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SAN DIEGO, CALIF.

Office of  
The City Attorney  
City of San Diego

MEMORANDUM  
MS 59

(619) 236-6220

**DATE:** November 3, 2008  
**TO:** The Honorable Mayor and City Council  
**FROM:** City Attorney  
**SUBJECT:** FY 2010 Contract Negotiations – Objection to Use of Outside Counsel

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On Friday, October 31, 2008, the Mayor's Labor Relations Department informed the City Attorney's Office that the Mayor intends to seek authorization from the Council to retain an outside law firm to represent the City in its contract negotiations with the City's five labor unions. The Mayor's proposal is to retain Burke, Williams & Sorensen (Burke Williams), at an initial cost not to exceed \$500,000 to handle the FY 2010 labor negotiations.

In an e-mail sent at 4:53 p.m. on Friday, October 31, 2008, the Labor Relations Department first requested the City Attorney's Office to take three actions by the close of business the following Monday, November 3, 2008: (1) Sign for approval Form 1472 prepared by the City's Labor Relations Department requesting the City Council approve a contract with Burke Williams not to exceed \$500,000; (2) Prepare a Resolution for the Council approving the allocation of funds and the terms of the Agreement with Burke Williams; and (3) Review and approve the terms of the legal contract with Burke Williams, which had already been signed by Burke Williams. (According to the agreement, provided to the City Attorney on October 31, 2008, at 4:53 p.m., Burke Williams had already signed the contract on October 30, 2008.)

At no time prior to Friday, October 31, 2008 had anyone in the Mayor's Office, or its Labor Relations Department ever consulted with or advised the City Attorney's Office that the Mayor intended to use an outside law firm to represent the City in negotiations with its unions at a cost to taxpayers of \$500,000.

The City Attorney recommends the City Council oppose the use of any outside law firm to represent the City in contract negotiations with its unions or the expenditure of up to \$500,000.

The City Attorney has appointed competent legal counsel to the Labor Employment Unit of the City Attorney's Office who can ably represent the City in negotiations with its labor unions.

As an example, the Chief Deputy City Attorney of the Labor and Employment Unit has seventeen years of experience as a labor relations attorney negotiating contracts in the public sector. He has six years of experience as a union side labor attorney with the California School Employees Association, the largest classified union of school employees in California. Prior to that, he represented Federal employees for nearly five years as an attorney with the National Treasury Employees Union.

Most recently, he has six years of experience representing management in negotiations with public sector labor unions as the General Counsel of the West Contra Costa Unified School District in Richmond, California, a school district with approximately 4,000 unionized employees in four different bargaining units. He has also prosecuted numerous unfair practice cases before the Public Employment Relations Board. He was a member and advisor to the State Bar Labor and Employment Executive Committee for approximately six years, has appeared on numerous panels of the State Bar on labor relations topics, and has written articles on labor relations issues for the California Public Employee Relations Reporter, a bi-monthly journal published by the University of California, Berkeley, Institute for Research of Labor and Employment, which is the most prestigious and influential public sector labor relations journal in California.

Accordingly, City Charter Section 40 provides:

The City Attorney shall be the chief legal adviser of, and attorney for the City and all Departments and offices thereof in matters relating to their official powers and duties, except in the case of the Ethics Commission, which shall have its own legal counsel independent of the City Attorney. The attorney and his or her deputies shall devote their full time to the duties of the office and shall not engage in private legal practice during the term for which they are employed by the City, except to carry to a conclusion any matters for which they have been retained prior to taking office. The City Attorney shall appoint such deputies, assistants, and employees to serve him or her, as may be provided by ordinance of the Council, but all appointments of subordinates other than deputies and assistants shall be subject to the Civil Service provisions of this Charter. It shall be the City Attorney's duty, either personally or by such assistants as he or she may designate, to perform all services incident to the legal department; to give advice in writing when so requested...

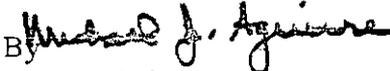
For these reasons, the City Attorney will not sign the Form 1472 approving the use of any outside law firm to represent the City in contract negotiations with its unions or the expenditure of up to \$500,000.

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The Honorable Mayor and City Council  
November 3, 2008  
Page 3

The City Attorney recommends the City Council and the Mayor abide by the City Charter and use the legal resources of the City Attorney's Office to handle FY 2010 labor negotiations.

MICHAEL J. AGUIRRE, City Attorney

By 

Michael J. Aguirre  
City Attorney

MJA:d

cc: Jay Goldstone, Chief Operating Officer  
Scott Chadwick, Director of Labor Relations  
Andrea Tevlin, Independent Budget Analyst  
Elizabeth Maland, City Clerk

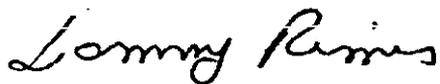
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CITY OF SAN DIEGO  
MEMORANDUM

DATE: October 27, 2008  
TO: Scott Chadwick, Labor Relations Director  
FROM: Tammy Rimes, Purchasing Agent  
SUBJECT: Sole Source Request for Sole Source Authorization for Professional  
Consultant Services

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Your Sole Source Request for the above subject with Burke, Williams & Sorensen was approved and is valid through 12/31/2009. In order for a Purchase Order to be issued, your department has to submit a purchase requisition. In the internal header notes of the requisition, please reference Sole Source Case Number 1984. For questions, please contact Pam Glover at x65554.



Tammy Rimes  
Purchasing Agent

TR/yk

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CITY OF SAN DIEGO  
MEMORANDUM

*Approved.  
L. Ri.  
10/27/08*

DATE: 10/27/2008  
TO: Tammy Rimes  
FROM: Pam Glover  
SUBJECT: Sole Source Request — Burke, Williams & Sorensen for Sole Source Authorization for Professional Consultant Services

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Negotiated Total: \$500,000.00  
Dept. Est. Total: \$500,000.00  
Vendor: Burke, Williams & Sorensen  
Expiration Date: 12/31/2009  
Recommendation: **Approved**

Pursuant to Section 9.1 of Administrative Regulation 25.70, Hiring of Consultants Other Than Architects and Engineers, and Council Policy 300-7, Consultant Services Selection, the Director of the Department of Labor Relations is requesting authorization to engage the services of Burke, Williams, & Sorensen, a partnership (Firm), as a sole source consultant. The firm will be hired to serve as an expert labor relations consultant to the City of San Diego pertaining to the contract negotiations with the City's five recognized employee organizations and will provide services related to employment relations matters for wages, hours, working conditions, and other terms and conditions as they apply.

The scope of work and/or services to be provided by the Firm includes but is not limited to, labor negotiations, oral advice and communications, preparing collective bargaining proposals, counter proposals, briefing materials, presentations, correspondence, services related to employment relations matters for wages, hours, working conditions and other terms and conditions as applied, administrative and City proceedings and other issues as requested by the Office of the Mayor of the City of San Diego.

This request for a sole source consultant is necessary due to the time constraints and unique expertise associated with, and required of, this project. The time constraints that necessitate this request relate to the amount of time necessary to completely negotiate the successor Memorandums of Understanding (MOUs) with all five of the City's bargaining units for the coming fiscal year. Due to the transition of the Strong Mayor form of government and the need for the salary ordinance to be introduced by April 2009, the City must negotiate in a condensed, finite period of time.

Given the above referenced time constraints relating to the negotiation window, and the fact that

CITY OF SAN DIEGO  
M E M O R A N D U M

the City must negotiate with all five labor organizations, there will be a significant workload necessitating two negotiators. The lead negotiator from the Firm will be William F. Kay, who brings with him more than 35 years of experience in the field of public sector labor and employment law, negotiations, labor relations consulting, and possesses the expertise needed to meet and confer with each of the City's five labor organizations. In the short time that the City has to negotiate the contracts for FY2010, it is important that the lead negotiator have a firm understanding of the City's policies, procedures, and current MOUs. Bill Kay has that familiarity due to having previously negotiated all the City's labor contracts for FY2006. His foundational experience and background knowledge working with the City and all five labor organizations makes him uniquely qualified to assist in the FY2010 negotiation process. This Firm and particularly the lead negotiator have knowledge in the public sector labor relations with both general and public safety labor organizations. Further, the Firm has extensive experience in all areas of labor and employment. There are limited number of firms or consultants in the labor industry who highly specialize in executed the proposed work, or who possess the unique industry knowledge on the above referenced key issues as the Firm.

The request to perform these services identified above will cover the time frame of later 2008, or when council approves, through the end of the calendar year 2009. This timeframe is necessary due to the anticipated revisions and review of the various memorandum, and the requirement for City Council to ratify the agreement, and update an related municipal code changes.

The estimated cost for these services related to FY2010 is estimated not to exceed \$500,000, which is deemed fair, reasonable, and within industry norms.



## THE CITY OF SAN DIEGO

## M E M O R A N D U M

DATE: October 24, 2008

TO: Tammy Rimes, Purchasing and Contracting Deputy Director

FROM: Scott Chadwick, Labor Relations Director

SUBJECT: Request for Sole Source Authorization for Professional Consultant Services

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Pursuant to Section 9.1 of Administrative Regulation 25.70, Hiring of Consultants Other Than Architects and Engineers, and Council Policy 300-7, Consultant Services Selection, I am request authorization to engage the services of Burke, Williams & Sorensen, a partnership (Firm), as a sole source consultant. The Firm will be hired to serve as an expert labor relations consultant to the City of San Diego pertaining to the contract negotiations with the City's five recognized employee organization and will provide services related to employment relations matters for wages, hours, working conditions, and other terms and conditions as they apply.

The scope of work and/or services to be provided by the Firm includes but is not limited to, labor negotiations, oral advice and communications, preparing collective bargaining proposals, counter proposals, briefing materials, presentation, correspondence, services related to employment relations matters for wages, hours, working conditions and other terms and conditions as applied, administrative and City proceedings and other issues as requested by the Office of Mayor of the City of San Diego.

This request for a sole source consultant is necessary due to the time constraints and unique expertise associated with, and required of, this project. The time constraints that necessitate this request relate to the amount of time necessary to completely negotiate the successor Memorandums of Understanding (MOUs) with all five of the City's bargaining units for the coming fiscal year. Due to the transition to the Strong Mayor form of government and the need for the salary ordinance to be introduced by April 2009, the City must negotiate in a condensed, finite period of time.

Given the above referenced time constraints relating to the negotiation window, and the fact that the City must negotiate with all five labor organizations, there will be a significant workload necessitating two negotiators. The lead negotiator from the Firm will be William F. Kay, who brings with him more than 35 years of experience in the field of public sector labor and employment law, negotiations, labor relations consulting, and possesses the expertise needed to meet and confer with each of the City's five labor organizations. In the short time that the City has to negotiate the contracts for FY2010, it is important that the lead negotiator have a firm understanding of the City's polices, procedures and current MOUs. Bill Kay has that familiarity

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Tammy Rimes

October 24, 2008

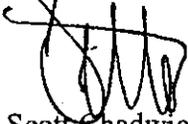
due to having previously negotiated all of the City's labor contracts for FY2006. His foundational experience and background knowledge working with the City and all five labor organizations makes him uniquely qualified to assist in the FY2010 negotiation process. This Firm and particularly the lead negotiator have knowledge in public sector labor relations with both general and public safety labor organizations. Further, this Firm has extensive experience in all areas of labor and employment. There are a limited number of firms or consultants in the labor industry who highly specialize in executing the proposed work, or who possess the unique industry knowledge on the above referenced key issues as the Firm.

The request to perform the services identified above will cover the time frame of late 2008, or when council approves, through the end of the calendar year 2009. This timeframe is necessary due to the anticipated revisions and review of the various memoranda, and the requirement for City Council to ratify the agreement, and update an related municipal code changes.

The estimated cost for these services related to FY2010 is estimated not to exceed \$500,000, which is deemed fair, reasonable, and within industry norms.

Please feel free to contact me at (619) 236-5587 if you would like to discuss this request further.

Regards,



Scott Chadwick  
Labor Relations Director

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DOCKET SUPPORTING INFORMATION  
CITY OF SAN DIEGO

DATE:

**EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION**

October 31, 2008

SUBJECT: Agreement with Burke, Williams & Sorensen for Professional Consultant Services

**GENERAL CONTRACT INFORMATION**

Recommended Consultant: Burke, Williams & Sorensen, LLP  
Amount of this Action: \$500,000.00  
Funding Source: City

**SUBCONSULTANT PARTICIPATION**

No subconsultant participation this action.

**EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

Equal Opportunity: Required

Burke, Williams & Sorensen, LLP submitted a Work Force Report for their Los Angeles County employees dated October 1, 2008, with a total of 92 employees. The firm's Work Force Analysis reflects under representations in the following categories:

- Blacks in Professional and Administrative Support
- Hispanics in Professional
- Asians in Professional
- Filipinos in Professional and Administrative Support
- Females in Professional and Technical

EOC staff is concerned about the under representations in the firm's workforce report and therefore, has requested an Equal Opportunity Plan and will continue to monitor the firm's effort to implement their plans.

This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2702) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517)

**ADDITIONAL COMMENTS**

The *Work Force Analyses* are attached.

  
JLR

File: Admin WOFO 2000

Date WOFO Submitted: 10/1/2008  
 Input by: Lad

Goals reflect statistical labor force availability for the following: 2000 CLFA  
 Los Angeles County, CA

City of San Diego/Equal Opportunity Contracting  
**WORK FORCE ANALYSIS REPORT**  
 FOR  
 Company: *Burke, Williams & Sorensen, LLP*

I. TOTAL WORK FORCE:

|                        | Black |          | Hispanic |       | Asian    |           | American Indian |          | Filipino |       | White    |          | Other |          |          |    |           |           |  |          |          |
|------------------------|-------|----------|----------|-------|----------|-----------|-----------------|----------|----------|-------|----------|----------|-------|----------|----------|----|-----------|-----------|--|----------|----------|
|                        | Goals | M        | F        | Goals | M        | F         | Goals           | M        | F        | Goals | M        | F        | Goals | M        | F        |    |           |           |  |          |          |
| Mgmt & Financial       | 7.3%  | 0        | 0        | 18.7% | 0        | 0         | 14.9%           | 0        | 0        | 0.3%  | 0        | 0        | 14.9% | 0        | 0        | 0  | 0         |           |  |          |          |
| Professional           | 8.9%  | 2        | 0        | 16.5% | 2        | 3         | 12.3%           | 0        | 2        | 0.3%  | 0        | 0        | 12.3% | 0        | 0        | 29 | 15        |           |  |          |          |
| A&E, Science, Computer | 6.0%  | 0        | 0        | 10.5% | 0        | 0         | 26.1%           | 0        | 0        | 0.2%  | 0        | 0        | 26.1% | 0        | 0        | 0  | 0         |           |  |          |          |
| Technical              | 12.2% | 0        | 0        | 24.7% | 1        | 0         | 20.8%           | 0        | 0        | 0.3%  | 0        | 0        | 20.8% | 0        | 0        | 3  | 0         |           |  |          |          |
| Sales                  | 7.3%  | 0        | 0        | 33.7% | 0        | 0         | 14.8%           | 0        | 0        | 0.3%  | 0        | 0        | 14.6% | 0        | 0        | 0  | 0         |           |  |          |          |
| Administrative Support | 13.1% | 0        | 2        | 36.0% | 3        | 9         | 12.8%           | 0        | 4        | 0.3%  | 0        | 1        | 12.8% | 1        | 1        | 0  | 14        |           |  |          |          |
| Services               | 9.5%  | 0        | 0        | 54.2% | 0        | 0         | 11.1%           | 0        | 0        | 0.2%  | 0        | 0        | 11.1% | 0        | 0        | 0  | 0         |           |  |          |          |
| Crafts                 | 8.1%  | 0        | 0        | 49.1% | 0        | 0         | 10.5%           | 0        | 0        | 0.3%  | 0        | 0        | 10.5% | 0        | 0        | 0  | 0         |           |  |          |          |
| Operative Workers      | 3.2%  | 0        | 0        | 73.3% | 0        | 0         | 10.2%           | 0        | 0        | 0.1%  | 0        | 0        | 10.2% | 0        | 0        | 0  | 0         |           |  |          |          |
| Transportation         | 11.2% | 0        | 0        | 61.1% | 0        | 0         | 4.7%            | 0        | 0        | 0.4%  | 0        | 0        | 4.7%  | 0        | 0        | 0  | 0         |           |  |          |          |
| Laborers               | 7.1%  | 0        | 0        | 69.8% | 0        | 0         | 4.4%            | 0        | 0        | 0.3%  | 0        | 0        | 4.4%  | 0        | 0        | 0  | 0         |           |  |          |          |
| <b>TOTAL</b>           |       | <b>2</b> | <b>2</b> |       | <b>6</b> | <b>12</b> |                 | <b>0</b> | <b>6</b> |       | <b>0</b> | <b>1</b> |       | <b>1</b> | <b>1</b> |    | <b>32</b> | <b>29</b> |  | <b>0</b> | <b>0</b> |

HOW TO READ TOTAL WORK FORCE SECTION:

The information blocks in Section I (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 |           |           |
|-----------------|-----------|-----------|
| ALL             | M         | F         |
| 0               | 0         | 0         |
| 53              | 33        | 20        |
| 0               | 0         | 0         |
| 4               | 4         | 0         |
| 0               | 0         | 0         |
| 35              | 4         | 31        |
| 0               | 0         | 0         |
| 0               | 0         | 0         |
| 0               | 0         | 0         |
| 0               | 0         | 0         |
| 0               | 0         | 0         |
| 0               | 0         | 0         |
| 0               | 0         | 0         |
| <b>92</b>       | <b>41</b> | <b>51</b> |

Female Goals  
 40.7%  
 53.9%  
 22.3%  
 48.9%  
 47.5%  
 69.6%  
 60.8%  
 9.2%  
 37.7%  
 16.0%  
 11.8%

HOW TO READ EMPLOYMENT ANALYSIS SECTION:

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

II. EMPLOYMENT ANALYSIS

|                        | Black |        |             | Hispanic |        |             | Asian |        |             | American Indian |        |             | Filipino |        |             | Female |        |             |
|------------------------|-------|--------|-------------|----------|--------|-------------|-------|--------|-------------|-----------------|--------|-------------|----------|--------|-------------|--------|--------|-------------|
|                        | Goals | Actual | Discrepancy | Goals    | Actual | Discrepancy | Goals | Actual | Discrepancy | Goals           | Actual | Discrepancy | Goals    | Actual | Discrepancy | Goals  | Actual | Discrepancy |
| Mgmt & Financial       | 0.00  | 0      | 0.00        | 0.00     | 0      | 0.00        | 0.00  | 0      | 0.00        | 0.00            | 0      | 0.00        | 0.00     | 0      | 0.00        | 0.00   | 0      | 0.00        |
| Professional           | 4.72  | 2      | (2.72)      | 8.75     | 5      | (3.75)      | 6.52  | 2      | (4.52)      | 0.16            | 0      | N/A         | 8.52     | 0      | (8.52)      | 28.57  | 20     | (8.57)      |
| A&E, Science, Computer | 0.00  | 0      | 0.00        | 0.00     | 0      | 0.00        | 0.00  | 0      | 0.00        | 0.00            | 0      | 0.00        | 0.00     | 0      | 0.00        | 0.00   | 0      | 0.00        |
| Technical              | 0.49  | 0      | N/A         | 0.99     | 1      | N/A         | 0.83  | 0      | N/A         | 0.01            | 0      | N/A         | 0.83     | 0      | N/A         | 1.98   | 0      | (1.98)      |
| Sales                  | 0.00  | 0      | 0.00        | 0.00     | 0      | 0.00        | 0.00  | 0      | 0.00        | 0.00            | 0      | 0.00        | 0.00     | 0      | 0.00        | 0.00   | 0      | 0.00        |
| Administrative Support | 4.59  | 2      | (2.59)      | 12.60    | 12     | N/A         | 4.48  | 4      | N/A         | 0.11            | 1      | N/A         | 4.48     | 2      | (2.48)      | 24.36  | 31     | 6.64        |
| Services               | 0.00  | 0      | 0.00        | 0.00     | 0      | 0.00        | 0.00  | 0      | 0.00        | 0.00            | 0      | 0.00        | 0.00     | 0      | 0.00        | 0.00   | 0      | 0.00        |
| Crafts                 | 0.00  | 0      | 0.00        | 0.00     | 0      | 0.00        | 0.00  | 0      | 0.00        | 0.00            | 0      | 0.00        | 0.00     | 0      | 0.00        | 0.00   | 0      | 0.00        |
| Operative Workers      | 0.00  | 0      | 0.00        | 0.00     | 0      | 0.00        | 0.00  | 0      | 0.00        | 0.00            | 0      | 0.00        | 0.00     | 0      | 0.00        | 0.00   | 0      | 0.00        |
| Transportation         | 0.00  | 0      | 0.00        | 0.00     | 0      | 0.00        | 0.00  | 0      | 0.00        | 0.00            | 0      | 0.00        | 0.00     | 0      | 0.00        | 0.00   | 0      | 0.00        |
| Laborers               | 0.00  | 0      | 0.00        | 0.00     | 0      | 0.00        | 0.00  | 0      | 0.00        | 0.00            | 0      | 0.00        | 0.00     | 0      | 0.00        | 0.00   | 0      | 0.00        |

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



City of San Diego
EQUAL OPPORTUNITY CONTRACTING (EOC)
1200 Third Avenue • Suite 200 • San Diego, CA 92101
Phone: (619) 236-6000 • Fax: (619) 235-5209

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.

CONTRACTOR IDENTIFICATION

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

Name of Company: Burke, Williams & Sorensen, LLP

AKA/DBA:

Address (Corporate Headquarters, where applicable): 444 South Flower Street, Suite 2400

City Los Angeles County Los Angeles State CA Zip 90071

Telephone Number: (213) 236-0600 FAX Number: (213) 236-2700

Name of Company CEO: John J. Welsh, Managing Partner

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

Address: none

City County State Zip

Telephone Number: ( ) FAX Number: ( )

Type of Business: Private Law Firm Type of License: Firm attorneys licensed with California State Bar

The Company has appointed: Joseph Buchman, Partner

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: above

Telephone Number: ( ) FAX Number: ( )

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

I, the undersigned representative of Burke, Williams & Sorensen, LLP

(Firm Name)

Los Angeles, California hereby certify that information provided

(County)

(State)

herein is true and correct. This document was executed on this October, 2008.

Handwritten signature of John J. Welsh

(Authorized Signature)

John J. Welsh

(Print Authorized Signature Name)

**WORK FORCE REPORT - Page 2**

NAME OF FIRM: Burke, Williams & Sorensen, LLP DATE: October, 2008

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 |     |            |     |           |     |                     |     |              |     |               |     |                       |     |
| Professional Specialty   | 2                                     |     | 2          | 3   |           | 2   |                     |     |              |     | 29            | 15  |                       |     |
| Engineers/Architects   |                                       |     |            |     |           |     |                     |     |              |     |               |     |                       |     |
| Technicians and Related Support                                      |                                       |     | 1          |     |           |     |                     |     |              |     | 3             |     |                       |     |
| Sales  |                                       |     |            |     |           |     |                     |     |              |     |               |     |                       |     |
| Administrative Support/Clerical                                      |                                       | 2   | 3          | 9   |           | 4   |                     | 1   | 1            | 1   |               | 14  |                       |     |
| 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 | 2 | 2 | 6 | 12 |  | 6 |  | 1 | 1 | 1 | 32 | 29 |  |  |
|--------------------|---|---|---|----|--|---|--|---|---|---|----|----|--|--|

GRAND TOTAL ALL EMPLOYEES

92

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

|          |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|----------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| DISABLED |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|----------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|

NON-PROFIT ORGANIZATIONS ONLY:

|                    |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|--------------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| BOARD OF DIRECTORS |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| VOLUNTEERS         |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| ARTISTS            |  |  |  |  |  |  |  |  |  |  |  |  |  |  |

**WORK FORCE REPORT** – Page 3

NAME OF FIRM: Burke, Williams & Sorensen, LLP

DATE: October, 2008

Not Applicable

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

| OCCUPATIONAL CATEGORY                 | (1)<br>African-American |     | (2)<br>Latino |     | (3)<br>Asian |     | (4)<br>American Indian |     | (5)<br>Filipino |     | (6)<br>Caucasian |     | (7)<br>Other Ethnicities |     |
|---------------------------------------|-------------------------|-----|---------------|-----|--------------|-----|------------------------|-----|-----------------|-----|------------------|-----|--------------------------|-----|
|                                       | (M)                     | (F) | (M)           | (F) | (M)          | (F) | (M)                    | (F) | (M)             | (F) | (M)              | (F) | (M)                      | (F) |
| Carpenter                             |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Drywall installer                     |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Electrician                           |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Elevator Installers                   |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Finishers, Concrete or Terrazzo       |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Glaziers                              |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Helpers, Construction Trade           |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Ironworkers, Structural Metal Workers |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Laborers                              |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Millwrights                           |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Masons, Bricklayers                   |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Tile setters                          |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Operators                             |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Painters                              |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Pipe fitter, Plumbers                 |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Plasterers                            |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Roofers                               |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Security, Protective Services         |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Sheet Metal, Duct Installers          |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Welders, Cutters                      |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| TOTALS EACH COLUMN                    |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |

GRAND TOTAL ALL EMPLOYEES

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

|          |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|----------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| DISABLED |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|----------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|

-000021

REQUEST FOR COUNCIL ACTION  
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER  
(FOR AUDITOR'S USE ONLY) 201  
AC 290036 12/01  
3. DATE: 11/3/2008

TO: Y ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):  
LABOR RELATIONS

4. SUBJECT:  
Agreement with Burke, Williams & Sorensen for Professional Consultant Services

5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.)  
Scott Chadwick, 65587, MS 56L

6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.)  
Abby Jarl, 65964, MS 56L

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND  
DEPT.  
ORGANIZATION  
OBJECT ACCOUNT  
JOB ORDER  
C.I.P. NUMBER  
AMOUNT

See attached transfer funding source and cost allocation schedule.

9. ADDITIONAL INFORMATION / ESTIMATED COST:  
EXPEND FUNDS IN AN AMOUNT NOT TO EXCEED \$500,000 FROM CITYWIDE COST ALLOCATIONS.

10. ROUTING AND APPROVALS

| ROUTE (#) | APPROVING AUTHORITY    | APPROVAL SIGNATURE | DATE SIGNED | ROUTE (#) | APPROVING AUTHORITY    | APPROVAL SIGNATURE | DATE SIGNED |
|-----------|------------------------|--------------------|-------------|-----------|------------------------|--------------------|-------------|
| 1         | ORIGINATING DEPARTMENT | <i>[Signature]</i> | 11/2/08     | 8         | DEPUTY CHIEF           |                    |             |
| 2         | EAS                    |                    |             | 9         | COO                    | <i>[Signature]</i> | 11/4/08     |
| 3         | EOCP                   | <i>[Signature]</i> | 11/4/08     | 10        | CITY ATTORNEY          |                    |             |
| 4         | LIAISON OFFICE         | <i>[Signature]</i> |             | 11        | ORIGINATING DEPARTMENT | <i>[Signature]</i> | 11/2/08     |
| 5         | FM                     | <i>[Signature]</i> | 11/4/08     |           | DOCKET COORD:          | <i>[Signature]</i> | 11/2/08     |
|           | AUDITOR                | <i>[Signature]</i> | 11/5/08     |           | COUNCIL LIAISON:       | <i>[Signature]</i> | 11/2/08     |
|           | CFO                    |                    |             |           | COUNCIL PRESIDENT      |                    |             |

11. PREPARATION OF:  RESOLUTION(S)  ORDINANCE(S)  AGREEMENT(S)  DEED(S) 12/1/08

1) Authorize the Mayor or his designee to execute an agreement between the City of San Diego and Burke, Williams & Sorensen (Firm) for consultant services pertaining to the FY2010 contract negotiations with the City's five recognized employee organizations and to provide services related to employment relations matters for wages, hours, working conditions, and other terms and conditions as they apply, in an amount not to exceed \$500,000 on behalf of the City of San Diego with the Firm. 2) Authorize the City Comptroller to expend funds in an amount not to exceed \$500,000 from Citywide cost allocations for the Agreement between the City of San Diego and Burke, Williams & Sorensen (Firm).

11A. STAFF RECOMMENDATIONS:  
Approve the requested actions and resolutions

12. SPECIAL CONDITIONS:  
COUNCIL DISTRICT(S): N/A  
COMMUNITY AREA(S): N/A  
ENVIRONMENTAL IMPACT: This activity is "not" a project and is therefore not subject to CEQA pursuant to State Guidelines Section 15060(c)(3)  
HOUSING IMPACT: N/A  
OTHER ISSUES: N/A

**EXECUTIVE SUMMARY SHEET**  
CITY OF SAN DIEGO

DATE ISSUED: November 3, 2008 REPORT NO:  
 ATTENTION: Council President and City Council  
 ORIGINATING DEPARTMENT: Labor Relations  
 SUBJECT: Agreement with Burke, Williams & Sorensen for  
 Professional Consultant Services  
 COUNCIL DISTRICT(S): None  
 CONTACT/PHONE NUMBER: Scott Chadwick, 236-6313

REQUESTED ACTION:

1) Authorize the Mayor or his designee to execute an agreement between the City of San Diego and Burke, Williams & Sorensen (Firm) for consultant services pertaining to the FY2010 contract negotiations with the City's five recognized employee organizations and to provide services related to employment relations matters for wages, hours, working conditions, and other terms and conditions as they apply, in an amount not to exceed \$500,000 on behalf of the City of San Diego with the Firm. 2) Authorize the City Comptroller to expend funds in an amount not to exceed \$500,000 from Citywide cost allocations for the Agreement between the City of San Diego and Burke, Williams & Sorensen (Firm).

STAFF RECOMMENDATION:

Approve the requested actions and resolutions

EXECUTIVE SUMMARY:

Labor Relations proposes to have Burke, Williams & Sorensen (Firm) as the sole source provider for consulting services pertaining to the FY2010 contract negotiations with the City's five recognized employee organizations and to provide services related to employment relations matters for wages, hours, working conditions, and other terms and conditions as they apply. This agreement is for a not-to-exceed amount of \$500,000.

Burke, Williams & Sorensen will serve as an expert labor relations consultant to the City pertaining to the FY2010 contract negotiations with the City's five recognized employee organizations: San Diego Municipal Employees Association (MEA); the San Diego Police Officers Association (POA); Local 127; American Federal of State, County and Municipal Employees, District Council 36, AFL-CIO (AFSME Local 127); Local 145, International Association of Firefighters (Local 145) and San Diego Deputy City Attorney's Association (DCAA) and will provide services related to employment relations matters for wages, hours, working conditions, and other terms and conditions as they apply. The scope of work and/or services to be provided by the Firm includes but is not limited to, labor negotiations, oral advice and communications, preparing collective bargaining proposals, counter proposals, briefing materials, presentation, correspondence, services related to employee relations matters for wages, hours, working conditions and other terms and conditions as applied, administrative and City proceedings and other issues as requested by the Office of Mayor of the City of San Diego.

EQUAL OPPORTUNITY CONTRACTING

Funding Source: City - Prevailing Wages do not apply to this contract  
 Goal Requirement: 15% Voluntary

Contract Amount: \$500,000

Other: Work Force Report submitted.

This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2702) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

FISCAL CONSIDERATIONS:

Expend funds in an amount not to exceed \$500,000 from Citywide cost allocations for the Agreement between the City of San Diego and Burke, Williams & Sorensen (Firm) pertaining to the FY2010 contract negotiations with the City's five recognized employee organizations and to provide services related to employment relations matters for wages, hours, working conditions, and other terms and conditions as they apply.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

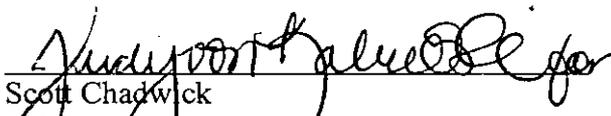
None

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

None

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

None

  
\_\_\_\_\_  
Scott Chadwick  
Labor Relations Department Director

  
\_\_\_\_\_  
Jay M. Goldstone  
Chief Operating Officer



FY 2009 FTE Allocation W/O MADS

Total Amount of AC/DP/Invoice:

\$ 500,000

| Line  | CY/PY | Fund                   | Dept | Department Name                  | Org  | Account | Job Order | Amount         |
|-------|-------|------------------------|------|----------------------------------|------|---------|-----------|----------------|
| 001   | 0     | 100                    | 601  | Citywide Program Expenditures    | 3305 | 4151    | 003305    | 376,150.00     |
| 013   | 0     | <del>41500</del> 41500 | 776  | MWWD-Administration              | 795  | 4151    | 776260    | 41,900.00      |
| 012   | 0     | 41500                  | 760  | Water                            | 163  | 4151    | 163       | 38,800.00      |
| 017   | 0     | 41300                  | 1300 | Developmental Service Enterprise | 1100 | 4151    | 1110      | 22,600.00      |
| 005   | 0     | 41200                  | 752  | Refuse Disposal                  | 1000 | 4151    | 110       | 5,950.00       |
| 009   | 0     | 41210                  | 757  | Collection Services              | 20   | 4151    | 4229      | 5,250.00       |
| 002   | 0     | 41400                  | 730  | Golf Course                      | 100  | 4151    | 2150      | 4,750.00       |
| 008   | 0     | 41210                  | 755  | Waste Reduction & Enforcement    | 1002 | 4151    | 1500      | 1,150.00       |
| 014   | 0     | 41100                  | 720  | Airports                         | 2000 | 4151    | 1101      | 950.00         |
| 006   | 0     | 41200                  | 753  | Resource Management              | 10   | 4151    | 2000      | 900.00         |
| 011   | 0     | 41210                  | 759  | Resource Management              | 10   | 4151    | 2010      | 650.00         |
| 007   | 0     | 41200                  | 754  | Collection Services              | 20   | 4151    | 4229      | 450.00         |
| 003   | 0     | 41200                  | 750  | Environmental Protection         | 1001 | 4151    | 1002      | 350.00         |
| 010   | 0     | 41210                  | 758  | Environmental Protection         | 10   | 4151    | 1001      | 150.00         |
| TOTAL |       |                        |      |                                  |      |         |           | <u>500,000</u> |

000029

**AGREEMENT FOR CONSULTING SERVICES  
FOR  
THE CITY OF SAN DIEGO  
LABOR RELATIONS DEPARTMENT**

**NOT TO EXCEED SPECIFIC AMOUNT AGREEMENT  
FOR  
CONSULTING SERVICES PERTAINING TO  
EMPLOYMENT RELATIONS MATTERS**

**THE CITY OF SAN DIEGO  
AND  
BURKE, WILLIAMS & SORENSEN, LLP**

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

**NOT TO EXCEED SPECIFIC AMOUNT AGREEMENT BETWEEN  
THE CITY OF SAN DIEGO  
AND BURKE, WILLIAMS & SORENSEN, LLP  
FOR CONSULTANT SERVICES**

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation (“City”) and **BURKE, WILLIAMS & SORENSEN, LLP**. (“Consultant”) for the Consultant to provide Services to the City for pertaining to employment relations matters.

**RECITALS**

The City wants to retain the services of the *Burke, Williams & Sorensen law* firm to provide consulting, representational and other services pertaining to employment relations matters, including representation in negotiations and in administrative and City proceedings, as requested by the Office of the Mayor of the City of San Diego or otherwise required by law, (“the Services”).

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

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

**ARTICLE I**

**CONSULTANT SERVICES**

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

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

**1.2 Contract Administrator.** The Labor Relations Department is the contract administrator for this Agreement. The Consultant shall provide the Services under the direction of a designated representative of the Labor Relations Department who can be contacted at:

Labor Relations, Scott Chadwick  
(619) 236-5587  
**SChadwick@sandiego.gov**

The City's designated representative will communicate with the Consultant on all matters related to the administration of this Agreement and the Consultant's performance of the Services rendered hereunder. When this Agreement refers to communications to or with the City, those communications will be with the designated representative, unless the designated representative or the Agreement specifies otherwise. However, when this Agreement refers to an act or approval to be performed by City, that act or approval shall be performed by the Mayor or his designee, unless the Agreement specifies otherwise.

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

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

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

## ARTICLE II

### DURATION OF AGREEMENT

**2.1 Term of Agreement.** This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40. Unless otherwise terminated, it shall be effective until completion

of the Scope of Services or August 30, 2008, whichever is the earliest but not to exceed five years unless approved by City ordinance.

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

**2.3 Notification of Delay.** The Consultant shall immediately notify the City in writing if the Consultant experiences or anticipates experiencing a delay in performing the Services within the time frames set forth in the Time Schedule (Exhibit C). The written notice shall include an explanation of the cause for, and a reasonable estimate of the length of the delay. If in the opinion of the City, the delay affects a material part of the City's requirements for the Services, the City may exercise its rights under Sections 2.5-2.7 of this Agreement.

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

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

**2.6 City's and Consultant Right to Terminate for Convenience.** The City or Consultant may, at its sole option and for its convenience, terminate all or any portion of the Services agreed to pursuant to this Agreement by giving written notice of such termination to the other. Such notice shall be delivered by certified mail with return receipt for delivery to the sending party. The termination of the Services shall be effective upon receipt of the notice by the party receiving notice. After termination of this Agreement, the Consultant shall complete any and all additional work necessary for the orderly filing of documents and closing of the Consultant's Services under this Agreement. For services satisfactorily rendered in completing the work, the Consultant shall be entitled to the Consultant hourly rate for the Service performed by the Consultant before (and which are authorized to be performed after) the effective date of termination. After filing of documents and completion of performance, the Consultant shall deliver to the City all documents or records related to the Consultant's Services. By accepting payment at the hourly contractual rate for all services performed, filing and delivering documents as called for in this paragraph, the Consultant discharges the City of all of the City's payment obligations and liabilities under this Agreement.

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

### ARTICLE III

#### COMPENSATION

**3.1 Amount of Compensation.** The City shall pay the Consultant for performance of all Services rendered in accordance with this Agreement, including reasonably related expenses, in an amount not to exceed \$500,000. The compensation for the Scope of Services shall not exceed \$500,000 and the compensation for Additional Services (described in Section 3.2), if any, shall be processed in accordance with Section 3.3. Consultant shall not be required to perform services which would cause billings to exceed the maximum amounts designated herein.

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

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

**Scott Chadwick, Director  
Labor Relations  
City of San Diego  
1200 Third Ave, Suite1316  
San Diego, CA 92101**

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

## ARTICLE IV

### CONSULTANT'S OBLIGATIONS

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

**4.2 Right to Audit.**

**4.2.1 Access.** The City retains the right to review and audit, and the reasonable right of access to Consultant's and any Subcontractor's premises to review and audit the Consultant's or Subcontractor's compliance with the provisions of this Agreement [City's Right]. The City's Right includes the right to inspect and photocopy same, and to retain copies, outside of the Consultant's premises, of any and all records related to the Services provided hereunder with

appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. This information shall be kept by the City in the strictest confidence allowed by law.

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

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

**4.2.2.1.1 Accounting Records.** The Consultant and all Subcontractors shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. The Consultant and Subcontractors shall make available to the City for review and audit; all Service related accounting records and documents, and any other financial data. Upon the City's request, the Consultant and Subcontractors shall submit exact duplicates of originals of all requested records to the City.

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

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

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

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

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

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

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

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

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

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

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

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

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

**4.6 Contract Activity Report.** The Consultant shall submit statistical information to the City as requested in the City's Contract Activity Report [Exhibit E]. The statistical information shall include the amount of subcontracting provided by firms during the period covered by the Contract Activity Report. With the Contract Activity Report, the Consultant shall provide an invoice from each Subcontractor listed in the report. The Consultant agrees to issue payment to each firm listed in the Report within fourteen working days of receiving payment from the City for Subcontractor Services as described in Section 4.4.1.

**4.7 Non-Discrimination Requirements.**

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

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

**4.7.3 Compliance Investigations.** Upon the City's request, the Consultant agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all Subcontractors, vendors, and suppliers that the Consultant has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the Consultant for each subcontract or supply contract. The Consultant further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-

22.3517.] The Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Consultant up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. The Consultant further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

**4.8 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 F].

**4.8.1 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.

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

**4.8.2.1** *The dangers of drug abuse in the work place.*

**4.8.2.2** The policy of maintaining a drug-free work place.

**4.8.2.3** Available drug counseling, rehabilitation, and employee assistance programs.

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

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

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

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

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

**4.11 Mandatory Assistance.** If a third party dispute or litigation, or both, arises out of, or relates in any way to the 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 as Additional Services under Section 3.3. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of the Consultant, its agents, officers, and employees, the Consultant shall reimburse the City. The City is then entitled to reimbursement of all fees paid to the Consultant, its agents, officers, and employees for Mandatory Assistance.

**4.13 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

## RESERVED

## ARTICLE VI

### INDEMNIFICATION

**6.1 Indemnification and Hold Harmless Agreement.** With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the Consultant, or Consultant's employees, agents, and officers, arising out of any services performed under this Agreement, the Consultant agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers, and employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the 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.

Regardless of the above provisions, Consultant shall have no duty to defend, indemnify or hold **the City** harmless with regard to claims, costs, losses, attorney's fees or payments for injury to any person or property caused or claimed to be caused by employee organization allegations of violation of the "meet and confer in good faith" requirements of the Meyers-Milias-Brown Act or other meet and confer-related claims within the jurisdiction of the Public Employment Relations Board (PERB) or the courts of the state of California. Additionally, Consultant shall have no duty to defend, indemnify or hold the City harmless with respect to any liability, cost, losses, attorney's fees or payments for injury to any person or property caused by employee organization "job actions" (a non-inclusive description consists of work slow downs, work stoppages, work speed ups, media campaigns) or other conduct undertaken by any

employee organization as a result of impasse proceedings or other employee organization actions intended to resolve a meet and confer-related impasse.

## ARTICLE VII

### MEDIATION

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

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

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

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

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

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

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

**7.4.1** Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

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

## ARTICLE VIII

### INTELLECTUAL PROPERTY RIGHTS

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

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

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

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

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

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

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

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

## ARTICLE IX

### MISCELLANEOUS

**9.1 Notices.** In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. For the purpose of this Agreement, unless otherwise agreed in writing, notice to the City shall be addressed to: Scott Chadwick, Labor Relations Director, Labor Relations Department, City of San Diego, 1200 3<sup>rd</sup> Avenue, Suite 1316, San Diego, CA 92101 and notice to the Consultant shall be addressed to William Kay and Timothy Davis, Burke, Williams & Sorensen, LLP 545 Middlefield Road, Suite 180, Menlo Park, CA 94025

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

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

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

**9.5 Consultant and Subcontractor Principals for Consultant Services.** It is understood that this Agreement is for unique Professional Services. Retention of the Consultant's Professional Services is based on the particular professional expertise of the following members of the Consultant's organization: William Kay and Timothy Davis. Accordingly, performance of Professional Services on the Project may not be delegated to other members of the Consultant's organization or to Subcontractors without the prior written consent of the City. It is mutually agreed that the members of the Project Team are the principal persons responsible for delivery of all Professional Services and may not be removed from the Project without the City's prior written approval. Removal of any member of the Project Team without notice and approval by the City may be considered a default of the terms and conditions of this Agreement by the Consultant. In the event any member of the Project Team becomes unavailable for any reason, the City must be consulted as to any replacement. If the City does not approve of a proposed

replacement, the City may terminate this Agreement pursuant to section 2.6 of this Agreement. Further, the City reserves the right, after consultation with the Consultant, to require any of the Consultant's employees or agents to be removed from the Project.

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

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

**9.8 Jurisdiction and Attorney Fees.** The jurisdiction and applicable laws for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in accordance with the laws of the State of California. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney fees in addition to any other award made in such suit or proceeding.

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

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

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

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

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

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

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

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

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

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

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

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

*The remainder of this page has intentionally been left blank.*

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor or designee, pursuant to Charter Section 265 authorizing such execution, and by the Consultant (pursuant to relevant corporate documents, if applicable)

I HEREBY CERTIFY that I can legally bind Burke, Williams & Sorensen, LLP and that I have read all of this Agreement this 30<sup>th</sup> day of October, 2008.

|   |   |
|---|---|
| <p>CONSULTANT</p>   | <p>CITY OF SAN DIEGO<br/>A MUNICIPAL CORPORATION</p>  |
| <p>BY: <u>William J. Fay</u></p>  | <p>BY: _____</p>  |
| <p>DATE SIGNED <u>10/30/08</u></p>  | <p>Tammy Rimes, Deputy Director<br/>DATE SIGNED _____</p>   |
| <p>I HEREBY APPROVE the form and legality of the foregoing Agreement this _____ day of _____, 2008.</p> |   |
|   | <p>Michael Aguirre, City Attorney:<br/><br/>By: _____<br/>Deputy City Attorney<br/><br/>DATE SIGNED _____</p> |

EXHIBITS

NON-DESIGN PROFESSIONAL CONSULTANT LUMP SUM AGREEMENT

- Exhibit A - Scope of Services
- Exhibit B - Compensation and Fee Schedule
- Exhibit C - Time Schedule
- Exhibit D - Insurance
- Exhibit E - City's Equal Opportunity Contracting Program Consultant Requirements
- Exhibit F - Consultant Certification for a Drug-Free Workplace

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**EXHIBIT A**  
**SCOPE OF SERVICES**

Burke will be hired to serve as an expert labor relations consultant to the City pertaining to the contract negotiations with the City's five recognized employee organization and will provide services related to employment relations matters for wages, hours, working conditions, and other terms and conditions as they apply. The scope of work and/or services to be provided by the Firm includes but is not limited to, labor negotiations, oral advice and communications, preparing collective bargaining proposals, counter proposals, briefing materials, presentation, correspondence, services related to employment relations matters for wages, hours, working conditions and other terms and conditions as applied, administrative and City proceedings and other issues as requested by the Office of Mayor of the City of San Diego.

**EXHIBIT B**

**COMPENSATION AND FEE SCHEDULE**

Attorney services for William Kay and Timothy Davis shall be provided by Consultant at the hourly rate of \$ \$295.00. Specifically included within the compensable hourly rate shall be 100% of travel time to and from Consultant's Los Angeles or Menlo Park office and meeting locations at the City of San Diego or other designated location. Associates from Consultant will be billed out at \$225.00 per hour.

Paraprofessionals shall be billed at the rate of \$130.00 per hour.

Costs shall be billed as follows:

1. - \$0.20 In-office Black/White photocopies/page - \$0.20
2. In-office Color photocopies/page - \$1.00
- .3. Facsimile transmittal - \$1.00 per page
4. Mileage/mile - \$.585 (per IRS notices)

City shall provide 100% reimbursement to Consultant for reasonable cost of lodging and for airfare, rental car and similar expenses related to Consultant's performance of contractual duties.

Consultant shall be 100% reimbursed by the City for all other reasonable costs and expenses related to its performance of its contractual duties.

**EXHIBIT C**

**TIME SCHEDULE**

Preparation for the meet and confer process will commence upon execution of this Agreement. Mr. Kay and Mr. Davis have a meeting with City staff on November 21, 2008 to discuss the strategy and timing of the meet and confer process.

Although we will work toward completion of the meet and confer process in April 2009 no representation can be made that such deadlines can or will be adhered to. The meet and confer process is subject to numerous variables which render it unreasonable to designate a likely completion date for the processes.

**EXHIBIT D****INSURANCE**

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

**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 (\$1,000,000.00) one million dollars per occurrence and subject to an annual aggregate of (\$1,000,000.00) one million dollars. 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.

**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 (\$1,000,000.00) one million dollars per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

**1.3 Workers' Compensation.** For all of the Consultant's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Consultant shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of (\$1,000,000.00) one million dollars 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.

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

3. **Acceptability of Insurers.**

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

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

4. **Required Endorsements**

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

#### **4.1 Commercial General Liability Insurance Endorsements**

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

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

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

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

#### **4.2 Automobile Liability Insurance Endorsements**

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

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

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

**4.3 Worker's Compensation and Employer's Liability Insurance Endorsements**

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

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

5. **Reservation of Rights.** The City reserves the right, from time to time, to review the Consultant's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to the City. The City will reimburse the Consultant for the cost of the additional premium for any coverage requested by the City in excess of that required by this Agreement without overhead, profit, or any other markup.
6. **Additional Insurance.** The Consultant may obtain additional insurance not required by this Agreement.
7. **Excess Insurance.** All policies providing excess coverage to the City shall follow the form of the primary policy or policies including but not limited to all endorsements.

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**EXHIBIT E**

**EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)  
CONTRACTOR REQUIREMENTS**

The Consultant's hiring or retaining of any Subcontractors to perform services is subject to prior written approval by the City. Should the Consultant retain Subcontractors with the City's written approval, the Consultant shall comply with all Equal Opportunity Contracting (EOC) requirements. For applicable rules and forms see: <http://www.sandiego.gov/eoc/index.shtml>.

EXHIBIT F

CONSULTANT CERTIFICATION FOR A DRUG-FREE WORKPLACE

PROJECT TITLE: CONSULTING SERVICES PERTAINING TO  
LABOR RELATIONS MATTERS

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:

Barke, Williams & Sorensen LLP  
Name under which business is conducted

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

Signed William J. Fay  
Printed Name William F. Fay  
Title Partner

Date 10/30/08