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11/6

COMMITTEE ACTION SHEET

COUNCIL DOCKET OF

Miramar Water Treatment Plant, 2007

Supplemental Adoption Consent Unanimous Consent Rules Committee Consultant Review

R -

O -

Amendment to Agreement with CDM for Design and Construction Support Services for Miramar Water Treatment Plant and Upgrade & Expansion

Reviewed Initiated By NR&C On 7/18/07 Item No. 1a

RECOMMENDATION TO:

Approve.

VOTED YEA: Frye, Hueso, Faluconer

VOTED NAY:

NOT PRESENT: Maienschein

CITY CLERK: Please reference the following reports on the City Council Docket:

REPORT TO THE CITY COUNCIL NO.

COUNCIL COMMITTEE CONSULTANT ANALYSIS NO.

OTHER:

Water Department's Executive Summary Sheet dated July 6, 2007; Water Department's July 18, 2007, PowerPoint

COUNCIL COMMITTEE CONSULTANT

M. Regi



EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: July 6, 2007 REPORT NO: N/A
 ATTENTION: Natural Resources & Culture Committee, Agenda of July 18, 2007
 ORIGINATING DEPT.: Water Department
 SUBJECT: Second Amendment to Agreement with CDM for Design and Construction Support Services for Miramar Water Treatment Plant Upgrade and Expansion Project
 COUNCIL DISTRICT(S): Council District 5, Brian Maienschein
 STAFF CONTACT: Alex Ruiz /(619) 533-6692 and Michael Marks /(619) 533-5120

REQUESTED ACTION:

Council authorization via an Ordinance to execute a second amendment to agreement with CDM, Inc. for design and construction support services for the Miramar Water Treatment Plant Upgrade and Expansion project, and authorize the funding.

STAFF RECOMMENDATION:

Adopt the Resolutions.

EXECUTIVE SUMMARY:

As a part of the Water Department's Capital Improvements Program, the Miramar Water Treatment Plant (WTP) is scheduled for expansion from the current capacity of 140 million gallons per day (MGD) to 215 MGD to meet future water demands and upgrade its water treatment processes. This will improve operations and maintenance at the facility, and will meet the new drinking water standards set by the U.S. Environmental Protection Agency and as mandated by the California Department of Health Services (DHS) Compliance Order. Failure to meet the DHS Compliance Order dates may result in fines levied against the City of San Diego.

Because of the magnitude and complexity of upgrading and expanding a major water treatment plant, it was contemplated the project would be broken up into three construction contracts, Early Start Improvements Phase (ESIP) I, ESIP II, and Miramar WTP Upgrade and Expansion. In order to allow for more competitive local bids, proper sequencing of the work and better funding management, the Miramar WTP project was further broken up into subprojects titled Contracts A,B,C and D. This also allowed for continuous plant operation without service disruption. As of today, ESIP I and ESIP II have been completed and Contract A is over 95% complete. Contract B consists of demolition of the original filters and existing Operation Building, demolition of the existing flocculation/sedimentation basins (3 & 4), construction of 4 new flocculation / sedimentation basins (5, 6, 7 & 8) and site piping, grading, electrical and mechanical work. Contract C consists of the purchase and installation of Ozone equipment, and Contract D consists of landscape and site improvement work to complete this multi-phased project.

CDM, Inc. (CDM) is a large engineering consulting firm that has unique and specialized experience in providing design and construction support services for upgrading and expanding major water treatment plants and other similar projects. The City has executed two agreements with CDM to date, in the amount of \$29,461,662. The continued participation by CDM during the construction phase of Miramar WTP contract B, C & D is essential to the overall project success.

The Water Department is requesting to amend (via Ordinance) CDM's agreement to provide design and construction support services for the Miramar WTP for all of its remaining phases for the following reasons:

1. CDM is very familiar with the Miramar WTP project site.
2. CDM is the designer of record and is responsible to support the design during construction.
3. CDM is currently providing construction support services for Miramar WTP contract A and design services for contracts B & C. CDM has the ability to maintain consistency and continuity for Miramar WTP contracts A, B, C & D at Miramar WTP site. CDM is also aware of the operational constraints of this project.
4. Having a new consultant on board at this stage will delay the project and increase costs because of its unfamiliarity with the Miramar WTP design, and the operational needs of the WTP.

The requested action is to execute a second amendment to agreement with CDM, Inc. for design and construction support services for Miramar Water Treatment Plant Upgrade and Expansion – Contracts B, C & D and authorize the expenditure of \$3,700,000.

The Miramar WTP project (Contracts B, C & D) is covered under a Resource Protection Ordinance (RPO) Permit No. 99 0704 and Final Program EIR (LDR No. 99-0704), which was approved and certified by City Council on March 13, 2002.

FISCAL CONSIDERATIONS:

The additional cost for this second amendment to the agreement with CDM, Inc. is \$3,700,000. Funding for this action will be phase funded in FY2008, FY2009 and 2010. The Water Department expects to reimburse 80% of the costs for FY 2008 – FY 2010 from future debt issuances. The Miramar Water Treatment Plant Upgrade and Expansion is one of the CIP projects the Water Department will fund with revenues generated by the rate increases approved by the City Council on February 26, 2007.

PREVIOUS COUNCIL COMMITTEE ACTION:

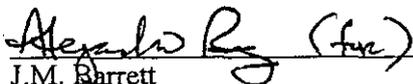
The original agreement was heard and approved at NR&C on May 15, 2002 and subsequently heard and approved at Council on August 5, 2002. The first amendment to agreement was heard and approved at Council on February 9, 2004.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

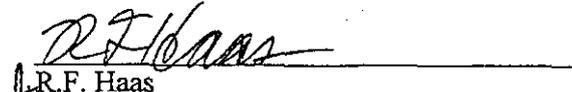
The City of San Diego Water Department has partnered with the community since the start of the Miramar Water Treatment Plant (MWTP) Upgrade and Expansion Project. In 1999, the Water Department worked with community members to form the Miramar Water Treatment Plant Community Advisory Group (CAG), which is comprised of area residents living and working in the area to help mitigate project impacts. Door hangers, fact sheets, MWTP WaterWorks newsletters, and updates on the City of San Diego Web site and community newsletters also add to the outreach efforts on behalf of the project.

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

Citywide water customers, CDM, Inc. (Design Consultant), MWH (Construction Management Consultant), Construction Contractors (to be selected), Scripps Ranch Community Advisory Group, San Diego County Water Authority and California Department of Health Services.



J.M. Barrett
Water Department Director



R.F. Haas
Deputy Chief of Public Works



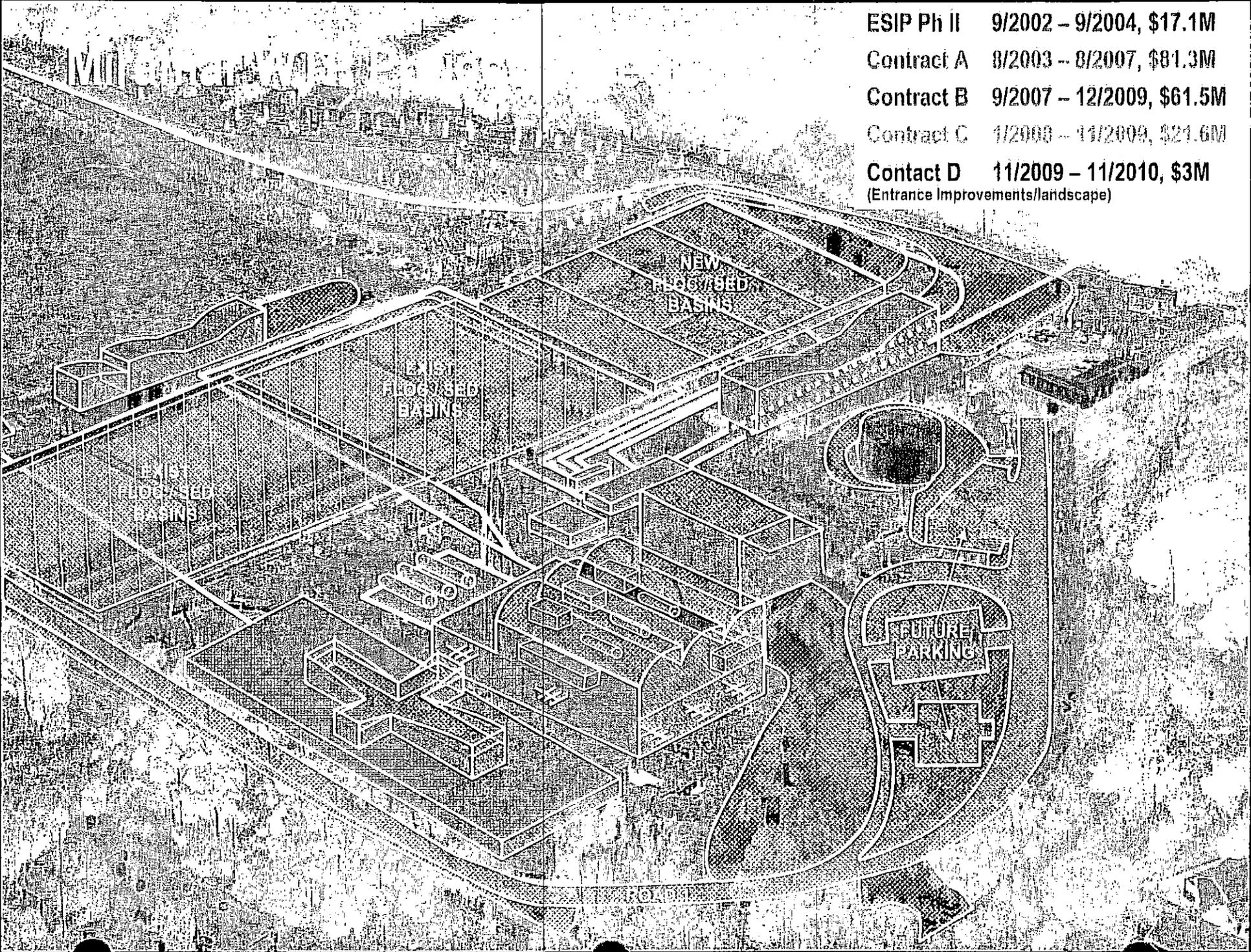
Natural Resources and Cultural Committee

Water Department

Amendment to the Agreement with CDM
Miramar Water Treatment Plant
Upgrade and Expansion



July 18, 2007



ESIP Ph II 9/2002 – 9/2004, \$17.1M
Contract A 8/2003 – 8/2007, \$81.3M
Contract B 9/2007 – 12/2009, \$61.5M
Contract C 1/2000 – 11/2009, \$21.6M
Contract D 11/2009 – 11/2010, \$3M
(Entrance Improvements/landscape)

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Overview

- WTP originally constructed in 1958 and expanded in 1975 to a capacity of 140 million gallons per day (mgd).
- EPA New Safe Drinking Water Standards.
- California Department of Health Services (DHS) Compliance Order (#04-14-96-022)
- Treatment plant separated into 6 sub-projects

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Background

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- Camp Dresser McKee, Inc. (CDM) chosen as Design Consultant for WTP Upgrade and Expansion.
- CDM is designer of record and is responsible to support the design during construction.
- CDM is currently providing construction support and is very familiar with the existing treatment plant and its operation.
- A change in consultants will delay the project and increase costs.

Schedule and Cost

13

- Prior Agreements and Amendments: \$14,388,899
 - Original Agreement under Discussion (3 Year Duration)
 - Approved August 5, 2002 for \$6,644,975
 - First Amendment (2 Year Duration)
 - Approved August 9, 2004 for \$8,427,788
 - Total: \$29,461,662
 - This Request for Second Amendment (5 Year Duration)
 - an additional \$3,700,000
- Grand Total : \$33,161,662

Requested Actions

- Amending CDM's Current Agreement beyond the original five year term to provide design and construction support services through project completion.
- Authorize the Mayor to establish funding phases and execute a consultant agreement with CDM.
- Authorize the expenditure of \$3.7 million which is phase funded in FY 2008 – 2010.

000015
EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION

DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO

DATE:

September 11, 2007

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11/6

SUBJECT: Amendment to the Agreement with CDM for Design and Construction Support Services for Miramar Water Treatment Plant Upgrade and Expansion

GENERAL CONTRACT INFORMATION

Recommended Consultant: Camp, Dresser & McKee (CDM)
Amount of this Action: \$ 3,700,000.00
Funding Source: City of San Diego

SUBCONSULTANT PARTICIPATION

	<u>This Action</u>	
Beyaz & Patel, Inc. (Male Other/DBE)	\$ 70,300.00	1.90%
Brown & Caldwell (Other)	\$ 1,106,300.00	29.90%
EMA, Inc. (Other)	\$ 347,800.00	9.40%
GEI Consultants, Inc. (Other)	\$ 29,600.00	0.80%
Katz & Associates (Other)	\$ 92,500.00	2.50%
Manuel Oncina Architects (Male Other/DBE)	\$ 62,900.00	1.70%
Process Applications, Inc. (Other)	\$ 151,700.00	4.10%
V&A Consulting Engineers (Other)	\$ 3,700.00	0.10%
Wimmer Yamada & Caughey/formerly	\$ 173,900.00	4.70%
Marum & Assoc (Other)		

Total Certified Participation	\$ 133,200.00	3.60%
Total Other Participation	\$ 1,905,500.00	51.50%
Total Subcontractor Participation	\$ 2,038,700.00	55.10%

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required

Camp, Dresser & McKee submitted a Work Force Report for their San Diego employees dated August 1, 2007 indicating 73 employees in the Administrative Work Force. The Administrative Work Force Analysis indicates underrepresentations in the following categories:

- Blacks in Professional
- Hispanics in Professional
- Filipinos in Management & Financial and Professional
- Females in Management & Financial and Technical

Although the firm's workforce has underrepresentations in Filipinos in Management & Financial and Professional, the participation level in the overall category exceeds the goal.

A comparison of Camp, Dresser & McKee's Work Force dated May 10 2007, indicates they have made some improvements to their Work Force. There is an increase of 1 Hispanic and 5 Females. Camp, Dresser & McKee had an increase of 13 employees.

ADDITIONAL COMMENTS

The *Work Force Analysis* is attached.

By MM-J

000016

File: Admn WOFO 2000

Date WOFO Submitted: 8/1/2007
Input by: SH

Goals reflect statistical labor force availability for the following: 2000 CLFA
San Diego, CA

City of San Diego/Equal Opportunity Contracting
WORK FORCE ANALYSIS REPORT

FOR
Company: Camp Dresser & McKee, Inc.

I. TOTAL WORK FORCE:

	Black			Hispanic			Asian			American Indian			Filipino			White		Other			
	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	M	F	M	F		
Mgmt & Financial Professional	3.3%	0	2	11.9%	2	0	6.2%	2	0	0.4%	0	0	6.2%	0	0	13	4	0	0		
A&E, Science, Computer Technical	4.0%	0	0	12.6%	1	2	6.5%	3	2	0.5%	0	1	6.5%	0	0	9	18	1	0		
Sales	2.8%	0	0	7.3%	0	0	16.2%	0	0	0.3%	0	0	16.2%	0	0	0	0	0	0		
Administrative Support Services	5.6%	0	0	14.8%	1	0	17.2%	0	0	0.4%	0	0	17.2%	0	0	2	0	0	0		
Crafts	3.9%	0	0	19.5%	0	0	6.8%	0	0	0.6%	0	0	6.8%	0	0	0	0	0	0		
Operative Workers	7.0%	0	0	20.8%	0	2	8.6%	0	0	0.8%	0	0	8.8%	0	0	0	8	0	0		
Transportation Laborers	5.5%	0	0	36.9%	0	0	9.7%	0	0	0.6%	0	0	9.7%	0	0	0	0	0	0		
	4.5%	0	0	25.8%	0	0	9.1%	0	0	0.7%	0	0	9.1%	0	0	0	0	0	0		
	4.3%	0	0	38.8%	0	0	20.8%	0	0	0.3%	0	0	20.8%	0	0	0	0	0	0		
	8.1%	0	0	32.1%	0	0	4.5%	0	0	0.5%	0	0	4.5%	0	0	0	0	0	0		
	4.4%	0	0	54.0%	0	0	4.1%	0	0	0.5%	0	0	4.1%	0	0	0	0	0	0		
TOTAL		0	2		4	4		5	2		0	1		0	0		24	30		1	0

HOW TO READ TOTAL WORK FORCE SECTION:

The information blocks in Section 1 (Total Work Force) identify the absolute number of the firm's employees. Each employee is listed in their respective ethnic/gender and employment category. The percentages listed under the heading of "CLFA Goals" are the County Labor Force Availability goals for each employment and ethnic/gender category.

Mgmt & Financial Professional
A&E, Science, Computer Technical
Sales
Administrative Support Services
Crafts
Operative Workers
Transportation Laborers

TOTAL EMPLOYEES			Female Goals
ALL	M	F	
23	17	6	39.8%
37	14	23	59.5%
0	0	0	22.3%
3	3	0	49.0%
0	0	0	49.4%
10	0	10	73.2%
0	0	0	62.3%
0	0	0	8.6%
0	0	0	36.7%
0	0	0	15.2%
0	0	0	11.1%
TOTAL	73	34	39

HOW TO READ EMPLOYMENT ANALYSIS SECTION:

The percentages listed in the goals column are calculated by multiplying the CLFA goals by the number of employees in that job category. The number in that column represents the percentage of each protected group that should be employed by the firm to meet the CLFA goal. A negative number will be shown in the discrepancy column for each underrepresented goal of at least 1.00 position.

II. EMPLOYMENT ANALYSIS

	Black			Hispanic			Asian			American Indian			Filipino			Female		
	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy
Mgmt & Financial Professional	0.76	2	(1.24)	2.74	2	N/A	1.43	2	N/A	0.09	0	N/A	1.43	0	(1.43)	9.15	6	(3.15)
A&E, Science, Computer Technical	1.48	0	(1.48)	4.66	3	(1.66)	2.41	5	2.60	0.19	1	N/A	2.41	0	(2.41)	22.02	23	N/A
Sales	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Administrative Support Services	0.20	0	N/A	0.44	1	N/A	0.52	0	N/A	0.01	0	N/A	0.52	0	N/A	1.47	0	(1.47)
Crafts	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Operative Workers	0.70	0	N/A	2.08	2	N/A	0.88	0	N/A	0.08	0	N/A	0.88	0	N/A	7.32	10	2.68
Transportation Laborers	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00

Goals are set by job categories for each protected group. An underrepresentation is indicated by a negative number, but if the DISCREPANCY is less than -1.00 position, a N/A will be displayed to show there is no underrepresentation.

**ATTACHMENT "CC-1"
SUBCONSULTANTS LIST**

INFORMATION REGARDING SUBCONSULTANTS PARTICIPATION:

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

NAME AND ADDRESS SUBCONSULTANTS	SCOPE OF WORK	PERCENT OF CONTRACT	DOLLAR AMOUNT OF CONTRACT	(1) MBE/WBE/ DBE/DVBE/ OBE	(2) WHERE CERTIFIED
Beyaz & Patel, Inc. 12396 World Trade Drive, Suite 317 San Diego, CA 92128	Structural Engineering	1.9%	\$110,000	MBE	Caltrans
Brown & Caldwell 400 Exchange, Ste. 100 Irvine, CA 92602	Civil, Electrical, Mechanical and Structural Engineering	29.9%	\$1,800,000		
EMA, Inc. 8885 Rio San Diego Drive, Suite 301 San Diego, CA 92108-1610	Process Control Design and Programming Services	9.4%	\$560,000		
GEI Consultants, Inc. 2141 Palomar Airport Road, Suite 160 Carlsbad, CA 92011-1463	Geotechnical Engineering Services	0.8%	\$50,000		
Katz & Associates 4250 Executive Square, Suite 670 La Jolla, CA 92037	Community Outreach Services	2.5%	\$150,000	WBE	Caltrans
Manuel Oncina Architects 5711 La Jolla Boulevard La Jolla, CA 92037	Architect	1.7%	\$100,000	MBE	Caltrans
Process Applications, Inc. 2627 Redwing Rd., Ste. 340 Fort Collins, CO 80526	Ozone Controlled Development, Process Training and Performance Testing Services	4.1%	\$250,000		
V&A Consulting Engineers (formerly DeC, Inc.) 8291 Aero Place, Ste. 110 San Diego, CA 92123	Corrosion Engineering Services	0.1%	\$7,000		
Wimmer Yamada & Caughey (formerly Marum & Assoc.) 3067 Fifth Avenue San Diego, CA 92103-5840	Landscape Architectural Services	4.7%	\$280,000	(*)	

(1) For information only. As appropriate, Proposer shall identify Subconsultants as:

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

(2) For information only. As appropriate, Proposer shall indicate if Subconsultant is certified by:

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

(*) At the beginning of the Miramar WTP Upgrade/Expansion Project (1996), staff in these "merged firms" were committed to the project via a prior firm with WBE/WBE/DBE status.

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REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY) **50**
N/A **11/6**
3. DATE: **08/13/2007**

TO: CITY ATTORNEY
2. FROM (ORIGINATING DEPARTMENT): WATER DEPARTMENT

4. SUBJECT: **AMENDMENT TO THE AGREEMENT WITH CDM FOR DESIGN AND CONSTRUCTION SUPPORT SERVICES FOR MIRAMAR WATER TREATMENT PLANT UPGRADE & EXPANSION**

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.) Alex Ruiz / Michael Marks
6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.) 533-6692 / 533-5120
7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	41500	41500	41500	9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.	760	760	760	Phase FY08: \$ 0
ORGANIZATION	391040	391040	391040	Phase FY09: \$ 2,700,000.00
OBJECT ACCOUNT	4118	4118	4118	Phase FY10: \$ 1,000,000.00
JOB ORDER	188772	189012	188762	Total Request: \$ 3,700,000.00
C.I.P. NUMBER	73-284.0 / 73-284.4	73-284.0 / 73-284.6	73-284.0 / 73-284.5	
AMOUNT	\$1,600,000.00	\$1,700,000.00	\$400,000.00	

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	<i>[Signature]</i>	8/10/07	8	DEPUTY CHIEF	<i>[Signature]</i>	10-8-07
2	E.A.S.	<i>[Signature]</i>	8-30-07	9	C.O.O.	<i>[Signature]</i>	10-1-07
3	EOCP	<i>[Signature]</i>	9-11-07	10	CITY ATTORNEY	<i>[Signature]</i>	10/15/07
4	DOCKET LIAISON	<i>[Signature]</i>	9/16/07	11	ORIG. DEPT		
5	C.F.O./FM	<i>[Signature]</i>	9/25/07	DOCKET COORD: _____ COUNCIL LIAISON _____			
6	C.F.O./AUDITOR	<i>[Signature]</i>	10/2/07	<input checked="" type="checkbox"/> COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> REFER TO: _____ COUNCIL DATE: 11/6/07			
7							

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

1. Authorizing the Mayor to execute an amendment to the Agreement with CDM, Inc. in the amount of \$3,700,000 in Water Fund 41500; CIP 73-284.0, Miramar Water Treatment Plant - Upgrade & Expansion Project; and

(Continued on other side)

11A. STAFF RECOMMENDATIONS:

Adopt the resolutions.

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

COUNCIL DISTRICT(S): COUNCIL DISTRICT 5, BRIAN MAIENSCHEN

COMMUNITY AREA(S): SCRIPPS MIRAMAR RANCH

ENVIRONMENTAL IMPACT: This activity is covered under the Miramar Water Treatment Plant Upgrade & Expansion EIR, LDR No. 99-0704. The activity is adequately addressed in the environmental document and there is no change in circumstance, additional information, or project changes to warrant additional environmental review. Because the prior environment documents adequately covered this activity as part of the previously approved project, the activity is not a separate project for purposes of CEQA review per CEQA Guidelines Sections §15060(c)(3) and 15378(c).

HOUSING IMPACT: NONE

OTHER ISSUES: NONE

CITY CLERK INSTRUCTIONS: PLEASE RETURN A COPY OF THE 1472 AND ORDINANCES TO TAMMY

FERGUSON, 533-4109, MS 913. This item required 6 votes for approval.

ATTACHMENTS: AGREEMENTS / AMENDMENT

000020

SECTION 11 – PREPARATION OF: RESOLUTIONS, ORDINANCES, ETC. (CONTINUED):

2. Authorizing an amendment via an Ordinance to the phased funded Agreement R-298874 to extend the contract time for five years and increase the compensation with CDM, Inc. by \$3,700,000; and
3. Authorizing the expenditure of \$3,700,000 from Water Fund 41500, CIP 73-284.0, Miramar Water Treatment Plant Upgrade and Expansion Project for the Amendment to the Agreement with CDM, Inc., and project related costs provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that funds are, or will be, on deposit with the City Treasurer, and authorizing the City Auditor and Comptroller to return excess budgeted funds to the appropriate reserve; and
4. Authorizing the Mayor to execute funding phases of the agreement with CDM, Inc. in the amount of \$3,700,000 as authorized in the FY2009 and FY2010 Budget Document; and
5. Authorizing the reallocation of previously authorized funds (R-298874) in the amount of \$2,800,000 from Water Fund 41500, CIP 73-284.0, Miramar Water Treatment Plant Upgrade and Expansion Project – Contract A to Miramar Treatment Plant Upgrade and Expansion Project – Contract B (\$1,350,000), Contract C (\$1,350,000) and Contract D (\$100,000) in FY2008.

RECEIVED

07 OCT 25 PM 4: 25

CITY CLERK'S OFFICE
SAN DIEGO, CA

CIVIL DIVISION
07 OCT 10 PM 2: 15
CITY ATTORNEY

1. CDM is very familiar with the Miramar WTP project site.
2. CDM is the designer of record and is responsible to support the design during construction.
3. CDM is currently providing construction support services for Miramar WTP Contract A and design services for Contracts B & C. CDM has the ability to maintain consistency and continuity for Miramar WTP Contracts A, B, C & D at Miramar WTP site. CDM is also aware of the operational constraints of this project.
4. Having a new consultant on board at this stage will delay the project and increase costs because of its unfamiliarity with the Miramar WTP design, and the operational needs of the WTP.

The requested action is to execute a second amendment to agreement with CDM, Inc. for design and construction support services for Miramar Water Treatment Plant Upgrade and Expansion – Contracts B, C & D, to extend the contract time for five years and to authorize the expenditure of \$3,700,000.

The Miramar WTP project (Contracts B, C & D) is covered under a Resource Protection Ordinance (RPO) Permit No. 99 0704 and Final Program EIR (LDR No. 99-0704), which was approved and certified by City Council on March 13, 2002.

FISCAL CONSIDERATIONS:

The additional cost for this second amendment to the agreement with CDM, Inc. is \$3,700,000. Funding for this action will be phase funded in FY2009 and 2010. The Water Department expects to reimburse 80% of the costs for FY2009 and FY2010 from future debt issuances. The Miramar Water Treatment Plant Upgrade and Expansion is one of the CIP projects the Water Department will fund with revenues generated by the rate increases approved by the City Council on February 26, 2007. The Auditor's Certificate will be issued prior to contract award.

PREVIOUS COUNCIL COMMITTEE ACTION:

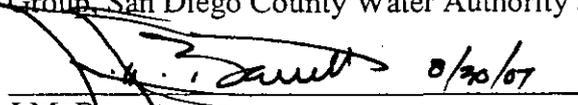
This item was approved by the Natural Resources & Culture Committee on July 18, 2007.

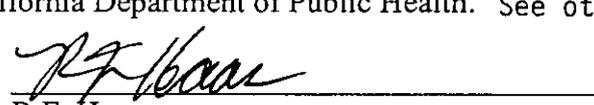
COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The City of San Diego Water Department has partnered with the community since the start of the Miramar Water Treatment Plant (MWTP) Upgrade and Expansion Project. In 1999, the Water Department worked with community members to form the Miramar Water Treatment Plant Community Advisory Group (CAG), which is comprised of area residents living and working in the area to help mitigate project impacts. Door hangers, fact sheets, MWTP WaterWorks newsletters, and updates on the City of San Diego Web site and community newsletters also add to the outreach efforts on behalf of the project.

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

Citywide Water Customers, CDM, Inc. (Design Consultant), MWH (Construction Management Consultant), Construction Contractors (to be selected), Scripps Ranch Community Advisory Group, San Diego County Water Authority and California Department of Public Health. See other side.


 J.M. Barrett
 Water Department Director


 R.F. Haas
 Deputy Chief of Public Works

SUBCONSULTANT PARTICIPATION

- Beyaz & Patel, Inc. (Male Other/DBE)
- Brown & Caldwell (Other)
- EMA, Inc. (Other)
- GEI Consultants, Inc. (Other)
- Katz & Associates (Other)
- Manuel Oncina Architects (Male Other/DBE)
- Process Applications, Inc. (Other)
- V&A Consulting Engineers (Other)
- Wimmer Yamada & Caughey/formerly
Marum & Assoc (Other)

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PROJECT WATER COST ESTIMATE

Prepared by: James Xiaowu Chen
 Date: 24-Jul-07
 W.O. No. 182482

732840

000024

Miramar WTP Upgrade & Expansion
Contract A
 (Project Title)

ACTIVITY	% OF E	CIP NO. OR OTHER SOURCE OF FUNDS				TOTALS	% OF E
		Previous	FY08 Phase This Request	FY09 Phase	FY10 Phase		
A. Planning/Design/Administration							
4114 Preliminary Engineering	1.6%	1,928,469.60			1,928,469.60		
4115 Outside Engineering - Tasks	0.1%	153,934.15			153,934.15		
4116 Construction Engineering	1.7%	2,000,955.85			2,000,955.85		
4118 Engineering Design	19.7%	26,671,662.00	(2,800,000.00)		23,871,662.00		
41181 Engineering Design #2	0.0%				0.00		
4151 Professional Services	0.0%	8,693.85			8,693.85		
4159 Construction Management	5.2%	6,315,118.00			6,315,118.00		
4222 Misc Contractual Services	0.0%	4,997.72			4,997.72		
4240 Reimbursement Agreements	0.0%				0.00		
Total Planning/Design/Administration		37,083,829.17	(2,800,000.00)	0.00	0.00	34,283,829.17	28.40%
B. Construction							
4150 Safety	0.6%	674,305.00			674,305.00		
4220 Prime Construction Contract	68.9%	83,309,426.00			83,309,426.00		
42201 Construction Contract #2	0.3%	342,297.00			342,297.00		
42220 JOC	0.0%				0.00		
4228 City Forces Work	0.2%	300,000.00			300,000.00		
4810 OCIP / Prof Liability / Bldrs Risk	0.0%	50,000.00			50,000.00		
4981 SDDPC Support	0.0%				0.00		
Total Construction		84,676,028.00	0.00	0.00	0.00	84,676,028.00	70.00%
C. Equipment and Furnishings							
3316 Pipe Fittings	0.0%				0.00		
4922 Construction Related	0.1%	141,267.53			141,267.53		
Total Equipment and Furnishings		141,267.53	0.00	0.00	0.00	141,267.53	0.10%
D. Contingencies							
4905 Contingencies	0.0%				0.00		
4909 Pooled Contingencies	1.5%	1,823,198.00			1,823,198.00		
Total Contingencies		1,823,198.00	0.00	0.00	0.00	1,823,198.00	1.50%
SUBTOTAL		123,724,322.70	(2,800,000.00)	0.00	0.00	120,924,322.70	100.00%
E. Land Aquisition							
4639 Land Acquisition		10,000.00	0.00	0.00	0.00	10,000.00	
E. Other Funding							
4279 Other Non Personal		45,321,948.00	0.00	0.00	0.00	45,321,948.00	
TOTAL PROJECT COST		169,056,270.70	(2,800,000.00)	0.00	0.00	166,256,270.70	

(When Applicable)		
SAVINGS BY USE OF CITY FORCES		
	City Forces	Contract
Labor		
Material		
Equip.		
Profit		
TOTAL	0	0

Prev. Auth. Res. #	R-287744	2,108,613.00
Prev. Auth. Res. #	R-289546	150,000.00
Prev. Auth. Res. #	R-291717	10,420,286.00
Prev. Auth. Res. #	R-294630	6,515,116.00
Prev. Auth. Res. #	R-296927	6,014,975.00
Prev. Auth. Res. #	R-297874	85,069,944.00
Prev. Auth. Res. #	Ltr. Agreement	5,000.00
Prev. Auth. Res. #	R-298188	6,658,271.00
Prev. Auth. Res. #	R-298874	8,427,788.00
Prev. Auth. Res. #	PA04-009-AC24006/75	442,452.00
Total Previous Authorized		125,812,445.00

AUTHORIZATION REQUIRED (2,800,000.00)

FUNDING: 41500

COMMENTS: Funding for FY08 Phase in the amount of \$2,800,000 in account 4118 in CIP 73-284.0, Miramar WTP Upgrade and Expansion - Contract A will be reallocated to Miramar WTP Upgrade and Expansion - Contracts B, C & D.

PROJECT WATER COST ESTIMATE

Prepared by: James Xiaowu Chen
 Date: 24-Jul-07
 W.O. No. 182482

732840
 000028

Miramar WTP Upgrade & Expansion
Contract A, B, C & D
 (Project Title)

ACTIVITY	% OF E	CIP NO. OR OTHER SOURCE OF FUNDS				TOTALS	% OF E
		Previous	FY08 Phase This Request	FY09 Phase	FY10 Phase		
A. Planning/Design/Administration							
4114 Preliminary Engineering	1.5%	1,928,469.60			1,928,469.60		
4115 Outside Engineering - Tasks	0.1%	153,934.15			153,934.15		
4116 Construction Engineering	1.6%	2,000,955.85			2,000,955.85		
4118 Engineering Design	23.8%	26,671,662.00		2,700,000.00	1,000,000.00	30,371,662.00	
41181 Engineering Design #2	0.0%					0.00	
4151 Professional Services	0.0%	8,693.85			8,693.85		
4159 Construction Management	5.0%	6,315,116.00			6,315,116.00		
4222 Misc Contractual Services	0.0%	4,997.72			4,997.72		
4240 Reimbursement Agreements	0.0%					0.00	
Total Planning/Design/Administration		37,083,829.17	0.00	2,700,000.00	1,000,000.00	40,783,829.17	32.00%
B. Construction							
4150 Safety	0.5%	674,305.00			674,305.00		
4220 Prime Construction Contract	65.4%	83,309,426.00			83,309,426.00		
42201 Construction Contract #2	0.3%	342,297.00			342,297.00		
42220 JOC	0.0%					0.00	
4226 City Forces Work	0.2%	300,000.00			300,000.00		
4810 OCIP / Prof Liability / Bids Risk	0.0%	50,000.00			50,000.00		
4981 SDDPC Support	0.0%					0.00	
Total Construction		84,676,028.00	0.00	0.00	0.00	84,676,028.00	66.50%
C. Equipment and Furnishings							
3316 Pipe Fittings	0.0%				0.00		
4922 Construction Related	0.1%	141,267.53			141,267.53		
Total Equipment and Furnishings		141,267.53	0.00	0.00	0.00	141,267.53	0.10%
D. Contingencies							
4905 Contingencies	0.0%				0.00		
4909 Pooled Contingencies	1.4%	1,823,198.00			1,823,198.00		
Total Contingencies		1,823,198.00	0.00	0.00	0.00	1,823,198.00	1.40%
SUBTOTAL		123,724,322.70	0.00	2,700,000.00	1,000,000.00	127,424,322.70	100.00%
E. Land Acquisition							
4639 Land Acquisition		10,000.00	0.00	0.00	0.00	10,000.00	
E							
4279 Other Non Personal		45,321,948.00	0.00	0.00	0.00	45,321,948.00	
TOTAL PROJECT COST		169,056,270.70	0.00	2,700,000.00	1,000,000.00	172,756,270.70	

(When Applicable)	
SAVINGS BY USE OF CITY FORCES	
City Forces	Contract
Labor	
Material	
Equip.	
Profit	
TOTAL	0 0

Prev. Auth. Res. #	R-287744	2,108,613.00
Prev. Auth. Res. #	R-289546	150,000.00
Prev. Auth. Res. #	R-291717	10,420,286.00
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Prev. Auth. Res. #	Ltr. Agreement	5,000.00
Prev. Auth. Res. #	R-298188	6,658,271.00
Prev. Auth. Res. #	R-298874	8,427,788.00
Prev. Auth. Res. #	PAD4-009-AC2400675	442,452.00
Total Previous Authorized		125,812,445.00

AUTHORIZATION REQUIRED 3,700,000.00

FUNDING: 41500

COMMENTS: Funding for FY08 Phase in the amount of \$2,800,000 in account 4118 in CIP 73-284.0, Miramar WTP Upgrade and Expansion - Contract A will be reallocated to Miramar WTP Upgrade and Expansion - Contracts B, C & D.

ORDINANCE NUMBER R- _____

DATE OF FINAL PASSAGE _____

AN ORDINANCE AUTHORIZING EXECUTION OF AN AMENDMENT TO AN AGREEMENT WITH CDM FOR DESIGN AND CONSTRUCTION SERVICES FOR MIRAMAR WATER TREATMENT PLANT; FOR EXPENDITURE OF FUNDS; AND TAKING RELATED ACTIONS.

WHEREAS, on August 5, 2002, the Council of the City of San Diego adopted Resolution R- 296927 authorizing the execution of an Agreement with Camp Dresser and McKee, Inc. [CDM], for consultant services for the Miramar Water Treatment Plant Upgrade and Expansion Project [Agreement]; and

WHEREAS, on February 9, 2004, the Council of the City of San Diego adopted Resolution R-298874 authorizing the execution of a First Amendment to the Agreement with CDM, for consultant services for the Miramar Water Treatment Plant Upgrade and Expansion Project [First Amendment]; and

WHEREAS, the Water Department of the City of San Diego has determined that it is necessary to increase the compensation to CDM for consultant services under the Agreement and to extend the term of the Agreement beyond five (5) years; NOW, THEREFORE:

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

Section 1. That the Mayor or his designee is hereby authorized to execute a Second Amendment to the Agreement with CDM increasing the funding for the Agreement by an amount not to exceed \$3,700,000 from Water Fund 41500, CIP 73-284.0, Miramar Water Treatment Plant – Upgrade and Expansion Project [Second Amendment], on file in the Office of the City Clerk as Document No. RR- _____.

Section 2. That the Mayor or his designee is hereby authorized by Ordinance to execute the Second Amendment to the Agreement to extend the Agreement term beyond five (5) years and increase the compensation to CDM by an amount not to exceed \$3,700,000.

Section 3. That the expenditure of an amount not to exceed \$3,700,000 from Water Fund 41500, CIP 73-284.0, Miramar Water Treatment Plant Upgrade and Expansion Project for the Second Amendment to the Agreement with CDM is authorized solely and exclusively for the purpose of providing funds for project related costs, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are, or will be, on deposit with the City Treasurer.

Section 4. That the Mayor or his designee is authorized to execute funding phases of the Agreement with CDM in an amount not to exceed \$3,700,000 as authorized in the FY2009 and FY2010 Budget Document.

Section 5. That the City Auditor and Comptroller is authorized to reallocate previously authorized funds (R-298874) in the amount of \$2,800,000 from Water Fund 41500, CIP 73-284.0, Miramar Water Treatment Plant Upgrade and Expansion Project – Contract A to Miramar Treatment Plant Upgrade and Expansion – Contract B (\$1,350,000), Contract C (\$1,350,000) and Contract D (\$100,000) in FY2008.

Section 6. That the City Auditor and Comptroller is authorized, upon advice from the administering department, to transfer excess budgeted funds, if any, to the appropriate reserves.

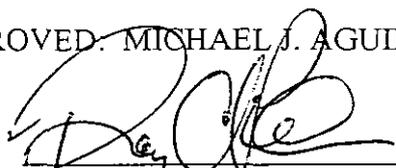
Section 7. That the City Council finds that this activity is covered under the Miramar Water Treatment Plant Upgrade & Expansion EIR, LDR No. 99-0704, that there is no change in circumstance. additional information or project changes to warrant additional environmental

review and that this project is not a separate project for purposes of review under the California Environmental Quality Act [CEQA], per CEQA Guidelines Sections 15060(c)(3) and 15378(c).

Section 8. That a full reading of this Ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 9. That this Ordinance shall take effect and be in force on the thirtieth (30th) day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Raymond C. Palmucci
Deputy City Attorney

RCP:js
10/15/2007
Or.Dept:Water
O-2008-53

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

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

**SECOND AMENDMENT TO AGREEMENT
BETWEEN THE CITY OF SAN DIEGO
AND CAMP DRESSER & MCKEE INC.
FOR CONSULTING SERVICES**

This Second Amendment to Agreement between the City of San Diego and Camp Dresser & McKee, Inc. for consulting services [Second Amendment] is made and entered into by and between the City of San Diego, a municipal corporation [City], and Camp Dresser & McKee, Inc [Consultant], with reference to the following:

RECITALS

- A. WHEREAS, on August 5, 2002, City and Consultant entered into an Agreement for Consulting Services [Agreement], the original of which is filed in the office of the Clerk as Document No. RR-296927, wherein Consultant agreed to provide engineering design and construction support services [Professional Services] to City for the Miramar Water Treatment Plant Improvement Projects [Project].
- B. WHEREAS, on February 9, 2004, in order to fulfill the purposes of the Agreement, the City and Consultant entered into a First Amendment to the Agreement [First Amendment] by Council Action Document No. RR-298874, to extend the Agreement for twenty-five months through August 5, 2007, and to effect other changes enumerated therein.
- C. WHEREAS, during the term of the Agreement, City determined that Consultant's Professional Services will be required beyond the current expiration date of the Agreement. City desires to extend the term of the Agreement for an additional five (5) years and increase the Contract Amount by \$3,700,000. Additionally, City determined that revisions to the Scope of Services as well as certain other contractual provisions are necessary to fulfill the purposes of this Agreement.
- D. WHEREAS, Consultant has agreed to provide the Professional Services as described in the Agreement as modified by the First Amendment and this Second Amendment for an additional five (5) years.
- E. WHEREAS, the Agreement provides that any change to the terms of the Agreement must be in writing and signed by both Parties.

NOW, THEREFORE, in consideration of the Recitals stated above, and incorporated herein by this reference, and the mutual obligations of the Parties expressed herein, City and Consultant agree as follows:

1. That all the terms and conditions of the Agreement referenced above, as modified by the First Amendment, copies of which are attached hereto, remain in full force and effect except as expressly and specifically amended herein.
2. That the effective date of the following terms and conditions set forth in this Second Amendment is August 6, 2007, and apply to the remaining services as defined in Exhibit A.2 and any additional work as requested by the City. Work completed prior to the effective date is exempt from these modified terms and shall be governed by the terms and conditions in place at the time work was provided.
3. That the expiration date of the Agreement, as set forth in Section 2.1, Term of the Agreement, is hereby changed from August 5, 2007, to August 5, 2012.
4. That Section 2.6, Termination for Convenience, be deleted in its entirety and replaced with the following:

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 Consultant. 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 Consultant. After termination of this Agreement, Consultant shall complete any and all additional work necessary for the orderly filing of documents and closing of Consultant's Professional Services under this Agreement. For services rendered in completing the work, Consultant shall be entitled to fair and reasonable compensation for the Professional Services performed by Consultant before the effective date of termination. After filing of documents and completion of performance, Consultant shall deliver to the City all drawings, plans, calculations, specifications and other documents or records related to Consultant's Professional Services on all tasks. By accepting payment for completion, filing and delivering documents as called for in this paragraph, Consultant discharges the City of all of the City's payment obligations and liabilities under this Agreement.

5. That Section 2.7, Termination of Agreement by City for Cause, be deleted in its entirety and replaced with the following:

2.7 City's Right to Terminate for Default. If Consultant fails to satisfactorily perform any obligation required by this Agreement, Consultant's failure constitutes a Default. A Default includes Consultant's failure to complete the Professional Services within the Time Schedule. If Consultant fails to satisfactorily cure a Default within ten calendar days of receiving written notice from the City specifying the nature of the Default, the City may immediately cancel and/or terminate this Agreement, and terminate each and every right of Consultant, and any person claiming any rights by or through Consultant under this Agreement. The rights and remedies of the City enumerated in this Section are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Section

otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against Consultant.

6. That the Contract Amount of the Agreement, as set forth in Section 3.1.1, Contract Amount, is hereby changed from \$15,072,763 to \$18,772,763.

7. That Section 3.2, Manner of Payment, be deleted in its entirety and replaced with the following:

3.2 Manner of Payment. The City shall pay Consultant in accordance with the Compensation [Exhibit B.2] and Fee [Exhibit C.2] Schedules. For the duration of this Agreement, Consultant shall not be entitled to fees, including fees for expenses, that exceed the amounts specified in the Compensation and Fee Schedules. The Consultant shall submit one invoice per calendar month in a form acceptable to City in accordance with the Compensation and Fee Schedules. The Consultant 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. Any invoices received by City one hundred and eighty (180) days, or greater, after completion of work, may be returned to Consultant for non-payment at City's discretion.

8. That the maximum fee in Section 3.3, Additional Services, is hereby changed from \$1,375,254 to \$1,802,632.

9. That Section 3.5, Excess Costs, be deleted in its entirety and replaced with the following:

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

10. That Section 3.6, Funding Phases, be deleted in its entirety and replaced with the following:

3.6 Funding Phases. The Professional Services to be performed under this Agreement shall be performed under separate and specific Funding Phases, identified below. The total Compensation for each Funding Phase shall not exceed the sum identified below for each Funding Phase, unless said amounts are modified in writing by an Amendment to this Agreement.

Funding Phase	Dates	Total Estimated Cost	Additional Services	Funding Phase Total Compensation
1-7	Approval to June 30, 2008	\$13,693,421	\$1,379,342	\$15,072,763
8	July 1, 2008 to June 30, 2009	\$2,250,000	\$300,000	\$2,550,000
9	July 1, 2009 to August 5, 2012	\$1,026,710	\$123,290	\$1,150,000
Total		\$16,970,131	\$1,802,632	\$18,772,763

11. That the term "the City Manager" in Section 4.1, Industry Standards, be deleted and replaced with "the Mayor or his designee".
12. That Section 4.3, Maintenance of Records, be deleted in its entirety and replaced with the following:

4.2 Right to Audit.

4.2.1 Access. The City retains the right to review and audit, and the reasonable right of access to Consultant's and any Subconsultant's premises to review and audit Consultant's or Subconsultant'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 Consultant'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 Consultant or Subconsultant is in compliance with all requirements under this Agreement.

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

4.2.2.2 Accounting Records. The Consultant and all Subconsultants shall maintain complete and accurate records in accordance with Generally Accepted Accounting Practices in the industry. The Consultant and Subconsultants 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, Consultant and Subconsultants shall submit exact duplicates of originals of all requested records to the City.

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

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 Consultant's and Subconsultants 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.

13. That Section 4.3, Insurance, be deleted in its entirety and replaced with the following:

4.3 Insurance. The Consultant 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 Consultant 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 4.3.2; and (c) confirmed that all policies contain the specific provisions required in Article IV, Section 4.3.4. Consultant's liabilities, including but not limited to Consultant's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement and Consultant's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by the City.

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

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

4.3.1.1 Commercial General Liability. Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate of \$1 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 Consultant's automobiles including owned, hired and non-owned automobiles, Consultant shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

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

4.3.1.4 Architects & Engineers Professional Liability. For all of Consultant's employees who are subject to this Agreement, Consultant shall keep in full force and effect, Professional Liability coverage for professional liability with a limit of \$2 million per claim and \$2 million annual aggregate. The Consultant shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the Project; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Project or termination of this Agreement whichever occurs last. The Consultant agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the City's exposure to loss. All defense costs shall be outside the limits of the policy.

4.3.2 Deductibles. All deductibles on any policy shall be the responsibility of Consultant and shall be disclosed to the City at the time the evidence of insurance is provided.

4.3.3 Acceptability of Insurers.

4.3.3.1 Except for the State Compensation Insurance Fund, all insurance required by this Contract or in the Special General Conditions shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the City.

4.3.3.2 The City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

4.3.4 Required Endorsements The following endorsements to the policies of insurance are required to be provided to the City before any work is initiated under this Agreement.

4.3.4.1 Commercial General Liability Insurance Endorsements

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

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

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

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

4.3.4.2 Automobile Liability Insurance Endorsements

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of Consultant.

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

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

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

CANCELLATION. Except as provided for under California law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the

policy or policies. Such notice shall be addressed to the City at the address specified in Section 9.1 "Notices."

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

4.3.4.4 Architects & Engineers Professional Liability Insurance

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

4.3.5 Reservation of Rights. The City reserves the right, from time to time, to review Consultant's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to the City. The City will reimburse Consultant for the cost of the additional premium for any coverage requested by the City in excess of that required by this Agreement without overhead, profit, or any other markup.

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

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

14. That Section 4.4, Subconsultants, be modified by the addition of the following two paragraphs:

4.4.1.5 The Subconsultant is bound to the City's Equal Opportunity Contracting Program covenants set forth in Article IV, Section 4.6 and Exhibit E.2 of this Agreement.

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

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15. That Section 4.6, Non-Discrimination Requirements, be deleted in its entirety and replaced with the following:

4.6 Non-Discrimination Requirements.

4.6.1 Compliance with the City's Equal Opportunity Contracting Program.

The Consultant shall comply with the City's Equal Opportunity Contracting Program Consultant Requirements (Exhibit E.2). The Consultant shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Consultant shall provide equal opportunity in all employment practices. The Consultant shall ensure that its Subconsultants comply with the City's Equal Opportunity Contracting Program Consultant Requirements. Nothing in this Section shall be interpreted to hold Consultant liable for any discriminatory practice of its Subconsultants.

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

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

16. That Section 4.8, Americans with Disabilities Act Statement, be deleted in its entirety and replaced with the following:

4.8 Title 24/Americans with Disabilities Act Requirements. Consultant has sole responsibility for ensuring that all Project plans and other design services comply with all accessibility requirements under Title 24 of the California Code of Regulations, known as the California Building Code (Title 24), and under the Americans with Disabilities Act Accessibility Guidelines (ADAAG) in effect at the time the designs are submitted to the City for review.

When a conflict exists between Title 24 and ADAAG, the most restrictive requirement shall be followed by Consultant (i.e., that which provides the most access). Consultant 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. Consultant understands that while the City will be reviewing Consultant's designs for compliance in specific and certain areas under Title 24 and ADAAG prior to acceptance of Consultant's designs, Consultant understands and agrees that the City's access review process and its acceptance of Consultant's designs in no way limits Consultant's obligations under this agreement to prepare designs that comply with all requirements under Title 24 and ADAAG.

17. That Section 4.10, Conflict of Interest, be deleted in its entirety and replaced with the following:

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

4.10.1 If, in performing the Professional Services set forth in this Agreement, any member of Consultant'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 Consultant'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 Consultant'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 Consultant shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships.

4.10.3 The Consultant and its Subconsultants 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 Consultant's personnel employed on the Project shall not accept gratuities or any other favors from any Subconsultants or potential Subconsultants. The Consultant shall not recommend or specify any product, supplier, or contractor with whom Consultant 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 Consultant violates any conflict of interest law or any of the provisions in this Section 4.10, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects Consultant to liability to the City for attorney's fees and all damages sustained as a result of the violation.

18. That Section 4.12, Compensation for Mandatory Assistance, be deleted in its entirety and replaced with the following:

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

19. That Section 4.14, Year 2000 Compliance, be deleted in its entirety and replaced with the following:

4.14 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.

20. That Section 4.16, Energy Conservation Specifications, be deleted in its entirety and replaced with the following:

4.16 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 Consultant 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 Consultant 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 Consultant 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. Consultant 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.

21. That Section 4.18, Design-Build Competition Eligibility, be added as follows:

4.18 Design-Build Competition Eligibility. Any architectural firms, engineering firms, Consultants, 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 Subconsultant hired to assist with a Design-Build competition, regardless of whether Subconsultant was hired by the City or hired by an architectural firm, engineering firm, Consultant, or individual retained by the City, has a competitive advantage and as such is ineligible to participate in that Design-Build competition.

22. That Section 4.19, Storm Water Management Discharge Control, be added as follows:

4.19 Storm Water Management Discharge Control. Unless specifically removed from the Scope of Work (Exhibit A.2), Consultant shall comply with Section 43.03 of the San Diego Municipal Code, Storm Water Management Discharge Control, and any and all Best Management Practice guidelines and pollution elimination requirements as may be established by the Enforcement Official. Further, Consultant shall prepare and incorporate into the construction documents a Storm Water Pollution Prevention Plan (SWPPP) to be implemented by the contractor during Project construction. Where applicable, the SWPPP shall comply with both the California Regional Water Quality Control Board Statewide General Construction Storm Water permit and National Pollution Discharge Elimination System permit requirements and any municipal regulations adopted pursuant to the permits.

23. That ARTICLE V – CITY'S OBLIGATIONS, be deleted in its entirety.

24. That all Sections under ARTICLE VI – INDEMNIFICATION, be deleted in their entirety and replaced with the following:

6.1 Indemnification. Other than in the performance of professional services which shall be solely as addressed in Section 6.2 below, to the fullest extent permitted by law, Consultant 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 Consultant or its Subconsultants), 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 Consultant, any Subconsultant, anyone directly or indirectly employed by them, or anyone that they control. The Consultant's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties.

6.2 Professional Services Indemnification and Defense.

6.2.1 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 professional services, Consultant 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 Consultant or Consultant's officers or employees.

6.2.2 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 Consultant or Consultant'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 Consultant agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in this Article.

25. That the title heading of ARTICLE VII – be changed from “ALTERNATIVE DISPUTE RESOLUTION PROCEDURES” to “MEDIATION”.

26. That Section 7.1, Mandatory Non-binding Mediation, be deleted in its entirety and replaced with the following:

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.

27. That ARTICLE VIII – MISCELLANEOUS, be deleted in its entirety and replaced with the following:

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 Consultant, including its employees, and independent Subconsultant(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 Consultant, including its employees, agents, talent and independent Subconsultants pursuant to this Agreement are the sole property of the City. The Consultant, including its employees, agents, talent, and independent Subconsultant(s), may not use any such Deliverable Materials mentioned in this article for purposes unrelated to Consultant’s work on behalf of the City without prior written consent of the City.

Such Deliverable Materials are not intended or represented by Consultant to be suitable for reuse by City or others on extensions of the Project or on any other project. Any such reuse without written verification or adaptation by Consultant and its Subconsultant(s), as appropriate, for the specific purpose intended will be at City's risk. Notwithstanding any other provision of this Agreement between Consultant and City, or any provision of the scope of work, work assignments, work authorizations, or any amendment issued hereunder, all of Consultant’s pre-existing or proprietary information, documents, materials, computer programs, or software developed by Consultant outside of this Agreement shall remain the exclusive property of Consultant.

8.3 Intellectual Property Rights Assignment. Consultant, its employees, agents, talent, and independent Subconsultant(s) agree to promptly execute and deliver, upon request by

City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials; and cooperate and assist in the prosecution of any action or opposition proceeding involving said rights and any adjudication of the same.

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

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

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

8.7 Intellectual Property Warranty and Indemnification. Consultant represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this contract are either original, not encumbered and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Consultant to produce, at Consultant's own expense, new non-infringing materials, deliverables or Works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Consultant further agrees to indemnify and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages of any type alleging or threatening that any materials, deliverables, supplies, equipment, services or Works provided under this contract

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infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claims of Infringement). If a Third Party Claim of Infringement is threatened or made before Consultant receives payment under this contract, City shall be entitled, upon written notice to Consultant, to withhold some or all of such payment.

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

28. That ARTICLE IX – MISCELLANEOUS, be added as follows:

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

Michael Marks
Associate Engineer – Civil
City of San Diego Water Department
600 B Street, Suite 700
San Diego, CA 92101

And notice to Consultant shall be addressed to:

William Hunter
Vice President
Camp Dresser & McKee, Inc.
1925 Palomar Oaks Way, Suite 300
Carlsbad, CA 92008

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

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

9.4 Independent Contractors. The Consultant and any Subconsultants employed by Consultant shall be independent contractors and not agents of the City. Any provisions of this

Agreement that may appear to give the City any right to direct Consultant concerning the details of performing the Professional Services, or to exercise any control over such performance, shall mean only that Consultant shall follow the direction of the City concerning the end results of the performance.

9.5 Consultant and Subconsultant Principals for Professional Services. It is understood that this Agreement is for unique Professional Services. Retention of Consultant's Professional Services is based on the particular professional expertise of the following members of Consultant's organization: William Hunter, Vice President, [Project Team]. Accordingly, performance of Professional Services on the Project may not be delegated to other members of Consultant's organization or to Subconsultants without the prior written consent of the City. It is mutually agreed that the members of the Project Team are the principal persons responsible for delivery of all Professional Services and may not be removed from the Project without the City's prior written approval. Removal of any member of the Project Team with out notice and approval by the City vide may be considered a default of the terms and conditions of this Agreement by Consultant. In the event any member of the Project Team becomes unavailable for any reason, the City must be consulted as to any replacement. If the City does not approve of a proposed replacement, the City may terminate this Agreement pursuant to Section 2.6 of this Agreement. Further, the City reserves the right, after consultation with Consultant, to require any of Consultant's employees or agents to be removed from the Project.

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

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

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

9.9 Compliance with Controlling Law. The Consultant shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, 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, Consultant shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

9.10 Jurisdiction and Attorney Fees. The jurisdiction and applicable laws for any suit or proceeding concerning this Agreement, the interpretation or application of any of its

terms, or any related disputes shall be in accordance with the laws of the State of California. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney fees in addition to any other award made in such suit or proceeding.

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

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

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

9.14 No Waiver. No failure of either the City or Consultant to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

9.15 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 Consultant Evaluation. City will evaluate Consultant'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.

29. That Exhibit A.2, Contracts B, C, And D, Scope of Work, dated 08-24-07, is added to this Agreement, a copy of which is attached hereto and incorporated herein by this reference.
30. That Exhibit B.2, Compensation Schedule, is added to this Agreement, a copy of which is attached hereto and incorporated herein by this reference.
31. That Exhibit C.2, Fee Schedule, is added to this Agreement, a copy of which is attached hereto and incorporated herein by this reference.
32. That Exhibit D.2, Time Schedule, is added to this Agreement, a copy of which is attached hereto and incorporated herein by this reference.
33. That Exhibit E.2, City's Equal Opportunity Contracting Program Consultant Requirements, is added to this Agreement, a copy of which is attached hereto and incorporated herein by this reference.
34. That Exhibit F, Determination Form, Conflict Of Interest Code: Determination Of Applicability To Consultant, is added to this Agreement, a copy of which is attached hereto and incorporated herein by this reference.
35. That Exhibit G, City Council Sustainable Building Policy No. 900-14, is added to this Agreement, a copy of which is attached hereto and incorporated herein by this reference.
36. That Exhibit H, Consultant Performance Evaluation, is added to this Agreement, a copy of which is attached hereto and incorporated herein by this reference.
37. That the Agreement as modified by the First Amendment and this Second Amendment represents the entire understanding of Consultant and the City.

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IN WITNESS WHEREOF, this Second Amendment is executed by the City of San Diego, acting by and through its Water Department Director pursuant to Ordinance No. 0-_____, authorizing such execution, and by Consultant.

Dated this 12 day of October, 2007.

THE CITY OF SAN DIEGO

By 
Jay Goldstone
Chief Operating Officer

I HEREBY CERTIFY I can legally bind Camp Dresser & McKee, Inc., and that I have read all of this Agreement, this 13TH day of SEPTEMBER, 2007.

By 
William Hunter
Vice President

I HEREBY APPROVE the form and legality of the foregoing Agreement this ____ day of _____, 2007.

MICHAEL J. AGUIRRE, City Attorney

By _____
Ray Palmucci
Deputy City Attorney

EXHIBIT A.2
CONTRACTS B, C AND D
TASK 1.0 - PROJECT MANAGEMENT
SCOPE OF WORK

1.01 *Prepare and Update Workplan*

Not Used.

1.02 *Project Coordination*

A. *City of San Diego*

The Miramar WTP Upgrade/Expansion project includes construction support services (CSS) for the remaining phased projects (Contracts B, C, & D), as well as advancing the Contract D design from 75% complete (which was placed on hold in January 2003) to final design. The scope assumes that the three remaining project phases will overlap and complete in March 2010. Ongoing coordination and communication between the City project management staff and the Consultant project management staff are necessary to successfully manage the multiple projects simultaneously, as well as clearly communicate project decisions. Lines of communication between the City and Consultant will be predominantly through *email correspondence and occasional telephone communications*. This task assumes an average of 1 hour per week for general City/Consultant coordination.

B. *CDM and Internal Project Team*

Information received from the City under Task 1.02.A will need to be disseminated to the multiple disciplines and task leaders in a timely fashion in order to effectively coordinate the City direction and associated activities. This task assumes an average of 2 hours per week to manage the construction support services and remaining design activities.

1.03 *Project Meetings (Contract Related)*

A. *City of San Diego (quarterly meeting – contract related)*

This task assumes up to six meetings between the City project management staff and CDM project management staff in order to discuss and resolve contract related issues.

B. *CDM and Internal Project Team (quarterly meeting – contract related)*

CDM shall hold up to six meetings with internal staff and subconsultants in order to discuss and resolve contract related issues.

1.04 *Project Administration/Management*

- Objectives:**
1. Establish and monitor Project budget controls.
 2. Establish and maintain Project filing controls.
 3. Initiate corrective action when potential deviations arise.

A. *Schedules*

Not Used

B. *Budget Monitoring*

Budgets for individual subtasks will be monitored on a weekly basis. Actual expenditures on work completed will be compared to budgets for work completed. CDM's project manager will notify the City if budgets or scope begin to deviate.

C. *Project Set-up and Document Distribution*

A filing system will be established to organize all Project-related documentation and correspondence. Administrative project filing will be completed under this task. Document distribution to all City and Agency Project participants will also be provided under this task.

D. *Monthly Progress Reports*

Deliverable: The format of the final monthly progress report will be developed so that it can be used by the City for other briefings that may be required. Report contents are defined below:

1. ***Budget Information.*** Detailed budget information will be provided and updated for each task. Potential overruns will be acknowledged and corrective action will be recommended.
2. ***Problems Encountered.*** Unforeseen problems will be explained if they occur. A solution will also be proposed to the problems.
3. ***Out-of-Scope Authorizations.*** Work required outside of the formal scope of services will be acknowledged.
4. ***CDM & City Action Items.*** Items that could potentially hold up the Project or cause changes in the overall Project cost will be outlined. Responsibility for each action will be assigned.

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E. *Contract Administration*

- Objectives:*
1. Management of the Miramar WTP Expansion contract to include preparation of invoices, budget tracking, and budget status reports.
 2. Manage the contractual requirements, including insurance of the nine (9) subcontractors for this Project.

- Deliverables:*
1. Development of invoicing to meet City requirements
 2. Compilation of subs invoices
 3. Preparation of monthly invoice to City

F. Brown & Caldwell Project Admin/Mgmt

Accounts for internal project administration and management of Brown & Caldwell staff as a primary subconsultant, due to the extent of their efforts under Contract B.

CONTRACT B, C & D
TASK 6 – PUBLIC RELATIONS
SCOPE OF WORK

6.01 *Public/Community Relations*

Make direct personal contact, and nurture and maintain positive relationships with those individuals who reside, own businesses, work and attend school in the areas affected by Project construction. This objective will be met through the continued use of Community Advisory Group (CAG) meetings, public invitations to tour the project site, periodic updates to the project newsletter and City website, and continued media relations. This scope is being provided by Katz & Associates under the direct control/management of the City.

CONTRACT B
TASK 15 - CONSTRUCTION PHASE SERVICES
SCOPE OF WORK

15.01 *Field Level Support*

Provide the services of a design team representative to be the single point of contact at the CDM-Carlsbad office for daily project correspondence, RFIs, and Submittal processing. This individual will monitor daily project issues as transmitted from the City and/or Construction Manager, attend weekly construction meetings, receive project correspondence and distribute to the design team as necessary, and review correspondence being sent back to the City and/or Construction Manager.

A. *Weekly Construction Meetings*

Prepare for, attend, and establish internal notes from the weekly construction meetings. Assumes attendance by the field support representative at up to 117 meetings with an average effort of 4 hours per meeting, and attendance by technical resources/engineers at up to 29 meetings.

B. *MOPO Meetings*

Scope deleted.

C. *Agency or Other Meetings*

Based on prior Contract A experience, it is anticipated that the design team will be requested to participate in meetings with SDG&E, DHS, Fire Dept/Haz Mat, City Security, Public Relations, SWPPP and other City departments. This task includes preparation for, attendance and preparing internal notes for up to 28 meetings.

D. *Field Level Support*

Based on prior Contract A experience, it is anticipated that there will be a need for direct communication between the design team and contractor, construction manager or the City to efficiently resolve field related issues in a timely fashion in an effort to avoid construction schedule impacts. The City has indicated that less effort is anticipated for Contract B than experienced on Contract A. Therefore, this task accounts for an average of 4 hours per week to receive, discuss, and distribute the Contractor, CM and City related field issues.

E. *Field Level Issue Resolution with City/CM*

Combined with Task 15.01.D, above.

F. Submittal Processing/Oversight (225 Submittals)

Includes time to receive incoming submittals, log, process, and distribute to the appropriate reviewers. Assumes 167 submittals and 58 resubmittals, for a total of 225. Prior to returning to the CM, each submittal response will be reviewed, logged, filed and returned to the CM. This task assumes that the Design Team Submittal response is considered final. The proposed budget does not account for time to address CM requests to modify the designer's response or response code. It is assumed that if the CM does not agree with the Design Team response, he/she can supplement the response as deemed necessary, clearly indicating the additional CM directive or changes to the designer's response, prior to sending back to the Contractor.

G. RFI Processing/Oversight (Assumes 280 RFIs)

Includes time to receive incoming RFIs, log, process, and distribute to the appropriate reviewers. Prior to returning to the CM, each RFI response will be reviewed, logged, filed and returned to the CM. This task also assumes that the Design Team RFI response is considered final. The proposed budget does not account for time to address CM requests to modify the designer's response. It is assumed that if the CM does not agree with the Design Team response, he/she can supplement the response as deemed necessary, clearly indicating the additional CM directive or changes to the designer's response, prior to sending back to the Contractor.

15.02 Bid Assistance

Provided services to assist the City in the bidding and award of the Miramar WTP Contract B construction services.

A. Pre-Bid Meeting

Attend a pre-bid meeting and job walk-through with potential bidders. Record and evaluate significant questions/concerns for formal clarification or incorporation into an addendum. Attend a debriefing meeting with the City PM to discuss the bidder questions.

B. Questions/Answers During Bidding

Respond to bidder questions and inquiries concerning drawings and specifications for the project. All bidder questions will be received and routed by the City to CDM. (Potential bidders that contact the design team will be requested to direct questions to the City contact.) The task assumes a total of 40 questions.

C. Prepare Addendum

Prepare an addendum to clarify the Contract Documents for the Miramar WTP Contract B project. Assumes a total of 30 addendum items will be coordinated and clarified in the Contract Documents. The scope assumes that two addenda will be prepared during the bid period and that a single copy will be sent to the City. Reproduction and distribution to the bidders will be handled by the City.

D. Bid Enhancement

Not in contract.

E. Bid Evaluation and Recommendation

Not in contract.

F. Pre-Construction Meeting

Attend a pre-construction meeting to meet the selected Contractor, Construction Management, City, and Design Team members, and to discuss/address any initial comments/questions. It is assumed that meeting minutes and resulting action items will be the responsibility of the City or CM.

15.03 Office Engineering

Provide office engineering services required to support the construction support services for the WTP Contract B construction contract.

A. Review of Submittals (Assumes 167 submittals + 58 resubmittals)

Review submittals, shop drawings and materials and equipment test reports for compliance with the Contract Documents. Return submittals to the Construction Manager within the prescribed time period for distribution to the Contractor. The level of effort assumes that 167 submittals will be reviewed and that 35 percent (58) of the submittals will require a re-submittal and be reviewed a second time.

B. Prepare record drawings

Record Drawings. Prepare as-built construction drawings based on marked up drawings developed by the Contractor during the construction phase. Record drawings comprise design drawings modified to reflect the results of addenda and contractor-prepared "as-constructed" drawings. As-built information will be transferred to the electronic files that were used to generate the original Mylars, and a complete set of as-built drawings will be submitted to the City in AutoCAD format. This task assumes that the City's Construction Manager will monitor the Contractor's updates on a regular basis, and that a complete set of red-line mark-ups on the original bid set of documents will be provided to CDM for incorporation into the electronic AutoCAD files.

C. Requests for Information

Provide clarifications and interpretations of design criteria or design intent in response to the Contractor's requests for information (RFI). Provide written response to the RFIs in an appropriate time frame. The level of effort assumes that support will be provided to respond to 280 RFIs.

D. Change Order Assistance

Assist the City's Construction Manager in the preparation of design documents to support formal changes to the contract documents. The level of effort assumes that support will be provided for up to 25 change orders at an average effort of \$5250 each.

E. Site Visits

Engineering staff will conduct periodic on-site observations to assist the City in managing the progress of the work, and address technical issues in the field. The level of effort assumes that support will be provided for up to 6 site visits. Refer to proposal backup for further details.

F. Final Inspection

Engineering staff will assist the City and/or Construction Manager with final site inspection. The level of effort assumes two days per each discipline; civil, structural, mechanical, and electrical.

15.04 Construction Assistance

Objective: Provide construction support services for the WTP Contract B construction contract to help ascertain Contractor compliance with the Contract Documents.

Assumption: 1. The City will provide or procure separate construction management services.
2. The construction period for the WTP Contract B is no more than 28 months.

A. Develop a Contract Administration Manual (CAM)

Not in contract.

B. Develop a Critical Path Method (CPM) construction schedule

Not in contract.

C. Technical Support for Field Staff

As field level issues/questions arise by the City, CM or Contractor, the specific discipline Engineer of Record will participate in the discussion, evaluate the impacts

to the overall design, prepare clarified details as necessary, and provide a formal response. The level of effort assumes an average of 8 hours per week over 117 weeks.

D. Construction progress meetings (Subconsultants)

1. Subconsultant engineering staff will attend construction progress meetings to discuss construction progress, problems, and other matters affecting completion of the Project, when requested. The level of effort assumes attendance at up to 6 construction progress meetings and up to 8 Agency / MOPO meetings. Refer to proposal backup for further details.

E. Special Inspections

1. Equipment Testing: Provide assistance with witness tests of equipment components and systems. Since major mechanical equipment for Contract B is limited to flocculation and sedimentation equipment, the level of effort assumes on-site inspection up to 32 hours.

F. Contract Administration

Provided under Task 1.

G. Punch lists

At interim phases of substantial completion, the Engineering staff will assist the CM in providing a punch list of deficiencies and non-compliance issues. The punch list will be provided in the form of a memorandum, clearly indicating the process area, and individual description of the non-conformance item.

H. Project closeout

At the end of the WTP Contract B construction phase services, a project closeout will be conducted in order to assemble all of the pertinent documents into files of record. The project closeout will include the following activities.

1. A final audit of files, calculations, and modifications to the construction documents to confirm that submittal reviews, RFIs and other pertinent information has been adequately addressed by all parties
2. Obtain pertinent files from subconsultants and incorporate into the master project file for archiving.
3. Print out final Expedition summary reports associated with the construction phase activities and incorporate into the master project files.
4. Backup all electronic data for archiving.

I. Negotiation Assistance – Consultation to City

Not in contract. It is assumed that the City's Construction Manager will review and evaluate Contractor claims against the requirements of the bid documents, and render an opinion of their validity.

15.05 *Preparation of Operations & Maintenance Manual*

This task compiles the O&M submittals from the Contractor and organizes them into binders. It assumes that one set of the multiple O&M copies retained by the CM will be used in order to compile and organize the Miramar WTP O&M Manual.

15.06 *Startup Assistance*

Engineering staff will provide on-site assistance during startup activities of the equipment and systems in order to help the Contractor and Construction Manager troubleshoot issues during startup. Refer to proposal backup for estimated level of effort.

15.07 *Maintenance Management System*

Not in contract.

15.08 *Operations Plan*

Provide an update to the City's Operations Plan that incorporates the new flocculation and sedimentation facilities installed under Contract B. Details of the scope will be determined later in cooperation with the City.

15.09 *PCS- Programming/Integration*

Process Control System (PCS) programming and integration shall be provided. Refer to the attached EMA scope summary included herein. Final scope to be determined by the City.

CONTRACT C
TASK 15 - CONSTRUCTION PHASE SERVICES
SCOPE OF WORK

15.01 *Field Level Support*

Provide the services of a design team representative to be the single point of contact at the CDM-Carlsbad office for daily project correspondence, RFIs, and Submittal processing. This individual will monitor daily project issues as transmitted from the City and/or Construction Manager, attend weekly construction meetings, receive project correspondence and distribute to the design team as necessary, and review correspondence being sent back to the City and/or Construction Manager.

A. *Weekly Construction Meetings*

Prepare for, attend, and establish internal notes from the weekly construction meetings. The scope assumes that the Contract C weekly construction meeting will take place on the same day as the Contract B weekly meeting. Attendance by the field support representative is assumed at up to 104 meetings and attendance by technical resources/engineers at up to 52 meetings.

B. *MOPO Meetings*

Scope deleted.

C. *Agency or Other Meetings*

Based on prior Contract A experience, it is anticipated that the design team will be requested to participate in meetings with SDG&E, DHS, Fire Dept/Haz Mat, City Security, Public Relations, SWPPP and other City departments. This task includes preparation for, attendance, and preparing internal notes for up to 12 meetings.

D. *Field Level Support*

Based on prior Contract A experience, it is anticipated that there will be a need for direct communication between the design team and contractor, construction manager, and City to efficiently resolve field related issues in a timely fashion in an effort to avoid construction schedule impacts. The City has indicated that less effort is anticipated for Contract C than experienced on Contract A. Therefore, this task accounts for an average of 6 hours per week to receive, discuss, and distribute the Contractor related field issues.

E. *Field Level Issue Resolution with City/CM*

Combined with Task 15.01.D, above.

F. *Submittal Processing/Oversight (194 Submittals)*

Includes time to receive incoming submittals, log, process, and distribute to the appropriate reviewers. Assumes 144 submittals and 50 resubmittals, for a total of 194. Prior to returning to the CM, each submittal response will be reviewed, logged, filed and returned to the CM. This task also assumes that the Design Team Submittal response is considered final. The proposed budget does not account for time to address CM requests to modify the designer's response or response code. It is assumed that if the CM does not agree with the Design Team response, he/she can supplement the response, clearly indicating the additional CM directive or changes to the designer's response, prior to sending back to the Contractor.

G. *RFI Processing/Oversight (Assumes 184 RFIs)*

Includes time to receive incoming RFIs, log, process, and distribute to the appropriate reviewers. Prior to returning to the CM, each RFI response will be reviewed, logged, filed and returned to the CM. This task also assumes that the Design Team RFI response is considered final. The proposed budget does not account for time to address CM requests to modify the designer's response. It is assumed that if the CM does not agree with the Design Team response, he/she can supplement the response, clearly indicating the additional CM directive or changes to the designer's response, prior to sending back to the Contractor.

15.02 *Bid Assistance*

Provided services to assist the City in the bidding and award of the Miramar WTP Contract C construction services.

A. *Pre-Bid Meeting*

Attend a pre-bid meeting and job walk-through with potential bidders. Record and evaluate significant questions/concerns for formal clarification or incorporation into an addendum. Attend a debriefing meeting with the City PM to discuss the bidder questions.

B. *Questions/Answers During Bidding*

Respond to bidder questions and inquiries concerning drawings and specifications for the project. All bidder questions will be received and routed by the City to CDM. (Potential bidders that contact the design team will be requested to direct questions to the City contact.) The task assumes a total of 25 questions.

C. *Prepare Addendum*

Prepare an addendum to clarify the Contract Documents for the Miramar WTP

Contract C project. Assumes a total of 30 addendum items will be coordinated and clarified in the Contract Documents. The scope assumes that one addendum will be prepared during the bid period and that a single copy will be sent to the City. Reproduction and distribution to the bidders will be handled by the City.

D. Bid Enhancement

Not in contract.

E. Bid Evaluation and Recommendation

Not in contract.

F. Pre-Construction Meeting

Attend a pre-construction meeting to meet the selected Contractor, Construction Management, City, and Design Team members, and to discuss/address any initial comments/questions. It is assumed that meeting minutes and resulting action items will be the responsibility of the City or CM.

15.03 Office Engineering

Provide office engineering services required to support the construction/field engineering services for the WTP Contract C construction contract.

A. Review of Submittals

Review submittals, shop drawings and materials and equipment test reports for compliance with the Contract Documents. Return submittals to the Construction Manager within the prescribed time period for distribution to the Contractor. The level of effort assumes that 144 submittals will be reviewed and that 35 percent (50) of the submittals will require a re-submittal and be reviewed a second time.

B. Prepare record drawings

Record Drawings. Prepare as-built construction drawings based on marked up drawings developed by the Contractor during the construction phase. Record drawings comprise design drawings modified to reflect the results of addenda and contractor-prepared "as-constructed" drawings. As-built information will be transferred to the electronic files that were used to generate the original Mylars, and a complete set of as-built drawings will be submitted to the City in AutoCAD format. This task assumes that the City's Construction Manager will monitor the Contractor's updates on a regular basis, and that a complete set of red-line mark-ups on the original bid set of documents will be provided to CDM for incorporation into the electronic AutoCAD files.

C. *Requests for Information*

Provide clarifications and interpretations of design criteria or design intent in response to the contractor's requests for information (RFI). Provide written response to the RFIs in an appropriate time frame. The level of effort assumes that support will be provided to respond to 184 RFIs.

D. *Change Order Assistance*

Assist the City's Construction Manager in the preparation of design documents to support formal changes to the contract documents. The level of effort assumes that support will be provided for up to 15 change orders at an average effort of \$5500 each.

E. *Site Visits*

Engineering staff will conduct periodic on-site observations to assist the City in managing the progress of the work, and address technical issues in the field. The level of effort assumes that support will be provided for up to 6 site visits. Refer to proposal backup for further details.

F. *Final Inspection*

Engineering staff will assist the City and/or Construction Manager with final site inspection. The level of effort assumes three days of final inspection services.

15.04 *Construction Assistance*

Objective: Provide construction support services for the WTP Contract C construction contract to help ascertain Contractor compliance with the Contract Documents.

Assumption: 1. The City will provide or procure separate construction management services.
2. The construction period for the WTP Contract C is no more than 24 months.

A. *Develop a Contract Administration Manual (CAM)*

Not in contract.

B. *Develop a Critical Path Method (CPM) construction schedule*

Not in contract.

C. *Technical Support for Field Staff*

As field level issues/questions arise by the City, CM or Contractor, the specific discipline Engineer of Record will participate in the discussion, evaluate the impacts to the overall design, prepare clarified details as necessary, and provide a formal

response. The level of effort assumes an average of 6 hours per week over 104 weeks.

D. Construction progress meetings

1. Subconsultant engineering will attend construction progress meetings as requested for the WTP Contract C construction contract to discuss construction progress, problems, and other matters affecting completion of the Project. The level of effort assumes support will be provided for up to 4 construction progress meetings and up to 6 Agency / MOPO meetings. Refer to proposal backup for further details.

E. Special Inspections

1. Equipment Testing: Provide assistance with witness tests of equipment components and systems. The level of effort assumes that testing will be conducted on-site and is limited to 3 days.

F. Contract Administration

Provided under Task 1.

G. Punch lists

At interim phases of substantial completion, the Engineering staff will assist the CM in providing a punch list of deficiencies and non-compliance issues. The punch list will be provided in the form of a memorandum, clearly indicating the process area, and individual description of the non-conformance item.

H. Project closeout

At the end of the WTP Contract C construction phase services, a project closeout will be conducted in order to assemble all of the pertinent documents into files of record. The project closeout will include the following activities.

1. A final audit of files, calculations, and modifications to the construction documents to confirm that submittal reviews, RFIs and other pertinent information has been adequately addressed by all parties
2. Obtain pertinent files from subconsultants and incorporate into the master project file for archiving.
3. Print out final Expedition summary reports associated with the construction phase activities and incorporate into the master project files.
4. Backup all electronic data for archiving.

I. Negotiation Assistance – Consultation to City

Not in contract. It is assumed that the City's Construction Manager will review and

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evaluate Contractor claims against the requirements of the bid documents, and render an opinion of their validity.

15.05 *Preparation of Operations & Maintenance Manual*

This task compiles the O&M submittals from the Contractor and organizes them into binders. It assumes that one set of the multiple O&M copies retained by the CM will be used in order to compile and organize the Miramar WTP O&M Manual.

15.06 *Startup Assistance*

Engineering staff will provide on-site assistance during startup activities of the equipment and systems in order to help the Contractor and Construction Manager troubleshoot issues during startup. Refer to proposal backup for estimated level of effort.

15.07 *Maintenance Management System*

Not in contract.

15.08 *Operations Plan*

Not in contract. Assumes that the City will update the Operations Plan, similar to the City's approach for Contract A.

15.09 *PCS- Programming/Integration and Ozone System Training/Control Development/Third-Party Testing*

Process Control System (PCS) programming and integration shall be provided. Refer to the attached EMA scope of services for further details. Final scope to be determined by the City.

In addition to the EMA scope of services, CDM will be responsible for developing the third-party loop descriptions associated with the Constant-Range Concentration ozone control. These loop descriptions will be developed jointly with input from Process Applications, Inc. and with input from EMA, and will be utilized by EMA to develop the system programming.

At the request of the City, Process Applications, Inc., shall provide the following services during the construction phase:

1. Ozone Startup Training and First-year Optimization Assistance
2. Ozone System Control Development Assistance
3. Ozone Production/Power Performance Testing during Contractor Startup/Validation

For further details on the scope items listed above, please refer to the attached Process Applications, Inc. proposed scope of services.

CONTRACT D SCOPE OF WORK

Summary

The Contract D – Final Grading/Paving/Landscaping and Entrance Improvements Phase of the Miramar WTP projects was placed on hold by the City of San Diego in April 2003. This decision was based on the City's need to defer remaining cost until a later time, as well as to incorporate potential changes as a result of construction from the earlier phases (ESIP Ph II, and Contracts A & B). The documents were estimated at approximately 75% complete, and a submittal was provided to the City to document the progress at the time of suspending the design effort.

The remaining scope will consist of advancing the previous drawings and specifications from the 75% complete level, to final bid documents. The scope assumes that a 99% complete submittal to the City will be included for final review and comment. The design team will provide written responses to the City comments, similar to the previous design approaches, and incorporate necessary changes in the final Mylar package.

The proposed budget also includes Construction Support Services. The predominant scope of construction associated with Contract D is limited to final site landscaping. In addition, there are limited entrance improvements associated with the main entrance gate, guardhouse and associated grading/paving. Therefore, the construction support services effort is anticipated to consist of RFI and Submittal review/responses, and occasional site visits as required. It is not anticipated that the design team will be required to attend weekly meetings similar to the current approach with Contract A, B & C, since the Contract D level of complexity is substantially less than the earlier projects. It is assumed that periodic meetings will be attended by the design team as requested by the City.

The current proposal establishes an anticipated level of effort of \$500,000 to advance the remaining Contract D design from its previous 75% state to 100%, and to provide associated construction support services. It is noted that the City of San Diego's security group may require a modified landscaping and/or main gate approach from the concepts previously agree to, and which were incorporated into the 75% complete set of documents. The City and Consultant will need to discuss the potential impacts further, in order to re-define the final Contract D scope of services and to determine potential impacts to the allocated budget.

000070**EXHIBIT B.2****COMPENSATION SCHEDULE**

Task / Description	Prior + Proposed	Carry-Over	New Contract Budget
Agreement RR-296927 Services			
Task 1.0 Project Management	\$2,128,879	(\$100,000)	\$2,028,879
Task 2.0 Partnering	\$0	---	\$0
Task 3.0 Intentionally Not Used	\$0	---	\$0
Task 4.0 Quality Assurance/Quality Control	\$494,368	---	\$494,368
Task 5.0 Opinions of Probable Cost	\$301,376	(\$50,000)	\$251,376
Task 6.0 Community Involvement	\$165,448	---	\$165,448
Task 7.0 Schedules	\$109,081	(\$50,000)	\$59,081
Task 8.0 Preliminary Design	\$180,670	(\$42,000)	\$138,670
Task 9.0 Detailed Design	\$2,096,319	(\$370,000)	\$1,726,319
Task 10.0 Field Investigations	\$209,211	(\$139,000)	\$70,211
Task 11.0 Design Support Services	\$4,588	---	\$4,588
Task 12.0 Studies	\$11,924	---	\$11,924
Task 13.0 Permits	\$13,345	---	\$13,345
Task 14.0 Early Start Improvement Projects (ESIP)	\$85,360	---	\$85,360
Task 15.0 Bid/Construction Phase Services	\$13,136,393	(\$1,749,000)	\$11,387,393
Task 16.0 Additional Services	\$1,802,632	(\$300,000)	\$1,502,632
Subtotal	\$20,739,594	(\$2,800,000)	\$17,939,594

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Task / Description	Prior + Proposed	Carry-Over	New Contract Budget
EXISTING: Two Year BLS CPI-U Annual Budget Escalation Allotment. Annual Adjustment is Not-to-Exceed CPI-U Calculation or 4% Whichever is Less.	\$584,881	---	\$584,881
Eighteen Month BLS CPI-U Annual Budget Escalation Allotment. Annual Adjustment is Not-to-Exceed CPI-U Calculation or 4% Whichever is Less.	\$348,288	---	\$348,288
Subtotal	\$21,672,763	(\$2,800,000)	\$18,872,763
Adjustment for Funds Previously Transferred to Budget from Agreement RR-296927 Funding	(\$100,000)	---	(\$100,000)
Revised Total Not- to-Exceed Contract Amount	<u>\$21,572,763</u>	<u>(\$2,800,000)</u>	<u>\$18,772,763</u>

EXHIBIT C.2**FEE SCHEDULE****I. Labor Billing Rates:**

- A. Labor billing rates shall be Consultant's burdened rates for job categories listed in Schedule C.2-1.
- B. Consultant represents that all indirect/overhead costs included in the billing rates are the most recently audited actual rates.
- C. Any overtime must be pre-approved in writing by the Water Department Project Manager.
- D. Additional labor categories may be added, subject to negotiation, and as authorized by the City in writing.

II. Other Direct Costs (excluding Subconsultants):

- A. Other Direct Costs (ODC) are consultant's actual costs for the items listed in Schedule C.2-2.
- B. Consultant's markup on Other Direct Costs is 5% of actual costs.
- C. ODC billing rate equals ODC plus markup.

III. Subconsultant Costs:

- A. Subconsultant Costs are actual costs paid to Subconsultants by Consultant.
- B. Consultant's markup on Subconsultant Costs, except for Brown & Caldwell (B&C), is 5.0% of actual cost. Consultant markup on B&C cost is 0% of actual costs..
- C. Consultant billing rate equals Subconsultant cost plus markup.

IV. Economic Price Adjustment :

- A. Consultant may request an adjustment to the labor billing rates in this Agreement on the first day of August annually. Any such request must include supporting data, in a form satisfactory to City, subject to audit. Any adjustments to labor rates shall not exceed the percent change in the Bureau of Labor Statistics (BLS) Consumer Price Index (CPI) for the previous twelve months. Under no circumstances will an adjustment to rates be made retroactively.

The formula for calculating the CPI adjusted allowable rate is:

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

Definitions:

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

Current CPI: The most current CPI-U as of the first day of August (adjustment date). For subsequent price adjustments, the CPI-U as of the twelfth month after the prior adjustment date, shall be used.

Previous CPI: The CPI-U in effect twelve months prior to the Current CPI. For subsequent price adjustments, the prior Current CPI, shall be used.

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

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

- B. Consultant shall incorporate the provisions of this Section IV., Economic Price Adjustment, in all contracts entered into between Consultant and Subconsultant (i.e. Any adjustments to Subconsultant Billing Rates shall be subject to this Section IV).

**Schedule C.2-1
Labor Rates**

Consultant Labor Billing Rates	
Categories	Rate
Engineers/Scientists/Planners	
Grade 1	\$100.00
Grade 2	\$109.00
Grade 3	\$120.00
Grade 4	\$130.00
Grade 5	\$140.00
Grade 6	\$150.00
Grade 7	\$165.00
Project Manager	\$180.00
Principal	\$180.00
Associate	\$190.00
Vice President	\$200.00
Sr. Vice President	\$210.00

Consultant Labor Billing Rates	
Categories	Rate
Support Service	
Designer Drafter 1	\$65.00
Designer Drafter 2	\$75.00
Designer Drafter 3	\$85.00
Designer Drafter 4	\$90.00
Designer Drafter 5	\$100.00
Designer Drafter 6	\$110.00
Designer Drafter 7	\$120.00
Designer Manager/ Drafter 8	\$130.00
Administrative Manager	\$95.00
Administrative Assistant/Word Processor	\$70.00
Office Clerk	\$60.00
Financial Manager	\$110.00
Contract Administrator	\$100.00
Finance Assistant	\$65.00

(Continued Next Page)

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**Schedule C.2-2
Other Direct Costs**

Other Direct Costs	
Categories	Rate
Mileage reimbursement for business miles driven. Mileage log identifying "To" and "From" locations, and "Start" and "End" odometer readings is required.	\$0.485 cents per mile, or current IRS rate.
Reproduction Services	
Black and White Copies	\$0.10/page
Color Copies	\$1.00/page
Drawings	
Color	\$0.75/sf
Bond	\$0.40/sf
Mylar	\$2.00/sf
Copies	\$0.75/ea
Faxes	\$1.00/pg
Outside Services	at Cost (Receipts required)
Materials and Other Expenses	at Cost (Receipts required)

---- End of Fee Schedule ----

Exhibit D.2 - Time Schedule
City of San Diego
Miramar Water Treatment Plant Upgrade and Expansion
Project Schedule
Duration (Quarterly)

Task	Task Description	Aug-2007	Oct-2007	Jan-2008	Apr-2008	Jul-2008	Oct-2008	Jan-2009	Apr-2009	Jul-2009	Oct-2009	Jan-2010	Apr-2010	Jul-2010	Oct-2010	Jan-2011	Apr-2011	Jul-2011	Oct-2011	Jan-2012	Apr-2012	Aug-2012	
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	
1	Project Management	■	■	■	■	■	■	■	■	■	■	■	■										
2	Public Relations (Katz)	■	■	■	■	■	■	■	■	■	■	■	■										
3 - 14	Not Used																						
15	Construction Support Services																						
	Contract B	■	■	■	■	■	■	■	■	■	■	■	■										
	Contract C				■	■	■	■	■	■	■	■	■										
16A	Contract D Final Design								■	■	■	■	■										
16B	Contract D Construction Support Services											■	■	■	■	■							
17	Additional Services																						

**EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)
CONTRACTOR 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 subconsultants of professional service consultants doing business with the City. The City encourages its consultants to share this commitment. Prime consultants are encouraged to take positive steps to diversify and expand their subconsultant solicitation base and to offer consulting opportunities to all eligible subconsultants.

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

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

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

Consultant shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Consultant shall provide equal opportunity for subconsultants to participate in subconsulting opportunities. Consultant understands

and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.

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

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

- A. Work Force Report. If a *Work Force Report* (Attachment AA) is submitted, and an EOCP staff Work Force Analysis determines there are under representation when compared to County Labor Force Availability data, Consultant will be required to submit an *Equal Employment Opportunity Plan*.
- B. Equal Employment Opportunity Plan. If an *Equal Employment Opportunity Plan* is submitted, it must include at least the following assurances that:
1. The Consultant will maintain a working environment free of discrimination, harassment, intimidation and coercion at all sites and in all facilities at which the Consultant's employees are assigned to work;
 2. A responsible official is designated to monitor all employment related activity to ensure the Consultant's EEO Policy is being carried out and to submit reports relating to EEO provisions;
 3. Consultant disseminates and reviews its EEO Policy with all employees at least once a year, posts the policy statement and EEO posters on all company bulletin boards and job sites, and documents every dissemination review and posting with a written record to identify the

time, place, employees present, subject matter, and disposition of meetings;

4. The Consultant reviews, at least annually, all supervisor's adherence to and performance under the EEO Policy and maintains written documentation of these reviews;
5. The Consultant discusses its EEO Policy Statement with subconsultants with whom it anticipates doing business, includes the EEO Policy Statement in its subcontracts, and provides such documentation to the City upon request;
6. The Consultant documents and maintains a record of all bid solicitations and outreach efforts to and from subconsultants, consultant associations and other business associations;
7. The Consultant disseminates its EEO Policy externally through various media, including the media of people of color and women, in advertisements to recruit, maintains files documenting these efforts, and provides copies of these advertisements to the City upon request;
8. The Consultant disseminates its EEO Policy to union and community organizations;
9. The Consultant provides immediate written notification to the City when any union referral process has impeded the Consultant's efforts to maintain its EEO Policy;
10. The Consultant maintains a current list of recruitment sources, including those outreaching to people of color and women, and provides written notification of employment opportunities to these recruitment sources with a record of the organizations' responses;
11. The Consultant maintains a current file of names, addresses and phone numbers of each walk-in applicant, including people of color and women, and referrals from unions, recruitment sources, or community organizations with a description of the employment action taken;
12. The Consultant encourages all present employees, including people of color and women employees, to recruit others;
13. The Consultant maintains all employment selection process information with records of all tests and other selection criteria;
14. The Consultant develops and maintains documentation for on-the-job training opportunities and/or participates in training programs for all of its employees, including people of color and women, and establishes apprenticeship, trainee, and upgrade programs relevant to the Consultant's employment needs;

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

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

A. Subconsultant Participation Level

1. Projects valued at \$25,000 or more have a voluntary Subconsultant Participation Level goal of 15%. Goals are achieved by contracting with any combination of Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Disadvantaged Business Enterprise (DBE), Disabled Veteran Business Enterprise (DVBE) or Other Business Enterprise (OBE) level.
2. While attainment of the 15% Subconsultant Participation Level goal is strictly voluntary, the City encourages diversity in your outreach and selection efforts. Historical data indicates that of the overall 15% goal, 25% to 30% Disadvantaged Business Enterprise (DBE) and 1% to 3% Disabled Veteran Business Enterprise (DVBE) participation is attainable. The remaining percentages may be allocated to Other Business Enterprises (OBE). Participation levels may be used as a tiebreaker in cases of an overall tie between two or more firms.

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

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

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

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

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

1. **Outreach Efforts.** Proposer's outreach efforts undertaken and willingness to make meaningful subconsulting opportunities available to all interested and qualified firms on this project.
2. **Past Participation Levels.** Proposer's subconsultant participation levels achieved on all private and public projects within the past three (3) years.
3. **Equal Opportunity Employment.** Proposer's use of productive strategies to successfully attain a diverse workforce as compared to the County's Labor Force Availability.
4. **Community Activities.** Proposer's current community activities.

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

- A. **Subconsultants List.** The *Subconsultant List* (Attachment BB) shall indicate the Name and Address, Scope of Work, Percent of Total Proposed Contract

Amount, Dollar Amount of Proposed Subcontract, Certification Status and Where Certified for each proposed subconsultant.

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

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

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

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

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

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

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

VIII. Certification.

A. The City of San Diego is a signatory to a Memorandum of Understanding (MOU) with the California Department of Transportation (CALTRANS), and therefore has adopted a policy regarding certification of MBE/WBE/DBE/DVBE firms. As a result of the MOU, an MBE, WBE or DBE is certified as such by any of the following methods:

1. Current certification by the City of San Diego as MBE, WBE, or DBE;
2. Current certification by the State of California Department of Transportation (CALTRANS) as MBE, WBE or DBE;

3. Current MBE, WBE or DBE certification from any participating agency in the statewide certified pool of firms known as CALCERT.

B. DVBE certification is received from the State of California's Department of General Services, Office of Small and Minority Business (916) 322-5060.

IX. List of Attachments.

AA - *Work Force Report*

BB - *Subconsultants List*

CC - *Contract Activity Report*

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City of San Diego
EQUAL OPPORTUNITY CONTRACTING (EOC)
1010 Second Avenue • Suite 500 • San Diego, CA 92101
Phone: (619) 533-4464 • Fax: (619) 533-4474

WORK FORCE REPORT

ADMINISTRATIVE

The objective of the Equal Employment Opportunity Outreach Program, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law.

CONTRACTOR IDENTIFICATION

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

Name of Company: Camp Dresser & McKee, Inc.

AKA/DBA: N/A

Address (Corporate Headquarters, where applicable): 50 Hampshire Street

City Cambridge County Middlesex State MA Zip 02139

Telephone Number: (617) 452-6000 FAX Number: (617) 452-8000

Name of Company CEO: Mr. Thomas D. Furman, Jr

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

Address: 1925 Palomar Oaks Way, Suite 300

City Carlsbad County San Diego State CA Zip 92008

Telephone Number: (760) 438-7755 FAX Number: (760) 438-7411

Type of Business: Engineering Consulting Type of License: Business

The Company has appointed: Charlene P. Allen, Senior Vice President, Human Resources

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

Address: One Cambridge Place, 50 Hampshire Street, Cambridge, MA 02139

Telephone Number: (617) 621-8181 FAX Number: (617) 577-7501

- [] One San Diego County (or Most Local County) Work Force - Mandatory
[] Branch Work Force *
[x] 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 Camp Dresser & McKee, Inc.

(Firm Name)

San Diego, California hereby certify that information provided

(County) (State)

herein is true and correct. This document was executed on this 1st day of August, 2007.

[Signature]
(Authorized Signature)

SCOTT TOLAND, P.E., Project Manager
(Print Authorized Signature)

WORK FORCE REPORT - NAME OF FIRM: Camp Dresser & McKee, Inc.

DATE: August 1, 2007

OFFICE(S) or BRANCH(ES): Carlsbad Office - Managing Office

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 Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Management & Financial		2	2		2						13	4		
Professional			1	2	3	2		1			9	18	1	
A&E, Science, Computer														
Technical			1								2			
Sales														
Administrative Support				2								8		
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*														

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

Totals Each Column		2	4	4	5	2		1			24	30	1	
--------------------	--	---	---	---	---	---	--	---	--	--	----	----	---	--

Grand Total All Employees

73

Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														



CITY OF SAN DIEGO WORK FORCE REPORT – ADMINISTRATIVE

HISTORY

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

WORK FORCE & BRANCH WORK FORCE REPORTS

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

project will be accomplished completely outside of San Diego, we ask for a Work Force Report from the county or counties where the work will be accomplished.²

MANAGING OFFICE WORK FORCE

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

TYPES OF WORK FORCE REPORTS:

Please note, throughout the preceding text of this page, the superscript numbers one¹, two² & three³. 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

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**ATTACHMENT "CC-1"
SUBCONSULTANTS LIST**

INFORMATION REGARDING SUBCONSULTANTS PARTICIPATION:

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

NAME AND ADDRESS SUBCONSULTANTS	SCOPE OF WORK	PERCENT OF CONTRACT	CONTRACT AMOUNT OF CONTRACT	MBE/WBE/ DBE/DVBE/ OBE	CITY/CERTIFIED
Beyaz & Patel, Inc. 12396 World Trade Drive, Suite 317 San Diego, CA 92128	Structural Engineering	1.9%	\$110,000	MBE	Caltrans
Brown & Caldwell 400 Exchange, Ste. 100 Irvine, CA 92602	Civil, Electrical, Mechanical and Structural Engineering	29.9%	\$1,800,000		
EMA, Inc. 8885 Rio San Diego Drive, Suite 301 San Diego, CA 92108-1610	Process Control Design and Programming Services	9.4%	\$560,000		
GEI Consultants, Inc. 2141 Palomar Airport Road, Suite 160 Carlsbad, CA 92011-1463	Geotechnical Engineering Services	0.8%	\$50,000		
Katz & Associates 4250 Executive Square, Suite 670 La Jolla, CA 92037	Community Outreach Services	2.5%	\$150,000	WBE	Caltrans
Manuel Oncina Architects 5711 La Jolla Boulevard La Jolla, CA 92037	Architect	1.7%	\$100,000	MBE	Caltrans
Process Applications, Inc. 2627 Redwing Rd., Ste. 340 Fort Collins, CO 80526	Ozone Controlled Development, Process Training and Performance Testing Services	4.1%	\$250,000		
V&A Consulting Engineers (formerly DeC, Inc.) 8291 Aero Place, Ste. 110 San Diego, CA 92123	Corrosion Engineering Services	0.1%	\$7,000		
Wimmer Yamada & Caughey (formerly Marum & Assoc.) 3067 Fifth Avenue San Diego, CA 92103-5840	Landscape Architectural Services	4.7%	\$280,000	(*)	

(1) For information only. As appropriate, Proposer shall identify Subconsultants as:

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

(2) For information only. As appropriate, Proposer shall indicate if Subconsultant is certified by:

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

(*) At the beginning of the Miramar WTP Upgrade/Expansion Project (1996), staff in these "merged firms" were committed to the project via a prior firm with WBE/WBE/DBE status.

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Beyaz & Patel, Inc.

Consulting Engineers

12396 World Trade Drive, Suite 317, San Diego, CA 92128-3789 (858) 451-0374 Fax: (858) 451-0194

*Engineering
Excellence
Since 1975*

August 24, 2007

Mr. John M. Price, P.E.
Camp Dresser & McKee Inc
1925 Palomar Oaks Way, Suite 300
Carlsbad, California 92008

Subject: City of San Diego
Miramar Water Treatment Plant Upgrade/Expansion Project
Letter of Commitment for Consulting Services

Dear Mr. Price:

Beyaz & Patel, Inc. is pleased to confirm our continued association with the CDM Team to provide consulting services for the City of San Diego's Miramar Water Treatment Plant Upgrade/Expansion Project. Beyaz & Patel is committed to Camp Dresser & McKee Inc., as a subconsultant, to provide structural engineering services during the continued construction support services of the project, and understand that the fee for our remaining services associated with the project is approximately \$110,000.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Subhash Patel', is written over a light-colored rectangular background.

Subhash Patel
Executive Vice President

000089

Suite 100, 400 Exchange
Irvine, California 92602

Tel: (714) 730-7600
Fax: (714) 734-0940

August 22, 2007



Mr. John M. Price, P.E.
Camp Dresser & McKee, Inc.
1925 Palomar Oaks Way, Suite 300
Carlsbad, California 92008

1012/118675-900

Subject: City of San Diego
Miramar Water Treatment Plant Upgrade/Expansion Project
Letter of Commitment for Consulting Services

Dear Mr. Price:

Brown and Caldwell is pleased to confirm our continued association with the CDM Team to provide consulting services for the City of San Diego's Miramar Water Treatment Plant Upgrade/Expansion Project. Brown and Caldwell is committed to Camp Dresser & McKee Inc., as a subconsultant, to provide consulting (civil, electrical, mechanical, structural, etc.) services during the continued construction support services of the project, and understand that the fee for our remaining services associated with the project is approximately \$1.8 million.

Very truly yours,

BROWN AND CALDWELL

A handwritten signature in black ink, appearing to read 'Azee Malik'.

Azee Malik
Vice President

000090



EMA, Inc.
8885 Rio San Diego Dr. Suite 301
San Diego, CA 92108-1610

phone: 619.542.1490
fax: 619.542.1488
www.ema-inc.com

August 22, 2007

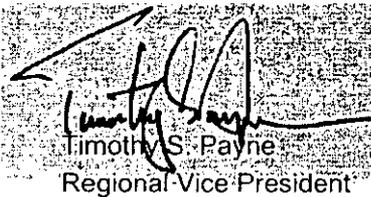
Mr. John M. Price, P.E.
Camp Dresser & McKee Inc
1925 Palomar Oaks Way, Suite 300
Carlsbad, California 92008

Subject: City of San Diego
Miramar Water Treatment Plant Upgrade/Expansion Project
Letter of Commitment for Consulting Services

Dear Mr. Price:

EMA, Inc. is pleased to confirm our continued association with the CDM Team to provide consulting services for the City of San Diego's Miramar Water Treatment Plant Upgrade/Expansion Project. EMA, Inc. is committed to Camp Dresser & McKee Inc., as a sub-consultant, to provide process control design and programming services during the continued construction support services of the project, and understand that the fee for our remaining services associated with the project is approximately \$560,000. Please note that this estimate is based on a City directed placeholder with final scope yet to be determined.

Very truly yours,
EMA, Inc.

A handwritten signature in black ink, appearing to read 'Timothy S. Payne', is written over a rectangular area with a textured, stippled background.

Timothy S. Payne
Regional Vice President

000091



Geotechnical
Environmental and
Water Resources
Engineering

August 21, 2007

Mr. John M. Price, P.E.
Camp Dresser & McKee Inc
1925 Palomar Oaks Way, Suite 300
Carlsbad, California 92008

Subject: City of San Diego
Miramar Water Treatment Plant Upgrade/Expansion Project
Letter of Commitment for Consulting Services

Dear Mr. Price:

GEI Consultants, Inc. (GEI) is pleased to confirm our continued association with the CDM Team to provide consulting services for the City of San Diego's Miramar Water Treatment Plant Upgrade/Expansion Project. GEI is committed to Camp Dresser & McKee Inc., as a subconsultant, to provide geotechnical engineering services during the continued construction support services of the project, and understand that the additional fee for our services associated with the Second Amendment to the 2002 City Agreement is approximately \$50,000.

Very truly yours,

A handwritten signature in black ink, appearing to read "Iqbal Ahmed", written over a horizontal line.

Iqbal Ahmed, Ph.D., P.E.
Principal Engineer

RESOLUTION NUMBER R- 298874

ADOPTED ON FEB 09 2004

A RESOLUTION AUTHORIZING AN AMENDMENT
TO THE AGREEMENT WITH CDM, INC. FOR
CONSULTANT SERVICES FOR THE MIRAMAR
WATER TREATMENT PLANT PROJECT,
AND TAKING RELATED ACTIONS.

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is authorized to execute, for and on behalf of the City, an amendment to the agreement with Camp Dresser and McKee, Inc. [CDM]; for consultant services for the Miramar Water Treatment Plant Upgrade and Expansion Project [Agreement], under the terms and conditions set forth in the amendment on file in the office of the City Clerk as Document No. RR- 298874 [Amendment], together with any reasonably necessary modifications or amendments thereto which do not increase Agreement cost and which the City Manager shall deem necessary from time to time in order to carry out the purposes and intent of the Agreement.

BE IT FURTHER RESOLVED, that the expenditure of an amount not to exceed \$8,427,788 from Water Fund No. 41500, CIP No. 73-284.0, Miramar Water Treatment Plant - Upgrade & Expansion Project, is authorized solely and exclusively for the purpose of providing funds for the Amendment, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds necessary under established contract funding phases are or will be on deposit with the City Treasurer.

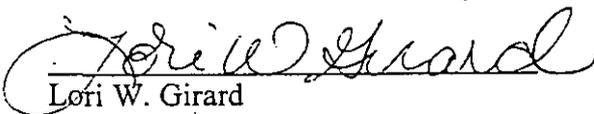
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BE IT FURTHER RESOLVED, that the City Manager is authorized to execute funding Phase 2 of the Agreement in the amount of \$1,370,000 as authorized in the Fiscal Year 2004 Budget Document.

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

APPROVED: CASEY GWINN, City Attorney

By



Lori W. Girard
Deputy City Attorney

LWG:lc:sc
01/26/04
Aud.Cert.:2400713
Or.Dept: Water
R-2004-775

000096

FEB 09 2004

Passed and adopted by the Council of The City of San Diego on _____
by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Scott Peters	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Michael Zucchet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Toni Atkins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Charles L. Lewis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Maienschein	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Donna Frye	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Madaffer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ralph Inzunza	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Dick Murphy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

(Seal)

DICK MURPHY

Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

By *[Signature]*, Deputy.

Office of the City Clerk, San Diego, California

Resolution R-298874 Adopted FEB 09 2004
Number _____

000097

DCN: 2003-000402 0



AGREEMENT

between

City of San Diego and
Camp Dresser & McKee, Inc.

for

Miramar Water Treatment Plant
Upgrade / Expansion Project



June 2002

DOCUMENT NO. RR-296927

FILED AUG 05 2002

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

**AGREEMENT BETWEEN THE CITY
OF SAN DIEGO AND CAMP DRESSER AND MCKEE INC.
FOR CONSULTING SERVICES**

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation [City], and Camp Dresser and McKee Inc. [Consultant] for the Consultant to provide Professional Services to the City on Miramar Water Treatment Plant Improvement Projects [Project].

RECITALS

The City wants to retain the services of a professional engineering design firm to provide design and construction related support services [Professional Services].

The Consultant has the expertise, experience and personnel necessary to provide the Professional Services for the Project.

The City and the Consultant [Parties] want to enter into an Agreement [Agreement] whereby the City will retain the Consultant to provide, and the Consultant shall provide, the Professional Services for the Project.

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

ARTICLE I - PROFESSIONAL SERVICES

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

1.1 Scope of Services.

The Consultant shall perform Professional Services as set forth in the written Scope of Services (Scope) [Exhibit A] at the direction of the City, and Time Schedule [Exhibit D].

1.2 Contract Administrator. The Water Department is the contract administrator for this Agreement. The Consultant shall provide Professional Services under the direction of a designated representative of the Water Department. The City's designated representative will communicate with the Consultant on all matters related to the administration of this Agreement and the Consultant's performance of the 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.

1.3 City Modification of Scope of Services.

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

1.4 Written Authorization.

Prior to performing any Professional Services in connection with the Project, the Consultant shall obtain from the City a written authorization to proceed. The Consultant shall advise the City in writing immediately of any anticipated change in the Scope of Services, Compensation Schedule, or Time 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 Consultant 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 Consultant, including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by the Consultant, pursuant to this Agreement, are for the sole use of the City, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the City. This provision does not apply to information that (a) was publicly known, or otherwise known to the Consultant, at the time that it was disclosed to the Consultant by the City, (b) subsequently becomes publicly known through no act or omission by the Consultant, or (c) otherwise becomes known to the Consultant other than through disclosure by the City. Except for Subconsultants 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 Consultant shall ensure that all plans and specifications prepared, required, or recommended under this Agreement allow for competitive bidding. The Consultant 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 Consultant shall submit this written

justification to the City prior to beginning work on such plans or specifications. Whenever the Consultant recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Project.

ARTICLE II - DURATION OF AGREEMENT

2.1 Term of Agreement.

This Agreement shall be effective on the date it is executed by the last party to sign the Agreement, and it shall be effective until June 30, 2005 or until completion of the last task hereunder, whichever occurs first.

2.2 Time of Essence.

Time is of the essence for this Agreement.

2.3 Notification of Delay.

The Consultant shall immediately notify the City in writing of any delay in completion of the Professional Services as set forth in the Scope. The written notice shall include an explanation of the cause for, and a reasonable estimate of the length of the delay. If the delay affects a material part of the Project, the City may exercise its rights under Sections 2.5-2.7 of this Agreement.

2.4 Delay.

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

2.5 City's Right to Suspend for Convenience.

The City may, at its sole option and for its convenience, suspend all or any portion of the Consultant's performance of the 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 Consultant of such suspension. In the event of such a suspension, in accordance with the provisions of Article III of this

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Agreement, the City shall pay to the Consultant a sum equivalent to the reasonable value of the Professional Services the Consultant has performed up to the date of suspension. Thereafter, the City may rescind such suspension by giving written notice of rescission to the Consultant. The City may then require the Consultant to resume performance of the Professional Services in compliance with the terms and conditions of this Agreement; provided, however, that the Consultant shall be entitled to an extension of time equal to the length of the suspension, unless otherwise agreed to in writing by the Parties.

2.6 Termination for Convenience.

The City may, at its sole option and for its convenience, terminate, subject to the express terms and conditions set forth below, Consultant's performance of Professional Services under this Agreement, in whole or, from time to time, in part, including, but not limited to, City Council's failure to appropriate sufficient monies to fund the Agreement. The Water Department Director shall terminate on behalf of the City by delivering to Consultant a notice of termination specifying the effective date.

2.6.1 Consultant Action. After receipt of the notice of termination, and except as otherwise directed by the Water Department Director, Consultant shall immediately proceed as follows:

2.6.1.1 Stop Professional Services immediately or as specified in the notice of termination.

2.6.1.2 Immediately enter into no further agreements with subconsultants for materials, services, or facilities, except as necessary to complete any authorized continued portion of the Agreement.

2.6.1.3 Immediately terminate all agreements with Subconsultants to the extent they relate to the Professional Services terminated.

2.6.1.4 With approval by the City, settle all outstanding obligations arising from the termination of agreements with Subconsultants; the approval of which will be final for purposes of this clause.

2.6.1.5 As directed by the City, transfer the title and deliver to the City completed or partially completed drawings, plans, calculations, specifications and any other documents and records that, if the Agreement had been completed, would be required to be furnished to the City.

2.6.1.6 Complete performance of the Professional Services not terminated.

2.6.1.7 Take any action that may be necessary, or that the City may direct, for the protection and preservation of the property related to this Agreement that is in the possession of Consultant and in which the City has or may acquire an interest.

2.6.2 Removal of City Property. Consultant may request the City to remove the City's property or enter into an agreement for its storage. Within sixty (60)

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days, the City will accept title of property and remove it or enter into a storage agreement.

2.6.3 Termination Settlement. After termination, Consultant shall submit a Final Termination Settlement Proposal ("Proposal") to the City in the form and with the certification prescribed by the City. Consultant shall submit the Proposal promptly, but no later than six (6) months from the effective date of termination, unless extended in writing by the City upon written request of Consultant within this six (6) month period. However, if the City determines that the facts justify it, a Proposal may be received and acted on after six (6) months or any extension. If Consultant fails to submit the Proposal within the time allowed, the City may in good faith determine, on the basis of information available, the fair and reasonable amount, if any, due Consultant as a result of the termination and pay the amount determined. If Consultant does not agree that the amount determined by the City is fair and reasonable and if Consultant gives notice of such disagreement to the City within thirty (30) days of receipt of payment, then the amount due shall be as later determined by the Alternative Dispute Resolution Procedures as set forth in this Agreement.

2.6.4 Payment Due Consultant. Subject to Section 2.6.3 above, Consultant and the City may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on Professional Services done. However, the agreed upon amount, whether under Section 2.6.5 below, exclusive of costs shown in Section 2.6.5.5 below, may not exceed the total Compensation as reduced by (1) the amount of payments previously made and, (2) the Compensation for Professional Services not terminated. The Agreement shall be amended, and Consultant paid the agreed amount. Section 2.6.5 below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this section.

2.6.5 Failure to Agree on Payment. If Consultant and the City fail to agree on the whole amount to be paid because of the termination of Professional Services, the City shall pay Consultant the fair and reasonable amounts determined in good faith by the City as follows, but without duplication of any amounts agreed on under Sections above:

2.6.5.1 The Compensation for completed Professional Services accepted by the City not previously paid for, adjusted for any saving of freight and other charges.

2.6.5.2 The costs incurred in the performance of the Professional Services terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to services paid or to be paid under Section 2.6.5.1 above;

2.6.5.3 The fair and reasonable cost of settling and paying termination settlement proposals under terminated agreements with Subconsultants that are properly chargeable to the terminated portion of the Agreement if not included in Section 2.6.5.2 above; and,

2.6.5.4 A sum, as profit on Section 2.6.5.2 above, determined by the City to be fair and reasonable under the circumstances; however, if it appears that Consultant would have sustained a loss on the entire Agreement had it been completed, the City shall allow no profit under this section and shall reduce the settlement to reflect the indicated rate of loss.

2.6.5.5 The reasonable costs of settlement of the Professional Services terminated, including:

2.6.5.5.1 Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of Proposals and supporting data;

2.6.5.5.2 The termination and settlement of agreements with subconsultants (excluding the amounts of such settlements); and,

2.6.5.5.3 Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of property in which the City has or may acquire an interest.

2.6.5.6 Under no circumstances will the City include any Compensation for lost profits or lost opportunity costs.

2.6.6 Dispute Resolution Procedures. If Consultant does not agree that the amount determined by the City is fair and reasonable and if Consultant gives notice of such disagreement to the City within thirty (30) days of receipt of payment, then the amount due shall be as later determined by Alternative Dispute Resolution Procedures as set forth in this Agreement.

2.6.7 Payment for Property Not Deliverable. Except to the extent that the City expressly assumed the risk of loss, the City shall exclude from the amounts payable to Consultant the fair value, as determined by the City, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the City.

2.6.8 Deductions. In arriving at the amount due Consultant under this clause, there shall be deducted:

2.6.8.1 All unliquidated advance or other payments to Consultant under the terminated portion of this Agreement.

2.6.8.2 Any claim which the City has against Consultant under this Agreement.

2.6.8.3 The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by Consultant or sold under the provisions of this clause and not recovered by or credited to the City.

2.6.9 Partial Termination If the termination is partial, Consultant may file a Proposal with the City for an equitable adjustment of the price(s) of the continued portion of the Agreement. The City shall make any equitable adjustment agreed upon. Any Proposal by Consultant for an equitable adjustment under this clause shall be requested within ninety (90) days from the effective date of termination unless extended in writing by the City.

2.6.9.1 The City may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by Consultant for the terminated portion of the Agreement if the City believes the total of these payments will not exceed the amount to which Consultant will be entitled.

2.6.9.2 If the total payments exceed the amount finally determined to be due, Consultant shall repay the excess to the City upon demand, together with interest. Interest shall be at a rate of 12% per annum and shall be computed for the period from the date the excess payment is received by Consultant to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in Consultant termination settlement proposal because of retention or other disposition of property until ten (10) days after the date of the retention or disposition, or a later date determined by the City because of the circumstances.

2.6.10 Document Retention. Unless otherwise provided in the Agreement or by statute, Consultant shall maintain all records and documents relating to the terminated portion of this Agreement for three years after final settlement. This includes all books and other evidence bearing on Consultant costs and expenses under this Agreement. Consultant shall make these records and documents available to the City, at all reasonable times, without any direct charge. If approved by the City, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

2.6.11 Rights of City Preserved. Where Consultant services have been so terminated by City, the termination will not affect any rights or remedies of City against Consultant then existing or which may thereafter accrue. Any retention or payment of monies due Consultant by City will not release Consultant from liability.

2.7 Termination of Agreement by City for Cause.

In the event of Default by Consultant, City shall give fourteen (14) days written notice to Consultant of City's intent to terminate the Agreement and provide the Consultant with an opportunity to remedy the conditions constituting the Default.

2.7.1 Default. It shall be considered a Default by Consultant when Consultant:

2.7.1.1 Declares bankruptcy, becomes insolvent, assigns its assets for the benefit of its creditors, or is unable to pay debts as they become due.

2.7.1.2 Fails to provide materials or workmanship meeting the requirements of the Agreement.

2.7.1.3 Disregards or violates provisions of the Agreement.

2.7.1.4 Fails to complete Professional Services according to the approved Schedule.

2.7.1.5 Fails to provide competent management and supervision, competent staff or materials or equipment meeting the requirements of the Agreement.

2.7.1.6 Disregards laws or regulations of any public body having jurisdiction.

2.7.1.7 Commits continuous or repeated serious violations of approved or legislated safety requirements.

2.7.2 **Failure to Remedy.** If Consultant fails to fix or remedy the conditions constituting Default within the time allowed, City may then issue a notice of termination.

2.7.3 **Completion of Professional Services.** In the event the Agreement is terminated in accordance with this Section, City may complete the Professional Services by whatever method or means City may select. The cost of completing the Agreement shall be deducted from the balance which would have been due Consultant had the Agreement not been terminated but had been fully performed. If such cost exceeds the balance which would have been due, Consultant shall pay the excess amount to City.

ARTICLE III - COMPENSATION

3.1 General.

3.1.1 **Contract Amount.** The City shall compensate the Consultant on an hourly basis, for all Professional Services related to performance under this Agreement, in an amount not to exceed \$6,644,975 (Contract Amount), as set forth in the Compensation Schedule [Exhibit B].

3.1.2 **Fees.** The Consultant shall be entitled to compensation for Professional Services under this Agreement, whether within the Scope of Services or as Additional Services, based on the Fee Schedule [Exhibit C]. For the duration of this Agreement, the Consultant shall not be entitled to fees which exceed those shown in the Fee Schedule.

3.2 Manner of Payment.

Consultant shall bill all fees and expenses (Costs) incurred in accordance with this Agreement directly to the City on a monthly basis.

3.2.1 **Payments.** The Consultant shall include with each invoice a description of completed Professional Services as set forth in the Scope. Invoices shall be submitted within sixty (60) days of completion of work represented by the request and within ninety (90) days of incurring Costs to be reimbursed under this Agreement, if any. Invoices to the City must be in accordance with the Fee Schedule and amounts approved by City will be paid within thirty calendar days of receipt.

3.3 Additional Services.

If the City requires additional Professional Services [Additional Services] beyond the Scope of Services, except for Additional Costs as described in Section 3.4 of this Agreement, the Consultant will be paid an additional fee. For Additional Services, if

required, a maximum fee of \$600,000 will be paid. The City and the Consultant must agree in writing upon such fee for a specific task based on the Fee Schedule prior to the Consultant beginning the Additional Services.

3.4 Additional Costs.

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

3.5 Excess Costs.

3.5.1 Notification. The Consultant shall promptly notify the City in writing if at any time the Consultant has reason to believe that Costs incurred in the performance of Professional Services will exceed the following limits;

3.5.1.1 80% of Contract Amount. Costs to be incurred in the next sixty calendar days, when added to all Costs previously incurred, will exceed eighty percent (80%) of the Contract Amount.

3.5.1.2 Total Contract Amount. Cost for performance of the Scope of Services will exceed the Contract Amount.

3.5.2 Estimate of Completion. The Consultant shall include a revised estimate to complete the Scope of Services under this Agreement in the notification required under Section 3.5.1.

3.6 Funding Phases

The Professional Services to be performed under this Agreement shall be performed during three separate and specific Funding Phases, identified below. The total Compensation for each Funding Phase shall not exceed the sum identified below for each Funding Phase, unless said amounts are modified in writing by an amendment to this Agreement.

Funding Phase	Dates	Total Estimated Cost	Additional Services	Funding Phase Total Compensation
1	Approval to June 30, 2003	\$3,700,000	\$150,000	\$3,850,000
2	July 1, 2003 to June 30, 2004	\$1,400,000	\$300,000	\$1,700,000
3	July 1, 2004 to June 30, 2005	\$944,975	\$150,000	\$1,094,975
Total		\$6,044,975	\$600,000	\$6,644,975

3.7 City and Consultant Obligations

It is expressly agreed that the Professional Services and Compensation for Funding Phases one through three identified above are subject to funds being appropriated by the San Diego City Council for said Professional Services and Compensation. The City's obligations and Consultant's obligations under this Agreement, which is subject to multi-phase funding authorizations, are as follows:

3.7.1 Funds Available. Funds available for performance are described in Section 3.6 above. The amount of funds available at the time of execution of this Agreement is not considered sufficient for the performance required for any Funding Phases other than the first Funding Phase. When additional funds are available for the full requirements of the next Funding Phase, the City shall, not later than the date specified (unless a later date is agreed to), so notify Consultant in writing. The City shall also modify the amount of funds available for Agreement performance as described in the Funding Phases above. This procedure shall apply for each successive Funding Phase.

3.7.2 - Limit of Funds Available. The City is not obligated to Consultant for any amount in excess of the amount specified in the Funding Phases authorized by the City Council.

3.7.3 Written Notification of Funds Available. Consultant is not obligated to incur costs for the performance of Professional Services required for any Funding Phase after the first, unless and until written notification is received from the City of an increase in availability of funds. If so notified, Consultant's obligation shall increase only to the Agreement performance required for that additional Funding Phase for which funds are made available.

3.7.4 Funds Available under Termination. If the Agreement is terminated for convenience as provided in Section 2.6, the settlement proposal shall be determined based upon the Funding Phase for which funds have been made available. However, if the Agreement is terminated for cause as provided in Section 2.7, the City's rights under this Agreement shall apply to the entirety of the Agreement, including all Funding Phases.

3.8 Expenses.

Compensation for each Funding Phase shall include all expenses. Expenses are subject to prior approval by the City in accordance with Exhibit C, except for items listed in Section II of Exhibit C as direct pass through expenses. The total Compensation, including expenses, shall not exceed the amounts shown in Section 3.1 above, unless said amounts are modified in writing by an amendment to the Agreement.

3.9 Funds For Additional Services.

Any further Professional Services to be performed under this Agreement will be as Additional Services pursuant to Section 3.12. It is expressly agreed that any Professional Services and Compensation so authorized are subject to funds being available and authorized by the City for said Professional Services and Compensation.

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3.10 Amendment to Compensation.

The Compensation may not be changed except in the case of a fully executed Amendment to this Agreement which alters the Scope of Services.

3.11 Compensation in Excess of Authorized Compensation.

Except as required by other provisions of this Agreement specifically stated to be an exception to this clause, the City shall not be obligated to reimburse Consultant for Costs incurred in excess of the authorized Compensation set forth in this Agreement, and Consultant shall not be obligated to continue performance under this Agreement (including actions under the termination clause) or to otherwise incur Costs in excess of the authorized Compensation unless and until the City has notified Consultant in writing that the Compensation has been increased and has so specified in such notice a revised authorized Compensation. In the absence of the specified notice, the City shall not be obligated to reimburse Consultant for any Costs in excess of the authorized Compensation, whether those excess Costs were incurred during the course of the Professional Services or as a result of termination.

3.12 Continuance of Professional Services.

In the event the entire Scope of Services provided for under this Agreement cannot be completed within the Compensation established, Consultant shall continue with any or all parts of the Professional Services for which an amended Compensation is established by a fully executed amendment to this Agreement.

3.13 Meaningful Negotiation.

It is further agreed that the Compensation contained herein has been arrived at after meaningful negotiation between the City and Consultant.

ARTICLE IV - CONSULTANT'S OBLIGATIONS

4.1 Industry Standards.

The Consultant 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 design engineering firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by the City, the City Manager, or other representatives of the City is required, it is understood to be general approval only and does not relieve the Consultant of responsibility for complying with all applicable laws, codes, and good consulting practices.

4.2 Maintenance of Records.

The Consultant shall maintain books, records, logs, documents and other evidence sufficient to record all actions taken with respect to the rendering of Professional Services for the Project, throughout the performance of the Professional Services and for a period of ten years following completion of the Professional Services

for the Project. Consultant further agrees to allow the City to inspect, copy, and audit such books, records, documents and other evidence at all reasonable times. Consultant agrees to provide the City with weekly backup (diskettes) for all documents generated by Consultant in performing Professional Services under the terms of this Agreement or to provide City with proof of insurance coverage for valuable papers and records.

4.3 Insurance

4.3.1 Definitions.

The following definitions shall apply to Section 4.3 "Insurance" only:

"Consultant and its subconsultants" shall mean the Consultant and its subconsultants of any tier who are engaged in the rendering of architectural, engineering, or other professional services."

"Professional Subconsultants" shall mean the Consultant's subconsultants of any tier who are engaged in the rendering of architectural, engineering, or other professional services."

"Designated Location" shall mean the site/project areas defined for coverage purposes by the terms of insurance policies of the Owner Controlled Insurance Program.

4.3.2 Owner Controlled Insurance Program General.

The City of San Diego as Owner has insured this Project, at its own expense, under an Owner Controlled Insurance Program (hereinafter "OCIP"). The City through its OCIP will provide, at its expense, certain insurance coverage for the Consultant and its subconsultants. All insurance underwriting, payroll, rating or loss history information requested of the Consultant and its subconsultants by the City or the City's OCIP Risk Manager or Administrative Broker, shall be provided within five (5) working days of the request. The coverage provided through the OCIP shall be a combined policy of Professional/Contingent Pollution Legal Liability Insurance only.

4.3.2.1 Limitation To The OCIP. The OCIP is not intended to provide a complete insurance program to the Consultant and its subconsultants. The Consultant and its subconsultants shall provide additional coverage as required, or as they may deem necessary, at their own expense and through their own efforts.

4.3.2.2 Coverages Subject To The OCIP Policy Provisions. The coverages provided by the City are subject to the terms, conditions and other provisions, including exclusions and limitations, contained in the policies and shall name the Consultant and its subconsultants and City of San Diego as an additional insured.

4.3.2.3 OCIP Exclusions. Consultant's and its subconsultants' employees, or visitors not providing professional services under this Agreement, are required to provide evidence of their own insurance equivalent to that specified in (Section 4.3.4) before accessing the Designated Location.

4.3.2.4 Elimination of Insurance Costs. The Consultant and its subconsultants shall eliminate from their contract price the cost of any insurance or self-insurance which duplicates insurance provided by the City. The Consultant's and its subconsultants shall provide to the City such information or records as may be requested, required or deemed helpful in determining that such costs have not been passed through to the City.

4.3.2.5 Exclusion From or Termination of OCIP. The City reserves the option to exclude the Consultant and/or any of its subconsultants from the OCIP or to terminate the OCIP, in whole or in part, at any time upon thirty (30) calendar days written notice to the Consultant and/or any of its subconsultants. Should the City choose to do so, the Consultant and/or its subconsultants shall obtain insurance for such coverages in amounts and subject to such terms as the City may direct. In such event, there shall be allowed to the Consultant and/or its subconsultants an equitable adjustment in the Consultant's and/or its subconsultants' compensation. The Consultant and its subconsultants shall provide to the City such information or records as may be required or may be deemed helpful in determining the increased insurance costs to the Consultant and/or its subconsultants.

4.3.2.6 Cooperation. The Consultant and its subconsultants shall cooperate fully with and provide any information or records requested by the City, or City's OCIP Administrative Broker. In addition the Consultant and its subconsultants shall abide by all applicable provisions, specifications, responsibilities and obligations set forth in the "Contractor's OCIP Insurance Manual" which is hereby incorporated into this Agreement by reference, including but not limited to claims reporting procedures, audits, insurance records and safety. City may, at its sole discretion, withhold progress payments to the Consultant if the Consultant and/or its subconsultants fail(s) to cooperate and provide requisite OCIP information or documentation to the City or City's OCIP Administrative Broker. Questions concerning the OCIP shall be directed to the City's OCIP Administrative Broker.

4.3.3 Coverage Provided By the Owner.

4.3.3.1 Specific Provision. Insurance coverage provided by the owner under the OCIP will be primary and non-contributory to any other valid and collectible insurance carried by the Consultant and its subconsultants with respect to the operations of the Consultant and its subconsultants, except when specified otherwise in another section of this Agreement.

4.3.3.2 Combined Project Professional, Errors & Omissions Liability (Coverage A) & Contractors' And Consultants' Contingent Pollution Legal Liability Insurance (Coverage B).

4.3.3.2.1 Coverage A: "Professional Errors & Omissions Liability". The City, at its own expense, will provide to the Consultant and its Professional Subconsultants, a Professional Errors & Omissions Liability policy, affording coverage for negligent acts, errors or omissions rendered, or that should have been rendered by the Consultant and/or its Professional Subconsultants of any tier, or by any person whose acts, errors or omissions the Consultant and/or its Professional Subconsultants are legally responsible for and which arise from the rendering of Professional Services under this Agreement, subject to all policy terms, conditions and exclusions.

4.3.3.2.2 Coverage B: "Contingent Pollution Legal Liability Insurance". The City, at its own expense, will provide to the Consultant and its subconsultants, a Contingent Pollution Legal Liability Insurance policy, affording coverage to the Consultant and its subconsultants for contingent and unanticipated pollution-related exposures, relative to the performance of Work or Services at the Designated Location subject to all policy terms, conditions and exclusions.

4.3.3.2.3 Both Coverages A & B: With respect to both lines of coverages afforded through this Section 4.3.3.2, the collective limits of liability are \$10,000,000 per claim and \$10,000,000 in the policy aggregate, inclusive of claims expenses. Coverage will apply separately to each insured. The addition of multiple insureds will not operate to increase the policy limit. The policy will include an extended discovery period of five (5) years. A \$25,000 per claim deductible will be the responsibility of the Consultant. A \$10,000 per claim deductible shall be the responsibility of the Consultant's subconsultants. The apportionment of the deductible associated with any single loss, among two or more liable insureds, will be allocated on a pro-rata basis relative to their collective contract values. In no event shall the combined deductible contributions of all liable entities exceed \$50,000.00 in the aggregate for any one loss.

4.3.4 Coverage to be Provided by the Consultant and its Subconsultants.

At all times during the term of this Agreement and for any Extended Reporting Period, the Consultant and its subconsultants shall maintain insurance coverages as follows:

4.3.4.1. Commercial General Liability. The Consultant and its subconsultants' shall provide Commercial General Liability Insurance evidencing coverage for all their operations. Coverage must not contain exclusions for blanket contractual, broad form property damage, personal injury, premises and operations, products/completed operations, fire legal liability, Explosion, Collapse and Underground

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Property Damage Liability. The limit of such coverage shall not be less than:

General Annual Aggregate (other than Products/Completed Operation)	\$1,000,000
Products/Completed Operations Aggregate Limit	\$1,000,000
Personal Injury Limit	\$1,000,000
Each Occurrence	\$1,000,000

Contractual liability shall include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization. Contractual liability limitation endorsement is not acceptable. The per occurrence limits required may be achieved by combining layers of excess or umbrella insurance with underlying Commercial General Liability Coverage, provided that the sum of the limits of all policies meet or exceed the required limits.

4.3.4.2 Commercial Automobile Liability. For all of the Consultant's and subconsultants' automobiles including owned, hired and non-owned automobiles, the Consultant and its subconsultants shall keep in full force and effect, automobile insurance for bodily injury and property damage providing coverage to a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile [any auto].

4.3.4.3. Architects & Engineers Professional Liability. The Consultant and its Professional Subconsultants shall keep in full force and effect, errors and omissions insurance providing coverage for professional liability with a combined single limit of \$2 million per claim and \$2 million annual aggregate. Consultant shall ensure that this policy retroactive date is on or before the date of commencement of the Project. Consultant agrees that for the time period defined above, there will be no changes or endorsements to the policy that increases the City's exposure to loss. This insurance, up to the limit of \$2.0 million for the Consultant or to a lesser amount as specifically approved by the City for individual Subconsultants, becomes primary to any other Architects & Engineers Professional Liability coverage which the City of San Diego may purchase for this project. Once the \$2.0 million, or previously approved lesser amount is reached, the OCIP or other Architects & Professional Liability coverage which the City of San Diego may purchase for this Project shall become the next primary layer of insurance.

4.3.4.4. Worker's Compensation and Employers Liability Insurance. The Consultant and its subconsultants shall provide Workers' Compensation Insurance and Employers' Liability Insurance, covering the employees of the Consultant and its subconsultants. The policy shall protect the Consultant and its subconsultants against all claims under applicable State Workers' Compensation laws. The Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, and representatives. Policy limits shall be not less than:

Type of Insurance

Policy Limits

Workers' Compensation
Employers' Liability

Statutory

Bodily injury by accident	\$1,000,000 each accident
Bodily injury by disease	\$1,000,000 each employee
Bodily injury by disease	\$1,000,000 policy limit

4.3.4.5 Rating Requirements. All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have been given at least an "A" & "A-" rating by AM BEST, that are licensed to do business in the State of California, and that have been approved by the City, or equivalent for Professional Liability Insurance issued through the London Market.

4.3.4.6 Deductibles. All deductibles on any policy shall be the responsibility of the Consultant.

4.3.4.7 No Modifications to the Policies. The Consultant and its subconsultants shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement or for any Extended Reporting Period dictated by this Agreement.

4.3.4.8 Adjustments to Insurance Limits. The City may request a proposal from Consultant and its subconsultants for adjusting insurance limits.

4.3.4.9 Pass Through Provisions. The Consultant and its subconsultants shall require that the Insurance, Indemnity and Safety Program provisions of this Agreement be included in its subcontracts of every tier.

4.3.4.10 Evidence of Renewal Certificates. Consultant and its subconsultants shall provide certificates of insurance for all policy renewals to the Project Contracts Manager at minimum thirty (30) days prior to the policy renewal date; this requirement shall prevail for the duration of this Agreement in addition to any and all Extended Reporting Periods indicated in this Section 4.3.4.

4.3.4.11 Specific Provisions Required. Each policy required under this Section 4.3.4. (except "Worker's Compensation and Employers' Liability Insurance" and "Professional Liability Insurance") shall expressly provide that and an endorsement shall be submitted to the City that::

4.3.4.11.1 Additional Insureds. The City of San Diego and its respective elected officials, officers, employees, and representatives shall be named as additional insureds. The City's additional insured status must be reflected on an additional insured endorsement form CG 20 10 (form CG 20 09 is unacceptable).

4.3.4.11.2 Primary and Non-Contributory Coverage. The policies are to be primary and non-contributory with any insurance that may be carried by the City, as reflected in an endorsement which shall be submitted to the City.

4.3.4.11.3 Modification or Cancellation Clause. The policies cannot be canceled or non-renewed or changed in limits except after thirty (30) calendar days prior written notice by the insurer to the City by certified mail. No endorsement from the insurer shall be required for this Modification or Cancellation Clause.

4.3.4.12 Commencement of Professional Services. The Consultant and subconsultants shall not commence Professional Services under this Agreement until they have a) provided the City with Certificates of Insurance accompanied with all endorsements reflecting evidence of all insurance required in Section 4.3.4, however, the City reserves the right to request, and Consultant and its Subconsultants shall submit, copies of any policy; b) obtained City's approval of each company or companies as required by Section 4.3.4; c) confirmed that all policies contain the specific provisions required in Section 4.3.4.

4.3.5 Additional Consultant Insurance.

The Consultant and its subconsultants may obtain additional insurance not required by this Agreement.

4.4 Subconsultants.

The Consultant's hiring of or retaining any third parties [Subconsultants] to perform services related to the Project [Subconsultant Services] is subject to prior approval by the City. Consultant shall list on the Subconsultants List [Exhibit E (Attachment CC)] all Subconsultants known to the Consultant at the time this Agreement is executed. If at any time after this Agreement is entered into, the Consultant identifies a need for additional Subconsultant Services, the Consultant shall give written notice to the City of the need, at least forty-five days before entering into a contract for such Subconsultant Services. The Consultant's notice shall include a justification, a description of the scope of work, and an estimate of all costs for the Subconsultant Services. The Consultant may request that the City reduce the forty-five day notice period. The City agrees to consider such requests in good faith.

4.4.1. Subconsultant All contracts entered into between the Consultant and a Subconsultant shall contain the information as described in Sections 4.6, 4.7, and 4.10.2, and shall provide as follows:

4.4.1.1. Each Subconsultant shall obtain insurance policies which shall be kept in full force and effect during any and all work on this Project and for the duration of this Agreement. Each Subconsultant shall obtain, and Consultant shall require the Subconsultant to obtain, all policies described in Section 4.3.4.

4.4.1.2. The Consultant is obligated to pay the Subconsultant, for

Consultant- and City-approved invoice amounts, out of amounts paid by the City to the Consultant, not later than fourteen working days from the Consultant's receipt of payment from the City. Nothing in this paragraph shall be construed to impair the right of the Consultant and any Subconsultant 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 Subconsultant Services, the Consultant shall notify the City in writing of any withholding of payment to the Subconsultant, 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 Subconsultant must take in order to receive the amount withheld. Once the Subconsultant corrects the deficiency, the Consultant shall pay the Subconsultant within fourteen working days of Consultant's receipt of the next payment from the City.

4.4.1.4. In any dispute between the Consultant and Subconsultant, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The Consultant agrees to defend and indemnify the City as described in Article VI of this Agreement in any dispute between the Consultant and Subconsultant should the City be made a party to any judicial or administrative proceeding to resolve the dispute in violation of this position.

4.5 Contract Activity Report.

The Consultant shall submit statistical information to the City as requested in the City's Contract Activity Report [Exhibit E (Attachment BB)]. The statistical information shall include the amount of subcontracting provided by firms during the period covered by the Contract Activity Report. With the Contract Activity Report, the Consultant shall provide an invoice from each Subconsultant listed in the Report. The Consultant agrees to issue payment to each firm listed in the Report within fourteen working days of receiving payment from the City for Subconsultant Services as described in Sections 4.4.1.2 and 4.4.1.3 of this Agreement.

4.6 Non-Discrimination Requirements.

4.6.1 Compliance with the City's Equal Opportunity Contracting Program. The Consultant and each of its Subconsultants shall comply with the City's Equal Opportunity Contracting Program Consultant Requirements which is attached hereto as Exhibit E and incorporated herein by this reference.

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

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

4.7 Drug-Free Workplace.

The Consultant agrees to comply with the City's Drug Free Workplace requirements set forth in Council Policy 100-17, adopted by Council Resolution No. R-277952 and incorporated into this Agreement by this reference. Consultant shall certify to the City that it will provide a drug-free workplace by submitting a Consultant Certification for a Drug-Free Workplace form [Exhibit F].

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

4.7.2. Drug-Free Awareness Program. The Consultant shall establish a drug-free awareness program to inform employees about all of the following:

4.7.2.1. The dangers of drug abuse in the work place.

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

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

4.7.2.4. The penalties that may be imposed upon employees for drug abuse violations.

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

4.7.4. Subconsultant's Agreements. The Consultant further certifies that each contract for Subconsultant services for this Project shall contain language that binds the Subconsultant to comply with the provisions of Article IV, Section 4.7 of this Agreement, as required by Sections 2.A.(1) through (3) of Council Policy 100-17. Consultants and Subconsultants shall be individually responsible for their own drug-free

work place program.

4.8 Americans with Disabilities Act Statement.

4.8.1. ADA Compliance. The Consultant agrees to comply with the City's American with Disabilities Act (ADA) requirements set forth in Council Policy 100-04, adopted by Council Resolution No. 282153 and incorporated into this Agreement by this reference. Consultant shall certify to the City that it will comply with the ADA by adhering to the following provisions of the ADA:

4.8.1.1 Title I - Employment Mandates. "No contractor may discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, disciplines, layoffs, and terminations of employment."

4.8.1.2 Title II - State and Local Government. "No qualified individual with a disability may be excluded on the basis, from participation in, or be denied the benefits of services, programs, or activities by contractors or subcontractors providing services to the City."

— - **4.8.1.3 Posting the Statement.** Post a statement addressing the requirements of the ADA in a prominent place at the worksite.

4.8.2. Subconsultant Agreements. The Consultant further certifies that each contract for Subconsultant Services for this Project shall contain language that binds the Subconsultant to comply with the provisions of Article IV, Section 4.8 of this Agreement. Consultants and Subconsultants shall be individually responsible for their own ADA employment programs.

4.8.3. ADA Design Standards. The Consultant is responsible for the design and all contract administration services during the construction of the Project in accordance with all applicable laws, regulations, and codes, including, but not limited to, the 1990 Americans with Disabilities Act [ADA] and Title 24 California Code of Regulations [Building Code] as defined in Section 18910 of California Health and Safety Code [Title 24]. The Consultant is responsible as a designer, employer, and City representative to comply with all portions of Title 24 and the ADA. (For specific services and public accommodations, the Consultant may contact the Office of the Americans with Disabilities Act, Civil Rights Division, U.S. Department of Justice, P.O. Box 66118, Washington, D.C. 20035-6118; phone number (202) 514-0301.)

4.9 Product Endorsement.

The Consultant acknowledges and agrees to comply with the provisions of the City's 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 Consultant is subject to all federal, state and local conflict of interest laws, regulations and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq. and

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81000, et. seq. The City may determine that a conflict of interest code requires the Consultant to complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Consultant shall submit the necessary documentation to the City.

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

4.10.2. The Consultant and its Subconsultants having subcontracts amounting to 1% or more of the value of the Contract Amount are precluded from participating in design services on behalf of the construction contractor, construction management services, and other construction services related to this Project without the prior written consent of the City. This does not prohibit bid phase services nor engineering services during construction for the Miramar Water Treatment Plant Projects or Early Start Improvement Projects.

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

4.10.4. If the Consultant violates any conflict of interest laws or any of these provisions in Section 4.10, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects the Consultant to liability to the City for attorneys fees and 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 Consultant, its agents, officers, and employees agree to assist in resolving the dispute or litigation. Consultant's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

4.12 Compensation for Mandatory Assistance.

The City will reimburse, as described in Article III of this Agreement, the Consultant for any fees and expenses incurred for required Mandatory Assistance as Additional Services defined in Section 3.3. The City in its sole discretion, shall determine whether these fees, expenses, and Professional Services rendered under Section 4.11, were necessary due to the Consultant's or its agents', officers', and employees' conduct or failure to act. If the City determines that such fees, expenses, or Professional Services were the result of the Consultant's or agents', officers', and employees' conduct, in part or in whole, the City is entitled to be reimbursed for any

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payments made for these fees, expenses, or Professional Services. Reimbursement may be through any legal means necessary, including City's withholding of payment.

4.13 Attorney Fees related to Mandatory Assistance.

In providing the City with dispute or litigation assistance, the Consultant or its agents, officers, and employees may incur expenses and/or costs. The Consultant agrees that any attorney fees it may incur as a result of assistance provided under Section 4.11 are not reimbursable. The Parties agree this provision does not in any way affect their rights to seek attorney fees under Article VIII, Section 8.8 of this Agreement.

4.14 Year 2000 Compliance:

Consultant agrees that the Professional Services on this Project and each product delivered, incorporated or designed for use under this Agreement that contains or utilizes any software, hardware, firmware or any device which requires or is designed to do any processing, analysis, calculating or tracking of date/time data or information shall be able to accurately process, track, or create such date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, and leap year calculations to the extent necessary for the Project, and each product to function correctly and accurately from, into, and between all dates and times, including but not limited to, from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and later, for the life of the Project.

4.15 Project Site Safety.

4.15.1 Compliance With Safety Program. The Consultant and each of its Subconsultants shall comply with The City of San Diego Water Department Safety and Health Program: Contractor's Safety Management Program, (Exhibit G) as adopted for each Project Site where Professional Services are performed pursuant to this Agreement.

4.15.2 Project Site Visits. Any representative of the Consultant or its subconsultants visiting the Project Site shall comply with Section 7.14 of the aforementioned Safety Program which provides in part "... minimum personal protective equipment required on all Projects consists of high visibility safety vest, ANSI approved hard hat, safety glasses with side shields, and steel-toed footwear...". This provision is strictly enforced and there are no exceptions.

4.16 Energy Conservation Specifications.

Technological advances in energy conservation devices such as lighting and Heating Ventilation and Air Conditions (HVAC) enable additional energy savings over that required by the State of California Title 24 Energy Standards. The Consultant shall be responsible for preparing a cost savings comparison of such devices for City review. The purpose of the comparison is to identify the additional initial cost of such devices, versus their long-term energy savings. The Consultant shall prepare a cost savings matrix that lists each device being considered and 1, 3, 5, and 10-year projected savings. The comparison shall include, but not be limited to the below listed devices:

Devices: Lighting, HVAC, Water Heating, and Motors.

4.17 Notification of Increased Construction Cost.

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

4.17.1 Compensation for Revisions to Project. The City will reimburse, as described in Article III of this Agreement, the Consultant for any fees and expenses incurred for revisions to bring construction costs within the construction budget as Additional Services defined in Section 3.3, unless the City in its sole discretion, determines that the revisions are necessary due to Consultant's, its officers', agents' or employees' conduct, failure to act, or errors or omissions. In that case, Consultant shall be responsible for any fees, expenses or Professional Services required to provide revisions due to Consultant's errors and omissions.

ARTICLE V - CITY'S OBLIGATIONS

5.1 Ownership of Documents.

Once the Consultant has received any compensation for the Professional Services performed, all documents, including but not limited to, original plans, studies, sketches, drawings, computer printouts and disk files, and specifications prepared in connection with or related to the Scope of Services or Professional Services, shall be the property of the City. The City's ownership of these documents includes use of, reproduction or reuse of and all incidental rights, whether or not the work for which they were prepared has been performed. The City's ownership entitlement arises upon payment or any partial payment for work performed and includes ownership of any and all work product completed prior to that payment. This Section shall apply whether the Consultant's Professional Services are terminated: (a) by the completion of the Project, or (b) in accordance with other provisions of this Agreement. Notwithstanding any other provision of this paragraph or Agreement, the Consultant shall have the right to make copies of all such plans, studies, sketches, drawings, computer printouts and disk files, and specifications.

Consultant shall not be responsible for damage caused by subsequent changes to or uses of the plans or specifications, where the subsequent changes or uses are not authorized or approved by Consultant, provided that the service rendered by Consultant was not a proximate cause of the damage.

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The hard copy of the contract documents containing the engineers professional stamp shall be the only legal submittal and shall take precedence over the floppy disc. Notwithstanding any other provision of this Agreement, all of Consultant's pre-existing or proprietary computer programs, software, information or materials developed by Consultant outside this Agreement shall remain the exclusive property of the Consultant.

5.2 Additional Consultants or Contractors.

The City reserves the right to employ, at its own expense, such additional consultants or contractors as the City deems necessary to perform work or to provide Professional Services on the Project.

5.3 Employment of City Staff.

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

ARTICLE VI - INDEMNIFICATION

6.1 Indemnification and Hold Harmless Agreement.

With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the Consultant, or Consultant's employees, agents and officers, arising out of any services performed involving this Agreement, except liability for Professional Services covered under Section 6.2, the Consultant agrees to defend, indemnify, protect, and hold harmless the City, its employees, agents and officers, from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, its employees, agents, and officers, which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents, or officers, or any third party. The Consultant's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its employees, agents, and officers. This section in no way alters, affects or modifies the Consultant's obligations and duties under Section 4.3.4.1 herein.

6.2 Indemnification for Professional Services.

As to the Consultant's Professional Services under this Agreement, the Consultant agrees to defend, indemnify, protect and hold harmless the City, its agents, officers and employees from and against any and all claims asserted, or liability established for any damages, arising from the active or passive negligent acts or omissions of the Consultant. The City may, of its own election, conduct its defense or

participate in the defense of any claim related in any way to this Agreement; provided however, that the Consultant's duty to indemnify and hold harmless shall not include any claims or liability arising from the established negligence or willful misconduct of the City, its agents, officers or employees.

6.3 Duty to Defend.

The Consultant further agrees that the indemnification agreement in Sections 6.1 and 6.2, and the duty to defend the City, require the Consultant to pay any costs the City incurs that are associated with enforcing the indemnification provisions, and defending any claims arising from this Agreement. If the City chooses at its own election to conduct its own defense, participate in its own defense or obtain independent legal counsel in defense of any claim related to this Agreement, the Consultant agrees to pay the reasonable value of attorneys fees and all of the City's cost equal to the established fault attributable to the acts or omissions of Consultant.

ARTICLE VII - ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

7.1 Mandatory Non-binding Mediation

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, the Parties agree to first endeavor to settle the dispute in an amicable manner, using mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association 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 expenses of the 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 American Arbitration Association (AAA) or any other agreed upon mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party. If the mediator is selected from a list provided by AAA, the initiating party shall concurrently file with AAA a "Request for Mediation" along with the appropriate fees; a list of three requested mediators marked in preference order, and a preference for available dates.

7.3.1. If AAA is selected to coordinate the mediation (Administrator), within ten (10) 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 frames.

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

8.1 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:

Habib Hariri
Project Manager
City of San Diego Water Department
600 B Street, Suite 600
San Diego, CA 92101

and notice to the Consultant shall be addressed to:

John M. Price
Vice President
Camp Dresser & McKee Inc.
1925 Palomar Oaks Way, Suite 300
Carlsbad, CA 92008

8.2 Headings.

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

8.3 Non-Assignment.

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

8.4 Independent Contractors.

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

8.5 Consultant Principal for Professional Services.

It is understood that this Agreement is for unique Professional Services. Retention of the Consultant's Professional Services is based on the particular professional expertise of the individuals rendering the services set forth in the Scope of Services. Accordingly, portions of the described service may not be delegated to other members of the team or Subconsultants without prior written consent by the City. It is mutually agreed that John M. Price (Vice President) is the principal person responsible for delivery of all Professional Services and may not be removed from the Project without the City's prior written approval. In the event the principal named above becomes unavailable for any reason, the City must be consulted as to any replacement. Further, the City reserves the right, after consultation with the Consultant, to require removal of Consultant's employees or agents.

8.6 Covenants and Conditions.

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

8.7 Compliance with Controlling Law.

The Consultant shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement. In addition, the Consultant shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

8.8 Jurisdiction, Venue, and Attorney's Fees.

The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney's fees in addition to any other award made in such suit or proceeding.

8.9 Successors in Interest.

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

8.10 Integration.

This Agreement and the exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, 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 or an amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.

8.11 Counterparts.

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

8.12 No Waiver.

No failure of either the City or the Consultant to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

8.13 Severability.

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

8.14 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.

8.15 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.

THIS SPACE INTENTIONALLY LEFT BLANK

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8.16 Signing Authority.

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

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Water Department Director, pursuant to Resolution No. _____ authorizing such execution, and by the Consultant.

Dated this _____ day of AUG 05 2002 2002.

THE CITY OF SAN DIEGO

By [Signature]
Larry Gardner
Water Department Director

I HEREBY CERTIFY I can legally bind Camp Dresser & McKee Inc. and that I have read all of this Agreement, this 24th day of June, 2002

By [Signature]
Raul R. Brown
Senior Vice President

I HEREBY APPROVE the form and legality of the foregoing Agreement this 21st day of August, 2002.

CASEY GWINN, City Attorney

By [Signature]
Catherine Bradley
Deputy City Attorney

EXHIBITS

Exhibit A - Scope of Services

Exhibit B - Compensation Schedule

Exhibit C - Fee Schedule

Exhibit D - Time Schedule

Exhibit E - City's Equal Opportunity Contracting Program Consultant Requirements

(Attachment AA) Work Force Report

(Attachment BB) Contract Activity Report

(Attachment CC) Subconsultants List

Exhibit F - Drug Free Workplace Policy and Consultant Certification.

Exhibit G - The City of San Diego Water Department Safety and Health Program:
Contractor's Safety Management Program.

ATTACHMENTS

Attachment 1 - Consultant Performance Evaluation

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CIP-14-03-002

REQUEST FOR COUNCIL ACTION - APPROVED COPY
CITY OF SAN DIEGO

CERTIFICATE NUMBER:
AC 2300094

TO: CITY ATTORNEY
2. FROM: (ORIGINATING DEPARTMENT) Water Department
3. DATE: June 26, 2002

FINAL APPROVED COPY
DOCUMENT # R-296927

4. SUBJECT: Agreement with CDM for the Miramar Water Treatment Plant Upgrade & Expansion
DCN: 2003-000095

5. FOR INFORMATION, CONTACT: (NAME & MAIL STA.) Vic. Bienes / Iraj Asgharzadeh MS 907
6. TELEPHONE NO. 533-6600/533-5105
7. CHECK HERE IF BOX 1472A, "DOCKET SUPPORTING INFORMATION," HAS BEEN COMPLETED ON PAGE 2:

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	41500	41500			9. ADDITIONAL INFORMATION / ESTIMATED COST:	
DEPT.	760	760			Records Management	
ORGANIZATION	391020	391020			Agreement	73-284.0 73-284.2
OBJECT ACCOUNT	4118	4118			FY03 Phase 1	\$3,700,000 \$150,000
JOB ORDER	182482	186262			FY04 Phase 2	\$1,400,000 \$300,000
C.I.P. NO.	73-2840	73-2840 / 73-284.2			FY05 Phase 3	\$ 944,975 \$150,000
AMOUNT	\$3,700,000	\$150,000			Total	\$6,044,975 \$600,000

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	DEPARTMENT DIRECTOR	[Signature]	7/9/02	5	CITY MANAGER	[Signature]	7/19/02
2	FAS	[Signature]	7/12/02	6	AUDITOR	Emman	7/22/02
3	CIP/EOC	[Signature]	7/18/02	7	CITY ATTORNEY	Catherine Stadley	7/22/02
4	EOC	[Signature]	7/18/02	8	ORIGINATING DEPARTMENT	[Signature]	7/23/02
				MGR. DOCKET COORD		[Signature]	COUNCIL REP.
				<input checked="" type="checkbox"/> RULES COMMITTEE <input type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION <input type="checkbox"/> Refer to _____ Date _____			

11. PREPARATION OF: RESOLUTION(S) ORDINANCE(S) AGREEMENT(S) DEED(S)

1. Authorizing the City Manager to execute a phase-funded agreement with Camp Dresser & McKee Inc. for engineering services for the Miramar Water Treatment Plant Upgrade & Expansion Project, CIP 73-284.0, for an amount not to exceed \$6,644,975; and
(Please see other side)

11a. MANAGER'S RECOMMENDATIONS: Adopt the resolutions.

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

COUNCIL DISTRICT(S): 5 (Maienschein)

COMMUNITY AREA(S): Scripps Miramar Ranch

CITY CLERK INSTRUCTIONS: Please return a copy of the 1472 along with (2) copies of Agreement and Resolutions to Irma Holt, 533-5198, MS 906.

ENVIRONMENTAL IMPACT: This activity is exempt from CEQA pursuant to State CEQA Guidelines, Section 15061(b)(3)

ATTACHMENTS: Project Cost Estimates and Agreement Between the City of San Diego and Camp Dresser and McKee Inc. for Consulting Services

CIVIL DIVISION
02 JUL 22 PM 12:14
CITY ATTORNEY

2. Authorizing the expenditure of \$6,644,975 in Water Fund 41500, CIP 73-284.0 Miramar Water Treatment Plant Upgrade & Expansion (\$6,044,975 in CIP 73-284.0 and \$600,000 in CIP 73-284.2) for the engineering agreement provided that the City Auditor first furnishes one or more certificates certifying that the funds are, or will be, on deposit with the City Treasurer; and
3. Authorizing Phase I of the agreement with Camp Dresser & McKee in the amount of \$3,850,000 (\$3,700,000 in CIP 73-284.0 and \$150,000 in CIP 73-284.2); and
4. Authorizing the City Auditor upon advice from the administering department to return excess funds, if any, to the appropriate reserves.

DOCKET SUPPORTING INFORMATION

DATE

June 26, 2002

CITY OF SAN DIEGO

SUBJECT:

Agreement with CDM for the Miramar Water Treatment Plant Upgrade & Expansion

BACKGROUND:

This agreement will provide additional engineering services for the expansion and upgrade of the Miramar Water Treatment Plant (WTP) to meet future potable water needs to the northern parts of the City. In addition to increasing the capacity, the plant is 40 years old and is in need of modernization to allow for improved operation and maintenance and to meet the new drinking water standards set by the U.S. Environmental Protection Agency. This project is part of the water system Capital Improvements Program approved by the City Council in August 1997, as part of the Strategic Plan for Water Supply 1997-2015.

The City executed an agreement with Camp Dresser & McKee (CDM) in August 1996, in the amount of \$2,108,613 for the design of Miramar WTP Expansion and Upgrade, Council Action (RR-287744). The scope of services under this agreement was to provide preliminary engineering. In June of 1999, the First Amended Agreement with CDM was authorized by City Council (RR-291717) for a total of \$12,280,286. The scope of services for the amended agreement included detail design for the expansion and upgrade of Miramar WTP from current production capacity of 140 million gallons per day (mgd) to 215 mgd. The engineering services included the design of rapid mix facility, flocculation basins, filters, chemical feed and storage facility, Ozone and wash water recovery basin.

The continued contractual participation in this critical CIP project by CDM is essential because of its historical and current involvement and its dedicated professional staff and high quality work. Due to additional service described below, a new agreement is needed to complete the design phase of the Miramar WTP Expansion and Upgrade Project: Raw Water Ozone and Deaeration Basins, additional chemicals, Miramar Lake entrance and recreational parking improvements, Miramar 2A Pipeline Extension, new administration building, temporary chemical facility, Early Start Improvement Projects Phase I and II Process Control System, engineering construction services for Early Start Improvement Projects, one additional flocculation and sedimentation basin plus the demolishing of two existing basins (lower construction cost) and, split water treatment plant contract to four separate contract documents (to provide more competitive bids and better opportunity to local contractors).

The design phase of the Miramar WTP Expansion and Upgrade is scheduled to be complete in early part of 2004.

This project was presented and approved by the Natural Resources and Culture Committee on May 15, 2002.

FISCAL IMPACT:

The total cost of this agreement is \$21,033,874 of which \$14,388,899 was previously authorized. The balance of \$6,644,975 is available from Water Revenue Fund 41500, CIP No. 73-284.0, Miramar Filtration Plant Upgrade & Expansion. This agreement will be phase funded over three phases as follows:

Phase 1 (FY 03) \$3,850,000, Phase 2 (FY 04) \$1,700,000 and Phase 3 (FY 05) \$1,094,975.

BY LINE: (CITY MANAGER / DEPT. HEAD / AUTHOR INITIALS)

MENDES/GARDNER/VB

SIGNATURES:

[Signature]
ORIGINATING DEPT. HEAD

[Signature]
CITY MANAGER
(FOR MANAGERIAL DEPARTMENTS ONLY)