REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO		CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) 3000008686
TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Environmental Services	DATE: 1/13/2016

SUBJECT: As Needed Environmental Consultant Services Agreement with Ninyo & Moore Related to Site Assessment and Mitigation Activities (H156457).

PRIMARY CONTACT (NAME, PHONE):	SECONDARY CONTACT (NAME, PHONE):
Craig Fergusson,858-627-3311 &1103A	Hamid Fathi, 858-573-1292 & 1103A

COMPLETE FOR ACCOUNTING PURPOSES

FUND	400629				
FUNCTIONAL AREA	OTHR-0000000-GG				
COST CENTER	2111000011				
GENERAL LEDGER ACCT	512059				
WBS OR INTERNAL ORDER	21002391				
CAPITAL PROJECT No.					
AMOUNT	$6,853.50	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): $6,853.50 will be the PO amount for the first task order to be issued under the contract. Services will be performed at the Brown Field Airport in response to a directive letter issued by the regulatory oversight agency and in accordance with a cost proposal received by the consultant for the specified scope of services not to exceed $1,000,000 over 5 years.

ROUTING AND APPROVALS

CONTRIBUTORS/REVIEWERS:		APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Liaison Office		ORIG DEPT.	Sierra, Mario	02/29/2016
Environmental Analysis		CFO		
Financial Management		DEPUTY CHIEF	Gomez, Paz	03/28/2016
Comptroller		COO		
Equal Opportunity Contracting		CITY ATTORNEY	Guy, Amanda	
		COUNCIL PRESIDENTS OFFICE		

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

1. Authorize the Mayor, or his designee, to execute an agreement with Ninyo & Moore to provide as-needed environmental consulting services for the Environmental Services Department in an amount not to exceed $1,000,000;

2. Authorize the Chief Financial Officer to expend an amount not to exceed $1,000,000 over 5 years for the purpose of funding the as-needed environmental consulting services agreement with Ninyo & Moore, contingent upon the Chief Financial Officer first furnishing one or more certificates demonstrating that the funds are, or will be, on deposit with the City Treasurer.

3. Authorize the Chief Financial Officer, upon advice from the administering department, to transfer excess funds, if any, to the appropriate reserves.

4. Authorize the Chief Financial Officer to expend an amount not to exceed $6,853.50 from Fund 400629 for the purpose of executing this Agreement and meeting minimum contract requirements.

5. Determining that this activity is categorically exempt from CEQA pursuant to CEQA Guidelines §15330.

STAFF RECOMMENDATIONS:
Approve requested actions.

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

COUNCIL DISTRICT(S):	City Wide
COMMUNITY AREA(S):	City Wide
ENVIRONMENTAL IMPACT:	This activity is categorically exempt from CEQA pursuant to CEQA Guidelines §15330 (Minor actions to prevent, minimize, stabilize, mitigate or eliminate the release or threat of release of hazardous waste or hazardous substances)".
CITY CLERK INSTRUCTIONS:	Send all copies of resolutions to Hamid Fathi at MS1103A

COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE: 1/13/2016
ORIGINATING DEPARTMENT: Environmental Services
SUBJECT: As Needed Environmental Consultant Services Agreement with Ninyo & Moore Related to Site Assessment and Mitigation Activities (H156457).
COUNCIL DISTRICT(S): City Wide
CONTACT/PHONE NUMBER: Craig Fergusson/858-627-3311 &1103A

DESCRIPTIVE SUMMARY OF ITEM:
This action is to authorize an as-needed agreement with Ninyo & Moore not-to-exceed $1,000,000 for five years. The agreement will provide as-needed services related to Site Assessment and Mitigation (SAM) activities related to Unauthorized Release (UR) cases in which the City has been named the responsible party.
STAFF RECOMMENDATION:
Approve requested actions.
EXECUTIVE SUMMARY OF ITEM BACKGROUND:
In Accordance with A.R. 25.60 (Selection of Consultants for work requiring Licensed Architect and Engineering Skills) and C.P. 300-07 (Consultant Services Selection), the Environmental Services Department's Tank Engineering and Environmental Management (TEEM) Program advertised a request for proposal (RFP) for As Needed Environmental Consultant Services Agreement SAM Activities and received proposals from nine consulting firms. All proposals were evaluated by ESD and four firms were short listed for the final interview and evaluation. After the interviews the four firms were evaluated to select the most highly qualified firm. Ninyo & Moore was selected as the most highly qualified firm to perform as-needed consultant services on the City's behalf related to Site Assessment and Mitigation Activities related to UR cases.

The City owns and operates an inventory of underground storage tank (UST) systems that supply petroleum products (gas, diesel, and motor oil) to the City's vehicle and maintenance operations. As regulatory standards evolve, non-compliant City-owned USTs must either be upgraded to the updated standards or removed.

The work performed by Ninyo & Moore for this five-year Agreement will include assessing the degree and extent of soil and groundwater impacts from these UR cases and taking appropriate action to mitigate any impacts. Applicable regulatory standards are contained in the California Code of Regulations (Title 23, Division 3, Chapter 16, Article 11) and in the California Health & Safety Code (Chapter 6.7, Section 25296).

ESD's TEEM Program has maintained consulting agreements for performance of mandated Site Assessment and Mitigation activities since 1987. The most recent 5-year consulting services agreement expired in May 2015.

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

Goal #2: Work in partnership with all of our communities to achieve safe and livable neighborhoods.
Objective #1: Protect lives, property, and the environment through timely and effective response in all communities.

FISCAL CONSIDERATIONS:
Funding for individual task orders will be secured from the specific departments that are responsible for the facilities where the unauthorized release occurred. The remaining UR case has active claims in place with the State Cleanup Fund (Brown Field Airport). For like projects, "seed" funding has previously been secured from the responsible department. Once seed funding has been expended, the TEEM Program submits a claim to the Cleanup Fund for reimbursement of eligible expenses and these funds are then returned to the project to cover costs of subsequent assessment and mitigation phases.

Funding requests to the responsible department will need to be made in instances where the City does not have an active or eligible claim in place with the Cleanup Fund or in instances where residual seed money is insufficient to accomplish mandated assessment or mitigation tasks.

Other than the initial award requested in this action of $6,853.50, funds are not to be encumbered or expended until such time as specific projects are identified and the City Comptroller certifies that the necessary funds are, or will be, on deposit with the City. It is imperative, however, that the City continues to allocate funds for assessment and mitigation work when requested. Chapter 6.7, Section 25299(d)(1) of the California Health and Safety Codes provides for a civil penalty of up to $10,000 per day for failure to adhere to corrective action requirements in response to an unauthorized release.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE): This Agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Sections 22.2701 through 22.2708) and Non-Discrimination 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):None

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None. There are no known groups expressing support or opposition to this project.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Key stakeholders are the citizens of San Diego. Task proposals implemented under this agreement will have a beneficial impact to the surrounding community. Unauthorized petroleum releases to soil and groundwater within the City of San Diego will be assessed and mitigated to ensure there are no adverse impacts to public health or the environment.

Sierra, Mario
Originating Department

Gomez, Paz
Deputy Chief/Chief Operating Officer

THE CITY OF SAN DIEGO

SUBMIT

Request for Human Resources Approval for Purchase Requisition

FEB 27 2015

(Contracting Out Review Request Form)

Requesting Department: Environmental Services

Vendor Name: TBD

WBS No. or Project Title: As-Needed Environmental Consulting Services for Site Assessment and Mitigation Activities

Purchase Requisition # (if available): TBD

Department Contact: Craig Fergusson

Date of Request: 02/27/2015

Contract Amount/Estimate: $ 1,000,000.00

Contract/Service Duration: 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@sandiego.gov or MS 56L

Question	Department Response
What is the contract/service for? (Please be specific as to the scope of work)	Completing Site Assessment and Mitigation activities related to Unauthorized Release cases in which the City is named the responsible party. Scope includes preparation of workplans, field implementation (including provision of lab, drilling, and support services), and reporting. Additional services may include Phase I and Phase II environmental site assessments, preparation of SPCC plans, field support related to contaminated soil and/or groundwater encountered on City construction projects, underground storage tank (UST) and aboveground storage tank (AST) system design, and preparation of health and safety plans.
What is the location of the project/service?	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. The services solicited under this agreement are of a highly specialized nature, requiring knowledge of complex environmental regulations, OSHA requirements, and other code requirements.

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?	Services have been contracted out for more than 25 years Ninyo & Moore (2010-2015)(H104905) Geocon (2005-2010)(approx) EBS & Geocon (2000-2005)(approx) EMCON (1995-2000)(approx) Tetra Tech (1990-1995)(approx)
Is this a Public Works project? * (i.e. construction, reconstruction or repair of City buildings, street or other facilities)	No
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?	No. The ESD TEEM Program is responsible for overseeing Citywide Site Assessment and Mitigation activities. There are no other departments that can provide these services. ATTACH

***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.

Human Resources Department Liaison

3/4/15
Date

AGREEMENT BETWEEN

THE CITY OF SAN DIEGO

AND

NINYO & MOORE

FOR

AS-NEEDED ENVIRONMENTAL CONSULTING SERVICES FOR SITE ASSESSMENT AND MITIGATION ACTIVITIES

CONTRACT NUMBER: H156457

AGREEMENT FOR DESIGN PROFESSIONAL SERVICES

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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
(DD) Consultant's Past Participation 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 - Equal Benefits Ordinance Certification of Compliance

Exhibit K - Regarding Information Requested under the California Public Records Act

Exhibit L - Americans With Disabilities Act (ADA) Compliance Certification

AS-NEEDED AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND NINYO & MOORE FOR DESIGN PROFESSIONAL SERVICES

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation [City], and Ninyo & Moore [Design Professional] to provide the City with as-needed civil, geological, and environmental engineering services in connection with site assessment and mitigation for unauthorized release cases of aboveground and underground storage tanks in which the City is named the responsible party [Professional Services].

RECITALS

The City wants to retain the services of a professional civil, geological and environmental 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 substantially the same or similar Professional Services during the term of this Agreement.

1.2 Task Administrator. The Environmental Services 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 Environmental Services 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 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 $1,000,000. 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 civil, geological and environmental 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.

4.3.1.5 Contractors Pollution Liability Insurance. Design Professional must procure and maintain at Design Professional's expense or require Subcontractor, as described below to procure and maintain, the Contractors Pollution Liability Insurance including contractual liability coverage to cover liability arising out of cleanup, removal, storage, or handling of hazardous or toxic chemicals, materials, substances, or any other pollutants by Design Professional or any Subcontractor in an amount not less than $2,000,000 limit for bodily injury and property damage.

All costs of defense must be outside the limits of the policy. Any such insurance provided by Subcontractor instead of Design Professional must be approved separately in writing by the City.

For approval of a substitution of Subcontractor's insurance, Design Professional must certify that all activities for which the Contractors Pollution Liability Insurance will provide coverage will be performed exclusively by the Subcontractor providing the insurance. The deductible must not exceed $25,000 per claim.

The policy must include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization. There must be no endorsement or modification of the coverage limiting the scope of coverage for either "insured vs. insured" claims or contractual liability.

Occurrence based policies must be procured before the work commences and must be maintained for the term of the Agreement. Claims Made policies must be procured before the work commences, must be maintained for the term of the Agreement, and must include a 12 month extended Claims Discovery Period applicable to this Agreement or the existing policy or policies must continue to be maintained for 12 months after the completion of the work without advancing the retroactive date.

Except as provided for under California law, the policy or policies must provide that the City is entitled to 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.

4.3.1.6 Contractors Hazardous Transporters Pollution Liability Insurance. Design Professional must provide at Design Professional's expense or require Subcontractor to provide, as described below Contractors Hazardous Transporters Pollution Liability Insurance including contractual liability coverage to cover liability arising out of transportation of hazardous or toxic, materials, substances, or any other pollutants by Design Professional or any Subcontractor in an amount not less than $2,000,000 limit per occurrence/aggregate for bodily injury and property damage.

All costs of defense must be outside the limits of the policy. The deductible must not exceed $25,000 per claim. Any such insurance provided by a Subcontractor instead of Design Professional must be approved separately in writing by the City.

For approval of the substitution of Subcontractor's insurance the Design Professional shall certify that all activities for which Contractors Hazardous Transporters Pollution Liability Insurance will provide coverage will be performed exclusively by the Subcontractor providing the insurance.

The policy must include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization. There must be no endorsement or modification of the coverage limiting the scope of coverage for either "insured vs. insured" claims or contractual liability. Occurrence based policies must be procured before the work commences and must be maintained for the term of the Agreement. Claims Made policies must be procured before the work commences, must be maintained for the term of the Agreement, and must include a 12 month extended Claims Discovery Period applicable to this Agreement or the existing policy or policies must continue to be maintained for 12 months after the completion of the work under this Agreement without advancing the retroactive date.

Except as provided for under California law, the policy or policies must provide that the City is entitled to 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.

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.

4.3.4.4 Contractors Pollution Liability Insurance Endorsements.

4.3.4.4.1 Additional Insured.

a) The policy or policies must be endorsed to include as an Additional Insured the City 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, e.g., your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled, or used by you; except that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of § 2782 of the California Civil Code apply, this endorsement must not provide any duty of indemnity coverage for the active negligence of the City and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City and its respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of §2782 of the California Civil Code.

b) In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City and its respective elected officials,

officers, employees, agents, and representatives that is not covered because of California Insurance Code §11580.04, the insurer's obligation to the City and its respective elected officials, officers, employees, agents, and representatives must be limited to obligations permitted by California Insurance Code §11580.04.

4.3.4.4.2 **Primary and Non-Contributory Coverage.** The policy or policies must be endorsed to provide that the insurance afforded by the Contractors Pollution Liability Insurance policy or policies is primary to any insurance or self-insurance of the City and its elected officials, officers, employees, agents and representatives with respect to operations including the completed operations of the Named Insured. Any insurance maintained by the City and its elected officials, officers, employees, agents and representatives must be in excess of your insurance and must not contribute to it.

4.3.4.4.3 **Severability of Interest.** For Contractors Pollution Liability Insurance, the policy or policies must provide that your insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and must provide cross-liability coverage.

4.3.4.5 **Contractors Hazardous Transporters Pollution Liability Insurance Endorsements.**

4.3.4.5.1 **Additional Insured.**

a) The policy or policies must be endorsed to include as an Additional Insured the City 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, e.g., your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled, or used by you; except that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of §2782 of the California Civil Code apply, this endorsement must not provide any duty of indemnity coverage for the active negligence of the City and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City and its respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of §2782 of the California Civil Code.

b) In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City and its respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code §11580.04, the insurer's obligation to the City and its respective elected officials, officers, employees, agents, and representatives must be limited to obligations permitted by California Insurance Code §11580.04.

4.3.4.5.2 **Primary and Non-Contributory Coverage.** The policy or policies must be endorsed to provide that the insurance afforded by the Contractors Pollution Liability Insurance policy or policies is primary to any insurance or self-insurance of the City and its elected officials, officers, employees, agents and representatives with respect to operations including the completed operations of the Named Insured. Any insurance maintained by the City and its elected officials, officers, employees, agents and representatives must be in excess of your insurance and must not contribute to it.

4.3.4.5.3 **Severability of Interest.** For Contractors Hazardous Transporters Pollution Liability Insurance, the policy or policies must provide that your insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and must provide cross-liability coverage.

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 Professional 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 and 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 Agreement 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, 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 Agreement 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 Agreement and may result in remedies being ordered against the Design Professional up to and including Agreement 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 attorney's fees and all damages sustained as a result of the violation.

4.11 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the Professional Services provided under this Agreement, upon the City's request, the Design Professional, its agents, officers, and employees agree to assist in resolving the dispute or litigation [Mandatory Assistance]. The Design Professional's Mandatory 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, as amended from time to time, and any and all Best Management Practice guidelines and pollution elimination requirements as may be established by the Enforcement Official. Further, the Design Professional shall prepare and incorporate into the construction documents a Storm Water Pollution Prevention Plan (SWPPP) to be implemented by the contractor during construction of any project that is subject to the Construction General Permit, California State Water Resources Control Board Order No. 2009-009-DWQ, as amended from time to time. Where applicable, the SWPPP shall comply with both the California Construction General Permit and City of San Diego Municipal Separate Storm Sewer National Pollution Discharge Elimination System permit requirements and any municipal regulations adopted pursuant to those permits.

4.19 ADA Certification. The Design Professional hereby certifies [Exhibit L] 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 Subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

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

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

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

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

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

> **4.20.3.1.** For agreements entered into on or after April 1, 2015, Design Professional and their Subcontractors 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 Subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Design Professional shall be held responsible for the compliance of their Subcontractors with sections 1777.5, 1777.6 and 1777.7.

4.20.5. Working Hours. Design Professional and their Subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of $25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections1810 through 1815.

4.20.6. Required Provisions for Subcontracts. Design Professional shall include at a minimum a copy of the following provisions in any contract they enter into with a Subcontractor: California Labor Code sections 1771, 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 Subcontractor 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 Subcontractor 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 Subcontractor is registered prior to proposal due date; (2) within twenty-four hours after the proposal due date, the Subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the Subcontractor is replaced by another registered Subcontractor 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 solely be addressed in Section 6.2 below, to the fullest extent permitted by law, Design Professional shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees [Indemnified Parties] from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Design Professional or its Subcontractors), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by the Design Professional, any Subcontractor, anyone directly or indirectly employed by them, or anyone that they control. The Design Professional's duty to defend, indemnify, protect and hold harmless shall not include any claims

or liabilities arising from the active negligence, sole negligence or sole willful misconduct of the Indemnified Parties.

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. 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 Agreement, City shall be entitled, upon written notice to Design Professional, to withhold some or all of such payment.

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

ARTICLE IX
MISCELLANEOUS

9.1 **Notices.** In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. For the purpose of this Agreement, unless otherwise agreed in writing, notice to the City shall be addressed to: Environmental Services Department, 9601 Ridgehaven Court, San Diego, CA 92123 and notice to the Design Professional shall be addressed to: Ninyo & Moore, 5710 Ruffin Road, San Diego, CA 92123.

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

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

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

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

Professional's Professional Services is based on the particular professional expertise of the following members of the Design Professional's organization **Mr. Stephan Beck, Program Manager; Mr. Adrian Olivares, Project Manager; Mr. Stephan Waide, Health & Safety Advisor; Ms. Beth Abramson-Beck, Project Geologist and Mr. Gene Berkland, Project Engineer**. 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. This Agreement is subject to the Equal Benefits Ordinance [EBO]. All consultants are required to complete the Equal Benefits Ordinance Certification of Compliance included herein as Exhibit J. Effective January 1, 2011, any contract awarded from this solicitation is subject to the City of San Diego's Equal Benefits Ordinance [EBO], Chapter 2, Article 2, Division 43 of the San Diego Municipal Code [SDMC].

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

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

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

9.24 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 K (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 Subcontractors, shall be precluded from participating in any future contract

for services, that is subsequently required/created as a result of the Professional Services provided under this Agreement.

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IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor, pursuant to R-_____, authorizing such execution, and by the Design Professional pursuant to the "Certificate of the President" document, dated November 10, 2015.

Dated this _____ day of _____, _____.

THE CITY OF SAN DIEGO
Mayor or Designee

By_____

I HEREBY CERTIFY I can legally bind Ninyo & Moore and that I have read all of this Agreement, this 22 day of JANUARY, 2016.

By_____

Stephan Beck
Principal

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

AS-NEEDED ENVIRONMENTAL CONSULTING SERVICES FOR SITE ASSESSMENT AND MITIGATION ACTIVITIES (H156457)

1.0 GENERAL DESCRIPTION

The City's Tank Engineering and Environmental Management (TEEM) Program is seeking to retain a consultant for the primary purpose of completing Site Assessment and Mitigation (SAM) activities related to Unauthorized Release (UR) cases in which the City has been named the responsible party. Additional services that may be requested on an as-needed basis include: Preparation of Phase I and Phase II Property Assessments; Preparation of Spill Prevention Control and Countermeasure (SPCC) Plans; Field Support related to Contaminated Soil and/or Groundwater Encountered on City Construction Projects; Underground Storage Tank (UST) and Aboveground Storage Tank (AST) System Design; Health Risk Assessments; Fate and Transport Studies, and Health and Safety Plans.

2.0 DESIGN PROFESSIONAL RESPONSIBILITIES

2.1 All work performed by the Design Professional on City UR cases shall be in accordance with current standards of the State and Regional Water Resources Control Boards (SWRCB / RWQCB), County of San Diego Department of Environmental Health (DEH), DEH Site Assessment and Mitigation (SAM) Manual, State Air Resources Board (ARB), County of San Diego Air Pollution Control District (APCD), and directives issued by the DEH case manager for individual UR cases.

2.2 Design Professional shall provide in-house technical resources related to field

oversight and report writing. All work under this Agreement shall be managed under the direct oversight of a technical manager who is familiar with the SAM process, as administered within the County of San Diego, and possesses required professional registration within the State of California.

2.3 Design Professional shall also provide all required support services for SAM work, including utility mark outs, saw cutting, laboratory services (mobile and fixed lab), drilling services (traditional and push methods), surveying, and characterization / disposal of any drummed purge water and soil cuttings.

2.4 Design Professional shall also perform Phase I and II Property Assessments, when requested by the City, which shall be performed in accordance with the most current publication of the ASTM E1527 standard, the EPA "All Appropriate Inquiry" standard, or other accepted standard as appropriate for the specific designated project.

2.5 SPCC Plans shall be performed in accordance with EPA 40 CFR Part 112 and the State of California Aboveground Petroleum Storage Act (APSA) standard.

3.0 LICENSE AND CERTIFICATION REQUIREMENTS

3.1 Design Professional shall ensure that all technical reporting and field work is performed under the direct supervision or oversight of a Registered Geologist, Certified Engineering Geologist, Registered Civil Engineer, or Certified Hydro-geologist who holds a current State of California registration. All technical reports and correspondence shall be signed by this registered professional.

3.2 Design Professional shall ensure that all drilling services is performed by a company holding a current C57 State of California driller's license. As specified in the County of San Diego DEH SAM Manual, permit applications for project-specific drilling events will require evidence of a $7,500 bond posted with the DEH.

3.3 Design Professional shall ensure that all laboratory services is performed by a

company holding a current certification with the State of California, Health and Human Services Agency, Environmental Laboratory Accreditation Program.

3.4 Design Professional shall ensure that all waste streams generated during soil drilling or groundwater sampling activities under this Agreement shall be managed in accordance with State and Federal regulations. Hazardous waste streams shall be transported for treatment or disposal by a State-registered waste hauler. All waste transfer, storage, or disposal facilities (TSDFs) utilized by the Design Professional shall hold current operating permits in their respective state and shall be certified to process the waste classification in question (i.e., RCRA Hazardous, California Hazardous Non-RCRA, or California Non-Hazardous).

4.0 ANTICIPATED PROJECTS

Specific projects the City anticipates to be part of the Professional Services include:

1) Brown Field Airport (UR Case # H 10618-016) – Perform additional site activities in accordance with a Corrective Action Plan (CAP) that is being prepared under the current as-needed consultant agreement. It is anticipated that the CAP will be recommending unmonitored natural attenuation. There are currently 12 monitoring wells extending to a perched water layer at approximately 70-feet and to the regional water table at depths of approximately 180-200 feet.

2) Western Police Division (UR Case # H 01782-001) – Case closure is pending. It is anticipated that the network of 19 monitoring wells and SVE wells and below-grade conveyance piping will be removed under the current as-needed consultant agreement. If closure is delayed beyond the expiration of the current consultant agreement, then the City anticipates that the above-noted activities will be completed under this Agreement.

3) Fire Repair Facility (UR Case # H 19194-004) - Case closure is pending. It is anticipated that the network of 4 monitoring wells will be removed under the current as-needed consultant agreement. If closure is delayed beyond the expiration of the current consultant agreement, then the City anticipates that the

above-noted activities will be completed under this Agreement.

END OF SCOPE OF SERVICES

EXHIBIT B

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:	

EXHIBIT C

COMPENSATION AND FEE SCHEDULE

Exhibit C

COMPENSATION AND FEE SCHEDULE

NINYO & MOORE
CITY OF SAN DIEGO CONTRACT NO. H156457

HOURLY CHARGES FOR PERSONNEL

Principal Engineer/Geologist/Environmental Scientist	$ 165
Senior Engineer/Geologist/Environmental Scientist	$ 139
Project Manager	$ 139
Project/Associate Engineer/Geologist/Environmental Scientist	$ 119
Staff Engineer/Geologist/Environmental Scientist	$ 99
Staff Engineer/Geologist/Environmental Scientist*	$ 135
Senior Field/Laboratory Technician	$ 92
Senior Field/Laboratory Technician*	$ 128
Field/Laboratory Technician	$ 79
Field Laboratory Technician*	$ 110
GIS Analyst/Technical Illustrator/CAD Operator	$ 73
Geotechnical/Environmental/Laboratory Assistant	$ 79
Data Processing, Technical Editing, or Reproduction	$ 59

OTHER CHARGES

Mileage will be reimbursed at the City of San Diego's current reimbursable rate.
Direct Project Expenses (such as laboratory testing, geophysical equipment, and other special equipment provided upon request):

For projects not subject to the California UST Cleanup Fund Cost Guidelines	Cost plus 5%
For projects subject to the California UST Cleanup Fund Cost Guidelines	Cost plus 10%

ITEMS NOT LISTED

Other items not specifically listed will be charged at rates equivalent to the Underground Storage Tank Cleanup Fund-approved rates (January 2014).
Website link is:
http://www.waterboards.ca.gov/water_issues/programs/ustcf/docs/cost_guidelines/costguidelinesupd.pdf

RATES

Rates may be adjusted annually upon submittal of written justification to the City of San Diego, and after written approval from the City of San Diego. The schedule of fees does not include prevailing wage rates.

PREVAILING WAGES

* Indicates labor classifications that are subject to Prevailing Wages based on Prevailing Wage Determinations made by the State of California, Director of Industrial Relations on a semiannual basis.

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 Subcontractor 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.

EXHIBIT D

EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)

CONSULTANT REQUIREMENTS

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I. **City's Equal Opportunity Commitment.** The City of San Diego (City) is strongly committed to equal opportunity for employees and Subcontractors of Consultants doing business with the City. The City encourages its Consultants to share this commitment. Consultants are encouraged to take positive steps to diversify and expand their Subcontractor solicitation base and to offer consulting opportunities to all eligible Subcontractors. ***Failure to submit the required EOCP documentation indicated below shall result in a determination of the Consultant being non-responsive.***

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

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

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

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

B. Subcontractor Participation List. The Subcontractor Participation List (Attachment 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. **Demonstrated Commitment to Equal Opportunity.** The City seeks to foster a business climate of inclusion and to eliminate barriers to inclusion.

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

1. Outreach Efforts. Description of Consultant's outreach efforts undertaken on this project to make subcontracting opportunities available to all interested and qualified firms including SLBE/ELBE/DBE/MBE/WBE/DVBE/OBE.

2. Past Participation Levels. The Consultant shall list all Subcontractor and Supplier past participation levels on each project (preferably in the City or County of San Diego) in response to Section 6.2.3 of the RFP by using the Past Participation List (Attachment DD). Include the name of project, type of project, value of project, Subcontractor and Supplier firm name, Subcontract amount and identification of the firm's ownership as a certified Minority Enterprise (MBE), Women Business Enterprise (WBE), Disadvantaged Business Enterprise (DBE), Disabled Veteran Business Enterprise (DVBE), Other Business Enterprise (OBE), Small Disadvantaged Business (SDB), Woman Owned Small Business (WOSB), Service Disabled Veteran Owned Business (SDVOSB), Historically Underutilized Business Zones (Hub Zone), Emerging Local Business Enterprise (ELBE) or Small Local Business Enterprise (SLBE). To receive credit for past participation levels by certified firms, Consultant shall provide copies of all listed consultant's certifications with the Proposal.

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

4. Community Activities. Listing of Consultant's current community activities such as membership and participation in local organizations, associations, scholarship programs, mentoring, apprenticeships, internships, community projects, charitable contributions and similar endeavors.

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

VI. **Definitions.**

Commercially Useful Function: an 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, an 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 which is at least fifty-one percent (51%) owned and operated by one or more socially and economically disadvantaged individuals and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, socially and economically disadvantaged individuals.

Disabled Veteran Business Enterprise (DVBE): a certified business which is at least fifty-one percent (51%) owned by one or more veterans with a service related disability and whose management and daily operation is controlled by the qualifying party(ies). 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 which is at least fifty-one percent (51%) owned by African Americans, American Indians, Asians, Filipinos, Latinos, or a combination and whose management and daily operation is controlled by one or more members of the identified ethnic groups. In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, one or more members of the identified ethnic groups.

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

VII. Certification.

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 Angles 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.

VIII. List of Attachments.

AA. Disclosure of Discrimination Complaints
BB. Work Force Report
CC. Subcontractors List
DD. Consultant Past Participation List

DISCLOSURE OF DISCRIMINATION COMPLAINTS

As part of its proposal, the Design Professional must provide to the City a list of all instances within the past 10 years where a complaint was filed or pending against the Design Professional in a legal or administrative proceeding alleging that Design Professional 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.

[X] The undersigned certifies that within the past 10 years the Design Professional has NOT been the subject of a complaint or pending action in a legal administrative proceeding alleging that Design Professional discriminated against its employees, subcontractors, vendors or suppliers.

[ ] The undersigned certifies that within the past 10 years the Design Professional has been the subject of a complaint or pending action in a legal administrative proceeding alleging that Design Professional 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

Design Professional Name Ninyo & Moore Geotechnical and Environmental Sciences Consultants

Certified By Avram Ninyo Title Principal Engineer

Name

Signature Date 1/25/2016

USE ADDITIONAL FORMS AS NECESSARY

ATTACHMENT BB

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 ☐ Other

Name of Company: Ninyo & Moore Geotechnical and Environmental Sciences Consultants

AKA/DBA:

Address (Corporate Headquarters, where applicable): 5710 Ruffin Road

City San Diego County San Diego State CA Zip 92123

Telephone Number: (858) 576-1000 FAX Number: (858) 576-9600

Name of Company CEO: Avram Ninyo

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

Address:

City County State Zip

Telephone Number: ( ) FAX Number: ( ) Email:

Type of Business: Geotechnical/Environmental Engineering Type of License: Business

The Company has appointed: Elaine Autus

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: 5710 Ruffin Road, San Diego, California 92123

Telephone Number: (858) 576-1000 FAX Number: (858) 576-9600 Email: eautus@ninyoandmoore.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 Ninyo & Moore
(Firm Name)

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

herein is true and correct. This document was executed on this 25th day of January, 20 16.

(Authorized Signature) Avram Ninyo
(Print Authorized Signature)

WORK FORCE REPORT – NAME OF FIRM: Ninyo & Moore DATE: 1/25/2016

OFFICE(S) or BRANCH(ES): 5710 Ruffin Road, San Diego, CA 92123 COUNTY: San Diego

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

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

OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Management & Financial			2							1	9	4		
Professional	1										9	2	1	
A&E, Science, Computer									1		1			
Technical	1	1	5				1				21	3		
Sales														
Administrative Support		2	1	1						2	1	9	2	
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*														

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

Totals Each Column	2	3	8	1			1		1	3	41	18	3	

Grand Total All Employees	81

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

Disabled														

Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

CITY OF SAN DIEGO WORK FORCE REPORT – ADMINISTRATIVE

HISTORY

The Work Force Report (WFR) is the document that allows the City of San Diego to analyze the work forces of all firms wishing to do business with the City. We are able to compare the firm's work force data to County Labor Force Availability (CLFA) data derived from the United States Census. CLFA data is a compilation of lists of occupations and includes the percentage of each ethnicity we track (Black, Hispanic, Asian, American Indian, Filipino) for each occupation. Currently, our CLFA data is taken from the 2010 Census. In order to compare one firm to another, it is important that the data we receive from the consultant firm is accurate and organized in the manner that allows for this fair comparison.

WORK FORCE & BRANCH WORK FORCE REPORTS

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

MANAGING OFFICE WORK FORCE

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

TYPES OF WORK FORCE REPORTS

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

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

[2] Branch Work Force *

[3] Managing Office Work Force

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

Exhibit: Work Force Report Job categories

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

Management & Financial

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

Professional

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

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

Architecture & Engineering, Science, Computer

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

Technical

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

Sales

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

Administrative Support

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

Services

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

Crafts

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

Operative Workers

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

Transportation

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

Laborers

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

ATTACHMENT CC

SUBCONTRACTOR PARTICIPATION LIST

This list shall include the name and complete address of all Subcontractors who qualify as SLBEs or ELBEs. Consultants 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.

Subcontractors shall be used in the percentages listed. **NOTE:** If percentages are listed as a range, the **minimum number identified** in the range will be used to calculate overall subcontractor participation.

No changes to this Participation List will be allowed without prior written City approval. The Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.

NAME AND ADDRESS SUBCONTRACTORS	SCOPE OF SERVICES	PERCENT OF CONTRACT	**SLBE/ELBE** (MBE/ WBE/DBE/ DVBE/OBE*)	WHERE CERTIFIED**
ABC Liovin Drilling 1380 Danielson, Poway, CA	Drilling	5%	SBE	CADogs
Ace Excavating and Env 1020 Greenfield, El Cajon, CA	UST, Utilities, Grading, Demolition	9%	SLBE, SBE	City/CADoGS
BBC Environmental 3593 Adams, San Diego, CA	Groundwater Services	5%	SLBE, SBE	City/CADoGS
Cascade Drilling 11442 Woodside Ave. N., Santee CA	Drilling	5%	OBE	
Del Mar Environmental and Construction 629 Del Mar, Chula Vista, CA	UST, Remediation, Remedial Construction, Hazardous Waste Management, Disposal, SPCC	9%	ELBE, SBE, 8 (A)	City
H&P Mobile Geochemistry, Inc. 2470 Impala, Carlsbad, CA	Drilling and Analytical Testing Lab	2%	WBE, SBE, DBE	SBA/CADoGS CPUC/CALTRANS
Hopwood Land Surveying 1354 N. Coast Hwy 101, Encinitas, CA	Land Surveying	1%	SBE	CADoGS
Orange Coast Analytical 3002 Dow Ave., Ste 532, Tustin, CA	Analytical Testing Lab	5%	SBE, WBE	CADoGS/SBA
Southwest Geophysics 8057 Raytheon, San Diego, CA	Geophysical Surveys	2%	SLBE, SBE	City/CADoGS

List of Abbreviations:

Small Local Business Enterprise	**SLBE**
Emerging Local Business Enterprise	**ELBE**
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*

* *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) Consultant Requirements.*

ATTACHMENT DD

CONSULTANT PAST PARTICIPATION LIST

The Consultant shall complete this form for each project listed in response to RFP. The Consultant Past Participation List shall include name, address, telephone number (including area code), classification, type of work, dollar amount of participation, certification, and certifying agency for each Subcontractor or Supplier who participated in the referenced project.

NAME OF PROJECT: City of San Diego - Fire Station 32

TYPE OF PROJECT: Groundwater Sampling, Well Abandonment DOLLAR VALUE OF CONTRACT: $53,738

NAME, ADDRESS AND TELEPHONE NUMBER OF SUBCONTRACTOR	CONTRACTOR, DESIGNER, SUPPLIER, OR VENDOR	TYPE OF WORK PERFORMED, MATERIALS OR SUPPLIES	DOLLAR AMOUNT OF SUBCONTRACTOR PARTICIPATION OR MATERIALS OR SUPPLIES	MBE, WBE, DBE, DVBE, OBE, ELBE, SLBE, SDB, WoSB, HUBZone, OR SDVOSB①	WHERE CERTIFIED②
Name: Baja Exploration Address: 246 Vista Grande Glen City: Escondido State: CA Zip: 92025 Phone: 760/737-6896	Contractor	Drilling Services	$15,356.25	SB (micro)	CADoGS
Name: BBC Environmental. Inc. Address: 3593 Adams Avenue City: San Diego State: CA Zip: 92116 Phone: 619/546-7165	Contractor	Groundwater Sampling	$165.00	SLBE, SB (micro)	CITY, CADoGS
Name: American Environmental Testing Lab Address: 2834 and 2908 N Naomi Street City: Burbank State: CA Zip: 91504 Phone: 818/845-8200	Vendor	Analytical Laboratory Testing	$4.098.27	SB (micro)	CADoGS

① As appropriate, Design Professional shall identify Subcontractors or Suppliers as one of the following and shall include a valid proof of certification (except for OBE):

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	Certified Emerging Local Business Enterprise	ELBE
Certified Small Local Business Enterprise	SLBE	Small Disadvantaged Business	SDB
Woman-Owned Small Business	WoSB	HUBZone Business	HUBZone
Service-Disabled Veteran Owned Small Business	SDVOSB		

② As appropriate, Design Professional shall indicate if Subcontractor or Subcontractor is certified by:

City of San Diego	CITY	State of California Department of Transportation	CALTRANS
California Public Utilities Commission	CPUC	San Diego Regional Minority Supplier Diversity Council	SRMSDC
State of California's Department of General Services	CADoGS	City of Los Angeles	LA
State of California	CA	U.S. Small Business Administration	SBA

The Consultant will not receive any points for past subcontracting participation percentages if the Consultant fails to submit the required proof of certification.

CONSULTANT PAST PARTICIPATION LIST

The Consultant shall complete this form for each project listed in response to RFP. The Consultant Past Participation List shall include name, address, telephone number (including area code), classification, type of work, dollar amount of participation, certification, and certifying agency for each Subcontractor or Supplier who participated in the referenced project.

NAME OF PROJECT: City of San Diego - Fire Station 32

TYPE OF PROJECT: Groundwater Sampling, Well Abandonment DOLLAR VALUE OF CONTRACT: $53,738

NAME, ADDRESS AND TELEPHONE NUMBER OF SUBCONTRACTOR	CONTRACTOR, DESIGNER, SUPPLIER, OR VENDOR	TYPE OF WORK PERFORMED, MATERIALS OR SUPPLIES	DOLLAR AMOUNT OF SUBCONTRACTOR PARTICIPATION OR MATERIALS OR SUPPLIES	MBE, WBE, DBE, DVBE, OBE, ELBE, SLBE, SDB, WoSB, HUBZone, OR SDVOSB①	WHERE CERTIFIED②
Name: EFR Environmental Services Address: PO Box 2269 City: Alpine State: CA Zip: 91903 Phone: 619/722-6781	Vendor	Waste Disposal	$1,457.50	SB (micro), WBE	CADoGS, CPUC
Name: Address: City: State: Zip: Phone:					
Name: Address: City: State: Zip: Phone:					

① As appropriate, Design Professional shall identify Subcontractors or Suppliers as one of the following and shall include a valid proof of certification (except for OBE):

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	Certified Emerging Local Business Enterprise	ELBE
Certified Small Local Business Enterprise	SLBE	Small Disadvantaged Business	SDB
Woman-Owned Small Business	WoSB	HUBZone Business	HUBZone
Service-Disabled Veteran Owned Small Business	SDVOSB		

② As appropriate, Design Professional shall indicate if Subcontractor or Subcontractor is certified by:

City of San Diego	CITY	State of California Department of Transportation	CALTRANS
California Public Utilities Commission	CPUC	San Diego Regional Minority Supplier Diversity Council	SRMSDC
State of California's Department of General Services	CADoGS	City of Los Angeles	LA
State of California	CA	U.S. Small Business Administration	SBA

The Consultant will not receive any points for past subcontracting participation percentages if the Consultant fails to submit the required proof of certification.

ATTACHMENT DD

CONSULTANT PAST PARTICIPATION LIST

The Consultant shall complete this form for each project listed in response to RFP. The Consultant Past Participation List shall include name, address, telephone number (including area code), classification, type of work, dollar amount of participation, certification, and certifying agency for each Subcontractor or Supplier who participated in the referenced project.

NAME OF PROJECT: City of San Diego - Fire Station 35

TYPE OF PROJECT: Borings, and Well Installations and Reporting DOLLAR VALUE OF CONTRACT: $66, 475

NAME, ADDRESS AND TELEPHONE NUMBER OF SUBCONTRACTOR	CONTRACTOR, DESIGNER, SUPPLIER, OR VENDOR	TYPE OF WORK PERFORMED, MATERIALS OR SUPPLIES	DOLLAR AMOUNT OF SUBCONTRACTOR PARTICIPATION OR MATERIALS OR SUPPLIES	MBE, WBE, DBE, DVBE, OBE, ELBE, SLBE, SDB, WoSB, HUBZone, OR SDVOSB①	WHERE CERTIFIED②
Name: ABC Liovin Drilling, Inc. Address: 1180 East Burnett Street City: Signal Hill State: CA Zip: 90755 Phone: 562/981-8575	Contractor	Drilling	$10, 252.00	SBE	CADoGS
Name: American Environmental Testing Address: 2834 & 2908 North Naomi Street City: Burbank State: CA Zip: 91504 Phone: 818/545-8200	Vendor	Analytical Testing Laboratory	$1,081.08	SB (micro)	CADoGS
Name: EFR Environmental Services Address: PO Box 2669 City: Alpine State: CA Zip: 91903-2669 Phone: 619/722-6781	Vendor	Waste Hauling	$2,300.00	SB (micro), WBE	CADoGS, CPUC

① As appropriate, Design Professional shall identify Subcontractors or Suppliers as one of the following and shall include a valid proof of certification (except for OBE):

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	Certified Emerging Local Business Enterprise	ELBE
Certified Small Local Business Enterprise	SLBE	Small Disadvantaged Business	SDB
Woman-Owned Small Business	WoSB	HUBZone Business	HUBZone
Service-Disabled Veteran Owned Small Business	SDVOSB		

② As appropriate, Design Professional shall indicate if Subcontractor or Subcontractor is certified by:

City of San Diego	CITY	State of California Department of Transportation	CALTRANS
California Public Utilities Commission	CPUC	San Diego Regional Minority Supplier Diversity Council	SRMSDC
State of California's Department of General Services	CADoGS	City of Los Angeles	LA
State of California	CA	U.S. Small Business Administration	SBA

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CONSULTANT PAST PARTICIPATION LIST

The Consultant shall complete this form for each project listed in response to RFP. The Consultant Past Participation List shall include name, address, telephone number (including area code), classification, type of work, dollar amount of participation, certification, and certifying agency for each Subcontractor or Supplier who participated in the referenced project.

NAME OF PROJECT: City of San Diego - Fire Station 35

TYPE OF PROJECT: Borings, and Well Installations and Reporting DOLLAR VALUE OF CONTRACT: $66,475

NAME, ADDRESS AND TELEPHONE NUMBER OF SUBCONTRACTOR	CONTRACTOR, DESIGNER, SUPPLIER, OR VENDOR	TYPE OF WORK PERFORMED, MATERIALS OR SUPPLIES	DOLLAR AMOUNT OF SUBCONTRACTOR PARTICIPATION OR MATERIALS OR SUPPLIES	MBE, WBE, DBE, DVBE, OBE, ELBE, SLBE, SDB, WoSB, HUBZone, OR SDVOSB①	WHERE CERTIFIED②
Name: H&P Mobile Geochemistry Address: 2470 Impala Drive City: Carlsbad State: CA Zip: 92010 Phone: 760/804-9678	Contractor/Vendor	Drilling and Mobile Analytical Testing	$8,831.02	SB (micro), WBE, DBE	SBA/CADoGS/ CPUC, CALTRANS
Name: Southwest Geophysics Address: 8057 Raytheon Road, Suite 9 City: San Diego State: CA Zip: 92111 Phone: 858/527-0849	Contractor	Geophysical Survey	$1,417.50	SLBE, SB (micro)	CITY, CADoGS
Name: Address: City: State: Zip: Phone:					

① As appropriate, Design Professional shall identify Subcontractors or Suppliers as one of the following and shall include a valid proof of certification (except for OBE):

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	Certified Emerging Local Business Enterprise	ELBE
Certified Small Local Business Enterprise	SLBE	Small Disadvantaged Business	SDB
Woman-Owned Small Business	WoSB	HUBZone Business	HUBZone
Service-Disabled Veteran Owned Small Business	SDVOSB		

② As appropriate, Design Professional shall indicate if Subcontractor or Subcontractor is certified by:

City of San Diego	CITY	State of California Department of Transportation	CALTRANS
California Public Utilities Commission	CPUC	San Diego Regional Minority Supplier Diversity Council	SRMSDC
State of California's Department of General Services	CADoGS	City of Los Angeles	LA
State of California	CA	U.S. Small Business Administration	SBA

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CONSULTANT PAST PARTICIPATION LIST

The Consultant shall complete this form for each project listed in response to RFP. The Consultant Past Participation List shall include name, address, telephone number (including area code), classification, type of work, dollar amount of participation, certification, and certifying agency for each Subcontractor or Supplier who participated in the referenced project.

NAME OF PROJECT: City of San Diego - Mission Trails Golf Course

TYPE OF PROJECT: CAP Implementation DOLLAR VALUE OF CONTRACT: $54,385

NAME, ADDRESS AND TELEPHONE NUMBER OF SUBCONTRACTOR	CONTRACTOR, DESIGNER, SUPPLIER, OR VENDOR	TYPE OF WORK PERFORMED, MATERIALS OR SUPPLIES	DOLLAR AMOUNT OF SUBCONTRACTOR PARTICIPATION OR MATERIALS OR SUPPLIES	MBE, WBE, DBE, DVBE, OBE, ELBE, SLBE, SDB, WoSB, HUBZone, OR SDVOSB①	WHERE CERTIFIED②
Name: American Environmental Testing Address: 2834 & 2908 North Naomi Street City: Burbank State: CA Zip: 91504 Phone: 818/545-8200	Vendor	Analytical Testing Laboratory	$3,972.96	SB (micro)	CADoGS
Name: Baja Exploration Address: 246 Vista Grande Glen City: Escondido State: CA Zip: 92025 Phone: 760/737-6896	Contractor	Drilling	$7,000.00	SB (micro)	CADoGS
Name: EFR Environmental Services, Inc. Address: P.O. Box 2669 City: Alpine State: CA Zip: 91903-2669 Phone: 619/722-6781	Vendor	Waste Hauling	$2,688.60	SB (micro), WBE	CADoGS, CPUC

① As appropriate, Design Professional shall identify Subcontractors or Suppliers as one of the following and shall include a valid proof of certification (except for OBE):

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	Certified Emerging Local Business Enterprise	ELBE
Certified Small Local Business Enterprise	SLBE	Small Disadvantaged Business	SDB
Woman-Owned Small Business	WoSB	HUBZone Business	HUBZone
Service-Disabled Veteran Owned Small Business	SDVOSB		

② As appropriate, Design Professional shall indicate if Subcontractor or Subcontractor is certified by:

City of San Diego	CITY	State of California Department of Transportation	CALTRANS
California Public Utilities Commission	CPUC	San Diego Regional Minority Supplier Diversity Council	SRMSDC
State of California's Department of General Services	CADoGS	City of Los Angeles	LA
State of California	CA	U.S. Small Business Administration	SBA

The Consultant will not receive any points for past subcontracting participation percentages if the Consultant fails to submit the required proof of certification.

CONSULTANT PAST PARTICIPATION LIST

The Consultant shall complete this form for each project listed in response to RFP. The Consultant Past Participation List shall include name, address, telephone number (including area code), classification, type of work, dollar amount of participation, certification, and certifying agency for each Subcontractor or Supplier who participated in the referenced project.

NAME OF PROJECT: City of San Diego - Mission Trails Golf Course

TYPE OF PROJECT: Cap Implementation DOLLAR VALUE OF CONTRACT: $54,385

NAME, ADDRESS AND TELEPHONE NUMBER OF SUBCONTRACTOR	CONTRACTOR, DESIGNER, SUPPLIER, OR VENDOR	TYPE OF WORK PERFORMED, MATERIALS OR SUPPLIES	DOLLAR AMOUNT OF SUBCONTRACTOR PARTICIPATION OR MATERIALS OR SUPPLIES	MBE, WBE, DBE, DVBE, OBE, ELBE, SLBE, SDB, WoSB, HUBZone, OR SDVOSB①	WHERE CERTIFIED②
Name: Southwest Geophysics Address: 8057 Raytheon Road, Suite 9 City: San Diego State: CA Zip: 92111 Phone: 858/527-0849	Contractor	Geophysical Survey	$400.00	SLBE, SB (micro)	CITY, CADoGS
Name: Address: City: State: Zip: Phone:					
Name: Address: City: State: Zip: Phone:					

① As appropriate, Design Professional shall identify Subcontractors or Suppliers as one of the following and shall include a valid proof of certification (except for OBE):

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	Certified Emerging Local Business Enterprise	ELBE
Certified Small Local Business Enterprise	SLBE	Small Disadvantaged Business	SDB
Woman-Owned Small Business	WoSB	HUBZone Business	HUBZone
Service-Disabled Veteran Owned Small Business	SDVOSB		

② As appropriate, Design Professional shall indicate if Subcontractor or Subcontractor is certified by:

City of San Diego	CITY	State of California Department of Transportation	CALTRANS
California Public Utilities Commission	CPUC	San Diego Regional Minority Supplier Diversity Council	SRMSDC
State of California's Department of General Services	CADoGS	City of Los Angeles	LA
State of California	CA	U.S. Small Business Administration	SBA

The Consultant will not receive any points for past subcontracting participation percentages if the Consultant fails to submit the required proof of certification.

EXHIBIT E

CONSULTANT CERTIFICATION FOR A DRUG-FREE WORKPLACE

PROJECT TITLE: As-Needed Environmental Consulting Services

Site Assessment and Mitigation Activities

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:

Ninyo & Moore Geotechnical and Environmental Sciences Consultants

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 Avram Ninyo

Title Principal Engineer

Date January 25, 2016

EXHIBIT F

INSTRUCTION SHEET FOR

DISCLOSURE DETERMINATION FOR CONSULTANT (Form CC-1671)

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

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

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

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

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

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

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

EXHIBIT F

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: Ninyo & Moore Geotechnical and Environmental Sciences Consultants

3. Address, City, State, ZIP: 5710 Ruffin Road, San Diego, CA 92123

4. Project Title (as shown on 1472, "Request for Council Action"): As-Needed Environmental Consulting Services
   Site Assessment and Mitigation Activities

5. Consultant Duties for Project: Environmental Consulting Services

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

[x] Consultant <u>will not</u> be "making a governmental decision" or "serving in a staff capacity." No disclosure required.

- or -

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

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

- or -

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

_____

By: Avram Ninyo, Principal Engineer — 1/25/2016

[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.

EXHIBIT F

DEFINITION OF "CONSULTANT"

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

(A) Makes a governmental decision whether to:

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

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

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

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

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

EXHIBIT G

CITY OF SAN DIEGO, CALIFORNIA

COUNCIL POLICY

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

BACKGROUND:

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

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

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

PURPOSE:

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

POLICY:

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

LEED (Leadership in Energy and Environmental Design):

The LEED (Leadership in Energy and Environmental Design) Green Building Rating System is a voluntary, consensus-based national standard for developing high-performance, sustainable 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 contaminates that are odorous or potentially irritating to provide installer(s) and occupant(s) health and comfort. Low-emitting materials will include adhesives, paints, coatings carpet systems, composite wood and agri-fiber products.

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

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

EXHIBIT G

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

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

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

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

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

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

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

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

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

EXHIBIT G

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):	2a. Name and address of Consultant:
1b. Brief Description:	2b. Consultant's Project Manager: Phone: ( )
1c. Budgeted Cost: $ WBS/IO:	

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

4. & 5. CONTRACT DATA (DESIGN PHASE ☐ OR CONSTRUCTION SUPPORT ☐)

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:

% 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 ( ) _____
(name and address)

5b. Superintendent _____

5c. Notice to Proceed _____ (date)

5d. Working days _____ (number)

5e. Actual Working days _____ (number)

5f. Change Orders:

Errors/Omissions	_____ % of const. cost	$ _____
Unforeseen Conditions	_____ % of const. cost	$ _____
Changed Scope	_____ % of const. cost	$ _____
Changed Quantities	_____ % of const. cost	$ _____
Total Construction Cost		$ _____

6. OVERALL RATING FOR DESIGN PHASE ☐ OR FOR CONSTRUCTION SUPPORT ☐

	Excellent	Satisfactory	Poor
6a. Quality of Plans/Specifications/As-Builts	☐	☐	☐
Compliance with Contract & Budget	☐	☐	☐
Responsiveness to City Staff	☐	☐	☐

6b. Overall Rating _____

7. AUTHORIZING SIGNATURES

7a. Project Manager _____ Date _____

7b. Section Head _____ Date _____

Section II — SPECIFIC RATING

DESIGN EVALUATION	EXCELLENT	SATISFACTORY	POOR	N/A
Plans/Specifications accuracy	☐	☐	☐	☐
Plans/Specs coordination	☐	☐	☐	☐
Plans/Specs properly formatted	☐	☐	☐	☐
Code Requirements covered	☐	☐	☐	☐
Adherence to City design standards	☐	☐	☐	☐
Attitude toward Client and review bodies	☐	☐	☐	☐
Follows direction and chain of responsibility	☐	☐	☐	☐
	☐	☐	☐	☐
	☐	☐	☐	☐

COMPLIANCE WITH CONTRACT & BUDGET	EXCELLENT	SATISFACTORY	POOR	N/A
Reasonable agreement negotiation	☐	☐	☐	☐
Adherence to fee schedule	☐	☐	☐	☐
Adherence to project budget	☐	☐	☐	☐
Timely responses	☐	☐	☐	☐
Timeliness in notifying City of major issues	☐	☐	☐	☐
Work product delivered on time	☐	☐	☐	☐
	☐	☐	☐	☐

CONSTRUCTION SUPPORT EVALUATION	EXCELLENT	SATISFACTORY	POOR	N/A
Drawing reflect existing conditions	☐	☐	☐	☐
As-Built drawings	☐	☐	☐	☐
Quality design	☐	☐	☐	☐
Change orders due to design deficiencies are minimized	☐	☐	☐	☐
Timely responses	☐	☐	☐	☐
Attitude toward Client and review bodies	☐	☐	☐	☐
Follows direction and chain of responsibility	☐	☐	☐	☐
Work product delivered on time	☐	☐	☐	☐
Timeliness in notifying City of major problems	☐	☐	☐	☐
Resolution of Field problems	☐	☐	☐	☐
Value Engineering Analysis	☐	☐	☐	☐
	☐	☐	☐	☐
	☐	☐	☐	☐
	☐	☐	☐	☐
	☐	☐	☐	☐
	☐	☐	☐	☐
	☐	☐	☐	☐

Section III — SUPPLEMENTAL INFORMATION

(Please ensure to attach additional documentation as needed.)

Item_____ _____

:

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Item_____ _____

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Item_____ _____
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Item_____ _____
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(*Supporting documentation attached: Yes ☐ No ☐)

EXHIBIT I

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 Environmental Consulting Services for Site Assessment and Mitigation Activities

Contract Number H156457

B. BIDDER/PROPOSER INFORMATION:

Ninyo & Moore Geotechnical and Environmental Sciences Consultants

Legal Name		DBA	
5710 Ruffin Road, San Diego, California 92123			
Street Address	City	State	Zip
C. Wood Hays, Principal Env. Manager	858/576-1000	858/576-9600	
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: 3 / 3 / 87 State of incorporation: CA

List corporation's current officers: President: Avram Ninyo
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?

EXHIBIT I

☐ 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?

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, Kearny Mesa Branch

   Point of Contact: Ryan Heath, Business Specialist

   Address: 9360 Clairemont Mesa Boulevard, San Diego, California 92123

   Phone Number: 858/597-4443

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: County of San Diego, Department of General Services

Contact Name and Phone Number: Jeff Redlitz, 858/694-8834

Contact Email: jeff.redlitz@sdcounty.gov

Address: 5560 Overland Avenue, San Diego, CA 92123

Contract Date: 8/15/11

Contract Amount: $3,000,000

Requirements of Contract: Site Assessment and Mitigation

Company Name: City of San Diego, Economic Development Department

Contact Name and Phone Number: James Davies, 619/236-6540

Contact Email: jdavies@sandiego.gov

Address: 1200 Third Avenue, 14th Floor, MS 56D, San Diego, CA 92101

Contract Date: 8/19/13

Contract Amount: $250,000

Requirements of Contract: Site Assessment for Brownfield Properties

EXHIBIT I

Company Name: City of San Diego, Environmental Services Department

Contact Name and Phone Number: Craig Fergusson, 858/627-3311

Contact Email: cfergusson@sandiego.gov

Address: 9601 Ridgehaven Court, Suite 310, San Diego, CA 92123

Contract Date: 8/13/10

Contract Amount: $1,000,000

Requirements of Contract: Site Assessment and Mitigation

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: ABC Liovin Drilling

Contact Name and Phone Number: Rick Hastings, Project Manager, 562/981-8575 ext. 719

Contact Email: rick@abcdrilling.com

Address: 1380 Danielson, Poway, California 92064

Contract Date

Sub-Contract Dollar Amount: 5% of contract

Requirements of Contract:

What portion of work will be assigned to this subcontractor: Drilling Services

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: Ace Excavating and Environmental Services

Contact Name and Phone Number: Eric Wood, Vice President, 619/441-4900

Contact Email: eric@ace.sdcoxmail.com

Address: 1020 Greenfield, El Cajon, California 92021

Contract Date

Sub-Contract Dollar Amount: 9% of contract

Requirements of Contract:

What portion of work will be assigned to this subcontractor: UST, Utilites, Grading, Demolition

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.

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: BBC Environmental Inc

Contact Name and Phone Number: Walter Craig, President

Contact Email: w,craig@bbcenvironmental.com

Address: 3593 Adams Avenue, San Diego, CA 92116

Contract Date

Sub-Contract Dollar Amount: 5% of contract

Requirements of Contract:

What portion of work will be assigned to this subcontractor: Groundwater Services

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: Cascade Drilling

Contact Name and Phone Number: Manny Marquez, Operations Manager, 619/596-0644

Contact Email: marquez@cascadedrilling.com

Address: 11442 Woodside Ave. N., Santee, CA 92071

Contract Date

Sub-Contract Dollar Amount: 5% of contract

Requirements of Contract:

What portion of work will be assigned to this subcontractor: Drilling Services

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.

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: Del Mar Environmental and Construction Services, Inc.

Contact Name and Phone Number: Juan Diez de Bonilla, President, 619/638-3670

Contact Email: jdiezdebonilla@dmecservices.com

Address: 629 Del Mar Avenue, Chula Vista, CA 91910

Contract Date

Sub-Contract Dollar Amount: 9% of contract

Requirements of Contract:

What portion of work will be assigned to this subcontractor: UST, Remediation, Remedial, Construction, Hazardous Waste Management, Disposal, SPCCs

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: H&P Mobile Geochemistry, Inc.

Contact Name and Phone Number: Louise Adams, President, 760/804-9678

Contact Email: louise.adams@handpmg.com

Address: 2470 Impala Drive, Carlsbad, CA 92010

Contract Date

Sub-Contract Dollar Amount: 2% of contract

Requirements of Contract:

What portion of work will be assigned to this subcontractor: Drilling and Mobile Analytical Testing Services

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.

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: Hopwood Land Surveying

Contact Name and Phone Number: Clive Hopwood, Owner, 760/738-9636

Contact Email: clive@hopwood.be

Address: 1354 N. Coast Hwy 101, #D, Encinitas, CA 92024

Contract Date

Sub-Contract Dollar Amount: 1% of contract

Requirements of Contract:

What portion of work will be assigned to this subcontractor: Land Surveying

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: Orange Coast Analytical

Contact Name and Phone Number: Mark Noorani, Laboratory Director, 714/832-0064

Contact Email: markn@ocalab.com

Address: 3002 Dow Ave., Suite 532, Tustin, CA 92780

Contract Date

Sub-Contract Dollar Amount: 5% of contract

Requirements of Contract:

What portion of work will be assigned to this subcontractor: Analytical Testing Services

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.

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: Southwest Geophysics

Contact Name and Phone Number: Hans Van de Vrugt, President, 858/527-0849

Contact Email: hvandevrugt@southwestgeophysics.com

Address: 8057 Raytheon Road, Suite 9, San Diego, CA 92111

Contract Date _____

Sub-Contract Dollar Amount: 2% of contract

Requirements of Contract: _____

What portion of work will be assigned to this subcontractor: Geophysical Surveys

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: Not Applicable

Owned ☐ Rented ☐ Other ☐ (explain below)

If Owned, Quantity Available: _____

Year, Make & Model: _____

Explanation: _____

Equipment Description: _____

Owned ☐ Rented ☐ Other ☐ (explain below)

If Owned, Quantity Available: _____

Year, Make & Model: _____

Explanation: _____

Equipment Description: _____

Owned ☐ Rented ☐ Other ☐ (explain below)

If Owned, Quantity Available: _____

Year, Make & Model: _____

Explanation: _____

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 ____/____/____.

EXHIBIT I

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.

Avram Ninyo, Principal Engineer		1/25/2016
Name and Title	Signature	Date

EXHIBIT I

City of San Diego
CONTRACTOR STANDARDS
Pledge of Compliance Attachment "A"

Provide additional information in space below. Use additional Attachment "A" pages as needed. Each page must be signed. Print in ink or type responses and indicate question being answered.

I have read the matters and statements made in this Contractor Standards Pledge of Compliance and attachments there to and I know the same to be true of my own knowledge, except as to those matters stated upon information or belief and as to such matters, I believe the same to be true. I certify under penalty of perjury that the foregoing is true and correct.

Avram Ninyo, Principal Engineer		1/25/2016
Print Name, Title	Signature	Date

EXHIBIT J

EQUAL BENEFITS ORDINANCE

CERTIFICATION OF COMPLIANCE

EXHIBIT J

EQUAL BENEFITS ORDINANCE CERTIFICATION OF COMPLIANCE

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

COMPANY INFORMATION

Company Name: Ninyo & Moore Geotechnical and Environmental Sciences Consultants	Contact Name: Elaine Autus
Company Address: 5710 Ruffin Road, San Diego, CA 92123	Contact Phone: 858/576-1000
	Contact Email: eautus@ninyoandmoore.com

CONTRACT INFORMATION

Contract Title: As-Needed Env. Consulting Services for Site Assessment and Mitigation Activitie	Start Date:
Contract Number (if no number, state location): H156457	End Date:

SUMMARY OF EQUAL BENEFITS ORDINANCE REQUIREMENTS

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

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

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

CONTRACTOR EQUAL BENEFITS ORDINANCE CERTIFICATION

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

☑ I affirm **compliance** with the EBO because my firm *(contractor must select one reason):*

- ☐ Provides equal benefits to spouses and domestic partners.
- ☐ Provides no benefits to spouses or domestic partners.
- ☐ Has no employees.
- ☐ Has collective bargaining agreement(s) in place prior to January 1, 2011, that has not been renewed or expired.

☐ I request the City's approval to pay affected employees a **cash equivalent** in lieu of equal benefits and verify my firm made a reasonable effort but is not able to provide equal benefits upon contract award. I agree to notify employees of the availability of a cash equivalent for benefits available to spouses but not domestic partners and to continue to make every reasonable effort to extend all available benefits to domestic partners.

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

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

Avram Ninyo, Principal Engineer		1/25/16
Name/Title of Signatory	Signature	Date

FOR OFFICIAL CITY USE ONLY

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

rev 02/15/2011

EXHIBIT K

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.

Ninyo & Moore Geotechnical and Environmental Sciences Consultants

Name of Firm

Signature of Authorized Representative

Avram Ninyo

Printed/Typed Name

1/25/2016

Date

EXHIBIT L

CONSULTANT CERTIFICATION

AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE CERTIFICATION

PROJECT TITLE: As-Needed Environmental Consulting Services for Site Assessment and Mitigation Activities
Contract Number H156457

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;

Ninyo & Moore Geotechnical and Environmental Sciences Consultants
(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 Avram Ninyo

Title Principal Engineer

THE CITY OF SAN DIEGO

CONSULTANT AWARD TRACKING FORM

Consultant Award Tracking Form: The purpose of this form is to track the cumulative amount of money awarded to both architectural and engineering (A&E) firms and non-A&E firms; and to ensure that the cumulative amount of money awarded to consultant does not exceed $250,000 for non-CIP funded contracts and $1,000,000 for CIP funded contracts in a fiscal year including this contract. If this cumulative award limit is exceeded, inclusive of this contract award, Council approval is required.

A copy of this form must be attached to forms Mayoral Action PA-2625, Mayoral Action 1544, Council Action 1472 and Purchase Orders for processing.

THIS SECTION TO BE COMPLETED BY CITY STAFF

Date: 2-17-16 Department Name: Environmental Services

City Project Manager: Craig Ferguson

Name of Firm: Ninyo & Moore

Project Name: As Needed Environmental Consulting Services for Site Assessment and Mitigation Activities

Contract or Amendment Amount: $ 1,000,000

Appropriate approval authority:

☐ Mayoral Action PA-2625
☐ Mayoral Action 1544
☒ Council Action 1472
☐ Purchase Order

THIS SECTION TO BE COMPLETED AND REVIEWED BY CONSULTANT

The City reserves the right to disqualify any Consultant if this tracking form is not completely and accurately executed prior to the contract award.

If it is determined subsequent to the contract award that this tracking form was not accurately executed, the underlying contract will be illegal and deemed void if awarded without Council approval and it is beyond the limits set in Municipal Code Section 22.3207. In such an instance, the City shall not be responsible for any losses or damages which may result from the void contract and reserves the right in its sole discretion to award the contract to another consultant.

Dollar amount awarded to the consultant by the City of San Diego this fiscal year (July 1 through June 30) **including this contract or amendment**: $ 1,000,000

I hereby certify that I am an authorized representative of:

NINYO & MOORE
(Name of Firm)

and that I have read and understand this form this 17TH (Day) *day of* FEBRUARY (Month) - 2016 (Year)

By [signature] C. WOOD HAYS

(SIGNATURE of Authorized Representative) (PRINTED name of Authorized Representative)

Client#: 704 NINYOMOOR1

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 12/23/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Dealey, Renton & Associates
P. O. Box 12675
Oakland, CA 94604-2675
510 465-3090 Mandy Guo

CONTACT NAME: Doris A. Chambers
PHONE (A/C, No, Ext): 510 465-3090 FAX (A/C, No): 510 452-2193
E-MAIL ADDRESS: dchambers@dealeyrenton.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Travelers Property Casualty Co	25674
INSURER B : American Automobile Ins. Co.	21849
INSURER C : Alterra Excess & Surplus Ins. C	33189
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Ninyo & Moore Geotechnical &
Environmental Sciences Consultants
5710 Ruffin Road
San Diego, CA 92123

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY	X	X	6308986R247	10/03/2015	10/03/2016	EACH OCCURRENCE	$1,000,000
	X COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$1,000,000
	CLAIMS-MADE X OCCUR						MED EXP (Any one person)	$10,000
	X Contractual						PERSONAL & ADV INJURY	$1,000,000
	X OCP						GENERAL AGGREGATE	$2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	$2,000,000
	POLICY X PRO-JECT LOC							$
A	AUTOMOBILE LIABILITY	X	X	8108986R247	10/03/2015	10/03/2016	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS / X NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
A	X UMBRELLA LIAB X OCCUR	X	X	CUP8986R247	10/03/2015	10/03/2016	EACH OCCURRENCE	$9,000,000
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$9,000,000
	DED RETENTION $							$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		X	WZP81025302	05/01/2015	05/01/2016	X WC STATU-TORY LIMITS / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N: N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N / A					E.L. EACH ACCIDENT	$1,000,000
							E.L. DISEASE - EA EMPLOYEE	$1,000,000
							E.L. DISEASE - POLICY LIMIT	$1,000,000
C	Professional Liab & Contractor's Pollution Liab.		X	MAX7PL0001977	10/03/2015	04/03/2017	$5,000,000 per Claim $5,000,000 Annl Aggr.	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

GENERAL LIABILITY POLICY EXCLUDES CLAIMS ARISING OUT OF THE PERFORMANCE OF PROFESSIONAL SERVICES.
PROJECT NAME/NUMBER: City of San Diego Contract #H156457

City of San Diego and its respective elected officials, officers, employees, agents and representatives are named as Additional Insureds to General and Auto Liability per policy form wording.
(See Attached Descriptions)

CERTIFICATE HOLDER

City of San Diego
Attn: Hamid Fathi
9601 Viewridge Court, Suite 310
San Diego, CA 92123

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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DESCRIPTIONS (Continued from Page 1)

COMMERCIAL GENERAL LIABILITY Insurance is primary and non-contributory per policy form wording. Waiver of Subrogation applies to General Liability, Auto Liability and Worker's Compensation coverage per policy form wording.
Notice of Cancellation: It is understood and agreed that in the event of cancellation of the policy for any reason other than non-payment of premium, 30 days written notice will be sent to the certificate holder by mail. In the event the policy is cancelled for non-payment of premium, 10 days written notice will be sent to the above.

PL Deductible: $25,000/claim

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED – WRITTEN CONTRACTS (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following is added to **SECTION II – WHO IS AN INSURED**:

   Any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:

   a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and

   b. If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

   The insurance provided to such additional insured is limited as follows:

   c. In the event that the Limits of Insurance of this Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement shall not increase the limits of insurance described in Section **III** – Limits Of Insurance.

   d. This insurance does not apply to the rendering of or failure to render any "professional services" or construction management errors or omissions.

   e. This insurance does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.

2. The following is added to Paragraph **4.a.** of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

   The insurance provided to the additional insured is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover. However, if you specifically agree in the "written contract requiring insurance" that this insurance provided to the additional insured under this Coverage Part must apply on a primary basis or a primary and non-contributory basis, this insurance is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured for such loss, and we will not share with that "other insurance". But this insurance provided to the additional insured still is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under any "other insurance".

3. The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

   Duties Of An Additional Insured

   As a condition of coverage provided to the additional insured:

   a. The additional insured must give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:

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i. How, when and where the "occurrence" or offense took place;

ii. The names and addresses of any injured persons and witnesses; and

iii. The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. If a claim is made or "suit" is brought against the additional insured, the additional insured must:

i. Immediately record the specifics of the claim or "suit" and the date received; and

ii. Notify us as soon as practicable.

The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. The additional insured must immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.

d. The additional insured must tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover the additional insured for a loss we cover. However, this condition does not affect whether this insurance provided to the additional insured is primary to that other insurance available to the additional insured which covers that person or organization as a named insured.

4. The following is added to the **DEFINITIONS** Section:

"Written contract requiring insurance" means that part of any written contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

a. After the signing and execution of the contract or agreement by you;

b. While that part of the contract or agreement is in effect; and

c. Before the end of the policy period.

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Insured: Ninyo & Moore Geotechnical &

Policy Number: WZP81025302

Effective Date: 05/01/2015

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT - CALIFORNIA

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be % of the California workers' compensation premium otherwise due on such remuneration.

SCHEDULE

Person or Organization	Job Description
City of San Diego Attn: Hamid Fathi 9601 Viewridge Court, Suite 310 San Diego, CA 92123	NAME OF PERSON(S) OR ORGANIZATION(S) CONT: City of San Diego and its respective elected officials, officers, employees, agents and representatives

Countersigned by _____

Authorized Representative

Form WC 04 03 06 **(1)** Printed in U.S.A.

Process Date: **Policy Expiration Date:**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AUTO COVERAGE PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

A. BLANKET ADDITIONAL INSURED

B. EMPLOYEE HIRED AUTO

C. EMPLOYEES AS INSURED

D. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

E. TRAILERS – INCREASED LOAD CAPACITY

F. HIRED AUTO PHYSICAL DAMAGE

G. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

H. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT – INCREASED LIMIT

I. WAIVER OF DEDUCTIBLE – GLASS

J. PERSONAL EFFECTS

K. AIRBAGS

L. AUTO LOAN LEASE GAP

M. BLANKET WAIVER OF SUBROGATION

A. BLANKET ADDITIONAL INSURED

The following is added to Paragraph **A.1.**, **Who Is An Insured**, of **SECTION II – LIABILITY COVERAGE**:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

B. EMPLOYEE HIRED AUTO

1. The following is added to Paragraph **A.1.**, **Who Is An Insured**, of **SECTION II – LIABILITY COVERAGE**:

An "employee" of yours is an "insured" while operating a covered "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. The following replaces Paragraph **b.** in **B.5.**, **Other Insurance**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

(1) Any covered "auto" you lease, hire, rent or borrow; and

(2) Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

C. EMPLOYEES AS INSURED

The following is added to Paragraph **A.1.**, **Who Is An Insured**, of **SECTION II – LIABILITY COVERAGE**:

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Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

D. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

1. The following replaces Paragraph **A.2.a.(2)** of **SECTION II – LIABILITY COVERAGE**:

(2) Up to $3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

2. The following replaces Paragraph **A.2.a.(4)** of **SECTION II – LIABILITY COVERAGE**:

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to $500 a day because of time off from work.

E. TRAILERS – INCREASED LOAD CAPACITY

The following replaces Paragraph **C.1.** of **SECTION I – COVERED AUTOS**:

1. "Trailers" with a load capacity of 3,000 pounds or less designed primarily for travel on public roads.

F. HIRED AUTO PHYSICAL DAMAGE

The following is added to Paragraph **A.4.**, **Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Hired Auto Physical Damage Coverage

If hired "autos" are covered "autos" for Liability Coverage but not covered "autos" for Physical Damage Coverage, and this policy also provides Physical Damage Coverage for an owned "auto", then the Physical Damage Coverage is extended to "autos" that you hire, rent or borrow subject to the following:

(1) The most we will pay for "loss" in any one "accident" to a hired, rented or borrowed "auto" is the lesser of:

(a) $50,000;

(b) The actual cash value of the damaged or stolen property as of the time of the "loss"; or

(c) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

(2) An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".

(3) If a repair or replacement results in better than like kind or quality, we will not pay for the amount of betterment.

(4) A deductible equal to the highest Physical Damage deductible applicable to any owned covered "auto".

(5) This Coverage Extension does not apply to:

(a) Any "auto" that is hired, rented or borrowed with a driver; or

(b) Any "auto" that is hired, rented or borrowed from your "employee".

G. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

The following replaces the first sentence in Paragraph **A.4.a.**, **Transportation Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

We will pay up to $50 per day to a maximum of $1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

H. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT – INCREASED LIMIT

Paragraph **C.2.. Limit Of Insurance**, of **SECTION III – PHYSICAL DAMAGE COVERAGE** is deleted.

I. WAIVER OF DEDUCTIBLE – GLASS

The following is added to Paragraph **D.**, **Deductible**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

J. PERSONAL EFFECTS

The following is added to Paragraph **A.4.**, **Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Personal Effects Coverage

We will pay up to $400 for "loss" to wearing apparel and other personal effects which are:

(1) Owned by an "insured"; and

(2) In or on your covered "auto".

This coverage only applies in the event of a total theft of your covered "auto".

No deductibles apply to Personal Effects coverage.

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K. AIRBAGS

The following is added to Paragraph **B.3.**, **Exclusions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Exclusion **3.a.** does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs **A.1.b.** and **A.1.c.**, but only:

a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;

b. The airbags are not covered under any warranty; and

c. The airbags were not intentionally inflated.

We will pay up to a maximum of $1,000 for any one "loss".

L. AUTO LOAN LEASE GAP

The following is added to Paragraph **A.4.**, **Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Auto Loan Lease Gap Coverage for Private Passenger Type Vehicles

In the event of a total "loss" to a covered "auto" of the private passenger type shown in the Schedule or Declarations for which Physical Damage Coverage is provided, we will pay any unpaid amount due on the lease or loan for such covered "auto" less the following:

(1) The amount paid under the Physical Damage Coverage Section of the policy for that "auto"; and

(2) Any:

(a) Overdue lease or loan payments at the time of the "loss";

(b) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;

(c) Security deposits not returned by the lessor;

(d) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and

(e) Carry-over balances from previous loans or leases.

M. BLANKET WAIVER OF SUBROGATION

The following replaces Paragraph **A.5.**, **Transfer Of Rights Of Recovery Against Others To Us,** of **SECTION IV – BUSINESS AUTO CONDITIONS**:

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

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November 10, 2015

CERTIFICATE OF THE PRESIDENT

TO WHOM IT MAY CONCERN:

I hereby certify that I am the President of Ninyo & Moore, a California Corporation. The following is a true excerpt from the Minutes of the Ninyo & Moore Board of Directors meeting held on June 24, 1999:

15. Empowerment of Executive Officers:

Many clients have requested letters of authorization prior to accepting the signatures of Principals on contractual documents. To clarify this situation, we hereby incorporate the following statement into the bylaws of the Corporation:

"RESOLVED, that the Corporation recognizes those employees appointed as Principals (including Division Managers) as Executive Officers of the Corporation, and empowers them to represent the Corporation in this legal capacity."

The resolution is in conformity with the Articles of Incorporation and bylaws of the Corporation, has never been modified or repealed, and is now in full force and effect.

Under this resolution, Stephan A. Beck, Principal Environmental Geologist of our San Diego, California office, is empowered to bind the Corporation.

NINYO & MOORE

Avram Ninyo, GE
Principal Engineer

Environmental Services Department

Presentation to the Environment Committee

As-Needed Environmental Consulting Services for Site Assessment and Mitigation Activities (H156457)

March 17, 2016

The City of SAN DIEGO

Background

- City of San Diego Underground Storage Tank (UST) Program established in 1987.
- Manages regulatory compliance of City-owned UST systems.
- Consulting agreements have been used since 1987 to support compliance efforts.
- Ninyo & Moore has been selected for the next agreement period.
- Agreement will be “as-needed” format, up to $1 million over 5-yrs.

Site Assessment activities in the San Pasqual Valley (2014)

Scope of Services

- Site Assessment and Mitigation.
- Phase I and II Property Assessments.
- Spill Prevention Control and Countermeasure (SPCC) Plans.
- Construction Field Support.
- UST and AST System Design.
- Health Risk Assessments.
- Fate and Transport Studies.
- Health and Safety Plans.

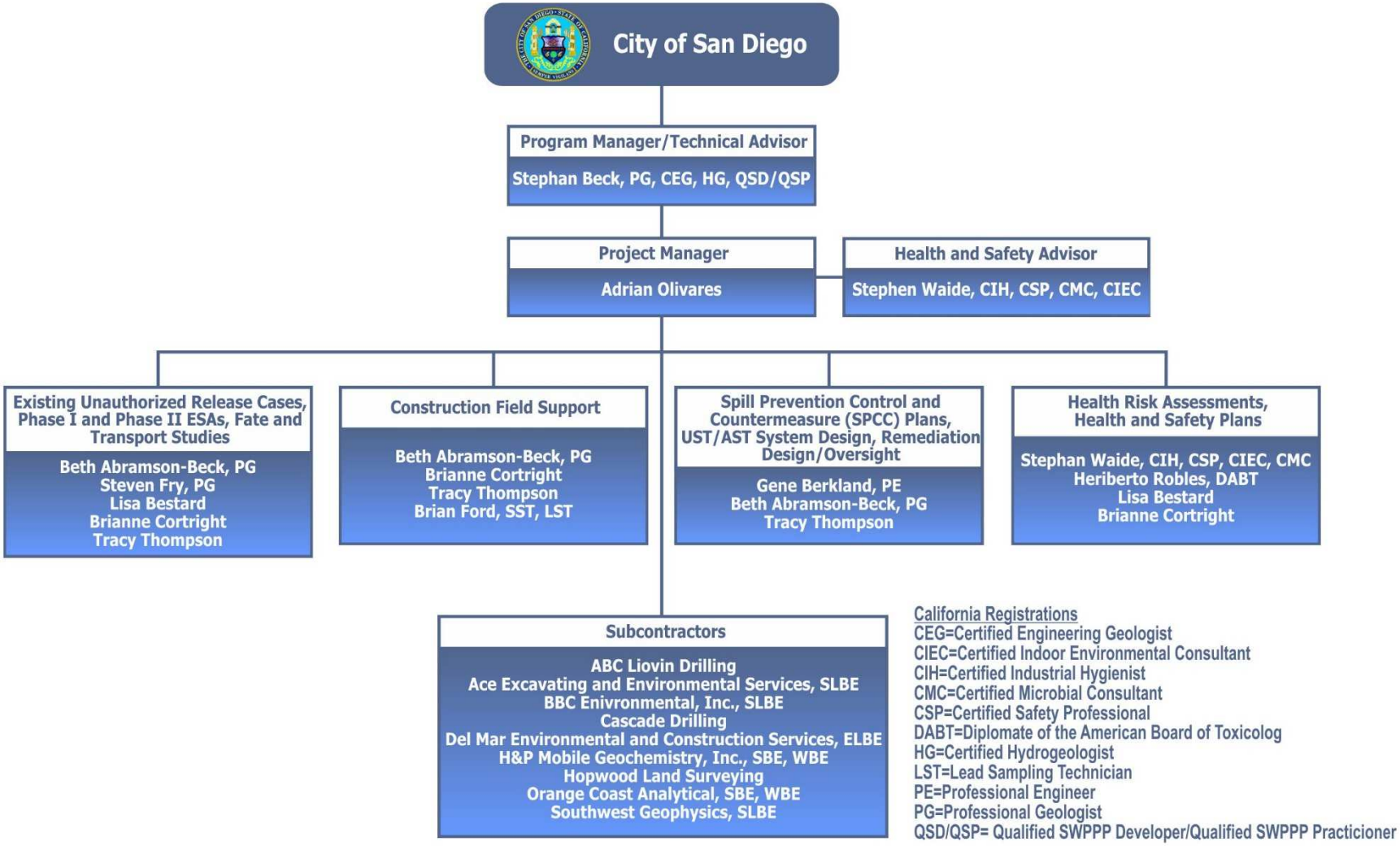
Field Support for UST Discovered during City Construction Project (2008)

Ninyo & Moore

- Established in San Diego, 1986
- Full-service firm with more than 80 Professionals in San Diego
- Extensive UST Experience
- Located 5-minutes from UST Program offices
- Personnel assigned to this contract are all San Diego based
- Ability to respond quickly to requests, meetings, and other tasks

Ninyo & Moore's San Diego Headquarters

Project Organization



California Registrations
CEG=Certified Engineering Geologist
CIEC=Certified Indoor Environmental Consultant
CIH=Certified Industrial Hygienist
CMC=Certified Microbial Consultant
CSP=Certified Safety Professional
DABT=Diplomate of the American Board of Toxicolog
HG=Certified Hydrogeologist
LST=Lead Sampling Technician
PE=Professional Engineer
PG=Professional Geologist
QSD/QSP= Qualified SWPPP Developer/Qualified SWPPP Practicioner

The City of San Diego
COMPTROLLER'S CERTIFICATE

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING DEPT. NO.: 2111

CC 3000008686

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: _____ Fund: _____

Purpose: _____

Date: _____ By: Francisco Lopez
COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA

Doc. Item	Fund	Funded Program	Internal Order	Functional Area	G/L Account	Business Area	Cost Center	WBS	Original Amount
								TOTAL AMOUNT	$0.00

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: $6,853.50

Vendor: Ninyo & Moore

Purpose: e1472 - authorize the expenditure not to exceed $6,853.50 for As Needed Environmental Consultant Services specifically for Site Assessment & Mitigation Activities for former fuel farm area - Brown Field Airport. This action includes approving a 5 year $1,000,000 as needed consultant contract with a minimum contract requirement of $1,000 that is satisfied by this encumbrance.

Date: March 10, 2016 By: Francisco Lopez
COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA

Doc. Item	Fund	Funded Program	Internal Order	Functional Area	G/L Account	Business Area	Cost Center	WBS	Original Amount
001	400629	21002391	21002391	OTHR-00-GG	512059		2111000011		$6,853.50
								TOTAL AMOUNT	$6,853.50

CC-361 (REV 7-09)

FUND OVERRIDE ☐

CC 3000008686

DOCKET SUPPORTING INFORMATION CITY OF SAN DIEGO **EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION**	DATE: March 23, 2016
SUBJECT: As-Needed Environmental Consultant Services Agreement with Ninyo & Moore Related to Site Assessment and Mitigation Activities (H156457)	

GENERAL CONTRACT INFORMATION

Recommended Consultant: Ninyo & Moore, Inc. (MBE, M Latino)

Amount of this Action: $ 6,853.50 (Task Order #01)
Total Contract Amount: $ 1,000,000.00 (Not to Exceed)

Funding Source: City of San Diego

Goal: 20% Voluntary SLBE/ELBE

SUBCONSULTANT PARTICIPATION	This Action	Percent
ABC Liovin Drilling Inc. (Not Certified, M Cauc)	$ 0.00	0.00%
Ace Excavating and Environmental Services Inc. (ELBE, M Cauc)	$ 0.00	0.00%
BBC Environmental, Inc. (SLBE, M Cauc)	$ 0.00	0.00%
Cascade Drilling (Not Certified, M Cauc)	$ 0.00	0.00%
Del Mar Environmental & Construction Services (ELBE, M Latino)	$ 370.00	5.40%
H&P Mobile Geochemistry, Inc. (WBE, F Cauc)	$ 0.00	0.00%
Hopwood Land Surveying (Not Certified, M Cauc)	$ 0.00	0.00%
Orange Coast Analytical, Inc. (WBE, F Cauc)	$ 0.00	0.00%
Southwest Geophysics, Inc. (SLBE, M Cauc)	$ 0.00	0.00%
Total Certified Participation	**$ 370.00**	**5.40%**
Total Non-Certified Participation	**$ 0.00**	**0.00%**
Total Subcontractor Participation	**$ 370.00**	**5.40%**

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required

Ninyo & Moore, Inc. submitted a Work Force Report for their San Diego employees dated, January 25, 2016 indicating 81 employees in their Administrative Work Force.

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

Latino in Professional and Administrative Support
Asian in Mgmt and Financial, Professional, Technical, and Administrative Support
Filipino in Professional and Technical
Female in Mgmt & Financial, Professional and Technical

Based on the under representations in the workforce noted above, staff has an approved Equal Employment Opportunity (EEO) Plan on file as of March 18, 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

Ninyo and Moore has committed to the following subconsultant participation levels based on the total contract amount of $1,000,000: S/ELBE - 25%; WBE 7%; OBE 11%

TC