

SUBJECT: Amendment No. 2 to Agreement for As-Needed Archaeological Monitoring for Underground
Utilities Conversion

GENERAL CONSULTANT INFORMATION

Recommended Contractor: Laguna Mountain Environmental, Inc.

Amount of this Action: \$ 750,000.00

Original Contract Amount: \$ 250,000.00

Cumulative Amount: \$ 1,400,000.00

Funding Source: City

SUBCONTRACTOR PARTICIPATION

No Subconsultant participation on this action.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required

Laguna Mountain Environmental, Inc. has submitted a Work Force Report for their San Diego County employees dated June 8, 2007 indicating 10 employees in the Administrative Work Force.

The firm has fewer than 15 employees and therefore, is exempt from the employment category goals.

ADDITIONAL COMMENTS

The *Work Force Analysis* is attached.

RLL

000363

File: Admin WOFO 2000
 Date WOFO Submitted: 6/8/2007
 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: Laguna Mountain Environmental, Inc.

I. TOTAL WORK FORCE:

	CLFA Goals		Black		CLFA Goals		Hispanic		CLFA Goals		Asian		CLFA Goals		American Indian		CLFA Goals		Filipino		CLFA Goals		White		CLFA Goals		Other		
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	
Mgmt & Financial	3.3%	0	0	11.9%	0	0	6.2%	0	0	0.4%	0	0	6.2%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Professional	4.0%	0	0	12.6%	0	0	6.5%	0	0	0.5%	0	0	6.5%	0	0	0	0	0	0	0	0	0	0	7	0	0	0	0	
A&E, Science, Computer	2.8%	0	0	7.3%	1	0	16.2%	0	0	0.3%	0	0	16.2%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Technical	6.6%	0	0	14.8%	0	0	17.2%	0	0	0.4%	0	0	17.2%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Sales	3.9%	0	0	19.5%	0	0	6.8%	0	0	0.6%	0	0	6.8%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Administrative Support	7.0%	0	0	20.8%	0	0	8.8%	0	0	0.6%	0	0	8.8%	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	
Services	5.5%	0	0	36.9%	0	0	9.7%	0	0	0.6%	0	0	9.7%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Crafts	4.5%	0	0	25.8%	0	0	9.1%	0	0	0.7%	0	0	9.1%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Operative Workers	4.3%	0	0	38.8%	0	0	20.8%	0	0	0.3%	0	0	20.8%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Transportation	8.1%	0	0	32.1%	0	0	4.5%	0	0	0.5%	0	0	4.5%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Laborers	4.4%	0	0	54.0%	0	0	4.1%	0	0	0.5%	0	0	4.1%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
TOTAL	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	2	7	0	0	0	0	0	0	0	0	0	0	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	
1	1	0	39.8%
7	0	7	59.5%
1	1	0	22.3%
0	0	0	49.0%
0	0	0	49.4%
1	1	0	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%
10	3	7	

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

TOTAL

This firm has fewer than 15 employees and is, therefore, exempt from the employment category goals.

000365

102

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER FOR AUDITOR'S USE: 9/25
AC 2800105

TO: CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT): ENGINEERING AND CAPITAL PROJECTS

3. DATE: 5/30/2007

4. SUBJECT: AMENDMENT TO AGREEMENT FOR AS-NEEDED ARCHAEOLOGICAL MONITORING FOR UNDERGROUND UTILITIES CONVERSION

5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.)
Afshin Oskoui (619) 533-3102 MS 614

6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.)
Nathan Bruner (619) 533-3777 MS 612

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	-30244 30101
DEPT.	30244
ORGANIZATION	106
OBJECT ACCOUNT	4279
JOB ORDER	370338
C.I.P. NUMBER	37-033.8
AMOUNT	\$750,000.00

9. ADDITIONAL INFORMATION / ESTIMATED COST:
Original Contract: \$250,000.00
First Amendment: \$400,000.00
Current Request: \$750,000.00
Total Contract: \$1,400,000.00

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>[Signature]</i>	6/4/07	8	DEPUTY CHIEF	<i>[Signature]</i>	8-9-07
2	EAS	<i>[Signature]</i>	6/5/07	9	COO	<i>[Signature]</i>	8/2/07
3	EOCP	<i>[Signature]</i>	6/8/07	10	CITY ATTORNEY	<i>[Signature]</i>	9/6/07
4	LIAISON OFFICE	<i>[Signature]</i>	6/13/07	11	ORIGINATING DEPARTMENT	<i>[Signature]</i>	9/7/07
5	FM/CIP	<i>[Signature]</i>	6/13/07	DOCKET COORD: <i>[Signature]</i> / COUNCIL LIAISON: <i>[Signature]</i>			
6	AUDITORS	<i>[Signature]</i>	8/9/07	COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/>		COUNCIL DATE: 9/25/07	
7				COUNCIL REFER TO: <i>[Signature]</i>			

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

1. Authorizing the Mayor or his representative to execute Amendment to Agreement No. 2 between the City of San Diego and Laguna Mountain Environmental, Inc. for consultant services, increasing the maximum contract amount from \$650,000.00 to 1,400,000.00 and a period of up to five years.
(See Back)

11A. STAFF RECOMMENDATIONS: ADOPT THE RESOLUTIONS(S).

12. SPECIAL CONDITIONS:
COUNCIL DISTRICT(S): Citywide
COMMUNITY AREA(S): Citywide
CITY CLERK INSTRUCTIONS: Send all copies of resolutions and executed agreement to Emily Perrone at MS 614.
ENVIRONMENTAL IMPACT: This activity is not a "project" and therefore exempt from CEQA pursuant to State CEQA Guidelines Sec. 15060(c)(3).
HOUSING IMPACT: None with this action

11. PREPARATION OF: (Continued from page 1)

2. Authorizing the Auditor and Comptroller to appropriate and expend \$ 750,000 from CIP No. 37-~~O~~ 33.8, Consultant Review for Various Underground Projects, Fund 30101, Underground Surcharge-CIP, for the purpose of executing this 2nd Amendment to the Agreement, provided the City Auditor & Comptroller first furnishes one ~~or~~ more certificates certifying the funds are or will be on deposit with the City Treasurer, and;

3. Authorizing the City Auditor & Comptroller upon advice of the administering department to transfer excess funds, if any to the appropriate reserves.

RECEIVED
07 SEP 14 AM 9:52
CITY CLERK'S OFFICE
SAN DIEGO, CA

EXECUTIVE SUMMARY SHEET

~~DATE REPORT ISSUED:~~ ~~May 30, 2007~~ ~~REPORT NO.:~~
 ATTENTION: Council President and City Council
 ORIGINATING DEPARTMENT: Engineering & Capital Projects
 SUBJECT: Second Amendment to Agreement
 COUNCIL DISTRICT(S): Citywide
 STAFF CONTACT: Afshin Oskoui (619) 533- 3102

REQUESTED ACTION:

Authorizing the Mayor or his representative to execute an Amendment to Agreement between the City of San Diego and Laguna Mountain Environmental, Inc. for consultant services to increase the maximum contract amount from \$650,000.00 to 1,400,000.00 for a period of up to five years.

STAFF RECOMMENDATION:

Approve the requested actions.

EXECUTIVE SUMMARY:

On June, 2005, after a competitive interview process for an as-needed archaeological monitoring consultant for the Utilities Undergrounding Program, the firm Laguna Mountain was awarded a two year contract, not to exceed \$250,000. Prior to that time, archeological needs were contracted out on a project by project basis. The as-needed contract serves to streamline the archeological monitoring needs of the Utilities Undergrounding Construction Program. Amendment No. 1, dated November 28, 2005, was required due to archaeological finds which required extensive unanticipated monitoring and mitigation requirements. To continue with the management of archaeological monitoring and mitigation needs of the program, it is most efficient to amend the existing contract for an additional three years, which will cover approximately 14 projects.

FISCAL CONSIDERATIONS:

Funds in an amount not to exceed \$750,000.00 are available in CIP No. 37-033.8, Consultant Review for Various Underground Projects, for this agreement.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

On November 28, 2005, per Resolution Number 301072, the City Council authorized to execute a first amendment to the Agreement with Laguna Mountain Environmental, Inc., increasing the maximum contract amount from \$250,000.00 to \$650,000.00.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Citywide Community and Public Outreach has been in effect for all Underground Utilities Conversion projects.

000368

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

Laguna Mountain Environmental, Inc. and City of San Diego.


Originating Department


Deputy Chief/Chief Operating Officer

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING AN AMENDMENT TO AN
AGREEMENT FOR AS-NEEDED ARCHAEOLOGICAL
MONITORING FOR UNDERGROUND UTILITIES
CONVERSION.

WHEREAS, on June 1, 2005, the City of San Diego [City] and Laguna Mountain Environmental, Inc. [Laguna Mountain], entered into a two year contract, City Clerk document No. 13294 [Agreement], not to exceed \$250,000; and

WHEREAS, on November 28, 2005, per Council Resolution Number 301072, the City Council authorized to execute a first amendment to the Agreement with Laguna Mountain, increasing the maximum contract amount from \$250,000 to \$650,000; and

WHEREAS, both parties would like to amend the Agreement with a Second Amendment to extend the existing contract for an additional three years, not to exceed 5 years from the original date of execution, June 1, 2005, and increasing the contract amount \$750,000 from \$650,000 to \$1,400,000; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor be and he is hereby authorized and empowered to execute, for and on behalf of said City, a Second Amendment to the Agreement with Laguna Mountain increasing the maximum contract amount \$750,000, from \$650,000 to \$1,400,000, for a period of up to five years from the original date of execution, June 1, 2005, for consultant services under the terms and conditions set forth in the Agreement, on file in the office of the City Clerk as Document No. RR C-13294.

BE IT RESOLVED, that the appropriation and expenditure of an amount not to exceed ~~\$750,000, from CIP No. 37-033.8, Consultant Review for Various Underground Projects, Fund~~

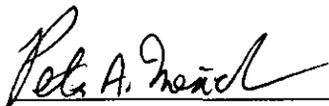
30101, Underground Surcharge-CIP, is authorized solely and exclusively for the purpose of providing funds for the purpose of executing this Second Amendment to the Agreement, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds necessary for expenditures are, or will be, on deposit with the City Treasurer.

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

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

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Peter A. Mesich
Deputy City Attorney

PAM:cfq
08/13/07
Aud.Cert.:2800105
Or.Dept:E&CP
R-2008-129

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

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

FIRST AMENDMENT TO AGREEMENT

This First Amendment to the As-Needed Agreement between the City of San Diego and Laguna Mountain Environmental, Inc. for Consulting Services dated 6/3/05 [Agreement], is hereby entered into by and between the City of San Diego, a municipal corporation [City], and Laguna Mountain Environmental, Inc. [Consultant].

RECITALS

A. The City and Consultant [collectively referenced herein as the "Parties"] entered into the Agreement, which is on file in the Office of the City Clerk as Document No. RR-13294, to provide archeological monitoring services [Professional Services] [Exhibit A to Agreement] for the City's multiple underground conversion projects [collectively "Project"].

B. In the course of excavations conducted for the Project, the City has unexpectedly encountered areas exceptionally rich in archeological and cultural resources. An increase in the amount of the Agreement is necessary in order to meet initially-planned needs for Professional Services.

C. The City desires to execute a First Amendment to the Agreement to increase the maximum amount of archeological monitoring services Consultant can provide under the Agreement by \$400,000, for a Total Compensation not to exceed \$650,000.

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

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

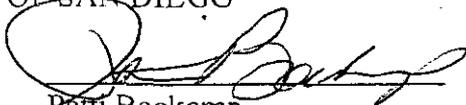
1. Section 3.1 is amended to read as follows:

DELETE "\$250,000" and INSERT "\$650,000".

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

IN WITNESS WHEREOF, this First Amendment to the Agreement is executed by the City of San Diego, acting by and through its Engineering and Capital Projects Director, pursuant to Resolution No. R-13294, authorizing such execution, and by Consultant.

THE CITY OF SAN DIEGO

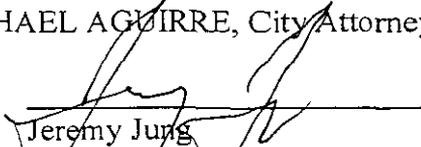
By: 
Name: Patti Boekamp
Title: Director
Date: 11/30/05

LAGUNA MOUNTAIN INTERNATIONAL, INC.

By: 
Name: Andrew Pjanich
Title: President
Date: 10/11/05

I HEREBY APPROVE the form and legality of the foregoing Amendment on this 30 day of November, 2005

MICHAEL AGUIRRE, City Attorney

By: 
Jeremy Jung
Deputy City Attorney

RESOLUTION NUMBER R- 301072ADOPTED ON NOV 28 2005

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is hereby authorized to execute, for and on behalf of the City, an amendment to the As-Needed Agreement with Laguna Mountain Environmental, Inc. for professional archeological monitoring services, dated June 3, 2005 [Agreement], increasing the maximum contract amount from \$250,000 to \$650,000, as specified in the amendment on file in the Office of the City Clerk as Document No. RR- 301072.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller is hereby authorized to appropriate and expend an amount not to exceed \$400,000 from CIP 37-033.8, Consultant Review for Various Underground Projects, Fund 30100, Undergrounding Surcharge Fund, for the purpose of executing the aforementioned amendment to the Agreement, provided that the City Auditor and Comptroller first furnishes a certificate demonstrating funds are available.

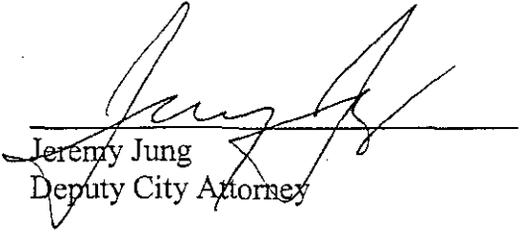
BE IT FURTHER RESOLVED, that the City Auditor and Comptroller, upon advice from the administering department, is authorized to transfer excess funds, if any, to the appropriate reserves.

000378

BE IT FURTHER RESOLVED, that this activity is adequately addressed in the environmental document for Project No. 4834, Formation of Underground Utility Districts (Mitigated Negative Declaration, dated 9/17/02), and that there is no change in circumstance, additional information, or project changes to warrant additional environmental review.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By


Jeremy Jung
Deputy City Attorney

JAJ:ca
11/16/05
Aud. Cert: 2600407
Or.Dept:E&CP
R-2006-503

000379

Passed and adopted by the Council of The City of San Diego on November 28, 2005, by
the following vote:

YEAS: PETERS, ATKINS, YOUNG, FRYE, & MADAFFER.
NAYS: NONE.
NOT PRESENT: MAIENSCHIN.
VACANT: DISTRICT 2, DISTRICT 8, & MAYOR.

AUTHENTICATED BY:

TONI ATKINS

Deputy Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

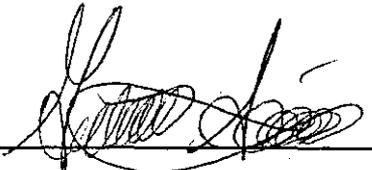
By: GIL SANCHEZ, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-301072, passed and adopted by the Council of The City of San
Diego, California on November 28, 2005.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By:  Deputy

SECOND AMENDMENT TO AGREEMENT

This Second Amendment to the As-Needed Agreement between the City of San Diego and Laguna Mountain Environmental, Inc. for Consulting Services dated June 3, 2005 [Agreement], is hereby entered into by and between the City of San Diego, a municipal corporation [City], and Laguna Mountain Environmental, Inc. [Consultant].

RECITALS

A. The City and Consultant [collectively referenced herein as the "Parties"] entered into the Agreement, which is on file in the Office of the City Clerk as Document No. RR- C- 13294, to provide archeological monitoring services [Professional Services] [Exhibit A to Agreement] for the City's multiple underground conversion projects [collectively "Project"].

B. In the course of excavations conducted for the Project, the City has unexpectedly encountered areas exceptionally rich in archeological and cultural resources. An increase in the amount of the Agreement is necessary in order to meet initially-planned needs for Professional Services.

C. The City and Consultant executed a First Amendment to the Agreement November 30, 2005 to increase the amount of archeological monitoring services Consultant can provide under the Agreement and First Amendment by \$400,000, for a Total Compensation not to exceed \$650,000.

D. The City desires to execute a Second Amendment to the Agreement to increase the maximum amount of archeological monitoring services Consultant can provide under the Agreement, First Amendment, and Second Amendment by \$750,000 for a Total Compensation not to exceed \$1,400,000.

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

to the Agreement.

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

1. Section 2.1 is amended to read as follows:

DELETE "two years" and INSERT "five years".

2. Section 3.1 is amended to read as follows:

DELETE "\$650,000" and INSERT "\$1,400,000".

3. The Parties agree that this Second Amendment to the Agreement represents the entire understanding of the Consultant and the City and affects only those paragraphs referred to, *and all other terms and conditions of the Agreement remain in full force and effect.*

IN WITNESS WHEREOF, this Second Amendment to the Agreement, and
Amendment No. 1 thereto, is executed by the City of San Diego acting by and
through its Mayor, or his designee, pursuant to Resolution No. _____,
authorizing such execution, and by Consultant.

THE CITY OF SAN DIEGO

By _____
W. Downs Prior
Principle Contract Specialist
Purchasing & Contracting Department

Date: _____

LAGUNA MOUNTAIN INTERNATIONAL, INC.

By: Andrew Pignick
Name: Andrew Pignick
Title: President

Date: 8/30/07

I HEREBY APPROVE the form and legality of the foregoing Amendment on this
_____ day of _____, 2007.

MICHAEL AGUIRRE, City Attorney

By: _____

Deputy City Attorney

DUPLICATE

CAPITAL IMPROVEMENTS
FOR
THE CITY OF SAN DIEGO
ENGINEERING AND CAPITAL IMPROVEMENTS DEPARTMENT

AS-NEEDED AGREEMENT
FOR
ARCHAEOLOGICAL MONITORING FOR UNDERGROUND CONVERSION
PROJECTS

THE CITY OF SAN DIEGO
AND
LAGUNA MOUNTAIN ENVIRONMENTAL, INC.

DOCUMENT NO. <u>C-13294</u>
FILED <u>JUN 06 2005</u>
OFFICE OF THE CITY CLERK SAN DIEGO, CALIFORNIA

~~AS-NEEDED AGREEMENT BETWEEN~~
THE CITY OF SAN DIEGO
AND LAGUNA MOUNTAIN ENVIRONMENTAL, INC.
FOR CONSULTING SERVICES

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation [City], and Laguna Mountain Environmental, Inc. [Consultant] for the Consultant to provide Professional Services to the City on underground utility conversion projects [Project].

RECITALS

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

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

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 whereby the City will retain the Consultant to provide, and the Consultant shall provide, the Professional Services for the Project [Agreement].

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

1.1.1 **Task Order.** Prior to beginning performance of a Task, Consultant shall complete and execute the Task Order which must be approved in writing by the City. Each Task

Order shall include a scope of Professional Services, a cost estimate, and the time for completion. The scope of Professional Services shall include all activities or work reasonably anticipated as necessary for successful completion of each Task presented by the City.

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

1.2 Task Administrator. The Engineering and Capital Improvements Department is the task administrator for this Agreement. The Consultant shall provide the Professional Services under the direction of a designated representative of the Engineering and Capital Improvements 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. Further, when this Agreement refers to an act or approval to be performed by City, that act or approval shall be performed by the City Manager, Engineering and Capital Improvements Department Director, or designee, unless the Agreement specifies otherwise.

1.3 City Modification of Scope of Services. The City may, without invalidating this Agreement, order changes in any Task by altering, adding to or deducting from the Professional Services to be performed. All such changes shall be in writing and shall be performed in accordance with the provisions of this Agreement. If any such changes cause an increase or decrease in the Consultant's cost of, or the time required for, the performance of any of the Professional Services, the Consultant shall immediately notify the City, and any such increase or decrease must be approved in writing by the City. If the City deems it 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. Further, throughout the term of this Agreement, the Consultant shall immediately advise the City in writing of any anticipated changes to any Task, including any changes to the time for completion or the Compensation and Fee Schedule, and shall obtain the City's written consent to the change prior to making any changes. In no event shall the City's consent be construed to relieve the 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 of 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.~~

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 for a period of two years or until all funds authorized under this Agreement have been expended, whichever occurs first.

2.2 **Time of Essence.** Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement. The time for performance of each Task shall be set forth in the Task Order.

2.3 **Notification of Delay.** The Consultant shall immediately notify the City in writing if the Consultant experiences or anticipates experiencing a delay in performing the Professional Services within the time frames set forth in the Task Order. The written notice shall include an explanation of the cause for and a reasonable estimate of the length of the delay. If in the opinion of the City, the delay affects a material part of the Task or Project, the City may exercise its rights under Sections 2.5-2.8 of this Agreement.

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

2.5 **City's Right to Suspend for Convenience.** The City may, at its sole option and for its convenience, suspend all or any portion of the Consultant's performance of the 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 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 City's Right to Terminate for Convenience. The City may, at its sole option and for its convenience, terminate all or any portion of the Professional Services agreed to pursuant to this Agreement by giving written notice of such termination to the 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 the Consultant. After termination of this Agreement, the Consultant shall complete any and all additional work necessary for the orderly filing of documents and closing of the Consultant's Professional Services under this Agreement. For services rendered in completing the work, the Consultant shall be entitled to fair and reasonable compensation for the Professional Services performed by the Consultant before the effective date of termination. After filing of documents and completion of performance, the Consultant shall deliver to the City all drawings, plans, calculations, specifications and other documents or records related to both the Project and to the Consultant's Professional Services on all Tasks. By accepting payment for completion, filing and delivering documents as called for in this paragraph, the Consultant discharges the City of all of the City's payment obligations and liabilities under this Agreement.

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

2.8 City's Right to Terminate for Bankruptcy or Assignment for the Benefit of Creditors. If the Consultant files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to or demand upon the Consultant, immediately cancel and/or terminate this Agreement, and terminate each and every right of the Consultant, and any person claiming any rights by or through the Consultant. The rights and remedies of the City enumerated in this Section are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against the Consultant.

ARTICLE III**COMPENSATION**

3.1 **Amount of Compensation.** The City shall pay the Consultant for performance of all Professional Services rendered in accordance with this Agreement, including reasonably related expenses, in an amount not to exceed \$250,000.00 (two hundred and fifty thousand dollars). The City agrees to issue at least one Task Order with a minimum value of \$25,000 to the Consultant.

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

3.3 **Additional Costs.** Additional Costs are those costs that can be reasonably determined to be related to the 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 the 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, the Consultant shall reimburse the City for Additional Costs due to the Consultant's errors or omissions.

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 Archaeological Monitoring Consultant firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by the City, the 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 **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 the

~~Consultant's compliance with the provisions of this Agreement [City's Right]. The City's Right includes the right to inspect and photocopy same, and to retain copies, outside of the Consultant's premises, of any and all Project-related records with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. This information shall be kept by the City in the strictest confidence allowed by law.~~

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

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

4.2.2.1.1 Accounting Records. The Consultant shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. Within thirty days of the date of City's written request, the Consultant shall make available to the City for review and audit, all Project related accounting records and documents, and any other financial data. Upon the City's request, the Consultant 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 provided for in Article VII or litigation pertaining to this Agreement is the Consultant's full compliance with the provisions of this Section 4.2.

4.3 Insurance. The Consultant shall not begin the Professional Services under this Agreement until it has: (a) obtained, and upon the City's request provided to the City, insurance certificates reflecting evidence of all insurance required in Article IV, Section 4.3.1; however, the City reserves the right to request, and the Consultant shall submit, copies of any policy upon reasonable request by the City; (b) obtained City approval of each company or companies as required 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. Maintenance of specified insurance coverage is a material element of this Agreement and Consultant's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by the City.

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

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

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

4.3.1.3 Architects & Engineers Professional Liability. For all of the Consultant's employees who are subject to this Agreement, the Consultant shall keep in full force and effect, Professional Liability coverage for professional liability with a limit of \$1 million per claim and \$1 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 increases the City's exposure to loss.

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

4.3.2 Insurer Requirements. All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have rated "A-" and "V" or better by the A.M. Best Key Rating Guide, that are licensed to do business in the State of California, and that have been approved by the City. 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 shown on the List of Eligible Surplus Lines Insurers (LESLI list).

~~4.3.3 Deductibles. All deductibles on any policy shall be the responsibility of the Consultant and shall be disclosed to the City at the time the evidence of insurance is provided.~~

4.3.4 **Specific Provisions Required.** Each policy required under Article IV, Sections 4.3.1.1 through 4.3.1.4 shall expressly provide, and an endorsement shall be submitted to the City, that:

4.3.4.1 Except as to Architects and Engineers Professional Liability and Workers Compensation insurance policies, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. The City's Additional Insured status must be reflected on additional insured endorsement form CG 20 10 11 85, or equivalent, which shall be submitted to the City.

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

4.3.4.3 The policies cannot be canceled, non-renewed, or materially changed except after thirty calendar days prior written notice by the Consultant to the City by certified mail, as reflected in an endorsement which shall be submitted to the City, except for non-payment of premium, in which case ten days notice will be provided.

4.3.4.4 Before performing any Professional Services, the Consultant shall provide the City with all Certificates of Insurance accompanied with all endorsements.

4.3.4.5 The Consultant may obtain additional insurance not required by this Agreement.

4.4 **Subconsultants.** The Consultant's hiring or retaining of any third parties [Subconsultants] to perform services related to the Project [Subconsultant Services] is subject to prior approval by the City. The Consultant shall list on the Subconsultants List [Exhibit D Attachment BB] all Subconsultants known to the Consultant at the time this Agreement is entered. If at any time after this Agreement is entered into the Consultant identifies a need for additional 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 Contract.** All contracts entered into between the Consultant and any Subconsultant shall contain the information as described in Sections 4.6, 4.7, 4.10.2, and 4.18, and shall also provide as follows:

4.4.1.1 Each 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 the Consultant shall require the Subconsultant

~~to obtain all policies described in Section 4.3.1 in the amounts required by the City, which shall not be greater than the amounts required of the Consultant.~~

4.4.1.2 The Consultant is obligated to pay the 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 the amount withheld within fourteen working days of the Consultant's receipt of the City's next payment.

4.4.1.4 In any dispute between the Consultant and 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.

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

4.5 **Contract Activity Report.** The Consultant shall submit statistical information to the City as requested in the City's Contract Activity Report [Exhibit D Attachment CC]. The statistical information shall include the amount of subcontracting provided by firms during the period covered by the Contract Activity Report. With the Contract Activity Report, the Consultant shall provide an invoice from each 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 Section 4.4.1.

4.6 Non-Discrimination Requirements.

4.6.1 **Compliance with the City's Equal Opportunity Contracting Program.** The Consultant shall comply with the City's Equal Opportunity Contracting Program Consultant Requirements [Exhibit D]. The Consultant shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Consultant shall provide equal opportunity in all employment practices. The Consultant shall ensure that its Subconsultants comply with the City's Equal Opportunity Contracting Program Consultant Requirements. Nothing in this Section shall be interpreted to hold the Consultant liable for any discriminatory practice of its 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
subconsulting opportunities. The Consultant understands and agrees that violation of this clause
shall be considered a material breach of the contract and may result in contract termination,
debarment, or other sanctions. This language shall be in contracts between the Consultant and
any Subconsultants, vendors and suppliers.

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

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

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

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

4.7.2.1 The dangers of drug abuse in the work place.

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

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

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

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

4.7.4 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 Reserved. [intentionally blank]

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

4.10 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, the Consultant makes, or participates in, a "governmental decision" as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the department's conflict of interest code, the Consultant shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the Consultant's relevant financial interests.

4.10.1.1 Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. The Consultant shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that the Consultant is subject to a conflict of interest code. The Consultant shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the Consultant was subject to a conflict of interest code.

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

4.10.2 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 the Consultant has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

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

4.11 **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. The Consultant's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

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

4.13 **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.

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 any Task 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. 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.

The 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 the Consultant, provided that the service rendered by the Consultant was not a proximate cause of the damage.

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 the 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 or City Manager in connection with the selection of the Consultant.

5.4 Project Site Safety. Unless otherwise provided by the Scope of Services in this Agreement, the Consultant, Subconsultant and their employees are not responsible for general Project site conditions during the course of construction of the Project. The City acknowledges that the construction contractor has primary responsibility for Project site conditions, including safety of all persons and property. This provision shall not be interpreted to in any way relieve the Consultant, Subconsultants or their employees of their obligation under Section 4.1 of this Agreement to comply with all applicable laws, codes and good consulting practices with regard to the maintenance of a safe Project site.

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 the Consultant's employees, agents, and officers, arising out of any services performed involving this Project, except liability for the Professional Services covered under Section 6.2, the Consultant agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers, and employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents or officers,

~~or any third party. The Consultant's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its agents, officers or employees. 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 obligations, work or services involving this Project, the Consultant agrees to indemnify and hold harmless the City, its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney fees, and losses or payments for injury to any person or property, caused directly or indirectly from the negligent acts, errors or omissions of the Consultant or the Consultant's employees, agents or officers.

6.3 Enforcement Costs. The Consultant agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in Section 6.1 and the indemnity provision in Section 6.2.

ARTICLE VII

MEDIATION

7.1 Mandatory Non-binding Mediation. With the exception of Sections 2.5-2.8 of this Agreement, if a dispute arises out of, or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the Parties agree to settle the dispute in an amicable manner, using mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association [AAA] or any other neutral organization agreed upon before having recourse in a court of law.

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

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

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

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

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

7.3.3 If the Parties agree not to use AAA, then a Mediator, date and place for the mediation shall be 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: Nathan Bruner, Underground Program Manager, 1010 Second Avenue, Suite 1200, San Diego, CA 92101. Notice to the Consultant shall be addressed to: Andrew Pignolo, Laguna Mountain Environmental, Inc., 3849 Shasta Street #16, San Diego, CA 92109.

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 and Subconsultant Principals 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 following members of the Consultant's organization: Andrew Pignuolo, John Dietler, Kimberly Lauko, Clinton Linton, and James Briggs Archaeological Services (acting as a subconsultant) [Project Team]. Accordingly, performance of Professional Services on the Project may not be delegated to other members of the 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. In the event any member of the Project Team 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 any of the Consultant's employees or agents to be removed from the Project.

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, including California Labor Code section 1720 as amended in 2002 relating to the payment of prevailing wages during the design and preconstruction phases of a project, including inspection and land surveying work [Exhibit I]. 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 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 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.

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.

8.17 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.

~~8.18 Consultant Evaluation. City will evaluate Consultant's performance of Professional Services on the Project using the Consultant Evaluation Form. [Exhibit J].~~

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

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Engineering and Capital Projects Department Director, pursuant to the City Manager's delegation of authority in San Diego Municipal Code section 22.3223 authorizing such execution, and by the Consultant.

LAGUNA MOUNTAIN ENVIRONMENTAL, INC.

By: Andrew Pignolo
Andrew Pignolo, President

Date: 3/30/05

CITY OF SAN DIEGO

By: Patti Boekamp
Patti Boekamp, Director

Date: 6/3/05

I HEREBY APPROVE the form and legality of the foregoing Agreement this 15 day of June, 2005.

MICHAEL J. AGUIRRE, City Attorney

By: [Signature]
Deputy City Attorney

EXHIBITS

- Exhibit A - Scope of Services
- Exhibit B - Task Order Authorization
- Exhibit C - Compensation and Fee Schedule
- Exhibit D - City's Equal Opportunity Contracting Program Consultant Requirements
 - (AA) Work Force Report
 - (BB) Subconsultants List
 - (CC) Contract Activity Report
- Exhibit E - Consultant Certification for a Drug-Free Workplace
- Exhibit F - ADA/Title 24 Consultant Certification
- Exhibit G - City Council Green Building Policy 900-14
- Exhibit H - California Labor Code section 1720
- Exhibit I - Consultant Evaluation Form

SCOPE OF SERVICES

Environmental: Cultural Resources Consultant

The Consultant may be issued task orders for the following scope of services in support of the Engineering and Capital Projects, Architectural Engineering and Contracts Division. Task orders shall describe the specific scope, schedule and compensation for each task. Each task order must be approved and signed by the Architectural Engineering and Contracts Division Deputy Director before the Consultant may proceed with the work. The listed tasks are envisioned as elements of the services to be performed; however, not all tasks outlined below will necessarily be authorized during the performance of this contract. The City reserves the right to modify or substitute as-needed tasks as necessary to meet the goals of the Underground Utility Program during the contract period of performance.

Typical tasks may include the following services:

1.0 Record Searches and Literature Reviews

The records searches will identify all prehistoric and historic archaeological sites previously recorded within one mile of the project area, as well as the locations of previous cultural resource studies. Copies of site forms, bibliographic citations, historic maps, and checks of federal, state, and locally listed resources provided by the South Coastal Information Center will also be included in the record search.

1. The consultant will obtain current record searches from the South Coastal Information Center at San Diego State University and the San Diego Museum of Man for various project areas.
2. The record searches will be reviewed to determine the locations and nature of any previously recorded cultural resources on the project site and the potential for buried resources.
3. After conducting the Record Search the Project Archaeologist will meet with the Engineering and Capital Project Department staff (E&CP) to provide recommendations and review areas where monitoring may be required based on the City's Environmental Assessment Section (EAS).

2.0 Archaeological Monitoring

The Project Archaeologist shall be responsible for monitoring all construction activities related to the cutting and/or excavation into native soils, as well as salvaging activities if necessary.

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All work shall be coordinated with the E&CP Project Manager and Mitigation Monitoring Coordination (MMC). Duties during construction are outlined below:

1. Monitor construction activities and inspect excavations. For the purposes of this scope of work, full-time monitoring during grading of native soils depending upon the presence of resources. If the presence of archaeological resources requires implementation of a resource recovery program, approval shall be obtained from the E&CP Project Manager and MMC prior to any additional work being performed.
2. Provide monthly monitoring reports during construction which include a weekly log of monitoring activities. A final report will be submitted at the conclusion of construction activities.
3. In the event that resources are found, the archaeologist shall divert, direct, or temporarily halt construction activities in the area of the discovery to allow identification and possible recovery of resources in a timely fashion. Recovery is expected to take between one hour to not more than two days. MMC and E&CP shall be notified immediately upon discovery of resources and must approve salvaging methods before construction activities are allowed to resume.
4. Any resources recovered shall be turned over to the E&CP Department for archival curation in a local scientific institution that houses archaeological collections.

3.0 Meetings

The Project Archaeologist shall attend the following meetings:

- A. Pre-Construction Meeting
- B. Project update meeting (one hour).
- C. One additional meeting (if necessary) to discuss Draft Final Report (one hour).

4.0 Research Designs and Data Recovery Program

1. The significance of the discovered resources shall be determined by the Project Archaeologist in consultation with MMC, EAS, and the Native American Community, if applicable. MMC must concur with the evaluation before grading activities will be allowed to resume. For significant archaeological resources, a Research Design and Data Recovery Program shall be prepared, approved by MMC and E&CP and carried out to mitigate impacts before ground disturbing activities in the area of discovery will be allowed to resume.
2. Minor discovery process for trenching projects.
For all projects: The following is a summary of the criteria and procedures related to the evaluation of small historic deposits during excavation for trenching projects.
(1) Coordination and Notification

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

SUBJECT: SUSTAINABLE BUILDING PRACTICES ("GREEN BUILDING") FOR PUBLIC AND PRIVATE BUILDING PROJECTS

POLICY NO.: 900-14

EFFECTIVE DATE: June 19, 2001

BACKGROUND:

Buildings consume approximately 36% to 40% of total energy produced in this country. As energy reliability and costs continue to challenge California, the City of San Diego is committed to reducing the energy and environmental impacts of building design, construction and maintenance both within the public and private sectors.

The City Council previously adopted two policies that address sustainable building practices, otherwise known as "Green Building" practices. City Policy 900-14 "Green Building Policy" was adopted in 1997, and City Policy 900-16 "Community Energy Partnership" was adopted in 2000. The purpose of this revision is to combine and update Policies 900-14 and 900-16 to provide a more comprehensive and coherent framework for City building projects as well as residential and commercial development within the City of San Diego.

The concept of Sustainable Building "Green Building" practices is designing, constructing and operating buildings that give a high level of environmental, economic and engineering performance. They are designed to consider occupant health, energy and transportation efficiency, resource and material conservation (air, water, land, fuel), as well as reuse and recycling during building construction, operation and demolition. The Environmental Services Department administrative headquarters is the City's first example of a "Green Building", and consumes 50% less energy than the 1998 edition of California's Title 24.

As a participant in the International Council for Local Environmental Initiatives (ICLEI) Cities for Climate Protection Program, the City of San Diego is committed to reducing greenhouse gas emissions by reducing electricity use.

PURPOSE:

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

POLICY:

The following principles will guide construction and renovation activities of both City facilities and private residential and commercial buildings:

1. The natural environment and built habitat are interdependent; ways have to be found for both to coexist in harmony.
2. High environmental quality, outdoors and indoors, is essential for the City's long-term health and welfare.
3. Innovative methods and up-to-date technologies should be used in the design, construction, and renovation of buildings within the City of San Diego in order to bring our consumption of energy and natural resources in line with the goals of sustainability.

CITY OF SAN DIEGO, CALIFORNIA COUNCIL POLICY

In order to achieve the necessary improvements in our natural and built environment, City building projects will be planned and executed using the following guidelines. The City will encourage participation and innovation by the private sector through a voluntary program that encourages energy-efficient standards in the residential and commercial building industries.

ENERGY EFFICIENCY:

1. The goal is to meet the most current criteria set forth in nationally recognized programs, e.g. US EPA "Energy Star for Buildings" and US DOE "Sustainable Buildings Program".
2. Buildings will be designed to take the maximum advantage of passive and natural sources of heat, cooling, ventilation and light.
3. Mechanical and electrical systems will be designed and constructed to achieve the maximum energy efficiency achievable with current technology. Computer programs such as DOE-2, Energy Pro, MICROPAS, EQuest, Power DOE, and HAP 3.22 will be used where feasible to analyze the effects of various design options and select the set of options producing the most efficient integrated design. Energy efficiency measures will be selected to achieve energy consumption at 25% below California's current Title 24 standards, to the extent such measures are economically justified.
4. Creative design and innovative energy sources and uses will be encouraged to reduce the consumption of energy from non-renewable sources. A deliberate effort will be made to convert to renewable energy sources to the extent that such options are feasible.
5. All new or significantly remodeled City facilities shall be designed and constructed to achieve energy consumption levels at least 25% below the then current Title 24 standards. An average payback period of five years will be used as a guide for the aggregate of all energy efficiency measures included in a project. In order to maximize energy efficiency measures within these guidelines, projects shall combine energy efficiency measures requiring longer payback periods with measures requiring shorter payback periods to determine the overall project period.

HEALTH AND RESOURCE CONSERVATION:

1. Projects will be designed to avoid inflicting permanent adverse impact on the natural state of the air, land and water, by using resources and methods that minimize pollution and waste, and do not cause permanent damage to the earth, including erosion.
2. Projects will include innovative strategies and technologies such as porous paving to conserve water, reduce effluent and run-off, thus recharging the water table.
3. When feasible, native plants will be used in landscaping to reduce pesticide, fertilizer, and water usage.
4. Buildings will be constructed and operated using materials, methods, mechanical and electrical systems that ensure a healthful indoor air quality, while avoiding contamination by carcinogens, volatile organic compounds, fungi, molds, bacteria, and other known toxins.
5. Projects will be planned to minimize waste through the use of a variety of strategies such as: a) reuse of materials or the highest practical recycled content; b) raw materials derived from sustainable or renewable sources; c) materials and products ensuring long life/durability and recyclability; d) materials requiring the minimum of energy and rare resources to produce and use; and e) materials requiring the least amount of energy to transport to the job site.

OUTREACH / EDUCATION:

CITY OF SAN DIEGO, CALIFORNIA COUNCIL POLICY

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

PRIVATE-SECTOR/INCENTIVES:

1. It shall be the policy of the City Council to expedite the ministerial plan check for projects which meets the criteria of the Community Energy Partnership Program. The criteria may include, but is not limited to:
 - Compliance with EPA "Energy Star for Buildings" Program
 - Residential buildings must exceed Title 24 by 30%
 - Commercial buildings must exceed Title 24 by 15%
2. It shall be the policy of the City Council to investigate further incentives to encourage energy efficiency in City operations, and in the private sector.

IMPLEMENTATION:

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

LEGISLATION:

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

REFERENCES:

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

HISTORY:

Adopted by Resolution R-289457 11/18/1997
 Amended by Resolution R-295074 06/19/2001

CALIFORNIA LABOR CODE
EXISTING LAW

§ 1771. Payment of general prevailing rate

Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

AMENDMENT

§ 1720. Public works; use of public funds

As used in this chapter, "public works" means:

(a) Construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this subdivision, "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

(b) Work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type. "Public work" shall not include the operation of the irrigation or drainage system of any irrigation or reclamation district, except as used in Section 1778 relating to retaining wages.

(c) Street sewer, or other improvement work done under the direction and supervision or by the authority of any officer or public body of the state, or of any political subdivision or district thereof, whether the political subdivision or district operates under a freeholder's charter or not.

(d) The laying of carpet done under a building lease-maintenance contract and paid for out of public funds.

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(e) The laying of carpet in a public building done under contract and paid for in whole or in part out of public funds.

(f) Public transportation demonstration projects authorized pursuant to Section 143 of the Streets and Highways Code.

(Amended by Stats. 1989, c. 278, § 1, eff. Aug. 7, 1989; Stats. 2000, c. 881 (S.B. 1999), § 1.)

City of San Diego

Consultant Performance Evaluation

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

1. PROJECT DATA	2. CONSULTANT DATA
1a. Project (title, location and CIP No.) _____	2a. Name and address of Consultant _____
1b. Brief Description: _____	2a. Consultant's Project Manager: _____ Phone () _____
1c. Budgeted Cost: \$ _____	

3. CITY DEPARTMENT RESPONSIBLE	3b. Project Manager (address & phone)
3a. Department (include division) _____	_____

4. CONTRACT DATA (DESIGN AND CONSTRUCTION)	
4. Design Agreement date: _____ / # _____ Resolution # _____ (city) \$ _____ / # _____ (consultant) \$ _____	
4a. Amendments \$ _____	
4c. Total Agreement (4a. & 4b.) \$ _____	
4d. Type of Work (Design, study, etc.) _____	4c. Key Contract Completion Dates: _____ % _____ % _____ % _____ % _____ % _____ %
	Agreement _____ %
	Delivery _____ %
	Acceptance _____ %
	Phone () _____

5. Construction Contractor _____ (Name and address) _____	5f. Change Orders: _____ % of const. Cost \$ _____
Superintendent _____	Errors/Omissions _____ % of const. Cost \$ _____
5c. Notice to Proceed _____ (date) _____	Unforeseen Conditions _____ % of const. Cost \$ _____
5d. Working Days _____ (number) _____	Changed Scope _____ % of const. Cost \$ _____
5e. Actual Working Days _____ (number) _____	Changes Quantities _____ % of const. Cost \$ _____
	Total Construction Cost \$ _____

6. OVERALL RATING (Please ensure Section II is completed)			
	Excellent	Satisfactory	Poor
6a. Plans/specifications accuracy _____	_____	_____	_____
Consistency with budget _____	_____	_____	_____
6b. Responsiveness to City Staff _____	_____	_____	_____
Overall Rating _____	_____	_____	_____

7. AUTHORIZING SIGNATURES		Date: _____
7a. Project Manager _____	_____	Date: _____
7b. Deputy Director _____	_____	

SPECIFIC RATINGS					EXCELLENT	SATISFACTORY	POOR	N/A	
Section II	EXCELLENT	SATISFACTORY	POOR	N/A	RESPONSIVENESS TO STAFF				
PLANS/SPECIFICATION ACCURACY					Timely Responses				
Plan/Specification clear and precise					Attitude toward Client and review bodies				
Plans/Specs Coordination					Follows direction and chain of responsibility				
Plans/Specs properly formatted					Work product delivered on time				
Requirements covered					Timeliness in notifying City of major problems				
Adhered to City Standard Drawings/Specs					Resolution of field problems				
						EXCELLENT	SATISFACTORY	POOR	N/A

SPECIFIC RATINGS

Section II
 Ratings
 Change Orders due to
 high
 quantities are
 minimized

				BUDGET				
				Reasonable Agreement negotiation				
				Adherence to fee schedule				
				Adherence to project budget				
				Value Engineering Analysis				

SUPPLEMENTAL INFORMATION

Please ensure to attach additional documentation as needed.

- Section III
- Item _____ :
 - Item _____ :

(*Supporting documentation attached yes _____ no _____)

(a) Project Archaeologist shall notify the RE, E&CP Project Manger, and MMC.

(b) EAS shall coordinate all historic discoveries with the applicable Senior Planner, MMC, PI and the RE, to determine the appropriate level of evaluation that should occur.

- (2) Criteria used to Determine if it is a Small Historic Deposit
- (a) The deposit is limited in size both in length and depth; and,
 - (b) The information value is limited and is not associated with any other resources.; and,
 - (c) There are no unique features/artifacts associated with the deposit.
 - (d) A preliminary description and photographs, if available, shall be transmitted to MMC and E&CP.

(3) Procedures for documentation, curation and reporting

The following constitutes adequate mitigation of a small historic deposit to reduce impacts due to excavation activities to below a level of significance.

- (a) 100% of the artifacts within the trench alignment and width shall be documented in-situ, to include photographic records, plan view of the trench and profiles of side walls, recovered, photographed after cleaning and analyzed and curated.
- (b) The remainder of the deposit within the limits of excavation (trench walls) shall be left intact.

- (b) If site significance can not be determined, the Final Results Report and Site Record (DPR Form 523A/B) shall identify the deposit as "potentially significant".
- (c) The Final Results Report shall include a requirement for monitoring of any future work in the vicinity.

5.0 Reporting

1. Final results reports (monitoring and research design and data recovery program) shall be prepared within three months following the completion of monitoring, two copies of the Final Results Report (even if negative) and/or evaluation report, if applicable, which describes the results, analysis, and conclusions of the Archaeological Monitoring Program (with appropriate graphics) shall be submitted to E&CP for review and approval by MMC and EAS.
2. For significant archaeological resources encountered during monitoring, the Research Design and Data Recovery Program shall be included as part of the Final Results Report.
3. The Archaeologist shall be responsible for recording (on the appropriate State of California Department of Park and Recreation forms-DPR 523 A/B) any significant or potentially significant resources encountered during the Archaeological Monitoring Program in accordance with the City's Historical Resources Guidelines,

and submittal of such forms to the South Coastal Information Center with the Final Results Report.

6.0 Native American Consultation

If Human Remains are determined to be Native American

- (1) The Medical Examiner shall notify the Native American (NAHC). By law, ONLY the Medical Examiner can make this call.
- (2) The NAHC will contact the Project Archaeologist within 24 hours or sooner, after Medical Examiner has completed coordination.
- (3) NAHC will identify the person or persons determined to be the Most Likely Descendent (MLD) and provide contact information.
- (4) The PI will coordinate with the MLD for additional consultation.

(5) Disposition of Native American Human Remains will be determined between the MLD and the PI, IF:

- (a) The NAHC is unable to identify the MLD, OR the MLD failed to make a recommendation within 24-hours after being notified by the Commission; OR;
- (b) The landowner or authorized representative rejects the recommendation of the MLD and mediation in accordance with PRC 5097.04 (k) by the NAHC fails to provide measures acceptable to the landowner.

Invoicing/Progress Reports

The Consultant shall provide the following information with each invoice:

Progress reports shall be submitted with each invoice. The report shall detail:

1. Work performed during the period covered by the invoice;
2. The percentage of each task completed (versus planned percentage completed);
3. Work planned for the next invoice period;
4. Problems identified, solved, and/or unresolved;
5. An explanation of any deviations from schedule and a description of what actions will be taken to ensure that the project shall be completed as scheduled; and
6. A cost breakdown by cost category for each task showing the amount of funds expended per task to date and the amount of funds remaining per task (spreadsheet format). Progress reports that do not comply with the requirements detailed herein shall be returned to the Consultant and the related invoice will be withheld from payment until a properly completed progress report is submitted and approved by the City. Progress reports shall follow the format provided by the City Project Manager. Failure to submit progress reports may result in the termination of this Agreement.

TASK ORDER AUTHORIZATION FOR CONSULTING SERVICES-[TASK ORDER]

Consultant:

Agreement:

Task Order No.:

Date:

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

Part A

Scope of Services

1.1

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

Part B

Task Order Compensation

City shall pay Consultant for the Professional Services required by this Task Order in accordance with Article III of the Agreement and in an amount not to exceed \$ _____. The estimated cost of the Scope of Services is \$ _____.

Part C

Personnel Commitment

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

Part D

Time Sequence

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

City of San Diego

Consultant

Recommended For Approval:

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

Approved By: _____

By: _____

Name: Nathan Bruner

Name: _____

Title: Underground Program Mgr

Title: _____

Date:

Date:

COMPENSATION AND FEE SCHEDULE

	Hourly Rate
Scientists	
Principal Archaeologist	\$55.00
Associate Archaeologist	\$40.00
Biological Technician	\$45.00
Support Staff	
Graphic Artist	\$35.00
Technical Editor	\$35.00
Word Processor	\$35.00
Clerical Support	\$30.00
Native American Monitor	\$45.00

General Terms

Travel, reproduction, blueprinting, telephone, supplies, fees, and other nonlabor direct costs are billed at cost. Mileage will be charged at \$0.41 per mile.

EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)
CONSULTANT REQUIREMENTS

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7.0 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.

8.0 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 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 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 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.

9.0 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.

9.1 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*.

9.2 Equal Employment Opportunity Plan. If an *Equal Employment Opportunity Plan* is submitted, it must include at least the following assurances that:

9.2.1 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;

9.2.2 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;

9.2.3 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;

9.2.4 The Consultant reviews, at least annually, all supervisor's adherence to and performance under the EEO Policy and maintains written documentation of these reviews;

9.2.5 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;

- 9.2.6 The Consultant documents and maintains a record of all bid solicitations and outreach efforts to and from subconsultants, consultant associations, and other business associations;
- 9.2.7 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;
- 9.2.8 The Consultant disseminates its EEO Policy to union and community organizations;
- 9.2.9 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;
- 9.2.10 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;
- 9.2.11 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;
- 9.2.12 The Consultant encourages all present employees, including people of color and women employees, to recruit others;
- 9.2.13 The Consultant maintains all employment selection process information with records of all tests and other selection criteria;
- 9.2.14 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;
- 9.2.15 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;
- 9.2.16 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;
- 9.2.17 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

~~9.2.18 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.~~

10.0 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*.

(d) Subconsultant Participation Level

- i. 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.
- ii. 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.

(f) 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.

5. 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:

- i. Outreach Efforts. Description of Proposer's outreach efforts undertaken on this project to make subconsulting opportunities available to all interested and qualified firms.
- ii. Past Participation Levels. Listing of Proposer's subconsultant participation levels achieved on all private and public projects within the past three 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.

iii. 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.

iv. 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 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 CC) 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.

i. 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.

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

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.

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.

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*



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

LOCAL WORK FORCE

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

CONTRACTOR IDENTIFICATION

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

Name of Company: Laguna Mountain Environmental, Inc.

AKA/DBA: _____

Address (Corporate Headquarters, where applicable): 3849 Shasta Street #16

City: San Diego County: San Diego State: California Zip: 92109

Telephone Number: (858) 274-8582 FAX Number: (858) 490-0447

Name of Company CEO: Andrew R. Pignuolo

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

Address: 7969 Enginer Road, Suite 208

City San Diego County San Diego State CA Zip 92111

Telephone Number: (858) 274-8582 FAX Number: (858) 490-0447

Type of Business: Environmental Consulting Type of License: _____

The Company has appointed: Andrew R. Pignuolo

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: 3849 Shasta Street #16, San Diego, CA 92109

Telephone Number: (858) 274-8582 FAX Number: (858) 490-0447

For Firm's: San Diego Work Force and/or Managing Office Work Force

I, the undersigned representative of Laguna Mountain Environmental, 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 April, 2005

Andrew R. Pignuolo

(Authorized Signature)

Andrew R. Pignuolo

(Print Authorized Signature Name)

WORK FORCE REPORT - Continued

NAME OF FIRM: Laguna Mountain Environmental, Inc.

DATE: 4/1/2005

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

OCCUPATIONAL CATEGORY	(1) African-American		(2) Latino		(3) Asian		(4) American Indian		(5) Filipino		(6) Caucasian		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Executive, Administrative, Managerial												1		
Professional Specialty							1					1	1	
Engineers/Architects														
Technicians and Related Support														
Sales														
Administrative Support/Clerical												1		
Services														
Precision Production, Craft, and Repair														
Machine Operators, Assemblers, Inspectors														
Transportation and Material Moving														
Handlers, Equipment Cleaners, Helpers, and Non-construction Laborers*														

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

TOTALS EACH COLUMN							1					3	1	
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GRAND TOTAL ALL EMPLOYEES	5
---------------------------	---

INDICATE BY GENDER AND ETHNICITY THE NUMBER OF ABOVE EMPLOYEES WHO ARE DISABLED:

DISABLED														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

NON-PROFIT ORGANIZATIONS ONLY:

BOARD OF DIRECTORS														
VOLUNTEERS														
ARTISTS														

000428

EXHIBIT E

CONSULTANT CERTIFICATION FOR A DRUG-FREE WORKPLACE

PROJECT TITLE:

I hereby certify that I am familiar with the requirement of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace as outlined in the request for proposals, and that:

Name under which business is conducted

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

Signed

Printed Name

Title

Date

CONSULTANT CERTIFICATION FOR
TITLE 24/ADA COMPLIANCE

[*INSERT NAME OF PROJECT*]

I HEREBY WARRANT AND CERTIFY that any and all plans and specifications prepared for [*insert name of Project*] by [*insert name of Consultant*] shall meet all current California Building Standards Code, California Code of Regulations, Title 24 and Americans with Disabilities Act Accessibility Guidelines requirements, and shall be in compliance with The Americans with Disabilities Act of 1990.

Dated:

By:

Authorized Representative

Print Name and Title