were reports regarding deficiencies in existing infrastructure.
- (4) Recommend communication paths and infrastructure to accommodate the future roadways. You stated that while the item requested a recommendation, it was limited to communication paths and infrastructure to accommodate new roadway improvements.
- (5) Make recommendations for upgrades to traffic signal controllers, fiber optic multiplexors, wireless equipment, etc., to reflect current industry standards with the goal of increasing equipment availability, increasing system capacity, reducing maintenance needs and system down time. You stated item 5 requested a recommendation on upgrades, but STC did not have the option of recommending that the City not upgrade the system. The decision to upgrade the system had already been made by City staff. This item directed STC to tell the City what is needed to upgrade the system to industry standards.

On December 2, 2014, the Master Plan prepared by STC was publicly released. The Executive Summary of the Master Plan stated:

"The City of San Diego has initiated the most significant investment in its history, in state-of-the-art traffic signal systems technology and Intelligent Transportation Systems (ITS), through the development of the Traffic Signal Communications Master Plan (TSCMP). The benefits of the plan are drastic, great, and wide ranging. Through modernization of the traffic signal system in San Diego, traffic signals throughout the community will be coordinated and this will increase public safety, shorten commutes, reduce greenhouse gasses, and increase mobility at intersections for all modes of travel including motorists, bicyclists, pedestrians, transit, and emergency vehicles.

"The Plan's purpose is to guide the City on implementing traffic signal communications and ITS technology improvements and includes resource allocation related to improvement prioritization, funding sources, and staff levels.

³ Other portions of the Master Plan, both RFPs, and both contracts are referenced or quoted in the analysis below and are not repeated in the factual summary.

“The plan is ground-breaking in many ways: the breadth of technology proposed includes every critical element of the traffic signal system, the technology is state-of-the-art, the area of deployment covers the entire City and all 1531 traffic signals, and the plan is scheduled for complete implementation in three phases by 2025.”

Contract #2: In late January 2015, the City issued a subsequent RFP for as-needed consulting services for the Intelligent Transportation Systems (“ITS”) project. This RFP references the Master Plan in the Project Background and the Scope of Services sections. After a competitive process, STC was awarded the contract, and on December 21, 2015, the City executed *Contract #2*.

The City became concerned about possible Section 1090 issues before going forward with the second contract and therefore is seeking written advice from the Commission. You stated that no work has been performed under *Contract #2* and no funds have been spent. The issuance and award of any task orders have been suspended. The City will not proceed with any work or expenditure under the contract until advice is received. You stated that an as-needed contract is characterized by no description of the work to be performed since it is undetermined at the time of contract award.

ANALYSIS

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. Taft* (1962) 58 Cal.2d 565, 569.) Section 1090 is intended “not only to strike at actual impropriety, but also to strike at the appearance of impropriety.” (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.)

Under Section 1090, “the prohibited act is the making of a contract in which the official has a financial interest.” (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) A contract that violates Section 1090 is void. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Id.* at pp. 646-649.) Your question involves application of the analysis and conclusions in the *Chadwick* Advice Letter, No. A-15-147 (hereafter *Chadwick 1*).

1. Is STC subject to the provisions of Section 1090?

Section 1090 provides, in part, that “[m]embers of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.”

The term “public official” is interpreted broadly under Section 1090 and includes “independent contractors who perform a public function” and “whose official capacities carry the potential to exert considerable influence over the contracting decisions of a public agency.” (See *Hub City Solid Waste Services, Inc. v. City of Compton* (2010) 186 Cal.App.4th 1114, 1124-1125;

citing *California Housing Finance Agency v. Hanover/California Management & Accounting Center, Inc.* (2007) 148 Cal.App.4th 682, 690-693; see also *Davis v. Fresno Unified School District* (2015) 237 Cal.App.4th 261, at pp. 300-301.) The purpose behind this inclusiveness of the definition is to ensure that independent contractors who are essentially performing a public function, though temporarily, provide the same “fealty expected from permanent officers and employees.” (46 Ops.Cal.Atty.Gen 74 (1965).⁴)

“Participation in the making or forming of a contract,” also defined broadly in the Section 1090 context, includes involvement in preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, and solicitation for bids. (*Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237; see also *Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569.)

In the recent matter of *Davis, supra*, the court concluded that the allegations were sufficient to state that a contractor (1) was an “employee” for purposes of Section 1090 and (2) participated in making the contracts where it was alleged that the contractor served as a professional consultant to the public entity and had a hand in designing and developing the plans and specifications for the project that the contractor later entered into contract to perform. (*Davis, supra*, at 301.)

Following the *Davis* case, in the *Chadwick* Advice Letter, No. A-15-147 (hereafter “*Chadwick 1*”), we applied Section 1090 to a city contractor and a city subcontractor:

“[A] contractor was involved in designing a project that it then bid on to build. Schmidt Design contracted with the City to develop a general plan that would lay out the design of reconstructed golf course. Schmidt Design advised the City, worked closely with City staff and project manager, and ultimately designed and developed the plan that became the RFP. The threshold question is: Does Section 1090 consider a corporate consultant that advises a public entity on the design phase of a project to be an ‘employee’? The *Davis*⁵ court answered that question in the affirmative, as must we.

“Schmidt Design, as the primary consultant, was in a position to interact with and advise the City on its policy goals, create a design that interprets and applies the City’s stated plan for the golf course, and work closely with the project manager and other staff to ensure the City and community supported the

⁴ In 46 Ops.Cal.Atty.Gen 74 (1965), the Attorney General’s Office clarified the scope of this definition.

“It seems clear that the Legislature in later amending section 1090 to include ‘employees’ intended to apply the policy of the conflicts of interest law, as set out in the *Schaefer* and *Terry* cases, to independent contractors who perform a public function and to require of those who serve the public temporarily the same fealty expected from permanent officers and employees. It is a fundamental rule for the interpretation of a statute that it is presumed to have been enacted or amended in the light of such existing judicial decisions as have a direct bearing upon it. [Citations.]. Except where the statutory language is clear and explicit, courts construe statutes with a view to promoting rather than to defeating their general purpose and their underlying policy.”

⁵ *Davis v. Fresno Unified School District, supra*. See also, *McGee v. Balfour Beatty Construction, LLC* (2016) 247 Cal.App.4th 235.

design. Because Schmidt Design contracted with the City and acted in an advisory capacity with the capability of exerting influence over the City staff's decision making, it is subject to Section 1090.

“The courts focus the inquiry regarding whether an independent contractor is considered an ‘employee’ under Section 1090 on the scope of influence the independent contractor holds in advising the public entity. The court in *Hub City* determined that an independent contractor that exerts considerable influence over the contracting decisions of a public agency is subject to Section 1090. (*Hub City Solid Waste Services, Inc. v. City of Compton* [2010] 186 Cal.App.4th [1114] at pp. 1124-1125.) Similarly, in *Schaefer*, the court found that a contractor who was ‘merely in an advisory position’ was also subject to Section 1090. (*Schaefer v. Berinstein, supra*, 140 Cal.App.2d at p. 291.) Unlike the other subconsultants, Lagardere Unlimited was highly involved with the City as an advisor and was influential in the City’s decision-making.^[6] Lagardere Unlimited is therefore also subject to Subject 1090.

“The remaining subconsultants that contracted with Schmidt Designs and provided technical input, submitted reports, and similar information to support the GDP were significantly more removed from directly advising City staff and therefore did not exert considerable influence. Based on the aforementioned case law, including *Davis*, and because the remaining subconsultants performed their duties for and through Schmidt Design, we find that as a group, they are not subject to Section 1090.”

In addition, in the *Fowler/Kieser* Advice Letter, No. A-15-228, the same analysis was applied to the City of Santa Rosa’s proposed award of a contract to update the City’s development impact fees to a firm that was intricately involved in the development and formation of that contract through its performance of a preceding contract with the City to review the City’s development impact fees. This is factually similar to the current situation. Moreover, as noted above, in our advisory function we do not conclude or suggest that the contracting process was in fact improperly slanted in favor of STC.

Essentially, your question is whether STC fits under the *Chadwick I* analysis applied to the prime contractor and the major subcontractor (Section 1090 applied) or the majority of the other subcontractors (Section 1090 did not apply). While some of the duties performed by STC under *Contract #1* could be considered technical input, submitting reports, and similar information to support the Master Plan Contract, STC was also the prime contractor in developing the City’s Master Plan which the Master Plan itself describes as “the most significant investment in its history in state-of-the-art traffic signal systems technology,” a plan that covers “every critical element of the traffic signal system, the technology is state-of-the-art, the area of deployment covers the entire

⁶ Public Contract Code Section 10365.5 draws a similar line in State contracting. It provides in pertinent part: “(a) No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract. (b) Subdivision (a) does not apply to any person, firm, or subsidiary thereof who is awarded a subcontract of a consulting.

City and all 1531 traffic signals, and the plan is scheduled for complete implementation in three phases by 2025.”⁷

The express tasks in *Contract #1* go beyond mere technical input, submitting reports, and similar information. For example, STC identified the communications infrastructure necessary to connect the approximately 500 existing offline signals and recommended communication paths and infrastructure to accommodate the future roadways. STC also made recommendations for upgrades to traffic signal controllers, fiber optic multiplexors, wireless equipment, etc. The Master Plan, the ultimate product of *Contract #1*, contains, in addition to identification of system deficiencies, almost 50 pages of suggestions and recommendations organized under chapters identified as: System Deficiencies and Resolution; Future Road Network Communications Infrastructure; Communications Equipment Upgrades Recommendations; ITS Element Recommendations; Implementation Phasing Plan; and Next Steps. Specific suggestions in the Master Plan (also reflected in *Contract #2* scope of services below) include: CCTV Cameras, ATC Controllers, Detection Systems, and Changeable Message Signs. Therefore, based on the content of the Master Plan, STC’s work was substantial and not merely an inventory of existing communication infrastructure.

Therefore, we find that STC, is subject to the provisions of Section 1090.

With respect to Mr. Yin’s letter, we disagree with the argument that these facts are distinguishable from *Chadwick 1* in any significant way.

1. The analysis in *Chadwick 1* regarding Schmidt was not a litmus test to be applied here. As noted above, *Chadwick 1* also concluded that Lagardere Unlimited, a subcontractor, was subject to Section 1090 because they were highly involved with the City as an advisor and were influential in the City’s decision-making. In this case STC was a prime contractor (not a subcontractor like Lagardere) in preparing the Master Plan which set the foundation for “the most significant investment in [the City’s] history, in state-of-the-art traffic signal systems technology and Intelligent Transportation Systems (ITS), through the development of the Traffic Signal Communications Master Plan (TSCMP).” *Contract #2* was an implementation of the Master Plan. STC’s services were not mere technical input or submission of reports and similar information.

2. We agree that STC did not have the option of recommending that the City not upgrade the system. The application of Section 1090 is based on the ability of STC to be the successful bidder on the *Contract #2* RFP through work performed under *Contract #1*. As Mr. Yin notes, STC made recommendations on upgrades and staffing, including the hiring of an “as-needed consultant.” Finally, it is clear that the Master Plan was prepared with an expectation that future work would be required. For example, the Master Plan provides:

⁷ Mr. Yin in his June 24, 2016 letter states that STC did not exercise judgment on behalf of the City nor did it advise the City generally on matters of public policy. Whether an independent contractor is considered an “employee” under Section 1090 is based on the influence the independent contractor holds in advising the public entity. As noted above, STC prepared the Master Plan on which *Contract #2* was based and in that capacity was potentially able to exert significant influence over *Contract #2* and could have shaped recommendations in the Master Plan to benefit its own future bid on *Contract #2*. Thus, STC, in its capacity as a public agency contractor, is subject to Section 1090.

“ES Implementation Phasing

“Transforming the existing network, composed of thousands of field devices spread over 370 square miles, requires a phased approach where critical deficiencies are addressed first, followed by a strategic conversion of the remaining communication infrastructure.

“The objective is to complete the TSCMP in 10 years, by year 2025. This plan revolves around technological advances that necessitate change in a timely manner, in order to keep as relevant as possible. It is also recognized that the recommendations of the TSCMP are largely unfunded and it will take time to build the proper funding into the City’s Capital Improvement Program (CIP). The technology identified by the TSCMP is critical for the operation and maintenance of the City’s traffic signal network which provides for safe and efficient mobility for all modes of travel. Implementing this plan expeditiously will provide the greatest return on investment through reduced traffic congestion, fewer crashes, greater productivity, lower transportation costs, and lower greenhouse gas emissions.

“Phase 1: Critical Deficiencies (Year 1-3) - This includes repairing and/or establishing communications to the 500 plus communication deficiencies identified throughout the City. The Traffic Management Center will also be implemented in Phase 1.

“Phase 2: Central Business District (Year 3-6) - As a best practice, the transformation of the legacy network shall begin centrally and expand outward into peripheral networks. Phase 2 constitutes Ethernet upgrades of nearly 500 intersections contained by the Central Business District (i.e. Downtown).

“Phase 3: Peripheral Networks (Year 6 -10) -The final phase of the communications overhaul will call for the replacement of existing hubs and extending Ethernet communication to each intersection serviced by the HUB. The implementation of phase 3 focuses on the remaining 500 or so intersections with the advantage of new Ethernet networks to connect to in the interior of the City.

“E6 Staffing Recommendations

“The operations and maintenance (O&M) staff for traffic signals have overlapping areas of responsibility and staff skills are complementary. The most well managed systems occur when operations engineers and maintenance technicians work side by side. The following are recommendations for O&M staffing:

* * *

“The City should contract the services of an on-call ITS and traffic signal operations engineering firm to provide highly technical services. This would provide much needed staff support during the TSCMP implementation. This would also provide flexibility in staffing levels as needed as in-house staffing levels are met.”

The fact that STC did not directly control the *Contract #2* process does not support a conclusion that STC had no financial interest in *Contract #2*.⁸

2. Does the decision involve a contract?

To determine whether a contract is involved in the decision, one may look to general principles of contract law (84 Ops.Cal.Atty.Gen. 34, 36 (2001); 78 Ops.Cal.Atty.Gen. 230, 234 (1995)), while keeping in mind that “specific rules applicable to Sections 1090 and 1097 require that we view the transactions in a broad manner and avoid narrow and technical definitions of ‘contract.’” (*People v. Honig, supra*, at p. 351 citing *Stigall, supra*, at pp. 569, 571.) There is no dispute that *Contract #2* between STC and the City would be a contract subject to Section 1090.

3. Is the official making or participating in making a contract?

Section 1090 casts a wide net to capture those officials who participate in any way in the making of the contract. (*People v. Sobel* (1974) 40 Cal.App.3d 1046, 1052.) Therefore, for purposes of Section 1090, participating in making a contract is defined broadly as any act involving preliminary discussions, negotiations, compromises, reasoning, planning, drawing plans and specifications, and solicitations for bids. (*Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237; see also *Stigall v. City of Taft, supra* at 569.)

STC was integrally involved in the city’s adoption of the Traffic Signal Communications Master Plan. As noted above, the ultimate product of *Contract #1*, the Master Plan, contains, in addition to identification of system deficiencies, almost 50 pages of what appear to be suggestions and recommendations organized under chapters identified as: System Deficiencies and Resolution; Future Road Network Communications Infrastructure; Communications Equipment Upgrades Recommendations; ITS Element Recommendations; Implementation Phasing Plan; and Next Steps. Specific suggestions in the Master Plan (also reflected in *Contract #2* scope of services below include: CCTV Cameras, ATC Controllers, Detection Systems, and Changeable Message Signs. STC, through the Master Plan, also made recommendations on upgrades and staffing, including the hiring of the “as-needed consultant” at issue in this letter.

Moreover, *Contract #1* and *Contract #2* appear to cover the same subject matter. For example, *Contract #1* required:

- 1.6 Task 6 - ITS Element Recommendations. Stack will prepare a report detailing how other ITS devices, such as CMS and video can be integrated into the existing/proposed communications infrastructure.

⁸ Mr. Yin, in his letter, states that at the time of the *Contract #2* RFP process, STC’s Master Plan activities were already completed and its contractual relationship (pursuant to *Contract #1*) with the City had terminated. The fact that STC had completed the Master Plan before the RFP for *Contract #2* was prepared is not determinative. For example, a “council member could participate in all negotiations giving a contract its substance and meaning, be instrumental in establishing specifications and schedules most advantageous to his or his firm’s particular mode of operation, participate in the selection of his or his firm’s offer, resign just prior to formal acceptance of that offer and execute the contract as the other party thereto . . .” (*Stigall supra* at 570.) In this case, *Contract #2* was based on the Master Plan prepared by STC under *Contract #1* and the gap between the performance and anticipated performance of the two contracts is not determinative.

Deployment strategies for video and CMS are based on an identified need for these elements at prioritized locations. The communication Master Plan should strive for an Ethernet platform for all newly deployed devices (especially video). The implementation of IP based communications allows for all IP compatible devices to be readily connected to the network including: Ethernet switches, IP cameras, external encoders for video detection to analog cameras, battery back-up systems, conflict monitor units, various detection systems including vehicle and pedestrian, changeable message signs, radar feedback signs, and more. These systems provide specific functions that support advanced traffic operations including: real-time video monitor of intersection operations, adaptive traffic control operation, dynamic messages for traveler information, and support for special event operations.

Contract #2 appears to be implementation of some of the proposals in the Master Plan developed under *Contract #1*. The RFP for *Contract #2* provides at Section 3: Project Description the following:

- 3.1 Project Background. The City is seeking to establish an As-Needed Contract with a highly qualified Consultant to provide support in the planning, design, and implementation of ITS elements and an upgraded traffic signal communications network.

The City of San Diego recently completed its first Traffic Signal Communications Master Plan. This Plan identified deficiencies, needs, and enhancements to the City's traffic signal communications network. In addition, the Plan also identified many new ITS elements and new technologies that can become extremely valuable traffic management tools when added onto a robust and efficient communications system. The enhanced communications system will primarily serve the City's Transportation & Storm Water Department, but it will also create great connectivity opportunities for other departments within the City, and potentially, other agencies in the region as well.

Section 1 of *Contract #2* describes the scope of service under *Contract #2* in pertinent part as follows:

- "1.1. Under the general supervision of the City Mayor or his designated representatives, STC Traffic, Inc. [Design Professional] shall provide as-needed Professional Services by Task Orders on an hourly basis. Professional Services may include, but are not necessarily limited to, the preparation of reports, grant applications, schematics, studies, design and/or construction documents relating to ITS elements such as CCTV cameras, 2070 ATC controllers, detection systems, changeable message signs, and adaptive traffic control systems; central management systems; fiber optic, copper and wireless systems; network & system integration; traffic signal timing optimization; traffic signal interconnect; new traffic signals and traffic signal upgrades; or other services necessary to complete the Tasks.

This is not a coincidental case of a contractor successfully bidding on two unrelated contracts with the same municipality. Rather the two contracts concern similar scopes of work and STC had the opportunity in performing *Contract #1* to affect the scope of *Contract #2*. In other words, participation in *Contract #1* was akin to preliminary discussions, negotiations, compromises,

reasoning, planning, drawing plans and specifications for *Contract #2*. (See, *Millbrae Assn. for Residential Survival, supra*; see also *Stigall v. City of Taft, supra* at 569.) Thus, through their substantial involvement in assisting the City with preparing the Master Plan under *Contract #1*, and the relationship of *Contract #2* to *Contract #1*, STC participated in making *Contract #2* for purposes of Section 1090.

Mr. Yin cites two advice letter and an opinion to support his argument that STC had no participation in making *Contract #2*. However, none of the cited authorities are factually similar to the facts here. The authorities all relate to single contracts. This ignores the significance of STC's work on the prior contract which resulted in the Master Plan.

1. The *Ansolabehere* Advice Letter No. A-15-180(a) and A-16-029 concerned a Planning Commissioner who had no involvement with a potential contract with his spouse's employer. He stated:

"You noted that the Planning Commission will not be making any recommendations regarding the selection of a consultant (or consultants) for the Plan. The City's RFP process for The Plan is exclusively performed by the City Council and City staff. No advisory bodies, including the Planning Commission, are involved in that process. Once a firm is selected, that firm will purely assist City staff in the review and processing of the proposed Plan. Therefore, the official will not be participating in a contract for purposes of Section 1090. Consequently, we do not further consider the application of Section 1090 to the Plan."

There was no indication that the Planning Commission worked on the foundation of the contract about which the question was based. If that had been the case, the conclusion would likely have been different.

2. Similarly, in the *Drexel* Advice Letter, No. I-14-075 and in 80 Ops. Cal. Atty. Gen., the questions concerned single contracts and the private conduct of officials contracting with their agencies. Section 1090 reaches beyond the officials who actually execute the contract to officials who participate in any way in the making of the contract.

"The decisional law, therefore, has not interpreted section 1090 in a hypertechnical manner, but holds that an official (or a public employee) may be convicted of violation no matter whether he actually participated personally in the execution of the questioned contract, if it is established that he had the opportunity to, and did, influence execution directly or indirectly to promote his personal interests. (*People v. Sobel, supra* at 1052.)

The crux of the question in this case is whether STC was acting in an official capacity in completing the Master Plan under *Contract #1* with the City, thereby creating the conflict of interest for STC bidding on *Contract #2*. Mr. Yin focuses on the bid and execution process for *Contract #2* without fully considering that *Contract #2* was based on the Master Plan that was the product of STC's *Contract #1*. Thus, we conclude that by STC's substantial involvement in assisting the City

with preparing the Master Plan under *Contract #1*, STC participated in making *Contract #2* for purposes of Section 1090.

4. Does the official have a financial interest in the contract?

Under Section 1090, "the prohibited act is the making of a contract in which the official has a financial interest" (*People v. Honig, supra*, at p. 333), and officials are deemed to have a financial interest in a contract if they might profit from it in any way. (*Ibid.*) Although Section 1090 nowhere specifically defines the term "financial interest," case law and Attorney General Opinions state that prohibited financial interests may be indirect as well as direct, and may involve financial losses, or the possibility of losses, as well as the prospect of pecuniary gain. (See e.g., *Thomson, supra*, at pp. 645, 651-652; see also *People v. Vallerga* (1977) 67 Cal.App.3d 847, 867, fn. 5.)

Since STC stands to financially gain from *Contract #2*, it has a financial interest in *Contract #2* under Section 1090.

5. Remote interest and non-interest exceptions and the Rule of Necessity?

There are several statutory exceptions to the prohibition in Section 1090:

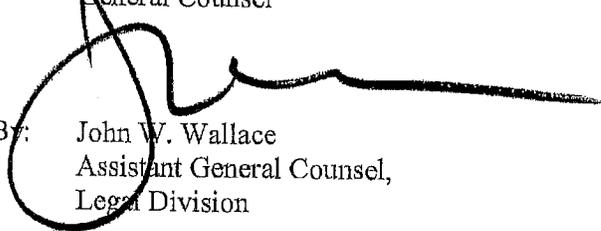
- The remote interests in Section 1091 apply only to the members of a body or board which STC would not be here.
- None of the non-interest exceptions in Section 1091.5 appear to apply.
- Additionally, the "rule of necessity" occasionally applies to allow a body to enter into a contract in which a member has a prohibitive conflict of interest and there is no alternate source for the contract.

Section 1090 therefore prohibits the City from contracting with STC to provide as-needed consulting services under *Contract #2* since STC created the Traffic Signal Communications Master Plan on which a substantial part of the as-needed consulting services contract is based.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Hyla P. Wagner
General Counsel

By: 
John W. Wallace
Assistant General Counsel,
Legal Division

JWW:jgl

DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO
EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION

DATE:
October 6, 2016

SUBJECT: Consultant Agreement with Kimley-Horn and Associates, Inc. to Provide Professional Engineering Services for As-Needed Intelligent Transportation Systems (ITS) Consulting Services

GENERAL CONTRACT INFORMATION

Recommended Consultant: Kimley Horn & Associates Inc. (SLBE, F – Cauc.)

Amount of this Action: \$ 1,000.00
Total Contract Amount: \$ 10,000,000.00 (Not to Exceed)

Funding Source: City of San Diego

Goal: 20% Voluntary

SUBCONSULTANT PARTICIPATION

	<u>This Action</u>	<u>Percent*</u>
Accurate Video Counts Inc. (DBE/ELBE, F Cauc)	\$ 300,000.00	3.00%
Aguirre & Associates, Inc. (MBE/DBE/SLBE, M Latino)	\$ 500,000.00	5.00%
Baranek Consulting Group (ELBE, M Cauc)	\$ 100,000.00	1.00%
C.A. Wehsener Engineering (SLBE, M Cauc)	\$ 700,000.00	7.00%
Evair GIS Consulting (SLBE, M Cauc)	\$ 100,000.00	1.00%
Katz & Associates Inc. (WBE/SWBE, F Cauc)	\$ 200,000.00	2.00%
PCG Utility Consultants Inc. (DBE/ELBE/WMBE/SMBE, F Af Am)	\$ 600,000.00	6.00%
Platt Whitelaw Architects (SLBE/SWBE, F Cauc)	\$ 100,000.00	1.00%
Quality Infrastructure Corporation (ELBE, M Cauc)	\$ 300,000.00	3.00%
Select Electric Inc. (MBE, M Latino)	\$ 500,000.00	5.00%
TerraCosta Consulting Group Inc. (SLBE, M Cauc)	\$ 100,000.00	1.00%
Total Certified Participation	\$3,500,000.00	35.00%
Total Non-Certified Participation	\$ 0.00	0.00%
Total Subconsultant Participation	\$3,500,000.00	35.00%

*Participation percentage calculated based on listed commitment levels in bidding document.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required

Kimley Horn & Associates Inc. submitted a Work Force Report for their San Diego County employees dated August 10, 2016 indicating 116 employees in their Administrative Work Force.

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

Latino and Female in Management and Financial
Black, Asian and Filipino in A&E, Science, and Computer
Latino in Administrative Support

Based on the under representations in the workforce noted above, staff has an approved Equal Employment Opportunity (EEO) Plan on file as of March 2, 2016. Staff will continue to monitor the firm's efforts to implement their EEO plan.

This agreement is subject to the City's Equal Employment Opportunity Outreach Program (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

(H156417)

RW

The City of San Diego
COMPTROLLER'S CERTIFICATE

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING DEPT. NO.: 3000009374
 DEPT. NO.: 2116

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: \$1,000.00

Vendor: Kimley-Horn and Associates, Inc

Purpose: To authorize the expenditure of funds not to exceed \$1,000.00 to Kimley-Horn and Associates, Inc for the purpose of executing an Agreement for As-Needed Intelligent Transportation Systems Consulting Services and meeting the minimum contract requirements.

Date: October 10, 2016 By: DeJuan Lewis
 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	AIL00002	400169 4002165	NOT_RELEVANT_GRANT	512059	OTHR-00000000-TR	2113	2113120011	A-IL.00002	\$1,000.00
TOTAL AMOUNT									\$1,000.00

FUND OVERRIDE

**AGREEMENT BETWEEN
THE CITY OF SAN DIEGO
AND
KIMLEY-HORN AND ASSOCIATES, INC.**

FOR

AS-NEEDED CONSULTANT SERVICES

FOR

**AS-NEEDED INTELLIGENT TRANSPORTATION SYSTEMS (ITS)
CONSULTANT SERVICES**

CONTRACT NUMBER: H156417

AGREEMENT FOR DESIGN PROFESSIONAL SERVICES

TABLE OF CONTENTS

ARTICLE I DESIGN PROFESSIONAL SERVICES

1.1	Scope of Services.....	1
1.2	Task Administrator	2
1.3	City Modification of Scope of Services	2
1.4	Written Authorization	2
1.5	Confidentiality of Services	2
1.6	Competitive Bidding.....	3

ARTICLE II DURATION OF AGREEMENT

2.1	Term of Agreement	3
2.2	Time of Essence.....	3
2.3	Notification of Delay.....	3
2.4	Delay	3
2.5	City's Right to Suspend for Convenience.....	4
2.6	City's Right to Terminate for Convenience.	4
2.7	City's Right to Terminate for Default.	4

ARTICLE III COMPENSATION

3.1	Amount of Compensation	4
3.2	Manner of Payment.....	5
3.3	Additional Costs.....	5
3.4	Eighty Percent Notification	5

ARTICLE IV DESIGN PROFESSIONAL'S OBLIGATIONS

4.1	Industry Standards	5
4.2	Right to Audit.....	5
4.3	Insurance.	6
4.4	Subcontractors	9
4.5	Contract Records Reports.....	10
4.6	Non-Discrimination Requirements.	10
4.7	Drug-Free Workplace.....	11
4.8	Title 24/Americans with Disabilities Act Requirements.	12

4.9	Product Endorsement.....	12
4.10	Conflict of Interest.	12
4.11	Mandatory Assistance	13
4.12	Compensation for Mandatory Assistance	13
4.13	Attorney Fees related to Mandatory Assistance	13
4.14	Energy Conservation Specifications.....	14
4.15	Notification of Increased Construction Cost.	14
4.16	Sustainable Building Policy	14
4.17	Design-Build Competition Eligibility	14
4.18	Storm Water Management Discharge Control	14
4.19	ADA Certification	15
4.20	Prevailing Wage Rates.....	15

**ARTICLE V
RESERVED**

**ARTICLE VI
INDEMNIFICATION**

6.1	Indemnification.....	18
6.2	Design Professional Services Indemnification and Defense.....	18
6.3	Insurance.....	18
6.4	Enforcement Costs	18

**ARTICLE VII
MEDIATION**

7.1	Mandatory Non-binding Mediation	19
7.2	Mandatory Mediation Costs.....	19
7.3	Selection of Mediator	19
7.4	Conduct of Mediation Sessions.....	19

**ARTICLE VIII
INTELLECTUAL PROPERTY RIGHTS**

8.1	Work for Hire	20
8.2.	Rights in Data	20
8.3	Intellectual Property Rights Assignment.	20
8.4	Moral Rights	20
8.5	Subcontracting.....	21
8.6	Publication Design.....	21
8.7	Intellectual Property Warranty and Indemnification.....	21
8.8	Enforcement Costs	21

**ARTICLE IX
MISCELLANEOUS**

9.1	Notices.....	21
9.2	Headings.	22
9.3	Non-Assignment.....	22
9.4	Independent Contractors	22
9.5	Design Professional and Subcontractor Principals for Professional Services.....	22
9.6	Additional Design Professionals or Contractors.	22
9.7	Employment of City Staff.....	22
9.8	Covenants and Conditions.	22
9.9	Compliance with Controlling Law.....	23
9.10	Jurisdiction.....	23
9.11	Successors in Interest.	23
9.12	Integration	23
9.13	Counterparts	23
9.14	No Waiver	23
9.15	Severability.....	23
9.16	Municipal Powers.	23
9.17	Drafting Ambiguities.....	23
9.18	Conflicts Between Terms	24
9.19	Design Professional Evaluation.....	24
9.20	Exhibits Incorporated.....	24
9.21	Survival of Obligations.	24
9.22	Contractor Standards.....	24
9.23	Equal Benefits Ordinance.....	24
9.24	Public Records.....	24
9.25	Precluded Participation.....	24
9.26	Sensitive Information Acknowledgment.....	24

DESIGN PROFESSIONAL AS_NEEDED EXHIBITS

- Exhibit A - Scope of Services
- Exhibit B - Task Order Authorization
- Exhibit C - Compensation and Fee Schedule
- Exhibit D - City's Equal Opportunity Contracting Program Consultant Requirements
 - (AA) Disclosure of Discrimination Complaints
 - (BB) Work Force Report
 - (CC) Subcontractors List
- Exhibit E - Consultant Certification for a Drug-Free Workplace
- Exhibit F - Determination Form
- Exhibit G - City Council Green Building Policy 900-14
- Exhibit H - Consultant Evaluation Form
- Exhibit I - Contractor Standards Pledge of Compliance
- Exhibit J - Regarding Information Requested under the California Public Records Act
- Exhibit K - Americans With Disabilities Act (ADA) Compliance Certification

**AS-NEEDED AGREEMENT BETWEEN
THE CITY OF SAN DIEGO
AND KIMLEY-HORN AND ASSOCIATES, INC.
FOR DESIGN PROFESSIONAL SERVICES**

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation [City], and Kimley-Horn and Associates, Inc. [Design Professional] to provide Professional Services to the City for transportation engineering on an as-needed basis.

RECITALS

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

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

The City and the Design Professional [Parties] want to enter into an Agreement whereby the City will retain the Design Professional to provide, and the Design Professional shall provide, the Professional Services on an as-needed, hourly fee basis [Agreement].

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

**ARTICLE I
DESIGN PROFESSIONAL SERVICES**

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

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

1.1.1 Task Order. Prior to beginning performance in response to a Task Order, Design Professional shall complete and execute the Task Order which must be approved in writing by the City. Each Task Order shall include a scope of Professional Services, a cost estimate, and the time for completion. The scope of Professional Services shall include all activities or work reasonably anticipated as necessary for successful completion of each Task presented by the City.

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

1.1.3 Issuance of Task Orders for Multiple Contracts with the Same Services.

When multiple As-Needed Agreements exist for the same discipline, the Contract Manager will rotate award of Task Orders between the multiple agreements until the contract duration expires or the contract authorization amount is reached. After a Design Professional has been issued a Task Order, that Design Professional will be placed at the end of the list for consideration to perform the next Task Order.

1.2 Task Administrator. The Transportation & Storm Water Department is the task administrator for this Agreement. The Design Professional shall provide the Professional Services under the direction of a designated representative of the Transportation & Storm Water Department. The City's designated representative will communicate with the Design Professional on all matters related to the administration of this Agreement and the Design Professional's performance of the Professional Services rendered hereunder. When this Agreement refers to communications to or with the City, those communications will be with the designated representative, unless the designated representative or the Agreement specifies otherwise. Further, when this Agreement refers to an act or approval to be performed by the City, that act or approval shall be performed by the Mayor or designee, unless the Agreement specifies otherwise.

1.3 City Modification of Scope of Services. The City may, without invalidating this Agreement, order changes in any Task by altering, adding to or deducting from the Professional Services to be performed. All such changes shall be in writing and shall be performed in accordance with the provisions of this Agreement. If any such changes cause an increase or decrease in the Design Professional's cost of, or the time required for, the performance of any of the Professional Services, the Design Professional shall immediately notify the City. If the City deems it appropriate, an equitable adjustment to the Design Professional's compensation may be made, provided that any adjustment must be approved by both Parties in writing in accordance with Section 9.1 of this Agreement.

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

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

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

ARTICLE II DURATION OF AGREEMENT

2.1 Term of Agreement. This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40. Unless otherwise terminated, this Agreement shall be effective for issuing and completing Task Orders for no more than sixty (60) months following the date of its execution by the City, unless said duration is modified in writing by an amendment to this Agreement. If required, the duration of this Agreement can be extended up to a maximum of sixty (60) months. Any extension beyond sixty (60) months will require City Council approval via Ordinance.

2.2 Time of Essence. Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement. The time for performance of any Task shall be set forth in the Task Order and shall not exceed the contract duration.

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

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

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

2.6 City's Right to Terminate for Convenience. The City may, at its sole option and for its convenience, terminate all or any portion of the Professional Services agreed to pursuant to this Agreement by giving written notice of such termination to the Design Professional. Such notice shall be delivered by certified mail with return receipt for delivery to the City. The termination of the Professional Services shall be effective upon receipt of the notice by the Design Professional. After termination of this Agreement, the Design Professional shall complete any and all additional work necessary for the orderly filing of documents and closing of the Design Professional's Professional Services under this Agreement. For services rendered in completing the work, the Design Professional shall be entitled to fair and reasonable compensation for the Professional Services performed by the Design Professional before the effective date of termination. After filing of documents and completion of performance, the Design Professional shall deliver to the City all drawings, plans, calculations, specifications and other documents or records related to the Design Professional's Professional Services on all Task(s). By accepting payment for completion, filing and delivering documents as called for in this paragraph, the Design Professional discharges the City of all of the City's payment obligations and liabilities under this Agreement.

2.7 City's Right to Terminate for Default. If the Design Professional fails to perform or adequately perform any obligation required by this Agreement, the Design Professional's failure constitutes a Default. A Default includes the Design Professional's failure to complete the Professional Services within the time for completion as set forth in the Task Order. If the Design Professional fails to satisfactorily cure a Default within ten calendar days of receiving written notice from the City specifying the nature of the Default, the City may immediately cancel and/or terminate this Agreement, and terminate each and every right of the Design Professional, and any person claiming any rights by or through the Design Professional under this Agreement. The rights and remedies of the City enumerated in this Section are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against the Design Professional.

ARTICLE III COMPENSATION

3.1 Amount of Compensation. The City shall pay the Design Professional for performance of all Professional Services rendered in accordance with this Agreement,

including all reasonably related expenses, in an amount not to exceed \$10,000,000. The City agrees to issue at least one or more Task Orders with a minimum aggregate value of \$1,000.00 to the Design Professional.

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

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

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

ARTICLE IV DESIGN PROFESSIONAL'S OBLIGATIONS

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

4.2 Right to Audit.

4.2.1 Access. The City retains the right to review and audit, and the reasonable right of access to Design Professional's and any Subcontractor's premises to review and audit the Design Professional's or Subcontractor's compliance with the provisions of this Agreement [City's Right]. The City's Right includes the right to inspect and

photocopy same, and to retain copies, outside of the Design Professional's premises, of any and all Project related records with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. This information shall be kept by the City in the strictest confidence allowed by law.

4.2.2 Audit. The City's Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the City determines are necessary to discover and verify that the Design Professional or Subcontractor is in compliance with all requirements under this Agreement.

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

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

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

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

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

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

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

4.3.1.1 Commercial General Liability. Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate of \$2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

4.3.1.2 Commercial Automobile Liability. For all of the Design Professional's automobiles including owned, hired and non-owned automobiles, the Design Professional shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

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

4.3.1.4 Architects & Engineers Professional Liability. For all of the Design Professional's employees who are subject to this Agreement, the Design Professional shall keep in full force and effect, Professional Liability coverage for professional liability with a limit of \$1 million per claim and \$2 million annual aggregate. The Design Professional shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the Professional Services as described in issued Task Orders; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Professional Services as described in issued Task Orders 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 Agreement 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 Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

4.3.4 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 Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

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

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 automobiles owned, leased, hired or borrowed by or on behalf of the Design Professional.

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

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

4.3.5 Reservation of Rights. The City reserves the right, from time to time, to review the Design Professional's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to the City. The City will reimburse the Design

Professional for the cost of the additional premium for any coverage requested by the City in excess of that required by this Agreement without overhead, profit, or any other markup.

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

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

4.4 Subcontractors. The Design Professional's hiring or retaining of any third parties [Subcontractors] to perform services related to the Project [Subcontractor Services] is subject to prior approval by the City. The Design Professional shall list on the Subcontractor List (Exhibit D, Attachment CC) all Subcontractors known to the Design Professional at the time this Agreement is entered. If at any time after this Agreement is entered into, the Design Professional identifies a need for addition, deletion, or substitution of Subcontractor Services, the Design Professional must submit a written notice to the City requesting approval for the change modifying the Subcontractor Services. The Design Professional's written notice shall include a justification, a description of the scope of services, an estimate of all costs/percentage of contract participation for the Subcontractor Services, and an updated Exhibit D, Attachment CC reflecting the requested change(s). The City agrees to consider such requests in good faith.

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

4.4.1.1 Design Professional shall require the Subcontractor to obtain insurance policies, as described in Section 4.3.1, and those policies shall be kept in full force and effect during any and all work on this Project and for the duration of this Agreement. Furthermore, Subcontractor policy limits, and required endorsements shall be determined by the Design Professional proportionate to the services performed by the Subcontractor.

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

4.4.1.3 In the case of a deficiency in the performance of Subcontractor Services, the Design Professional shall notify the City in writing of any withholding of payment to the Subcontractor, specifying: (a) the amount withheld; (b) the specific cause under the terms of the subcontract for withholding payment; (c) the connection between the cause for withholding payment and the amount withheld; and (d) the remedial action the Subcontractor must take in order to receive the amount withheld. Once the Subcontractor corrects the deficiency, the Design Professional shall pay the Subcontractor the amount withheld within fourteen working days of the Design Professional's receipt of the City's next payment.

4.4.1.4 In any dispute between the Design Professional and Subcontractor, the City shall not be made a party to any judicial or administrative proceeding

to resolve the dispute. The Design Professional agrees to defend and indemnify the City as described in Article VI of this Agreement in any dispute between the Design Professional and Subcontractor should the City be made a party to any judicial or administrative proceeding to resolve the dispute in violation of this position.

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

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

4.5 Contract Records Reports.

4.5.1 The Design Professional shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors. Records shall show name, telephone number including area code, and business address of each Subcontractor and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

4.5.2 The Design Professional shall retain all records, books, papers, and documents directly pertinent to the Contract for a period of not less than five (5) years after Completion of the contract and allow access to said records by the City's authorized representatives.

4.5.3 The Design Professional must submit the following reporting using the City's web-based contract compliance i.e., Prism® portal:

4.5.3.1 Monthly Employment Utilization. Design Professional and their Subcontractors must submit Monthly Employment Utilization Reporting by the fifth (5th) day of the subsequent month.

4.5.3.2 Monthly Invoicing and Payments. Design Professional and their Subcontractors must submit Monthly Invoicing and Payment Reporting by the fifth (5th) day of the subsequent month.

4.5.3.3 To view the City's online tutorials on how to utilize PRISM® for compliance reporting, please visit:
<http://stage.prismcompliance.com/etc/vendortutorials.htm>

Incomplete and/or delinquent reporting may cause payment delays, non-payment of invoice, or both. The Design Professional understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.

4.6 Non-Discrimination Requirements.

4.6.1 Compliance with the City's Equal Opportunity Contracting Program. The Design Professional shall comply with the City's Equal Opportunity Contracting Program Consultant Requirements [Exhibit D]. The Design Professional shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Design

Professional shall provide equal opportunity in all employment practices. The Design Professional shall ensure that its Subcontractors comply with the City's Equal Opportunity Contracting Program Design Professional Requirements. Nothing in this Section shall be interpreted to hold the Design Professional liable for any discriminatory practice of its Subcontractors.

4.6.2 Non-Discrimination Ordinance. The Design Professional shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of Subcontractors, vendors or suppliers. The Design Professional shall provide equal opportunity for Subcontractors to participate in subcontracting opportunities. The Design Professional understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. This language shall be in contracts between the Design Professional and any Subcontractors, vendors and suppliers.

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

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

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

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

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

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

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

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

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

4.10.1 If, in performing the Professional Services set forth in this Agreement, any member of the Design Professional's organization makes, or participates in, a "governmental decision" as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the department's conflict of interest code, the individual shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the individual's relevant financial interests. The determination as to whether any individual members of the Design Professional's organization must make disclosures of relevant financial interests is set forth in the Determination Form [Exhibit F].

4.10.1.1 If a determination is made that certain individuals must disclose relevant financial interests, the statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. The individual shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that the individuals are subject to a conflict of interest code. Each year thereafter, the individuals shall also file a Form 700 (Annual Statement) on or before April 1,

disclosing any financial interests held during the previous calendar year for which the individual was subject to a conflict of interest code. A Form 700 (Leaving Office Statement) shall also be filed when the individual discontinues services under this Agreement.

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

4.10.2 The Design Professional shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships.

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

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

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

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

4.12 Compensation for Mandatory Assistance. The City will compensate the Design Professional for fees incurred for providing Mandatory Assistance as Additional Costs under Section 3.3. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of the Design Professional, its agents, officers, and employees, the Design Professional shall reimburse the City. The City is then entitled to reimbursement of all fees paid to the Design Professional, its agents, officers, and employees for Mandatory Assistance.

4.13 Attorney Fees related to Mandatory Assistance. In providing the City with dispute or litigation assistance, the Design Professional or its agents, officers, and employees may incur expenses and/or costs. The Design Professional agrees that any attorney fees it

may incur as a result of assistance provided under Section 4.11 are not reimbursable. The Parties agree this provision does not in any way affect their rights to seek attorney fees under Article VIII, Section 8.8 of this Agreement.

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

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

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

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

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

4.18 Storm Water Management Discharge Control. Design Professional shall comply with Chapter 4, Article 3, Division 3 of the San Diego Municipal Code, Storm Water Management Discharge Control and the Municipal Storm Water Permit (MS4) Permit,

California Regional Water Quality Control Board Order No. R9-2013-0001 (amended by R9-2015-0001 and R9-2015-0100), Storm Water Standards Manual, as amended from time to time, and any and all Best Management Practice (BMP) guidelines and pollution elimination requirements as may be established by the Enforcement Official. Design Professional warrants and certifies that any and all plans, reports, and specifications prepared for the City in accordance with this agreement shall meet all requirements of the San Diego Municipal Code and Storm Water Standards Manual. Design Professional understands that while the City will be reviewing Design Professional's designs for storm water permit compliance prior to acceptance of Design Professional's designs, Design Professional understands and agrees that the City's Storm Water 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 of the San Diego Municipal Code and MS4 Permit.

The Design Professional shall review the completed Storm Water Applicability Checklist (DS-560) to confirm the project's appropriate storm water requirements. For all applicable projects, and to the maximum extent practicable, the Design Professional shall incorporate and include Source Control and Low Impact Development (LID) design features or Site Design BMPs on the construction plans. In addition, for Priority Development projects, the Design Professional shall prepare a Storm Water Quality Management Plan in accordance with the requirements of the Storm Water Standards Manual and prepare a BMP plan showing all permanent BMPs, LID designs, hydromodification management plan facilities, and include sufficient details and cross sections for construction.

Design Professional shall attend the Pre-construction meeting. The Project Manager will coordinate with the Design Professional on the inspection of the permanent BMP(s) during installation. Design Professional shall inspect and confirm that the permanent BMP was installed in accordance with the details on the plans and that the permanent BMP functions to meet the requirements of the MS4 Permit. Upon notification by the Project Manager, the Design Professional shall sign and stamp the Permanent BMP Self Certification on the plans or the Permanent BMP Self Certification Form (DS-563) prior to final acceptance by the City.

For projects requiring soil-disturbance work such as geotechnical borings, street coring and potholing as component of the design, the Design Professional shall complete a Minor Water Pollution Control Plan (DS-570), if applicable.

4.19 ADA Certification. The Design Professional hereby certifies [Exhibit K] 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.

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 subconsultants 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 subconsultants shall ensure that all workers who perform work under this Agreement 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 subconsultants 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 subconsultants 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 subconsultants 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 subconsultants to also comply with section 1776. Design Professional and its subconsultants shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Design Professional is responsible for ensuring its subconsultants submit certified payroll records to the City.

4.20.3.1. For agreements entered into on or after April 1, 2015, Design Professional and their subconsultants shall furnish records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required by Labor Code section 1771.4.

4.20.4. Apprentices. Design Professional and its subconsultants 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 subconsultants with sections 1777.5, 1777.6 and 1777.7.

4.20.5. Working Hours. Design Professional and their subconsultants 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 subconsultant: California Labor Code sections 1771, 1771.1, 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 authorized in August 2011 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. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.

4.20.9. Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. As of March 1, 2015, no Design Professional or subconsultant may be listed on a bid or proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5. As of April 1, 2015, a Design Professional or subcontractor shall not be qualified to bid on, be listed in a bid or proposal, or enter into any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. By submitting a bid or proposal to the City, Design Professional is certifying that he or she has verified that all subcontractors used on this public work project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Design Professional shall provide proof of registration to the City upon request.

4.20.9.1. A Design Professional's inadvertent error in listing a subconsultant who is not registered pursuant to Labor Code section 1725.5 in response to a

solicitation shall not be grounds for filing a protest or grounds for considering the bid or proposal non-responsive provided that any of the following apply: (1) the subconsultant is registered prior to proposal due date; (2) within twenty-four hours after the proposal due date, the subconsultant is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subconsultant is replaced by another registered subconsultant pursuant to Public Contract Code section 4107.

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, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by the Design Professional, any Subcontractor, anyone directly or indirectly employed by them, or anyone that they control. The Design Professional's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or sole willful misconduct of the Indemnified Parties.

6.2 Design Professional Services Indemnification and Defense.

6.2.1 Design Professional Services Indemnification. To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8), with respect to the performance of Design Professional services, Design Professional shall indemnify and hold harmless the City, its officers, or employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.

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

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

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

ARTICLE VII MEDIATION

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

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

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

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

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

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

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

7.4.1 Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand,

either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

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

ARTICLE VIII INTELLECTUAL PROPERTY RIGHTS

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

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

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

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

8.5 Subcontracting. In the event that Design Professional utilizes a Subcontractor(s) for any portion of the Work that is in whole or in part of the specified Deliverable Materials to the City, the agreement between Design Professional and the Subcontractor [Subcontractor Agreement] shall include a statement that identifies that the Deliverable Materials/Work product as a “work-for hire” as defined in the Act and that all intellectual property rights in the Deliverable Materials/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 Materials, including all copyrights and other intellectual property rights. City shall have the right to review any Subcontractor agreement for compliance with this provision.

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

8.7 Intellectual Property Warranty and Indemnification. Design Professional represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this contract are either original, not encumbered and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Design Professional to produce, at Design Professional’s own expense, new non-infringing materials, deliverables or Works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Design Professional further agrees to indemnify and hold harmless the City, its elected officials, 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, Deliverable Materials, or Works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claims of Infringement). If a Third Party Claim of Infringement is threatened or made before Design Professional receives payment under this contract, City shall be entitled, upon written notice to Design Professional, to withhold some or all of such payment.

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

ARTICLE IX MISCELLANEOUS

9.1 Notices. In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. For the purpose of this Agreement, unless otherwise agreed in writing, notice to the City shall be addressed to: Transportation & Storm Water Department, 1010 Second Av, Suite 800, San Diego, CA 92101 and notice to the Design Professional shall be addressed to: Kimley-Horn and Associates, Inc., 401 B Street, Suite 600, San Diego, CA 92101.

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

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

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

9.5 Design Professional and Subcontractor Principals for Professional Services. It is understood that this Agreement is for unique Professional Services. Retention of the Design Professional's Professional Services is based on the particular professional expertise of the following members of the Design Professional's organization Mike Washkowiak, Pierre Pretorius, Kevin Aguigui, Dave Sorenson, Jon Collins, Leo Espelet, Alyssa Phaneuf, Adam Dankberg, and Jason Castillo. [Project Team]. Accordingly, performance of Professional Services under this Agreement may not be delegated to other members of the Design Professional's organization or to Subcontractors without the prior written consent of the City. It is mutually agreed that the members of the Project Team are the principal persons responsible for delivery of all Professional Services and may not be removed from the Project Team without the City's prior written approval. Removal of any member of the Project Team without notice and approval by the City may be considered a default of the terms and conditions of this Agreement by the Design Professional. In the event any member of the Project Team becomes unavailable for any reason, the City must be consulted as to any replacement. If the City does not approve of a proposed replacement, the City may terminate this Agreement pursuant to section 2.6 of this Agreement. Further, the City reserves the right, after consultation with the Design Professional, to require any of the Design Professional's employees or agents to be removed from performance of the Scope of Services.

9.6 Additional Design Professionals or Contractors. The City reserves the right to employ, at its own expense, such additional Design Professionals or contractors as the City deems necessary to perform work or to provide the Professional Services in the Scope of Services as described in issued Task Orders.

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

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

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

9.10 Jurisdiction. 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 without regard to the conflicts or choice of law provisions thereof.

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

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

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

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

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

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

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

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

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

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

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

9.22 Contractor Standards. This Agreement is subject to the Contractor Standards clause of the Municipal Code Chapter 2, Article 2, Division 30 adopted by Ordinance No. O-20148. 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.

9.23 Equal Benefits Ordinance. Unless an exception applies, Design Professional shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (§22.4304(f)). Failure to maintain equal benefits is a material breach of this Agreement. By signing this Agreement, Design Professional certifies that Design Professional is aware of, and will comply with, this City-mandated clause throughout the duration of the Agreement.

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

9.25 Precluded Participation. In order to avoid any conflicts of interest, the Design Professional, and all subconsultants, shall be precluded from participating in any future contract for services, that is subsequently required/created as a result of the contract services provided under this Agreement.

9.26 Sensitive Information Authorization Acknowledgement. This Agreement is subject to the provisions set forth in Administrative Regulation Number 90.64. All consultants are required to complete the Sensitive Information Authorization Acknowledgement Form included herein as Exhibit L.

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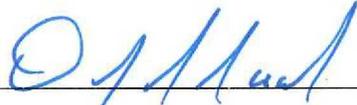
IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor, pursuant to R - _____, authorizing such execution, and by the Design Professional pursuant to Certificate of Secretary.

Dated this _____ day of _____, _____.

THE CITY OF SAN DIEGO
Mayor or Designee

By _____

I HEREBY CERTIFY I can legally bind Kimley-Horn and Associates, Inc. and that I have read all of this Agreement, this 18th day of October, 2016.

By 

Dennis J. Landaal
Sr. Vice President

KHACA
11

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

JAN I. GOLDSMITH, City Attorney

By _____

Deputy City Attorney

DESIGN PROFESSIONAL AS-NEEDED
EXHIBITS

SCOPE OF SERVICES

1.0 SCOPE OF SERVICES

- 1.1 Under the general supervision of the City Mayor or his designated representatives, Kimley-Horn and Associates, Inc. [Design Professional] shall provide as-needed professional consulting services by Task Orders on an hourly basis. Consulting Services may include, but are not necessarily limited to, the preparation of reports, grant applications, schematics, studies, design and/or construction documents relating to ITS elements such as CCTV cameras, 2070 ATC controllers, detection systems, changeable message signs, and adaptive traffic control systems; central management systems; fiber optic, copper and wireless systems; network & system integration; traffic signal timing optimization; traffic signal interconnect, new traffic signals and traffic signal upgrades; or other services necessary to complete the Tasks. These services will be provided according to City directions and in conformance with professional standards of practice.
- 1.2 Design Professional is responsible for the design services and, if needed, construction management & inspection support services of the Task in accordance with all current applicable laws, regulations and codes.
- 1.3 Design Professional, either personally or through its subconsultants, shall make any presentations necessary as determined by the City, to City Council, Council Committee, Public Building Review Committee and citizen groups to provide them with the information about the Project/Task. Design Professional, either personally, or through its subconsultants, shall also make presentations to any governing or regulatory body or agency for other approvals as may be required.

- 1.4 If required, Design Professional shall obtain all necessary soils investigation required for the design of the Task. The Design Professional, either personally or through the soil subconsultant, shall prepare a statement that may, in the City's discretion, be included in the bidding documents as to the nature of soils, contamination, ground water conditions and any other information concerning the existing conditions of the site.

- 1.5 The professional standards of practice established by the City and referred to in paragraph 1.1 include, but are not necessarily limited to, the current versions of the following:
 - 1.5.1 California's Standard Specifications for Public Works Construction with Regional and City Supplements,
 - 1.5.2 San Diego Regional Standards Committee's Work Area Traffic Control Handbook (WATCH),
 - 1.5.3 California Manual on Uniform Traffic Control Devices,
 - 1.5.4 California Transportation Electrical Equipment Specifications (TEES),
 - 1.5.5 California Department of Transportation's Standard Specifications,
 - 1.5.6 City of San Diego's Standard Drawings,
 - 1.5.7 California Department of Transportation's Standard Plans,
 - 1.5.8 City of San Diego's Drainage Design Manual,
 - 1.5.9 City of San Diego's Landscape Technical Manual produced by the Planning Department,
 - 1.5.10 City of San Diego's Consultant's Guide to Park Design produced by the Park & Recreation Department,

- 1.5.11 City of San Diego Sewer Design Guide,
 - 1.5.12 City of San Diego's Street Design Manual,
 - 1.5.13 City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans,
 - 1.5.14 City of San Diego's Technical Guidelines for Geotechnical Reports, and
 - 1.5.15 Land Development Code/San Diego Municipal Code.
- 1.6** Design Professional shall comply with City Engineering drafting standards, as outlined in the City of San Diego's Manual of Preparation Land Development and Public Improvement Plans, in order to ensure good quality microfilm prints. The Design Professional shall check with Development Services Plan Check Section for amendments to the most recent version of the manual.
- 1.7** If required, Design Professional shall provide all required easement documents (i.e. dedication, acquisitions, set asides, street vacations, abandonments, subordination agreements, joint use agreements, etc.) per City of San Diego Real Estate Assets Department requirements and Council Policy 600-04.
- 1.8** Design Professional shall provide all required information for the construction or relocation of public or private utility facilities which must be constructed or relocated as a result of the Task.
- 1.9** If directed, Design Professional shall address all traffic control requirements for the Task including, if necessary, separate traffic control plans and/or notes.
- 1.10** Design Professional shall design the Task, when determined necessary, to comply with the ADA and Title 24 as described in the Agreement;

however, as owner of the facility, the City is exposed to liability for projects on which designers fail to meet this obligation. Consequently, the City is implementing an evaluation of certain design aspects to ensure a compliant facility. When necessary per the specific Task, the Design Professional shall complete and submit an ADA Compliance Review Checklist. This Checklist is designed to assist consultants in meeting their ADA obligations under the contract (Design Professional also must meet Title 24 which these checklists do not cover). These checklists are not comprehensive. The checklists merely reflect the specific problematic areas of compliance with ADA commonly seen by the City. As a result, the City will be checking only these areas of ADA prior to acceptance of a Design Professional's design. The Design Professional is obligated to meet all additional laws which are not included on the City's ADA Design Review Checklist, and/or to advise the City at any time if they feel components on the checklist misrepresent the current state of the law. These ADA checklists and the City's access review process in no way limits the Design Professional's obligation under the contract.

2.0 TASK DELIVERABLES

2.1 CONTRACT DOCUMENTS

- 2.1.1 The Design Professional shall design and prepare Contract Documents for each As-Needed Contract Task as directed by City Staff.
- 2.1.2 Working drawings shall be prepared by the Design Professional in accordance with the City's most current drawing format as outlined in the City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans. Specifications shall be prepared using Microsoft Word or equivalent utilizing Greenbook or Construction Specification Institute (CSI) format. When required, Design Professional will furnish only the

technical "Special Provisions" section of the specifications to supplement or modify the Greenbook & Whitebook standards.

2.2 SCHEMATIC DESIGN

2.2.1 Design Professional shall consult with the City to ascertain requirements of the Task including operational needs analysis in coordination with the City's Transportation & Storm Water Department. Schematic Designs, when required, shall include, but not be limited to the following:

2.2.1.1 Site plan and/or network/system plan, with diagrammatic indications showing relationships of the Task components:

- Sketches with sufficient detail to illustrate the scale and location of the Task components,
- Analysis of parameters affecting design and construction for each alternate considered, and
- Summary of Task requirements and a recommendation.

2.2.1.2 City approval of the Schematic Design documents, when required, and Task proposal is a condition precedent to authorization to the consultant to proceed with any Task.

2.3 DESIGN DEVELOPMENT

Design Professional shall prepare from the approved Schematic Design documents, for approval by the City, Design Development documents for the entire Task. These documents shall contain, as a minimum, the following:

2.3.1 Site plan or network/system plan, indicating the immediate

surrounding development around the site nature and relational location, via dimensions, of all proposed Task components. Traffic circulation and landscaping should also be indicated at this stage, if requested.

- 2.3.2 Plans, elevations, cross/longitudinal sections, details, and notes as required to construct/install each Task as to architectural, mechanical and electrical systems. If requested, space plans and/or schematics should show furniture layouts, interior and exterior materials.
- 2.3.3 Proposed construction schedules.
- 2.3.4 Technical 'Special Provisions' section of the specifications.
- 2.3.5 Outline of specifications prepared in accordance with the latest recommended format of the Construction Specification Institute, or in Greenbook format.
- 2.3.6 Probable construction costs, for each component of the Task.

2.4 CONSTRUCTION DOCUMENTS

- 2.4.1 Design Professional shall prepare, if directed, based on the approved Design Development documents, Working Drawings and Contract Specifications [Construction Documents] setting forth in detail the requirements for the Task construction/installation, and furnishing of the entire Task including the necessary bidding information.
- 2.4.2 Design Professional shall have a specific program established for coordinating the work of all its subconsultants.
- 2.4.3 Working Drawings and Specifications will be prepared in accordance with the latest City drawing and specification format.

EXHIBIT A

Specifications shall be typed using Microsoft Word and printed using a standard laser printer or equivalent utilizing Greenbook and/or CSI format. Mylar "D" Sheets will be furnished by the Design Professional to the City, if requested. Working drawings shall be made with permanent ink, Computer Aided Drafting, a permanent photographic reproduction process, or with pencil made for use on drafting film and permanently fixed with spray coating. Scale and clarity or detail shall be suitable for half-size reduction. Electronic files shall be submitted to the City as directed.

- 2.4.4 Design Professional shall provide a Construction Cost Estimate based on the Construction Documents.
- 2.4.5 If directed, Design Professional shall file the required documents to obtain the services of all utilities required by the Task, including but not limited to, natural gas, electrical, telephone, cable, fiber optics, water, sewer, and storm drain; and shall coordinate the design of serving utilities with the corresponding utility companies. Design Professional shall furnish City with a written confirmation of the utility companies' approval of the proposed services and of the cost of these services, along with initial submission of Construction Documents.
- 2.4.6 Design Professional shall address all traffic control requirements for the Project/Task including, if necessary at the discretion of the City, separate traffic control plans and/or notes.
- 2.4.7 Design Professional shall prepare and incorporate into the Construction Documents, when required, a Storm Water Pollution Prevention Plan (SWPPP) to be implemented by the Contractor during Project construction. The SWPPP shall comply with the California Regional Water Quality Control Board Statewide

General Construction Storm Water permit current requirements.

- 2.4.8 If required, Design Professional shall apply for and obtain a discretionary and/or building permit(s) for the building from the City's Development Services Department, California Department of Fish & Game, Army Corps of Engineers, Coastal Commission, CalTrans, Port District, Navy, Airport Authority and revise the plans as necessary to obtain such permit(s). City will pay the permit fees. It is the Design Professional's responsibility to obtain and research the necessary information from the San Diego Municipal Code/Land Development Code for the project design's compliance with the current development regulations.
- 2.4.9 Design Professional shall revise Construction Documents to incorporate comments received from the City-wide plan check and/or from the permitting agencies.

2.5 BIDDING DOCUMENT

Design Professional, following City approval of the Construction Documents, shall prepare Final Corrected Construction Documents [Bidding Documents], and shall assist City in responding to inquiries from prospective bidders, and in preparation of Addenda for issuance by the City.

2.6 CONSTRUCTION ADMINISTRATION

- 2.6.1 The Construction Phase will commence with the award of the construction contract, and will terminate when the Task is complete and operable and the Final Record Drawings [As-builts] have been accepted by the City.
- 2.6.2 During the construction phase, Design Professional shall provide technical advice for the Project, and any other related work, to the

Project Manager employed by the City of San Diego as required by the scope of work of the Task.

2.6.3 Design Professional shall incorporate all construction changes provided by the City into the Final Record Drawings, including the location of underground and concealed utilities, and/or details of network & ITS system components', and shall submit them to the Project Manager as Record Drawings for final acceptance.

2.6.4 Design Professional shall aid the City in the general administration of any construction contract let by City for development of the Project/Task including periodic on-site inspections, if requested, as may be necessary to determine if the work is proceeding in accordance with Contract Documents. Design Professional shall make such regular reports as may be required by applicable agencies, inform the City of the progress of Project development by preparation of monthly reports, check and approve schedules and other submittals in a timely manner, attend periodic meetings and make other submittals in a timely manner, attend periodic meetings as may be established between City and Contractors, prepare Change and Clarification memoranda and Change Orders for City's approval, examine Contractor's requests for Progress Payments and make recommendations with respect to said payments and provide color scheme and schedule for all materials in Project/Task for City's approval.

2.6.5 Design Professional shall aid in the assembling of all written guarantees and warranties, software applications, instruction books, diagrams and charts required by Contract Documents.

2.6.6 Design Professional shall conduct inspections to determine the date of substantial completion and final completion, and shall

EXHIBIT A

furnish City with a statement that Project/Task has been constructed in accordance with the Plans and Specifications.

- 2.6.7 Design Professional shall incorporate all construction changes into the original tracings, including location of underground concealed utilities, significant shop drawing & schematic information, and final adjusted outputs of mechanical and/or electrical systems, and submit them to the City for final acceptance.
- 2.6.8 If requested, Design Professional shall coordinate and/or provide training of City staff on the operation and maintenance of new technologies deployed by Project/Task.

END OF SCOPE OF SERVICES

TASK ORDER AUTHORIZATION FOR PROFESSIONAL SERVICES [TASK ORDER]

Consultant:

Agreement:

Task Order No.:

Date:

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

Part A

Scope of Services

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

Part B

Task Order Compensation

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

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

Part C Personnel Commitment

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

Part D Time Sequence

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

City of San Diego

Consultant

Recommended For Approval:

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

Approved By:

By:

Name:
(Type)

Title:

Date:

COMPENSATION AND FEE SCHEDULE

Kimley-Horn and Associates, Inc.

Schedule of Fees

The following are current hourly rates for professional consulting services:

Program Director / Principal	\$ 335/hour
Senior Professional III	\$ 295/hour
Senior Professional II	\$ 260/hour
Project Manager / Senior Professional I	\$ 230/hour
Professional Engineer II	\$ 200/hour
Professional Engineer I	\$ 185/hour
Analyst	\$ 140/hour
Technician	\$ 100/hour
Project Accountant	\$ 150/hour
Support	\$ 95/hour

NOTE:

- Mileage reimbursement rate will be at current City of San Diego mileage rate (mileage log required).
- Travel expenses for the lowest cost effective Air Fare, Train, and/or Car Rental, will be reimbursed at actual costs (receipts required).
- Lodging and Per Diem will be reimbursed at actual costs (receipts required) up to the maximum allowance for the San Diego area as published/posted on the U.S. General Services Administration website (<http://www.gsa.gov/portal/category/100120>).
- All subconsultant costs are reimbursed as a "direct expense" at actual costs (invoice/receipts required).
- A request for an annual rate adjustment must be submitted to the City of San Diego in writing for approval. Written justification for the rate adjustment must be submitted to the City of San Diego a minimum of 60 days before the Agreement anniversary date. Said proposed adjustment shall not exceed three percent (3%), and the City of San Diego must approve any rate adjustments in writing before they become effective.

EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)

CONSULTANT REQUIREMENTS

TABLE OF CONTENTS

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

II. Nondiscrimination in Contracting Ordinance1

III. Equal Employment Opportunity Outreach Program2

IV. Small and Local Business Program.....2

V. Demonstrated Commitment to Equal Opportunity.....3

VI. Definitions4

VII. Certification.....5

VIII. List of Attachments.....5

 AA. Disclosure of Discrimination Complaints6

 BB. Work Force Report.....10

 CC. Subcontractors List.....11

I. **City’s Equal Opportunity Commitment.** The City of San Diego (City) is strongly committed to equal opportunity for employees and Subcontractors of Consultants doing business with the City. The City encourages its Consultants to share this commitment. Consultants are encouraged to take positive steps to diversify and expand their Subcontractor solicitation base and to offer consulting opportunities to all eligible Subcontractors. Consultants are encouraged to take positive steps to diversify and expand their subcontractor and supplier solicitation base and to offer opportunities to all eligible business firms.

Failure to submit the required EOCP documentation indicated below shall result in a determination of the Consultant being non-responsive.

II. **Nondiscrimination in Contracting Ordinance.** All Consultants doing business with the City, and their Subcontractors, must comply with requirements of the City’s *Nondiscrimination in Contracting Ordinance*, San Diego Municipal Code Sections 22.3501 through 22.3517.

A. Disclosure of Discrimination Complaints (Attachment AA). As part of its bid or proposal, Consultant shall provide to the City a list of all instances within the past ten (10) years where a complaint was filed or pending against Consultant in a legal or administrative proceeding alleging that Consultant discriminated against its employees, Subcontractors, vendors, or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

B. Contract Language. The following language shall be included in contracts for City projects between the Consultant and any Subcontractors, vendors, and suppliers:

Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Consultant shall provide equal opportunity for Subcontractors to participate in opportunities. Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.

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

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

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

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

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

1. For all consultant contracts, the City shall apply a maximum of an additional 12 points for SLBE or ELBE participation, to the proposer's subtotal maximum evaluation points. Additional points will be awarded as follows to achieve the proposer's final maximum evaluation points :

- a. If the proposer achieves 20% participation, apply 5 points to the proposer's score; or

- b. If the proposer achieves 25% participation, apply 10 points to the proposer's score; or
 - c. If the prime consultant is a SLBE or an ELBE, apply 12 points to the proposer's score.
- B. Subcontractor Participation List. The Subcontractor Participation List (Attachment CC) shall indicate the Name and Address, Scope of Services, Percent of Total Proposed Contract Amount, Certification Status and Where Certified for each proposed Subcontractor/Subconsultant.

V. Maintaining Participation Levels.

- A. Bid discounts and additional points are based on the Consultant's level of participation prior to the award of goods, services, or consultant contract. Consultants are required to achieve and maintain the SLBE or ELBE participation levels throughout the duration of the goods, services, or consultant contract.
- B. If the City modifies the original specifications, the Consultant shall make reasonable efforts to maintain the SLBE or ELBE participation for which the bid discount or additional points were awarded. The City must approve in writing the reduction in SLBE or ELBE participation levels.
- C. The Consultant shall notify and obtain written approval from the City in advance of any reduction in subcontract scope, termination, or substitution for a designated SLBE or ELBE subcontractor.
- D. Consultant's failure to maintain SLBE or ELBE participation levels as specified in the goods, services, or consultant contract shall constitute a default and grounds for debarment under Chapter 2, Article 2, Division 8, of the San Diego Municipal Code.
- E. The remedies available to the City under Council Policy 100-10 are cumulative to all other rights and remedies available to the City.

VI. Definitions.

Commercially Useful Function: a Small Local Business Enterprise or Emerging Local Business Enterprise (SLBE/ELBE) performs a commercially useful function when it is responsible for execution of the work and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the SLBE/ELBE shall also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself.

To determine whether an SLBE/ELBE is performing a commercially useful function, an evaluation will be performed of the amount of work subcontracted, normal industry practices, whether the amount the SLBE/ELBE firm is to be paid under the contract is commensurate with the work it is actually performing and the SLBE/ELBE credit claimed for its performance of the work, and other relevant factors. Specifically, a SLBE/ELBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of meaningful and useful SLBE/ELBE participation, when in similar transactions in which SLBE-ELBE firms do not participate, there is no such role performed.

Disadvantaged Business Enterprise (DBE): a certified business that is (1) at least fifty-one (51%) owned by socially and economically Disadvantaged Individuals, or, in the case of a publicly owned business at least fifty-one percent (51%) of the stock is owned by one or more socially and economically Disadvantaged Individuals; and (2) whose daily business operations are managed and directed by one or more socially and economically disadvantaged owners. Disadvantaged Individuals include Black Americans, Hispanic Americans, Asian Americans, and other minorities, or individual found to be

disadvantaged by the Small Business Administration pursuant to Section 8 of the Small Business Reauthorization Act.

Disabled Veteran Business Enterprise (DVBE): a certified business that is (1) at least fifty-one percent (51%) owned by one or more disabled veterans; and (2) business operations must be managed and controlled by one or more disabled veterans. Disabled Veteran is a veteran of the U.S. military, naval, or air service; the veteran must have a service-connected disability or at least 10% or more; and the veteran must reside in California. The firm shall be certified by the State of California's Department of General Services, Office of Small and Minority Business.

Emerging Business Enterprise (EBE): a business whose gross annual receipts do not exceed the amount set by the City Manager, and which meets all other criteria set forth in the regulations implementing the City's Small and Local Business Preference Program. The City Manager shall review the threshold amount for EBEs on an annual basis, and adjust as necessary to reflect changes in the marketplace.

Emerging Local Business Enterprise (ELBE): a Local Business Enterprise that is also an Emerging Business Enterprise.

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

Minority Business Enterprise (MBE): a certified business that is (1) at least fifty-one percent (51%) owned by one or more minority individuals, or, in the case of a publicly owned business at least fifty-one percent (51%) of the stock is owned by one or more minority individuals; and (2) whose daily business operations are managed and directed by one or more minority owners. Minorities include the groups with the following ethnic origins: African, Asian Pacific, Asian Subcontinent, Hispanic, Native Alaskan, Native American, and Native Hawaiian.

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

Principal Place of Business: a location wherein a firm maintains a physical office and through which it obtains no less than fifty percent (50%) of its overall customers or sales dollars.

Significant Employee Presence: no less than twenty-five percent (25%) of a business's total number of employees are domiciled in San Diego County.

Small Business Enterprise (SBE): a business whose gross annual receipts do not exceed the amount set by the City Manager, and that meets all other criteria set forth in regulations implementing the City's Small and Local Business Preference Program. The City Manager shall review the threshold amount for SBEs on an annual basis, and adjust as necessary to reflect changes in the marketplace. A business certified as a DVBE by the State of California, and that has provided proof of such certification to the City Manager, shall be deemed to be an SBE.

Small Local Business Enterprise (SLBE): a Local Business Enterprise that is also a Small Business Enterprise.

Women Business Enterprise (WBE): a certified business that is (1) at least fifty-one percent (51 %) owned by a woman or women, or, in the case of a publicly owned business at least fifty-one percent (51%) of the stock is owned by one or more women; and (2) whose daily business operations are managed and directed by one or more women owners.

VII. Certifications.

The City accepts certifications of MBE, WBE, DBE or DVBE from the following certifying agencies:

Current certification by the State of California Department of Transportation (CALTRANS) as DBE.

Current MBE or WBE certification from the California Public Utilities Commission.

DVBE certification is received from the State of California's Department of General Services, Office of Small and Minority Business.

Current certification by the City of Los Angeles as DBE, WBE or MBE.

Current certification by the U.S. Small Business Association as SDB, WOSB, SDVOSB, or Hubzone.

Subcontractors' valid proof of certification status e.g., copy of MBE, WBE, DBE, or DVBE certification must be submitted with RFP. MBE, WBE, DBE, or DVBE certifications are listed for informational purposes only.

VIII. List of Attachments.

- AA. Disclosure of Discrimination Complaints**
- BB. Work Force Report**
- CC. Subcontractors List**

DISCLOSURE OF DISCRIMINATION COMPLAINTS

As part of its proposal, the Consultant must provide to the City a list of all instances within the past 10 years where a complaint was filed or pending against the Consultant in a legal or administrative proceeding alleging that Consultant discriminated against its employees, subcontractors, vendors or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

CHECK ONE BOX ONLY.

- The undersigned certifies that within the past 10 years the Consultant has NOT been the subject of a complaint or pending action in a legal administrative proceeding alleging that Consultant discriminated against its employees, subcontractors, vendors or suppliers.
- The undersigned certifies that within the past 10 years the Consultant has been the subject of a complaint or pending action in a legal administrative proceeding alleging that Consultant discriminated against its employees, subcontractors, vendors or suppliers. A description of the status or resolution of that complaint, including any remedial action taken and the applicable dates is as follows:

DATE OF CLAIM	LOCATION	DESCRIPTION OF CLAIM	LITIGATION (Y/N)	STATUS	RESOLUTION/REMEDIAL ACTION TAKEN

Consultant Name Kimley-Horn and Associates, Inc.

Certified By Dennis Landaal, P.E. Title Senior Vice President

Name

 Signature

Date 10/10/2016

USE ADDITIONAL FORMS AS NECESSARY



City of San Diego

EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)

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

Phone: (619) 236-6000 • Fax: (619) 236-5904

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)*.

NO OTHER FORMS WILL BE ACCEPTED**CONTRACTOR IDENTIFICATION**Type of Contractor: Construction Vendor/Supplier Financial Institution Lessee/Lessor Consultant Grant Recipient Insurance Company OtherName of Company: Kimley-Horn and Associates, Inc.

AKA/DBA: _____

Address (Corporate Headquarters, where applicable): 421 Fayetteville Street, Suite 600City Raleigh County Wake State NC Zip 27601Telephone Number: (919) 677-2000 FAX Number: (919) 677-2050Name of Company CEO: John C. Atz

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

Address: 401 B. Street, Suite 600City San Diego County San Diego State CA Zip 27601Telephone Number: (619) 234-9411 FAX Number: () None Email: dennis.landaal@kimley-horn.comType of Business: Civil Engineering Consulting Type of License: _____The Company has appointed: Joy Pado

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: 765 The City Drive, Suite 200, Orange CA 92868Telephone Number: (714) 939-1030 FAX Number: (714) 938-9488 Email: joy.pado@kimley-horn.com 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 Kimley-Horn and Associates, Inc.

(Firm Name)

San Diego, California hereby certify that information provided

(County)

(State)

herein is true and correct. This document was executed on this 10 day of October, 2016.

(Authorized Signature)

Dennis Landaal, P.E.

(Print Authorized Signature)

WORK FORCE REPORT – NAME OF FIRM: Kimley-Horn and Associates, Inc. DATE: 10/10/16
 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 | (5) Filipino |
| (2) Hispanic, Latino, Mexican-American, Puerto Rican | (6) White, Caucasian |
| (3) Asian, Pacific Islander | (7) Other ethnicity; not falling into other groups |
| (4) American Indian, Eskimo | |

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											8	1		
Professional														
A&E, Science, Computer	1		6	4	6	5					44	19	3	1
Technical	1		1	1		1					1	1		2
Sales														
Administrative Support		1	1								1	2		2
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*														

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

**Kimley-Horn does not track Filipino separately. They are included in Asian category.

Totals Each Column	2	1	8	5	6	6					54	23	3	5
--------------------	---	---	---	---	---	---	--	--	--	--	----	----	---	---

Grand Total All Employees

113

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

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

Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

WORK FORCE REPORT – NAME OF FIRM: Kimley-Horn and Associates, Inc. DATE: 10/10/16
 OFFICE(S) or BRANCH(ES): Los Angeles Downtown & LA San Fernando Valley COUNTY: Los Angeles

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

OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino **		(6) White		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Management & Financial											1	2		
Professional														
A&E, Science, Computer			3	3	7	3					10	8	2	1
Technical				2	1						1			
Sales												2		
Administrative Support														
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*														

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

**Kimley-Horn does not track Filipino separately. They are included in Asian category.

Totals Each Column			3	5	8	3					12	12	2	1
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Grand Total All Employees

46

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

Disabled														
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Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

WORK FORCE REPORT – NAME OF FIRM: Kimley-Horn and Associates, Inc. DATE: 10/10/16
 OFFICE(S) or BRANCH(ES): Orange COUNTY: Orange

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

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											8	2		
Professional														
A&E, Science, Computer			5	4	10	3					21	19	3	3
Technical						2						3	1	
Sales														
Administrative Support											1	4		
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*														

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

**Kimley-Horn does not track Filipino separately. They are included in Asian category.

Totals Each Column			5	4	10	5					30	28	4	3
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Grand Total All Employees

89

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

Disabled														
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Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

WORK FORCE REPORT – NAME OF FIRM: Kimley-Horn and Associates, Inc. DATE: 10/10/16
 OFFICE(S) or BRANCH(ES): Oakland / Pleasanton COUNTY: Alameda

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												2		
Professional														
A&E, Science, Computer	1		2	1	7	4	1					20	4	4
Technical					2									
Sales														
Administrative Support		1											1	
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*														

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

**Kimley-Horn does not track Filipino separately. They are included in Asian category.

Totals Each Column	1	1	2	1	9	4	1					22	5	4
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Grand Total All Employees

50

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

Disabled														
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Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

WORK FORCE REPORT – NAME OF FIRM: Kimley-Horn and Associates, Inc. DATE: 10/10/16
 OFFICE(S) or BRANCH(ES): Phoenix COUNTY: Maricopa

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

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		1						16	4		
Professional														
A&E, Science, Computer	2		5	4	4		1				61	26	2	1
Technical		1	1								5	2		
Sales														
Administrative Support				2								12		1
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*														

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

**Kimley-Horn does not track Filipino separately. They are included in Asian category.

Totals Each Column	2	1	7	6	5		1				82	44	2	2
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Grand Total All Employees

152

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

Disabled														
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Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

WORK FORCE REPORT – NAME OF FIRM: Kimley-Horn and Associates, Inc. DATE: 10/10/16
 OFFICE(S) or BRANCH(ES): Las Vegas COUNTY: Clark

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

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											5			
Professional														
A&E, Science, Computer	1		1	2	1	3					10	8		
Technical			2								2	2		
Sales														
Administrative Support												4		
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*														

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

**Kimley-Horn does not track Filipino separately. They are included in Asian category.

Totals Each Column	1		3	2	1	3					17	14		
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Grand Total All Employees

41

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

Disabled														
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Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

WORK FORCE REPORT – NAME OF FIRM: Kimley-Horn and Associates, Inc. DATE: 10/10/16
 OFFICE(S) or BRANCH(ES): Philadelphia COUNTY: Philadelphia

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

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

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

**Kimley-Horn does not track Filipino separately. They are included in Asian category.

Totals Each Column												3		
--------------------	--	--	--	--	--	--	--	--	--	--	--	---	--	--

Grand Total All Employees

3

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

Disabled														
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Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

WORK FORCE REPORT – NAME OF FIRM: Kimley-Horn and Associates, Inc. DATE: 10/10/16
 OFFICE(S) or BRANCH(ES): Fort Lauderdale COUNTY: Broward

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

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						5			
Professional														
A&E, Science, Computer	3	1	8	1	4	1					13	6	1	
Technical			1								1			1
Sales														
Administrative Support												3		
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*														

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

**Kimley-Horn does not track Filipino separately. They are included in Asian category.

Totals Each Column	3	1	9	1	5	1					19	9	1	1
--------------------	---	---	---	---	---	---	--	--	--	--	----	---	---	---

Grand Total All Employees

50

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

Disabled														
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Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

SUBCONSULTANTS LIST

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

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

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

NAME AND ADDRESS SUBCONTRACTORS	SCOPE OF SERVICES	PERCENT OF CONTRACT	SLBE/ELBE (* / MBE / WBE / DBE / DVBE / OBE)	** WHERE CERTIFIED
Accurate Video Counts Inc, P.O. Box 261425 San Diego, CA 92196	Traffic Counts	3%	SLBE, ELBE DBE	City of San Diego State of CA
Aguirre & Associates 8265 Commercial Street, Suite 1 La Mesa, CA 91942	Surveying	5%	SLBE DBE, MBE	City of San Diego Caltrans CUCP
Baranek Consulting Group 10023 Wildlife Road San Diego, CA 92131	Environmental	1%	ELBE	City of San Diego
C.A. Wehsener Engineering 10453 Russell Rd La Mesa, CA 91941	Construction Management and Inspections	7%	SLBE	City of San Diego
Evari GIS Consulting 3060 University Avenue San Diego, CA 92104	GIS (as-builts)	1%	ELBE	City of San Diego
Katz & Associates, Inc. 5440 Morehouse Drive, Ste. 1000 San Diego, CA 92121	Marketing and Outreach	2%	WBE	Caltrans
PCG Utility Consultants, Inc. 3911 North Cordoba, Suite B Spring Valley, CA 91977	Utility Coordination	6%	SLBE, ELBE MBE, WBE DBE	City of San Diego CPUC Caltrans
Platt/Whitelaw Architects 4034 30th Street San Diego, CA 92104	Architectural (TMC)	1%	SLBE WBE	City of San Diego Caltrans
Quality Infrastructure Corporation 7777 Alvarado Road, Suite 606 La Mesa, CA 91942	Traffic Control, SWPPP & Permitting	3%	ELBE	City of San Diego
Select Electric Inc. 13250 Kirkham Way Poway, CA 92064	Integration & Procurement Support	5%	MBE	Minority Supplier Development Council
TerraCosta Consulting Group, Inc. 3890 Murphy Canyon Rd., Ste. 200 San Diego, CA 92123	Geotechnical	1%	SLBE	City of San Diego

* Listed for informational purposes only.

** Consultant shall indicate if Subcontractor is certified by one of the agencies listed in Section VII of the Equal Opportunity Contracting Program (EOCP) Attachment.

List of Abbreviations:

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
Small Local Business Enterprise	SLBE
Emerging Local Business Enterprise	ELBE

Subcontractor Participation List

12-26-12

CONSULTANT CERTIFICATION FOR A DRUG-FREE WORKPLACE

PROJECT TITLE: As-Needed Intelligent Transportation Systems (ITS) Consulting Services
Contract Number H156417

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:

Kimley-Horn and Associates, 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 Dennis Landaal, P.E.
Title Senior Vice President
Date 10/10/2016

INSTRUCTION SHEET FOR
DISCLOSURE DETERMINATION FOR CONSULTANT
(Form CC-1671)

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

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

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

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

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

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

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

DISCLOSURE DETERMINATION FOR CONSULTANT

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

- 1. Department / Board / Commission / Agency Name:
2. Name of Specific Consultant & Company:
3. Address, City, State, ZIP
4. Project Title (as shown on 1472, "Request for Council Action")
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.]

Blank lines for providing specific details for the limited disclosure category.

By: [Name/Title]* [Date]

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

DEFINITION OF "CONSULTANT"

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

- (A) Makes a governmental decision whether to:
1. Approve a rate, rule or regulation;
 2. Adopt or enforce a law;
 3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
 4. Authorize the City to enter into, modify, or renew a contract provided it is the type of contract that requires City approval;
 5. Grant City approval to a contract that requires City approval and to which the City is a party, or to the specifications for such a contract;
 6. Grant City approval to a plan, design, report, study, or similar item;
 7. Adopt, or grant City approval of, policies, standards, or guidelines for the City, or for any subdivision thereof; or
- (B) Serves in a staff capacity with the City and in that capacity participates in making a governmental decision as defined in Regulation 18702.2 or performs the same or substantially all the same duties for the City that would otherwise be performed by an individual holding a position specified in the City's Conflict of Interest Code.

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

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

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

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

BACKGROUND:

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

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

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

PURPOSE:

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

POLICY:

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

LEED (Leadership in Energy and Environmental Design):

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

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

SUSTAINABLE BUILDING MEASURES:

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

1. Design and construct mechanical and electrical systems to achieve the maximum energy efficiency achievable with current technology. Consultants shall use computer modeling programs, (Energy Pro) to analyze the effects of various design options and select the set of options producing the most efficient integrated design. Energy efficiency measures shall be selected to achieve energy efficiencies at least 22.51% better than California's Title 24.2001 standards for both new construction and major renovation projects.
2. Incorporate self-generation using renewable technologies to reduce environmental impacts associated with fossil fuel energy use. Newly constructed City facilities shall generate a minimum of 10%, with a goal of 20% from renewable technologies (e.g., photovoltaic, wind and fuel cells).
3. Eliminate the use of CFC based refrigerants in newly constructed facilities and major building renovations and retrofits for all heating, ventilation, air conditioning and refrigerant-based building systems.
4. Incorporate additional commissioning and measurement and verification procedures as outlined by LEED 2.0 Rating System, Energy and Atmospheres, credit 3 and credit 5 for all projects over 20,000 sq. ft.
5. Reduce the quantity of indoor air contaminants that are odorous or potentially irritating to provide installer(s) and occupant(s) health and comfort. Low-emitting materials will include adhesives, paints, coatings carpet systems, composite wood and agri-fiber products.
6. In order to maximize energy efficiency measures within these requirements, projects will combine energy efficiency measures requiring longer payback periods, with measures requiring shorter payback periods to determine the overall project period.

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

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

1. Use high efficiency irrigation technology, drought tolerant native plants and recycled site water to reduce potable water for irrigation by 50%. Additionally, building water consumption should be reduced by 30%.
2. Limit disruption of natural water flows and minimize storm water runoff by minimizing building footprints and other impervious areas, increasing on-site infiltration, preserving and/or restoring natural drainage systems, and reducing contaminants introduced into San Diego's bays, beaches and the ocean.
3. Facilitate the reduction of waste generated by building occupants that is hauled to and disposed of in landfills. Provide an easily accessible area that serves the entire building and is dedicated to the separation, collection and storage of materials for recycling. Recycling should include paper, glass, plastic and metals at a minimum.
4. Incorporate building products that have recycled content reducing the impacts resulting from the extraction of new materials. Newly constructed City facilities shall have a minimum of 25% of building materials that contain in aggregate, a minimum weighted average of 20% post consumer recycled content materials.
5. Reduce the use and depletion of finite raw and long-cycle renewable materials by replacing them with rapidly renewable materials. Newly constructed City facilities should consider incorporating rapidly renewable building materials for 5% of the total building materials.
6. Establish minimum indoor air quality (IAQ) performance to prevent the development of indoor air quality problems in buildings, maintaining the health and well being of the occupants. Newly constructed City facilities will comply with IAQ by conforming to ASHRAE 62-1999.
7. City buildings will be designed to take the maximum advantage of passive and natural sources of heat, cooling, ventilation and light.

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

PRIVATE-SECTOR/INCENTIVES:

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

1. Residential projects that provide 50% of their projected total energy use utilizing renewable energy resources, (e.g., photovoltaic, wind and fuel cells).
2. Commercial and industrial projects that provide 30% of their projected total energy use utilizing renewable energy resources, (e.g., photovoltaic, wind and fuel cells).
3. Residential and commercial and industrial projects that exceed the State of California Title 24 energy requirements by:
 - a. 15% better than California's Title 24.2001 for Residential Buildings.
 - b. 10% better than California's Title 24.2001 for Commercial and Industrial Buildings.

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

1. Incorporate the U.S. Green Building Council, Leadership in Energy and Environmental Design (LEED) 2.0 Rating System "Silver" Level Certification for commercial development projects.
2. Incorporate self-generation through renewable technologies (e.g., photovoltaic, wind and fuel cells) to reduce environmental impacts associated with fossil fuel energy use for commercial and industrial projects generating a minimum of 30% or more of the designed energy consumption from renewable technologies such as photovoltaic, wind and fuel cells.
3. Residential discretionary projects of 4 units or more within urbanized communities as defined in the Progress Guide and General Plan that provide 50% of their projected total energy use utilizing renewable energy resources.

HEALTH AND RESOURCE CONSERVATION:

1. Projects will be designed to avoid inflicting permanent adverse impact on the natural state of the air, land and water, by using resources and methods that minimize pollution and waste, and do not cause permanent damage to the earth, including erosion.
2. Projects will include innovative strategies and technologies such as porous paving to conserve water, reduce effluent and run-off, thus recharging the water table.
3. When feasible, native plants will be used in landscaping to reduce pesticide, fertilizer, and water usage.
4. Buildings will be constructed and operated using materials, methods, mechanical and electrical systems that ensure a healthful indoor air quality, while avoiding contamination by carcinogens, volatile organic compounds, fungi, molds, bacteria, and other known toxins.

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

OUTREACH / EDUCATION:

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

IMPLEMENTATION:

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

LEGISLATION:

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

REFERENCES:

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

HISTORY:

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

**CITY OF SAN DIEGO
Consultant Performance Evaluation**

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

Section I

1. PROJECT DATA		2. CONSULTANT DATA																				
1a. Project (title, location): 1b. Brief Description: 1c. Budgeted Cost: \$ _____ WBS/IO: _____	2a. Name and address of Consultant: 2b. Consultant's Project Manager: _____ Phone: (____) _____																					
3. CITY DEPARTMENT RESPONSIBLE																						
3a. Department (include Division): _____	3b. Project Manager (address & phone): _____ Phone: (____) _____																					
4 & 5. CONTRACT DATA (DESIGN PHASE <input type="checkbox"/> OR CONSTRUCTION SUPPORT <input type="checkbox"/>)																						
4. Design Phase Agreement Date: _____ Resolution #: R- _____ Initial Contract Amount 4a. \$ _____ 4b. Prev. Amendment(s): \$ _____ 4c. Current Amendment: \$ _____ / Number: _____ 4d. Total Agreement (4a. + 4b. + 4c.): \$ _____																						
4d. Type of Work (design, study, as-needed services, etc.): _____	4e. Key Design Phase Completion Dates: <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">% of Design Phase Completion</td> <td style="width: 25%;">%</td> <td style="width: 25%;">%</td> <td style="width: 25%;">100%</td> </tr> <tr> <td>Agreed Delivery Date:</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>Actual Delivery Date:</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>Acceptance of Plans/Specs.:</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> </table>		% of Design Phase Completion	%	%	100%	Agreed Delivery Date:	_____	_____	_____	Actual Delivery Date:	_____	_____	_____	Acceptance of Plans/Specs.:	_____	_____	_____	<table style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">Final Construction</td> </tr> <tr> <td>Est. Completion: _____</td> </tr> <tr> <td>Actual Completion: _____</td> </tr> </table>	Final Construction	Est. Completion: _____	Actual Completion: _____
% of Design Phase Completion	%	%	100%																			
Agreed Delivery Date:	_____	_____	_____																			
Actual Delivery Date:	_____	_____	_____																			
Acceptance of Plans/Specs.:	_____	_____	_____																			
Final Construction																						
Est. Completion: _____																						
Actual Completion: _____																						
5. Construction Support 5a. Contractor _____ Phone (____) _____ <i>(name and address)</i> 5b. Superintendent _____																						
5c. Notice to Proceed _____ (date) 5d. Working days _____ (number) 5e. Actual Working days _____ (number)	5f. Change Orders: Errors/Omissions _____ % of const. cost \$ _____ Unforeseen Conditions _____ % of const. cost \$ _____ Changed Scope _____ % of const. cost \$ _____ Changed Quantities _____ % of const. cost \$ _____ Total Construction Cost \$ _____																					
6. OVERALL RATING FOR DESIGN PHASE <input type="checkbox"/> OR FOR CONSTRUCTION SUPPORT <input type="checkbox"/>																						
	Excellent	Satisfactory	Poor																			
6a. Quality of Plans/Specifications/As-Builts Compliance with Contract & Budget Responsiveness to City Staff	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>																			
6b. Overall Rating _____																						
7. AUTHORIZING SIGNATURES																						
7a. Project Manager _____	Date _____																					
7b. Section Head _____	Date _____																					

Section II SPECIFIC RATING									
DESIGN EVALUATION					CONSTRUCTION SUPPORT EVALUATION				
	EXCELLENT	SATISFACTORY	POOR	N/A		EXCELLENT	SATISFACTORY	POOR	N/A
Plans/Specifications accuracy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Drawing reflect existing conditions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Plans/Specs coordination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	As-Built drawings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Plans/Specs properly formatted	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Quality design	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Code Requirements covered	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Change orders due to design deficiencies are minimized	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adherence to City design standards	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Timely responses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Attitude toward Client and review bodies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Attitude toward Client and review bodies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Follows direction and chain of responsibility	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Follows direction and chain of responsibility	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Work product delivered on time	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Timeliness in notifying City of major problems	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
COMPLIANCE WITH CONTRACT & BUDGET	EXCELLENT	SATISFACTORY	POOR	N/A	Resolution of Field problems	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reasonable agreement negotiation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Value Engineering Analysis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adherence to fee schedule	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adherence to project budget	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Timely responses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Timeliness in notifying City of major issues	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Work product delivered on time	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Section III SUPPLEMENTAL INFORMATION
 (Please ensure to attach additional documentation as needed.)

Item _____ :

Item _____ :

Item _____ :

Item _____ :

(*Supporting documentation attached: Yes No)

City of San Diego
CONTRACTOR STANDARDS
Pledge of Compliance

The City of San Diego has adopted a Contractor Standards Ordinance (CSO) codified in section 22.3004 of the San Diego Municipal Code (SDMC). The City of San Diego uses the criteria set forth in the CSO to determine whether a bidder or proposer has the capacity to fully perform the contract requirements and the business integrity to justify the award of public funds. This completed Pledge of Compliance signed under penalty of perjury must be submitted with each bid and proposal. If an informal solicitation process is used, the bidder must submit this completed Pledge of Compliance to the City prior to execution of the contract. All responses must be typewritten or printed in ink. If an explanation is requested or additional space is required, Respondents must provide responses on Attachment A to the Pledge of Compliance and sign each page. Failure to submit a signed and completed Pledge of Compliance may render the bid or proposal non-responsive. In the case of an informal solicitation, the contract will not be awarded unless a signed and completed Pledge of Compliance is submitted. A submitted Pledge of Compliance is a public record and information contained within will be available for public review except to the extent that such information is exempt from disclosure pursuant to applicable law.

A. BID/PROPOSER/SOLICITATION TITLE:

As-Needed Intelligent Transportation Systems (ITS) Consulting Services, H156417

B. BIDDER/PROPOSER INFORMATION:

Kimley-Horn and Associates, Inc.		N/A	
Legal Name		DBA	
401 B. Street, Suite 600	San Diego	CA	92101
Street Address	City	State	Zip
Mike Washkowlak, Project Manager	619-744-0130	N/A	
Contact Person, Title	Phone	Fax	

C. OWNERSHIP AND NAME CHANGES:

1. In the past five (5) years, has your firm changed its name?

Yes No

If **Yes**, use Attachment "A" to list all prior legal and DBA names, addresses, and dates each firm name was 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 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. Fill in only one section on this page. Use Attachment "A" if more space is required.

Corporation Date incorporated: 02/10 / 67 State of incorporation: North Carolina

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

Is your firm a publicly traded corporation? Yes No

If **Yes**, name those who own ten percent (10 %) or more of the corporation's stocks:

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

List names of members who own ten percent (10%) or more of the company:

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

List names of all firm partners:

Sole Proprietorship Date started: ___/___/___

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

Joint Venture Date formed: ___/___/___

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

Note: To be responsive, each member of a Joint Venture must complete a separate *Pledge of Compliance*.

E. FINANCIAL RESOURCES AND RESPONSIBILITY:

1. Is your firm preparing to be sold, in the process of being sold, or in negotiations to be sold?
 Yes No

If **Yes**, use Attachment "A" to explain the circumstances, including the buyer's name and principal contact information.

2. In the past five (5) years, has your firm been denied bonding?
 Yes No

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

4. In the past five (5) years, has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?

Yes **No**

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

5. Within the last five years, has your firm filed a voluntary petition in bankruptcy, been adjudicated bankrupt, or made a general assignment for the benefit of creditors? **No**

6. Please provide the name of your principal financial institution for financial reference. By submitting a response to this Solicitation Contractor authorizes a release of credit information for verification of financial responsibility.

Name of Bank: Wells Fargo Bank, N.A.

Point of Contact: D. Brent Gore

Address: 150 Fayetteville Street, 6th Floor, Raleigh, NC 27601

Phone Number: 919-881-7022

7. By submitting a response to a City solicitation, Contractor certifies that he or she has sufficient operating capital and/or financial reserves to properly fund the requirements identified in the solicitation. At City's request, Contractor will promptly provide to City a copy of Contractor's most recent balance sheet and/or other necessary financial statements to substantiate financial ability to perform.

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 Attachment "A" to explain specific circumstances.

2. In the past five (5) years, has a public entity terminated your firm's contract for cause prior to contract completion?

Yes **No**

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

3. In the past five (5) years, has your firm entered into any settlement agreement for any lawsuit that alleged contract default, breach of contract, or fraud with or against a public entity?

Yes **No**

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

4. Is your firm currently involved in any lawsuit with a government agency in which it is alleged that your firm has defaulted on a contract, breached a contract, or committed fraud?

Yes No

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

5. In the past five (5) years, has your firm, or any firm with which any of your firm's owners, partners, or officers is or was associated, been debarred, disqualified, removed, or otherwise prevented from bidding on or completing any government or public agency contract for any reason?

Yes No

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

6. In the past five (5) years, has your firm received a notice to cure or a notice of default on a contract with any public agency?

Yes No

If **Yes**, use Attachment "A" to explain specific circumstances and how the matter resolved.

7. Performance References:

Please provide a minimum of three (3) references familiar with work performed by your firm which was of a similar size and nature to the subject solicitation within the last five (5) years.

Company Name: City of San Diego

Contact Name and Phone Number: Brad Johnson (619) 533-3770

Contact Email: bjohnson@sandiego.gov

Address: 1010 Second Ave., Suite 1100, San Diego, CA 92101

Contract Date: 2/2009-Ongoing

Contract Amount: \$10,576,000 (Design Contract)

Requirements of Contract: PS&E - Roadway, Traffic and Electrical

Company Name: SANDAG

Contact Name and Phone Number: Alex Estrella, 619-699-1928

Contact Email: alex.estrella@sandag.org

Address: 401 B. Street, Suite 800, San Diego, CA 92101

Contract Date: 2/2010-4/2016

Contract Amount: \$1,499,019

Requirements of Contract: ITS Program Management

Company Name: Port of San DiegoContact Name and Phone Number: Eric Guerreiro, 619-686-6451Contact Email: eguerrei@portofsandiego.orgAddress: 3165 Pacific Highway, San Diego, CA 92101Contract Date: 2011-2013Contract Amount: \$634,380Requirements of Contract: Fiber Optic Interconnect Projects, Planning Design and Construction Admin**G. COMPLIANCE:**

1. In the past five (5) years, has your firm or any firm owner, partner, officer, executive, or manager 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, permitting, and licensing laws?

Yes No

If **Yes**, use Attachment "A" to explain specific circumstances surrounding each instance. Include the name of the entity involved, the 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 determined to be non-responsible by a public entity?

Yes No

If **Yes**, use Attachment "A" to explain specific circumstances of each instance. Include the name of the entity involved, the 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 public entity?

Yes No

If **Yes**, use Attachment "A" to explain specific circumstances of each instance. Include the entity involved, specific 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.

3. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a federal, state, or local crime of fraud, theft, or any other act of dishonesty?

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. WAGE COMPLIANCE:

In the past five (5) years, has your firm been required to pay back wages or penalties for failure to comply with the federal, state or local prevailing, minimum, or living wage laws? **Yes** **No** If **Yes**, use Attachment "A" to explain the specific circumstances of each instance. Include the entity involved, the specific infraction(s), dates, outcome, and current status.

J. STATEMENT OF SUBCONTRACTORS:

Please provide the names and information for all subcontractors used in the performance of the proposed contract, and what portion of work will be assigned to each subcontractor. Subcontractors may not be substituted without the written consent of the City. Use Attachment "A" if additional pages are necessary. If no subcontractors will be used, please write "Not Applicable."

Company Name: See attachment A

Contact Name and Phone Number: _____

Contact Email: _____

Address: _____

Contract Date: _____

Sub-Contract Dollar Amount: _____

Requirements of Contract: _____

What portion of work will be assigned to this subcontractor: _____

Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE? (Circle One) YES NO

If YES, Contractor must provide valid proof of certification with the response to the bid or proposal.

Company Name: _____

Contact Name and Phone Number: _____

Contact Email: _____

Address: _____

Contract Date: _____

Sub-Contract Dollar Amount: _____

Requirements of Contract: _____

What portion of work will be assigned to this subcontractor: _____

Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE? (Circle One) YES NO

If YES, Contractor must provide valid proof of certification with the response to the bid or proposal.

K. STATEMENT OF AVAILABLE EQUIPMENT:

List all necessary equipment to complete the work specified. Use *Pledge of Compliance Attachment "A"* if additional pages are necessary. In instances where the required equipment is not owned by the Contractor, Contractor shall explain how the equipment will be made available before the commencement of work. The City of San Diego reserves the right to reject any response when, in its opinion, the Contractor has not demonstrated he or she will be properly equipped to perform the work in an efficient, effective manner for the duration of the contract period.

If no equipment is necessary to complete the work specified, please write "Not Applicable."

Equipment Description: Kimley-Horn possesses general office equipment such as computers, phones, printers, plotters and software that is required to provide design services.

L. 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 10/14/2016

Complete all questions and sign below.

Under penalty of perjury under the laws of the State of California, I certify that I have read and understand the questions contained in this Pledge of Compliance, that I am responsible for completeness and accuracy of the responses contained herein, and that all information provided is true to the best of my knowledge and belief. I agree to provide written notice to the Purchasing Agent within five (5) business days if, at any time, I learn that any portion of this Pledge of Compliance. Failure to timely provide the Purchasing Agent with written notice is grounds for Contract termination.

I, on behalf of the firm, further certify that I and my firm will comply with the following provisions of SDMC section 22.3004:

- (a) I and my firm will 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) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of receiving notice that a government agency has begun an investigation of me or my firm that may result in a finding that I or my firm is or was not in compliance with laws stated in paragraph (a).
- (c) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of a finding by a government agency or court of competent jurisdiction of a violation by the Contractor of laws stated in paragraph (a).
- (d) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar 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).
- (e) I and my firm will cooperate fully with the City during any investigation and to respond to a request for information within ten (10) working days.

Failure to sign and submit this form with the bid/proposal shall make the bid/proposal non-responsive. In the case of an informal solicitation, the contract will not be awarded unless a signed and completed *Pledge of Compliance* is submitted.

Dennis Landaal, P.E., Sr. Vice President



10/14/2016

Name and 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.

In response to Item D. Business Organization/Structure, below is a complete list of Kimley-Horn's current officers:

Principal Officers

John C. Atz, CEO / President
Mark S. Wilson, CFO / Chairman
Richard N. Cook, Senior Vice President / Secretary / Treasurer

Directors

John C. Atz, CEO / President
Mark S. Wilson, CFO / Chairman
Barry L. Barber, Senior Vice President
Gregory B. Burns, Senior Vice President
Derrick B. Cave, Senior Vice President
Terence T. Murphy, Senior Vice President
Brooks H. Peed, Executive Vice President
H. Dean Penny, Senior Vice President
Michael G. Schiller, Executive Vice President
Frederick W. Schwartz, Senior Vice President
Christopher A. Squires, Senior Vice President
Deborah L. Wilson, Senior Vice President

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.

Dennis Landaal, Sr. Vice President
Print Name, Title


Signature

10/14/2016
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.

In response to Item J. Statement of Subcontractors:

Name: Accurate Video Counts Inc,
Contact Name and Phone Number: Mike Stutz, 619.987.5136
Contact E-mail: info@accuratevideocounts.com
Address: P.O. Box 261425, San Diego, CA 92196
Contract Date: TBD
Sub-Contract Dollar Amount: TBD
Requirements of Contract: Traffic Counts
Portion of Work: 3%
Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE?
Yes - SLBE, ELBE / City of San Diego, DBE / CA

Name: Aguirre & Associates
Contact Name and Phone Number: Mickey Aguirre, P.E., 619.464.6978 x31
Contact E-mail: mickey@aguirre-inc.com
Address: 8265 Commercial Street, Suite 1, La Mesa, CA 91942
Contract Date: TBD
Sub-Contract Dollar Amount: TBD
Requirements of Contract: Surveying
Portion of Work: 5%
Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE?
Yes - SLBE / City of San Diego, MBE, DBE / Caltrans CUCP

Name: Baranek Consulting Group
Contact Name and Phone Number: Kim Baranek, 858.922.8604
Contact E-mail: baranekconsulting@san.rr.com
Address: 10023 Wildlife Road, San Diego, CA 92131
Contract Date: TBD
Sub-Contract Dollar Amount: TBD
Requirements of Contract: Environmental
Portion of Work: 1%
Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE?
Yes - ELBE / City of San Diego

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.

Dennis Landaal, Sr. Vice President
Print Name, Title


Signature

10/14/2016
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.

In response to Item J. Statement of Subcontractors:

Name: C.A. Wehsener Engineering
Contact Name and Phone Number: Charles A. Wehsener, P.E., 619.929.9529
Contact E-mail: chuck@cawehsenereng.com
Address: 10453 Russell Rd, La Mesa, CA 91941
Contract Date: TBD
Sub-Contract Dollar Amount: TBD
Requirements of Contract: Construction Management and Inspections
Portion of Work: 7%
Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE?
Yes - SLBE / City of San Diego

Name: Evari GIS Consulting
Contact Name and Phone Number: Ari Isaak, 858.633.6447
Contact E-mail: ari@sdgis.com
Address: 3060 University Avenue, San Diego, CA 92104
Contract Date: TBD
Sub-Contract Dollar Amount: TBD
Requirements of Contract: GIS
Portion of Work: 1%
Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE?
Yes - ELBE / City of San Diego

Name: Katz & Associates, Inc.
Contact Name and Phone Number: Joan Isaacson
Contact E-mail: jisaacson@katzassociates.com
Address: 5440 Morehouse Drive, Ste. 1000, San Diego, CA 92121
Contract Date: TBD
Sub-Contract Dollar Amount: TBD
Requirements of Contract: Marketing and Outreach
Portion of Work: 2%
Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE?
No - WBE / Caltrans

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.

Dennis Landaal, Sr. Vice President
Print Name, Title


Signature

10/14/2016
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.

In response to Item J. Statement of Subcontractors:

Name: PCG Utility Consultants

Contact Name and Phone Number: Bobby Johnson, 619.660.1355

Contact E-mail: admin@procongp.com

Address: 3911 North Cordoba, Suite B, Spring Valley, CA 91977

Contract Date: TBD

Sub-Contract Dollar Amount: TBD

Requirements of Contract: Utility Coordination

Portion of Work: 6%

Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE?

Yes - SLBE, ELBE / City of San Diego, MBE, WBE / CPUC, DBE / Caltrans

Name: Platt/Whitelaw Architects

Contact Name and Phone Number: Alison M. Whitelaw, 619.546.4326

Contact E-mail: awhitelaw@plattwhitelaw.com

Address: 4034 30th Street, San Diego, CA 92104

Contract Date: TBD

Sub-Contract Dollar Amount: TBD

Requirements of Contract: Architectural

Portion of Work: 1%

Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE?

Yes - SLBE / City of San Diego, WBE / Caltrans

Name: Quality Infrastructure Corporation

Contact Name and Phone Number: Kirk Bradbury, P.E., 619.741.9400

Contact E-mail: kbradbury@qualityinfrastructure.com

Address: 7777 Alvarado Road, Suite 606, La Mesa, CA 91942

Contract Date: TBD

Sub-Contract Dollar Amount: TBD

Requirements of Contract: Traffic Control, SWPPP & Permitting

Portion of Work: 3%

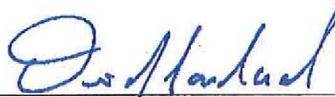
Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE?

Yes - ELBE / City of San Diego

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.

Dennis Landaal, Sr. Vice President

Print Name, Title



Signature

10/14/2016

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.

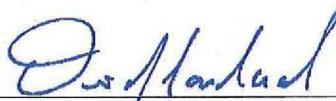
In response to Item J. Statement of Subcontractors:

Name: Select Electric Inc.
Contact Name and Phone Number: Omar Echeverri, 619.460.6060
Contact E-mail: oecheverri@selectelectricinc.com
Address: 13250 Kirkham Way, Poway CA 92064
Contract Date: TBD
Sub-Contract Dollar Amount: TBD
Requirements of Contract: Integration & Procurement Support
Portion of Work: 5%
Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE?
Yes - MBE / Minority Supplier Development Council

Name: TerraCosta Consulting Group
Contact Name and Phone Number: Walter F. Crampton, 858.573.6900
Contact E-mail: mail@terracosta.com
Address: 3890 Murphy Canyon Rd., Ste. 200, San Diego, CA 92123
Contract Date: TBD
Sub-Contract Dollar Amount: TBD
Requirements of Contract: Geotechnical
Portion of Work: 1%
Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE?
Yes - SLBE / City of San Diego

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.

Dennis Landaal, Sr. Vice President
Print Name, Title


Signature

10/14/2016
Date

**REGARDING INFORMATION REQUESTED UNDER THE
CALIFORNIA PUBLIC RECORDS ACT**

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

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

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

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

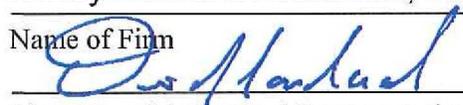
If the Contractor does not provide a specific and detailed legal basis for withholding the requested information within a time specified by the City, the City will release the information as required by the California Public Records Act and the **Contractor will hold the City harmless** for release of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

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

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

Kimley-Horn and Associates, Inc.

Name of Firm


Signature of Authorized Representative

Dennis Landaal, P.E.

Printed/Typed Name

10/14/2016

Date

CONSULTANT CERTIFICATION

AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE CERTIFICATION

PROJECT TITLE: Intelligent Transportation Systems (ITS) Consulting Services, H156417

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

Kimley-Horn and Associates, Inc.

(Name under which business is conducted)

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

Signed 

Printed Name Dennis Landaal, P.E.

Title Senior Vice President/Principal

**Sensitive Information
Authorization Acknowledgement**

CITY OF SAN DIEGO

Sensitive Information Authorization Acknowledgement Form – City Contractors/Vendors

Authorized Person (City Contractor/Vendor requesting authorized access to Sensitive Information):

<i>Name (Printed)</i>	<i>eMail Address</i>	<i>Network (AD) Login/User ID</i>
Michael S. Washkowiak	mike.washkowiak@kimley-horn.com	
<i>Company/Organization</i>		<i>Contractor/Vendor Office Phone</i>
Kimley-Horn and Associates, Inc.		619.744.0130
<i>City Department (managing contract)</i>		<i>Contractor/Vendor Office FAX</i>
Transportation & Storm Water Dept.		N/A
<i>City Contract Manager's Name (Printed)</i>	<i>City Contract Manager's Phone</i>	<i>City Contract Manager's Mail Sta.</i>
Eddie Flores	619.533.3761	

Policy Summary (pertinent excerpts from City Administrative Regulation 90.64):

- 4.1 Sensitive Information shall be maintained in a confidential manner and access restricted to only employees or individuals properly authorized by his or her Appointing Authority and approved by the Information/Data Owner, based on verified business needs to have access to such information and/or in compliance with specific legal requirements.
- 4.3 Authorization to access or use Sensitive Information shall be based on a functional role (job duties) and not linked directly with a specific individual, such that when an authorized person's job duties no longer require access to or use of Sensitive Information, the ability to access or use such information shall be revoked. At no time shall a contractor's or vendor's access to Sensitive Information extend beyond the termination of the authorizing contract, and such access shall be revoked as soon as the duties requiring access or use have ended, regardless of the end date of the contract.
- 4.5 Authorized Persons shall access or use Sensitive Information only for its intended purpose for which it was obtained and maintained by the City of San Diego. An employee or individual authorized to access or use Sensitive Information shall sign an Authorization Acknowledgement Form stating he or she has read, understands, and agrees to abide by this policy.
- 4.7 Violation of this policy, either by unauthorized persons accessing or attempting to access Sensitive Information, or by Authorized Persons accessing or using Sensitive Information for other than its intended purpose or beyond the scope of their duties, may result in disciplinary action, up to and including termination of employment, and also subject the violating individual(s) to personal liability without the option of City legal defense. In the case of contractors or vendors, violation of this policy will be considered a breach of contract and appropriate actions taken on that basis. If deemed necessary, information regarding employee, volunteer, contractor or vendor violation of this policy may be referred to the appropriate agency for any civil and/or criminal action, as applicable.

Acknowledgement

By signing below, the above City Contractor/Vendor acknowledges that he or she understands that the Terms and Conditions of the underlying City Contract contain the provisions of the full policy stated above, and he or she agrees to comply with such contract provisions. City Contractor/Vendor understands that this form will be kept on file with the underlying contract documents in the City Purchasing & Contracting Department, and that he or she may receive a copy, if requested. The City Contract Manager acknowledges that he or she has discussed the contract Terms and Conditions related to this policy with the above Contractor/Vendor and understands the supervisor's obligations regarding the Contractor's/Vendor's access to the City's Sensitive Information under this policy.



Contractor's/Vendor's Signature

10/14/2016

Date Signed

City Contract Manager's Signature

Date Signed

CITY OF SAN DIEGO
ADMINISTRATIVE REGULATION

SUBJECT	Number 90.64	Issue 1	Page 1 of 10
PROTECTION OF SENSITIVE INFORMATION AND DATA	Effective Date July 1, 2009		

1. PURPOSE

- 1.1 To establish a policy to ensure the confidentiality and protection of Sensitive Information against unauthorized use; to establish procedures to control access to Sensitive Information so that it is only accessible by authorized persons; and to establish safeguards to ensure the appropriate use of Sensitive Information by authorized persons.
- 1.2 To define responsibility and procedures for granting authorized persons access to Sensitive Information.
- 1.3 To define processes by which access to Sensitive Information is administered and to develop control points in compliance with City policy.

2. SCOPE

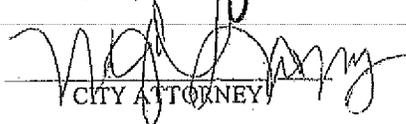
- 2.1 This policy applies to all City employees in all City departments, including independent departments as authorized by the signing authorities below; and to City volunteers, contractors, vendors, and other individuals granted access to Sensitive Information under the City's control; and to all employees, contractors, and vendors of San Diego Data Processing Corporation (SDDPC) granted and/or having access to Sensitive Information by the nature of their support or service functions.
- 2.2 This policy and procedures apply to all Sensitive Information created, owned, stored, managed or under the control of the City of San Diego, regardless of the media which contains the Sensitive Information, including but not limited to paper, microfilm, microfiche or any analog or digital format.
- 2.3 Nothing in this Administrative Regulation supersedes any stricter requirement(s) set by other authorities (i.e., local, state, and/or federal laws, rules or regulations), such as obtaining or retaining employment in a law enforcement agency; nor does this Administrative Regulation supersede any applicable, stricter rules, regulations or policies that affect access to or use of Sensitive Information. In such cases, the department head must ensure implementation or application of any such superseding rules, regulations or policies include adequately strong internal controls over Sensitive Information.

Authorized


MAYOR


PERSONNEL DIRECTOR


CITY CLERK


CITY ATTORNEY

CITY OF SAN DIEGO
ADMINISTRATIVE REGULATION

SUBJECT	Number 90.64	Issue 1	Page 2 of 10
PROTECTION OF SENSITIVE INFORMATION AND DATA	Effective Date July 1, 2009		

3. DEFINITIONS

- 3.1 "Appointing Authority" means an unclassified, management-level position designated by the department head or higher who has the authority to grant permission for an employee or individual to be authorized for access to Sensitive Information.
- 3.2 "Authorized Person" means an employee or other individual who is granted permission to access or use Sensitive Information by an Appointing Authority, as approved by the Information/Data Owner, at the type and the level of access to the specific information required for the performance of his or her job duties.
- 3.3 "Authorization Acknowledgment Form" is the City's official form used to request and authorize an individual's access to or use of Sensitive Information (see Appendix). This form will be available on the City's Intranet site (CityNet) on the 'Forms' page.
- 3.4 "Information/Data Owner" means the department head or designee who is the primary recipient or manager of particular Sensitive Information or who has the responsibility to oversee the collection, maintenance or management of such information or data. There will only be one defined Information/Data Owner for any particular source of data; although other departments may collect and/or access the data. An Information/Data Owner may also be an Appointing Authority, as defined in Section 3.1 above.
- 3.5 "Level of Access" refers to the amount of Sensitive Information for which access is granted for any specific category or type of Sensitive Information, such as full access to all information related to a particular category or document, or limited access to only specific pieces of information (i.e., certain fields in a database) required for the performance of valid job duties.
- 3.6 "Personal Identifying Information" shall include information listed in California Penal Code Section 530.55(b), as amended (Sept. 2006), which reads, in pertinent part:
- (a) "Person" means a natural person, living or deceased, firm, association, organization, partnership, business trust, company, corporation, limited liability company, or public entity, or any other legal entity.
- (b) "Personal Identifying Information" means any name, address, telephone number, health insurance number, taxpayer identification number, school identification number, state or federal driver's license, or identification number, social security number ... professional or occupational number, mother's maiden name, demand deposit account number, savings account number, checking account number, PIN (personal identification number) or password, alien registration number, government passport number, date of birth, unique biometric data including fingerprint, facial scan identifiers, voiceprint, retina or

CITY OF SAN DIEGO
ADMINISTRATIVE REGULATION

SUBJECT	Number	Issue	Page
PROTECTION OF SENSITIVE INFORMATION AND DATA	90.64	1	3 of 10
	Effective Date July 1, 2009		

iris image, or other unique physical representation, unique electronic data including information identification number assigned to the person, address or routing code, telecommunication identifying information or access device, information contained in a birth or death certificate, or credit card number of an individual person, or an equivalent form of identification.

3.7 For the purpose of this policy, "Sensitive Information" shall mean:

3.7.1 Personal Identifying Information (as defined above), also including debit card number of an individual person, and where home/personal address and telephone number are included and work/office address and telephone number are excluded (i.e., the City Directory is not considered Sensitive Information); and

3.7.2 Any information that is possessed by the City of San Diego which is not subject to the California Public Records Act (refer to Administrative Regulation 95.20), and which may be used for other than the intended purpose of such information, to cause harm to or otherwise jeopardize the City of San Diego or any individual, or used in violation of any local, state or federal law (for example the Health Insurance Portability and Accountability Act of 1996 (HIPAA)).

3.8 "Sensitive Information Custodian" is the person who manages the physical or computer-based access to Sensitive Information; for example an office manager or records manager who controls access to locked file rooms/cabinets, or a computer systems administrator who manages the creation of user accounts and passwords to provide specific access to particular data. A Sensitive Information Custodian may also be an Information/Data Owner, as defined in Section 3.4 above.

3.9 "Type of Access" refers to the following: (a) Read Only, (b) Write/Create, (c) Edit/Modify, and (d) Delete.

4. GENERAL POLICY

4.1 Sensitive Information shall be maintained in a confidential manner and access restricted to only employees or individuals properly authorized by his or her Appointing Authority and approved by the Information/Data Owner, based on verified business needs to have access to such information and/or in compliance with specific legal requirements.

4.2 Contractors and vendors or other non-City employees who are authorized to access or use Sensitive Information, shall be required to enter into agreements stating that the individuals specified for this access and their employing Contractor/Vendor agree to be contractually bound by the terms and conditions of this policy, including personal liability, as part of their contract or agreement prior to being granted access to Sensitive Information.

CITY OF SAN DIEGO
ADMINISTRATIVE REGULATION

SUBJECT	Number 90.64	Issue 1	Page 4 of 10
PROTECTION OF SENSITIVE INFORMATION AND DATA	Effective Date July 1, 2009		

- 4.3 Authorization to access or use Sensitive Information shall be based on a functional role (job duties) and not linked directly with a specific individual, such that when an authorized person's job duties no longer require access to or use of Sensitive Information, the ability to access or use such information shall be revoked. At no time shall a contractor's or vendor's access to Sensitive Information extend beyond the termination of the authorizing contract, and such access shall be revoked as soon as the duties requiring access or use have ended, regardless of the end date of the contract.
- 4.4 The Information/Data Owner shall specify the type and the level of access that should be assigned to various functional roles that require access to the Sensitive Information based on an employee's or individual's job requirements.
- 4.5 Authorized Persons shall access or use Sensitive Information only for its intended purpose for which it was obtained and maintained by the City of San Diego. An employee or individual authorized to access or use Sensitive Information shall sign an Authorization Acknowledgement Form stating he or she has read, understands, and agrees to abide by this policy.
- 4.6 As a standard IT security measure, Authorized Persons shall not share their User ID and/or password with anyone else, and shall not have their User ID and/or password written down in any unsecured location (e.g., anywhere around their work location). "Generic" User IDs shall not be used for system access to Sensitive Information; each Authorized Person must use an assigned, unique User ID that is directly linked with the user's name. As a standard physical security measure, Authorized Persons shall not share their building or facility access key card or key(s) with anyone else, nor shall they allow access into secured areas by unauthorized persons.
- 4.7 Violation of this policy, either by unauthorized persons accessing or attempting to access Sensitive Information, or by Authorized Persons accessing or using Sensitive Information for other than its intended purpose or beyond the scope of their duties, may result in disciplinary action, up to and including termination of employment, and also subject the violating individual(s) to personal liability without the option of City legal defense. In the case of contractors or vendors, violation of this policy will be considered a breach of contract and appropriate actions taken on that basis. If deemed necessary, information regarding employee, volunteer, contractor or vendor violation of this policy may be referred to the appropriate agency for any civil and/or criminal action, as applicable.
- 4.8 Appointing Authorities shall review the list of their employees, contractors or other individuals who they have designated as Authorized Persons with access to Sensitive Information, at least semi-annually, to ensure continued authorization is warranted and to update (add, delete or modify) the authorization list appropriately.

CITY OF SAN DIEGO
ADMINISTRATIVE REGULATION

SUBJECT	Number 90.64	Issue 1	Page 5 of 10
PROTECTION OF SENSITIVE INFORMATION AND DATA	Effective Date July 1, 2009		

- 4.9 Information/Data Owners shall verify and document semi-annually that the Appointing Authorities performed a thorough review of authorized users in compliance with this policy (Section 4.8), by comparing the Appointing Authority's report with a list of individuals currently authorized to access the Sensitive Information over which the Information/Data Owner has control and authority. For internal control purposes, to maintain segregation of duties, this verification must be performed by someone other than the Appointing Authority who submitted the semi-annual review of Authorized Persons. All discrepancies shall be reported back to the impacted Appointing Authority for appropriate corrective action. Information/Data Owners shall retain records of such reviews and actions for the period of time set within the citywide or departmental Records Retention Schedule as approved by the City Clerk.
- 4.10 Sensitive Information stored in City computer systems shall be secured and maintained in accordance with applicable provisions of the Information Security Guidelines and Standards, as amended.
- 4.11 Sensitive Information stored in paper or other non-digital formats shall have appropriate physical security, and access to such information shall also comply with Administrative Regulation 95.10 for validating the identity of the individual requesting authorized access.
- 4.12 Upon the discovery of any breach of the protection of Sensitive Information through the accidental, inadvertent or purposeful release of such information to any unauthorized persons, the person discovering such breach should immediately notify the Information/Data Owner or their Appointing Authority, and, if the information was stored on City computer systems, also notify the Information Security Manager in the Department of Information Technology.
- 4.12.1 Depending on the nature and scope of such breach and release of information, additional notifications must comply with applicable state and federal regulations.
- 4.12.2 The Information/Data Owner, in coordination with the Information Security Manager from the Department of Information Technology (if applicable), should immediately take whatever steps are deemed necessary to stop any further breach of the protected information and to minimize any potential or actual losses or damages to the City of San Diego.

CITY OF SAN DIEGO
ADMINISTRATIVE REGULATION

SUBJECT	Number 90.64	Issue 1	Page 6 of 10
PROTECTION OF SENSITIVE INFORMATION AND DATA	Effective Date July 1, 2009		

5. PROCEDURES

Responsibility

5.1. Supervisor

Action

When an employee's, volunteer's or contractor's job duties require access to or use of Sensitive Information, the immediate supervisor will complete an Authorization Acknowledgment Form. In addition, the supervisor must ensure that the proper system access/account request form and process is followed for the specific computer system where the Authorized Person needs access, specifying the nature of the job duties and the level and type of access or use requested. The supervisor will ensure the accuracy and completeness of information on the forms. After obtaining the employee's signature, the acknowledgement and request forms will be routed to the Appointing Authority for approval. Likewise, when an employee's, volunteer's or contractor's job duties change such that access to or use of Sensitive Information is no longer needed, the immediate supervisor will notify both the Appointing Authority and the Information/Data Owner, as soon as possible (no more than five (5) business days).

5.2. Authorized Person (employee, volunteer, contractor, vendor or other individual being authorized for access)

Any person being given access to Sensitive Information must sign the Authorization Acknowledgement Form stating he or she has read, understands, and agrees to comply with this policy for access or use and protection of such information. A copy of the final, approved form shall be kept in the employee's departmental personnel file, as the Appointing Authority's record; or for volunteers, on file with the department where assigned; or for a contractor, on file with the contract manager.

5.3. Department Appointing Authority

The Appointing Authority having management control over the employee, volunteer, contractor,

CITY OF SAN DIEGO
ADMINISTRATIVE REGULATION

SUBJECT	Number 90.64	Issue 1	Page 7 of 10
PROTECTION OF SENSITIVE INFORMATION AND DATA	Effective Date July 1, 2009		

ResponsibilityAction

- vendor or other individual seeking authorization to access Sensitive Information, shall review the Authorization Acknowledgement and system access/account request forms for appropriateness of the job functions for the type and level of access requested while considering appropriate segregation of duties, and ensure the forms are signed by both the individual and supervisor. The Appointing Authority will sign either approval or denial of the request, providing the reasons for any denial, and route the approved request form to the appropriate Information/Data Owner(s), or route a denied form back to the supervisor. Appointing Authorities shall maintain a copy of all authorization forms they approve, including those for non-City employees (i.e., volunteers and contractors). Any changes reported in the job duties of Authorized Persons which require a change in the access to or use of Sensitive Information must be immediately communicated to the Information/Data Owner to initiate the appropriate change in access. The semi-annual reviews should take place in May and November each year. The Appointing Authority will submit documentation of each review to the Information/Data Owner and these records will be retained by the department for the period of time set by the citywide or departmental Records Retention Schedule as approved by the City Clerk.
- 5.4. Information/Data Owner (owner of the information, regardless of its format or mechanism of access, [i.e., computerized system, hard copy file, etc.])
- The Information/Data Owner for each different source of Sensitive Information covered by an approved access request form will review each request to ensure the type and level of access requested is appropriate for the job functions of the individual seeking access. Upon confirmation of the business need to have access to Sensitive Information, the Information/Data Owner will sign approval to grant access, and

CITY OF SAN DIEGO
ADMINISTRATIVE REGULATION

SUBJECT	Number 90.64	Issue 1	Page 8 of 10
PROTECTION OF SENSITIVE INFORMATION AND DATA	Effective Date July 1, 2009		

ResponsibilityAction

- | | |
|--|---|
| <p>5.5. Sensitive Information Custodian (Administrator of the format and/or mechanism of access [i.e., computerized system or hard copy file] for the given information)</p> | <p>may modify the type or level of access granted, as he or she deems necessary and appropriate, in consultation with the requesting Appointing Authority. The Information/Data Owner will initiate any further actions necessary to grant access to the Authorized Person (such as any computer system access processes). Information/Data Owners will maintain a list of individuals currently authorized access to their Sensitive Information and provide such list to the appropriate Appointing Authority for semi-annual review at the end of April and October each year.</p> |
| <p>5.6. Department of Information Technology</p> | <p>The Authorized Person's access to the identified Sensitive Information will be set up following the established procedures either in the IT Security Guidelines and Standards for access to electronic or digital data or following departmental internal controls for paper or physical records, based on the nature (media/format) of the Sensitive Information.</p> <p>Annually review this policy for any necessary updates or revisions, taking into account changes in City organization and IT systems. Maintain the list of Information/Data Owners and update it annually. Maintain the necessary correlation between this policy and other IT security policies and/or regulations. Ensure that San Diego Data Processing Corporation (SDDPC) system administrators comply with this and other IT security policies. The Department of Information Technology is also responsible for ensuring that the requirements of this policy are communicated to all employees at least every two years, using citywide and/or departmental training or communication channels.</p> |

CITY OF SAN DIEGO
ADMINISTRATIVE REGULATION

SUBJECT	Number 90.64	Issue 1	Page 9 of 10
PROTECTION OF SENSITIVE INFORMATION AND DATA	Effective Date July1, 2009		

Responsibility

5.7. Purchasing & Contracting
Department

Action

Ensure that this policy is included as an Addendum to or within the Terms and Conditions of signed contacts or agreements, for all contracts and/or agreements that include a contractor's or vendor's need to access or use the City's Sensitive Information.

APPENDIXLegal References**City Administrative Regulations:**

AR 45.50 "Private Use of City Labor, Materials, Equipment and Supplies Prohibited"

AR 90.63 "Information Security Policy"

AR 95.10 "Identification of City Employees and Controlled Access to City Facilities"

AR 95.20 "Public Records Act Requests and Civil Subpoenas; Procedures for Furnishing Documents and Recovering Costs"

AR 95.60, "Conflict of Interest and Employee Conduct"

Civil Service Rules and City Personnel Manual:

Civil Service Rules, Definitions (p.1), "Appointing Authority"

Civil Service Rule XI, "Resignation, Removal, Suspension, Reduction in Compensation, Demotion"

Personnel Manual, Index Code A-3 "Improper Use of City Resources"

Personnel Manual, Index Code G-1 "Code of Ethics and Conduct"

IT Security Guidelines and Standards

Employee Performance Plans, Ethics and Integrity Section

Applicable California State Laws

Applicable Federal Laws

Forms Involved

Form DoIT-010, "Sensitive Information Authorization Acknowledgement"

CITY OF SAN DIEGO
 Sensitive Information Authorization Acknowledgement Form – City Employees

Authorized Person (City Employee requesting authorized access to Sensitive Information):

<i>Name (Printed)</i>	<i>Job Classification</i>	<i>Network (AD) Login/User ID</i>
<i>Department / Division</i>		
<i>Mail Station</i>	<i>Office Phone</i>	<i>Office FAX</i>
<i>Supervisor's Name (Printed)</i>	<i>Supervisor's Phone</i>	

Policy Summary (pertinent excerpts from Administrative Regulation 90.64):

4.1 Sensitive Information shall be maintained in a confidential manner and access restricted to only employees or individuals properly authorized by his or her Appointing Authority and approved by the Information/Data Owner, based on verified business needs to have access to such information and/or in compliance with specific legal requirements.

4.3 Authorization to access or use Sensitive Information shall be based on a functional role (job duties) and not linked directly with a specific individual, such that when an authorized person's job duties no longer require access to or use of Sensitive Information, the ability to access or use such information shall be revoked. [...]

4.5 Authorized Persons shall access or use Sensitive Information only for its intended purpose for which it was obtained and maintained by the City of San Diego. An employee or individual authorized to access or use Sensitive Information shall sign an Authorization Acknowledgement Form stating he or she has read, understands, and agrees to abide by this policy.

4.7 Violation of this policy, either by unauthorized persons accessing or attempting to access Sensitive Information, or by Authorized Persons accessing or using Sensitive Information for other than its intended purpose or beyond the scope of their duties, may result in disciplinary action, up to and including termination of employment, and also subject the violating individual(s) to personal liability without the option of City legal defense. In the case of contractors or vendors, violation of this policy will be considered a breach of contract and appropriate actions taken on that basis. If deemed necessary, information regarding employee, volunteer, contractor or vendor violation of this policy may be referred to the appropriate agency for any civil and/or criminal action, as applicable.

Acknowledgement

By signing below, the above employee acknowledges that he or she has been provided a full copy of A.R. 90.64 ("Protection of Sensitive Information and Data"), which has been discussed with his or her supervisor, and further acknowledges that he or she has read, understands, and agrees to comply with the provisions of the policy. Employee understands that this form will be kept as part of his or her permanent employee file, and that he or she may receive a copy, if requested. The supervisor acknowledges that he or she has discussed the policy with the above employee and understands the supervisor's obligations regarding employee's access to Sensitive Information under this policy.

 Employee's Signature

 Date Signed

 Supervisor's Signature

 Date Signed

CITY OF SAN DIEGO
Sensitive Information Authorization Acknowledgement Form – City Volunteers

Authorized Person (City Volunteer requesting authorized access to Sensitive Information):

Name (Printed)	Volunteer Assignment	Network (AD) Login/User ID
City Department / Division (where assigned as volunteer)		
Work Location	Contact Phone	
City Supervisor's Name (Printed)	City Supervisor's Phone	City Supervisor's Mail Station

Policy Summary (pertinent excerpts from Administrative Regulation 90.64):

4.1 Sensitive Information shall be maintained in a confidential manner and access restricted to only employees or individuals properly authorized by his or her Appointing Authority and approved by the Information/Data Owner, based on verified business needs to have access to such information and/or in compliance with specific legal requirements.

4.3 Authorization to access or use Sensitive Information shall be based on a functional role (job duties) and not linked directly with a specific individual, such that when an authorized person's job duties no longer require access to or use of Sensitive Information, the ability to access or use such information shall be revoked. At no time shall a contractor's or vendor's access to Sensitive Information extend beyond the termination of the authorizing contract, and such access shall be revoked as soon as the duties requiring access or use have ended, regardless of the end date of the contract.

4.5 Authorized Persons shall access or use Sensitive Information only for its intended purpose for which it was obtained and maintained by the City of San Diego. An employee or individual authorized to access or use Sensitive Information shall sign an Authorization Acknowledgement Form stating he or she has read, understands, and agrees to abide by this policy.

4.7 Violation of this policy, either by unauthorized persons accessing or attempting to access Sensitive Information, or by Authorized Persons accessing or using Sensitive Information for other than its intended purpose or beyond the scope of their duties, may result in disciplinary action, up to and including termination of employment, and also subject the violating individual(s) to personal liability without the option of City legal defense. In the case of contractors or vendors, violation of this policy will be considered a breach of contract and appropriate actions taken on that basis. If deemed necessary, information regarding employee, volunteer, contractor or vendor violation of this policy may be referred to the appropriate agency for any civil and/or criminal action, as applicable.

Acknowledgement

By signing below, the above City Volunteer acknowledges that he or she has been provided a full copy of A.R. 90.64 ("Protection of Sensitive Information and Data"), which has been discussed with the City Supervisor, and further acknowledges that he or she has read, understands, and agrees to comply with the provisions of the policy. City Volunteer understands that this form will be kept on file with the City Department, and that he or she may receive a copy, if requested. The City Supervisor acknowledges that he or she has discussed the policy with the above volunteer and understands the supervisor's obligations regarding the volunteer's access to Sensitive Information under this policy.

Volunteer's Signature

Date Signed

City Supervisor's Signature

Date Signed

CITY OF SAN DIEGO
 Sensitive Information Authorization Acknowledgement Form – City Contractors/Vendors

Authorized Person (City Contractor/Vendor requesting authorized access to Sensitive Information):

Name (Printed)	email Address	Network (AD) Login/User ID
Company/Organization		Contractor/Vendor Office Phone
City Department (managing contract)		Contractor/Vendor Office FAX
City Contract Manager's Name (Printed)	City Contract Manager's Phone	City Contract Manager's Mail Sta.

Policy Summary (pertinent excerpts from City Administrative Regulation 90.64):

- 4.1 Sensitive Information shall be maintained in a confidential manner and access restricted to only employees or individuals properly authorized by his or her Appointing Authority and approved by the Information/Data Owner, based on verified business needs to have access to such information and/or in compliance with specific legal requirements.
- 4.3 Authorization to access or use Sensitive Information shall be based on a functional role (job duties) and not linked directly with a specific individual, such that when an authorized person's job duties no longer require access to or use of Sensitive Information, the ability to access or use such information shall be revoked. At no time shall a contractor's or vendor's access to Sensitive Information extend beyond the termination of the authorizing contract, and such access shall be revoked as soon as the duties requiring access or use have ended, regardless of the end date of the contract.
- 4.5 Authorized Persons shall access or use Sensitive Information only for its intended purpose for which it was obtained and maintained by the City of San Diego. An employee or individual authorized to access or use Sensitive Information shall sign an Authorization Acknowledgement Form stating he or she has read, understands, and agrees to abide by this policy.
- 4.7 Violation of this policy, either by unauthorized persons accessing or attempting to access Sensitive Information, or by Authorized Persons accessing or using Sensitive Information for other than its intended purpose or beyond the scope of their duties, may result in disciplinary action, up to and including termination of employment, and also subject the violating individual(s) to personal liability without the option of City legal defense. In the case of contractors or vendors, violation of this policy will be considered a breach of contract and appropriate actions taken on that basis. If deemed necessary, information regarding employee, volunteer, contractor or vendor violation of this policy may be referred to the appropriate agency for any civil and/or criminal action, as applicable.

Acknowledgement

By signing below, the above City Contractor/Vendor acknowledges that he or she understands that the Terms and Conditions of the underlying City Contract contain the provisions of the full policy stated above, and he or she agrees to comply with such contract provisions. City Contractor/Vendor understands that this form will be kept on file with the underlying contract documents in the City Purchasing & Contracting Department, and that he or she may receive a copy, if requested. The City Contract Manager acknowledges that he or she has discussed the contract Terms and Conditions related to this policy with the above Contractor/Vendor and understands the supervisor's obligations regarding the Contractor's/Vendor's access to the City's Sensitive Information under this policy.

 Contractor's/Vendor's Signature

 Date Signed

 City Contract Manager's Signature

 Date Signed