



**Request for Proposal (RFP) for
Outside Legal Counsel**

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| Solicitation Number: | 10089538-19-W |
| Solicitation Issue Date: | February 05, 2019 |
| Questions and Comments Due: | February 15, 2019 @ 12:00 p.m. |
| Proposal Due Date and Time (Closing Date): | February 28, 2019 @ 2:00 p.m. |
| Contract Terms: | Five (5) years from Effective Date, as defined in Article I, Section 1.2 of the City's General Contract Terms and Provisions. |
| City Contact: | Michael Warner Senior Procurement Contracting Officer 1200 Third Avenue, Suite 200 San Diego, CA 92101 MWarner@sandiego.gov (619) 236-6154 |
| Submissions: | Respondent is required to provide five (5) originals and one (1) electronic copy (e.g. thumb drive or CD) of their response as described herein. Completed and signed RFP signature page is required, with most recent addendum listed as acknowledgement of all addenda issued. Note: Emailed submissions will not be accepted. |

**CONTRACT RESULTING FROM REQUEST FOR PROPOSAL NUMBER 10089538-19-W,
Outside Legal Counsel**

This Contract (Contract) is entered into by and between the City of San Diego, a municipal corporation (City), and the successful proposer to Request for Proposal (RFP) # 10089538-19-W, Outside Legal Counsel (Contractor).

RECITALS

On or about 2/5/2019, City issued an RFP to prospective proposers on services to be provided to the City. The RFP and any addenda and exhibits thereto are collectively referred to as the "RFP." The RFP is attached hereto as Exhibit A.

City has determined that Contractor has the expertise, experience, and personnel necessary to provide the services.

City wishes to retain Contractor to provide as needed Outside Legal Counsel as further described in the Scope of Work, attached hereto as Exhibit B. (Services).

For good and valuable consideration, the sufficiency of which is acknowledged, City and Contractor agree as follows:

**ARTICLE I
CONTRACTOR SERVICES**

1.1 Scope of Work. Contractor shall provide the Services to City as described in Exhibit B which is incorporated herein by reference. Contractor will submit all required forms and information described in Exhibit A to the Purchasing Agent before providing Services.

1.2 General Contract Terms and Provisions. This Contract incorporates by reference the General Contract Terms and Provisions, attached hereto as Exhibit C.

**ARTICLE II
DURATION OF CONTRACT**

2.1 Term. This Contract shall be for a period of 5 years beginning on the Effective Date. The term of this Contract shall not exceed five years unless approved by the City Council by ordinance.

2.2 Effective Date. This Contract shall be effective on the date it is executed by the last Party to sign the Contract, and approved by the City Attorney in accordance with San Diego Charter Section 40.

**ARTICLE III
COMPENSATION**

3.1 Amount of Compensation. City shall pay Contractor for performance of all Services rendered in accordance with this Contract in an amount not to exceed \$250,000.00.

**ARTICLE IV
WAGE REQUIREMENTS**

4.1 Reserved.

**ARTICLE V
CONTRACT DOCUMENTS**

5.1 Contract Documents. The following documents comprise the Contract between the City and Contractor: this Contract and all exhibits thereto, the RFP; the Notice to Proceed; and the City's written acceptance of exceptions or clarifications to the RFP, if any.

5.2 Contract Interpretation. The Contract Documents completely describe the Services to be provided. Contractor will provide any Services that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for or identified in the Contract Documents. Words or phrases which have a well-known technical or construction industry or trade meaning and are used to describe Services will be interpreted in accordance with that meaning unless a definition has been provided in the Contract Documents.

5.3 Precedence. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the Parties will use the order of precedence as set forth below. The 1st document has the highest priority. Inconsistent provisions in the Contract Documents that address the same subject, are consistent, and have different degrees of specificity, are not in conflict and the more specific language will control. The order of precedence from highest to lowest is as follows:

1st Any properly executed written amendment to the Contract

2nd The Contract

3rd The RFP and the City's written acceptance of any exceptions or clarifications to the RFP, if any

4th Contractor's Pricing

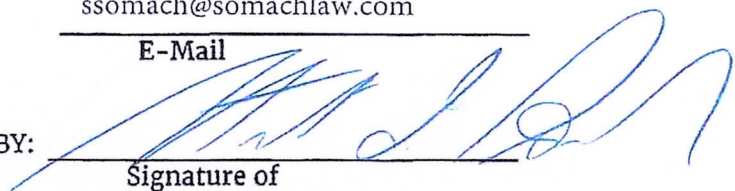
5.4 Counterparts. This Contract may be executed in counterparts which, when taken together, shall constitute a single signed original as though all Parties had executed the same page.

5.5 Public Agencies. Other public agencies, as defined by California Government Code section 6500, may choose to use the terms of this Contract, subject to Contractor's acceptance. The City is not liable or responsible for any obligations related to a subsequent Contract between Contractor and another public agency.

IN WITNESS WHEREOF, this Contract is executed by City and Contractor acting by and through their authorized officers.

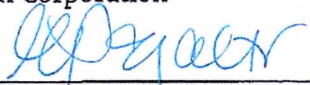
CONTRACTOR

Somach Simmons & Dunn
Proposer
500 Capitol Mall, Suite 1000
Street Address
Sacramento
City
(916) 446-7979
Telephone No.
ssomach@somachlaw.com
E-Mail

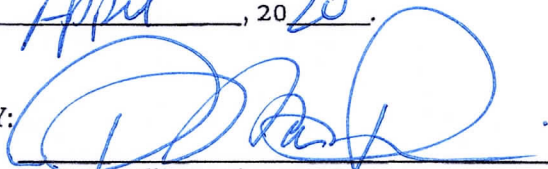
BY: 
Signature of Proposer's Authorized Representative

Stuart L. Somach
Print Name
Attorney/President
Title
2/26/2019
Date

CITY OF SAN DIEGO
A Municipal Corporation

BY: 
Kristina Peralta, Director,
Purchasing & Contracting Department

3 DEC 2019
Date Signed

Approved as to form this 2 day of
April, 2020
BY: 
Mara W. Elliott, City Attorney

**EXHIBIT A
PROPOSAL SUBMISSION AND REQUIREMENTS**

A. PROPOSAL SUBMISSION

1. Timely Proposal Submittal. Proposals must be submitted as described herein to the Purchasing & Contracting Department (P&C).

1.1 Reserved.

1.2 Paper Proposals. The City will accept paper proposals in lieu of eProposals. Paper proposals must be submitted in a sealed envelope to the Purchasing & Contracting Department (P&C) located at 1200 Third Avenue, Suite 200, San Diego, CA 92101. The Solicitation Number and Closing Date must be referenced in the lower left-hand corner of the outside of the envelope. Faxed proposals will not be accepted.

1.3 Proposal Due Date. Proposals must be submitted prior to the Closing Date indicated on the eBidding System. E-mailed and/or faxed proposals will not be accepted.

1.4 Pre-Proposal Conference. No pre-proposal conference will be held for this RFP.

1.4.1 Reserved.

1.5 Questions and Comments. Written questions and comments must be submitted electronically via the eBidding System no later than the date specified in the eBidding System. Only written communications relative to the procurement shall be considered. The City's eBidding System is the only acceptable method for submission of questions. All questions will be answered in writing. The City will distribute questions and answers without identification of the inquirer(s) to all proposers who are on record as having received this RFP, via its eBidding System. No oral communications can be relied upon for this RFP. Addenda will be issued addressing questions or comments that are determined by the City to cause a change to any part of this RFP.

1.6 Contact with City Staff. Unless otherwise authorized herein, proposers who are considering submitting a proposal in response to this RFP, or who submit a proposal in response to this RFP, are prohibited from communicating with City staff about this RFP from the date this RFP is issued until a contract is awarded.

2. Proposal Format and Organization. Unless electronically submitted, all proposals should be securely bound and must include the following completed and executed forms and information presented in the manner indicated below:

Tab A - Submission of Information and Forms.

2.1 Completed and signed Contract Signature Page. If addenda are issued, the latest Addendum Contract Signature Page is required.

2.2 Exceptions requested by proposer, if any. The proposer must present written factual or legal justification for any exception requested to the Scope of Work, the Contract, or the Exhibits thereto. Any exceptions to the Contract that have not been accepted

by the City in writing are deemed rejected. The City, in its sole discretion, may accept some or all of proposer's exceptions, reject proposer's exceptions, and deem the proposal non-responsive, or award the Contract without proposer's proposed exceptions. The City will not consider exceptions addressed elsewhere in the proposal.

2.3 The Contractor Standards Pledge of Compliance Form.

2.4 Equal Opportunity Contracting forms including the Work Force Report and Contractors Certification of Pending Actions.

2.5 Licenses as required in Exhibit B.

2.6 Reserved.

2.7 Reserved.

2.8 Reserved.

2.9 Reserved.

Tab B - Executive Summary and Responses to Specifications.

2.10 A title page.

2.11 A table of contents.

2.12 An executive summary, limited to one typewritten page, that provides a high-level description of the proposer's ability to meet the requirements of the RFP and the reasons the proposer believes itself to be best qualified to provide the identified services.

2.13 Proposer's response to the RFP.

Tab C - Cost/Price Proposal (if applicable). Proposers shall submit a cost proposal in the form and format described herein. Failure to provide cost(s) in the form and format requested may result in proposal being declared non-responsive and rejected.

3. Proposal Review. Proposers are responsible for carefully examining the RFP, the Scope of Work, this Contract, and all documents incorporated into the Contract by reference before submitting a proposal. If selected for award of contract, proposer shall be bound by same unless the City has accepted proposer's exceptions, if any, in writing.

4. Addenda. The City may issue addenda to this RFP as necessary. All addenda are incorporated into the Contract. The proposer is responsible for determining whether addenda were issued prior to a proposal submission. Failure to respond to or properly address addenda may result in rejection of a proposal.

5. Quantities. As indicated in the RFP, Contractors will be used on a rotating basis, with the highest scoring Contractor being used first, the second highest Contractor being used second, and so on. Once a Contractor accepts handling a particular matter, that Contractor will be placed at the bottom of the rotation order for future matters.

If a Contractor is unable to take on a particular matter as part of this rotation process such as, for example, due to a conflict of interest, lack of capacity, or lack of expertise, the City and Contractor may mutually agree in writing that the Contractor will be skipped in the

rotation for that particular assignment and still maintain its order of precedence for the next assignment. Alternatively, if a Contractor passes on handling a particular assignment and the Parties do not mutually agree in writing that Contractor may do so, the Contractor will be placed at the bottom of the rotation order. In either circumstance, the next Contractor in the rotation order will be given the opportunity to handle the particular assignment passed upon by the preceding Contractor.

5.1 For illustration purposes, assume there are 5 Contractors (Contractors A-E) who will accept assignments in that order based on their scoring rank in the RFP. If Contractor A accepts an assignment, then Contractor B would be next in the rotation order. If Contractor B passes on the next assignment without the City's consent in writing, Contractor B would then be placed at the bottom of the rotation order. Assuming Contractor C accepts handling the particular assignment that Contractor B passed upon, future assignments would be offered in the following order to Contractors D, E, A, B, and C.

5.2 Using the same hypothetical scenario as in 5.1 above except that Contractor B and the City both agree that Contractor B may pass on a particular assignment because of a conflict of interest, lack of capacity, or lack of expertise, Contractor C would then be offered the opportunity to handle the assignment. Assuming Contractor C accepts handling the particular matter that Contractor B passed upon, future matters would be offered in the following order to Contractors B, D, E, A, and C.

5.3 If all Contractors in a particular area of law are unable to take on the assignment, the City has the option to retain counsel of its choice to handle a particular matter.

6. Existing Contracts. The Parties acknowledge and agree that this Contract does not in any manner whatsoever affect the City's existing contracts with outside counsel and that the City may continue with such existing contracts with other outside counsel until completion of those matters.

The Parties further acknowledge and agree that the scope of services of this Contract does not include any legal services which are provided on a contingency fee, sole source (pursuant to Municipal Code sections 22.3016 and 22.3208(d)), or emergency basis (pursuant to Municipal Code section 22.3208(b)).

7. Modifications, Withdrawals, or Mistakes. Proposer is responsible for verifying all prices and extensions before submitting a proposal.

7.1 Modification or Withdrawal of Proposal Before Proposal Opening. Prior to the Closing Date, the proposer or proposer's authorized representative may modify or withdraw the proposal by providing written notice of the proposal modification or withdrawal to the City Contact via the eBidding System. E-mail or telephonic withdrawals or modifications are not permissible.

7.2 Proposal Modification or Withdrawal of Proposal After Proposal Opening. Any proposer who seeks to modify or withdraw a proposal because of the proposer's inadvertent computational error affecting the proposal price shall notify the City Contact identified on the eBidding System no later than three working days following the Closing Date. The proposer shall provide worksheets and such other information as may be

required by the City to substantiate the claim of inadvertent error. Failure to do so may bar relief and allow the City recourse from the bid surety. The burden is upon the proposer to prove the inadvertent error. If, as a result of a proposal modification, the proposer is no longer the apparent successful proposer, the City will award to the newly established apparent successful proposer. The City's decision is final.

8. Incurred Expenses. The City is not responsible for any expenses incurred by proposers in participating in this solicitation process.

9. Public Records. By submitting a proposal, the proposer acknowledges that any information submitted in response to this RFP is a public record subject to disclosure unless the City determines that a specific exemption in the California Public Records Act (CPRA) applies. If the proposer submits information clearly marked confidential or proprietary, the City may protect such information and treat it with confidentiality to the extent permitted by law. However, it will be the responsibility of the proposer to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the CPRA should the City choose to withhold such information. General references to sections of the CPRA will not suffice. Rather, the proposer must provide a specific and detailed legal basis, including applicable case law that clearly establishes the requested information is exempt from the disclosure under the CPRA. If the proposer does not provide a specific and detailed legal basis for requesting the City to withhold proposer's confidential or proprietary information at the time of proposal submittal, City will release the information as required by the CPRA and proposer will hold the City, its elected officials, officers, and employees harmless for release of this information. It will be the proposer's obligation to defend, at proposer's expense, any legal actions or challenges seeking to obtain from the City any information requested under the CPRA withheld by the City at the proposer's request. Furthermore, the proposer shall indemnify and hold harmless the City, its elected officials, officers, and employees from and against any claim or liability, and defend any action brought against the City, resulting from the City's refusal to release information requested under the CPRA which was withheld at proposer's request. Nothing in the Contract resulting from this proposal creates any obligation on the part of the City to notify the proposer or obtain the proposer's approval or consent before releasing information subject to disclosure under the CPRA.

10. Right to Audit. The City Auditor may access proposer's records as described in San Diego Charter section 39.2 to confirm contract compliance.

B. PRICING

1. Fixed Price. Contractor shall perform services for the prices identified in the Pricing Page in Exhibit B.

C. EVALUATION OF PROPOSALS

1. Award. The City shall evaluate each responsive proposal to determine which proposal offers the City the best value consistent with the evaluation criteria set forth herein. The proposer offering the lowest overall price will not necessarily be awarded a contract.

2. Sustainable Materials. Consistent with Council Policy 100-14, the City encourages use of readily recyclable submittal materials that contain post-consumer recycled content.

3. Evaluation Process.

3.1 Process for Award. A City-designated evaluation committee (Evaluation Committee) will evaluate and score all responsive proposals. The Evaluation Committee may require proposer to provide additional written or oral information to clarify responses. Upon completion of the evaluation process, the Evaluation Committee will recommend to the Purchasing Agent that award be made to the highest scoring proposers. Proposers must achieve at least 80 points to be considered. A contract will be awarded to no more than 3 proposers. Proposers will be used on a rotating basis, with the highest scoring proposer being used first, the second highest proposer being used second, and so on.

3.2 Optional Interview/Oral Presentation. The City may require proposers to interview and/or make an oral presentation.

3.3 Reserved.

3.4 Discussions/Negotiations. The City has the right to accept the proposal(s) that serve the best interest of the City, as submitted, without discussion or negotiation. Contractors should, therefore, not rely on having a chance to discuss, negotiate, and adjust their proposals. The City may negotiate the terms of a contract with the winning proposer based on the RFP and the proposer's proposal, or award the contract without further negotiation.

3.5 Inspection. The City reserves the right to inspect the proposer's equipment and facilities to determine if the proposer is capable of fulfilling this Contract. Inspection will include, but not limited to, survey of proposer's physical assets and financial capability. Proposer, by signing the proposal agrees to the City's right of access to physical assets and financial records for the sole purpose of determining proposer's capability to perform the Contract. Should the City conduct this inspection, the City reserves the right to disqualify a proposer who does not, in the City's judgment, exhibit the sufficient physical and financial resources to perform this Contract.

3.6 Evaluation Criteria. The following elements represent the evaluation criteria that will be considered during the evaluation process:

| | MAXIMUM EVALUATION POINTS |
|--|---------------------------------|
| A. Responsiveness to the RFP. | <u>5</u> |
| 1. Requested information included; response is thorough | |
| B. Firm's ability to provide the services; expertise; past performance. | 55 |
| 1. Background and experience in providing work identified in the Scope of Work [10] | |
| 2. Past/Prior Performance performing work described in the Scope of Work [10] | |
| 3. Qualifications [10] | |
| 4. Appropriate staffing levels to provide required services [10] | |
| 5. Capacity/Capability to meet the City's needs in a timely manner [10] | |
| 6. Reference checks [5] | |
| C. Price. | 25 |
| D. Demonstrated Commitment to Diversity | 15 |
| 1. This may include Firm policies and procedures; existing initiatives and strategies to recruit, hire, train, and promote a diverse workforce; awards; in-house diversity programs; training; evidence of outreach; memberships and participation in diverse organizations. | |
| SUB TOTAL MAXIMUM EVALUATION POINTS: | <u>100</u> |
| E. Participation by Small Local Business Enterprise (SLBE) or Emerging Local Business Enterprise (ELBE) Firms* | 12 |
| FINAL MAXIMUM EVALUATION POINTS INCLUDING SLBE/ELBE: | <u>112</u> |

*The City shall apply a maximum of an additional 12 percentage points to the proposer's final score for SLBE OR ELBE participation. Refer to Equal Opportunity Contracting Form, Section V.

D. ANNOUNCEMENT OF AWARD

1. Award of Contract. The City will inform all proposers of its intent to award a Contract in writing.

2. Obtaining Proposal Results. No solicitation results can be obtained until the City announces the proposal or proposals best meeting the City's requirements. Proposal results may be obtained by: (1) e-mailing a request to the City Contact identified on the eBidding System or (2) visiting the P&C eBidding System to review the proposal results. To ensure an accurate response, requests should reference the Solicitation Number. Proposal results will not be released over the phone.

3. Multiple Awards. City may award more than one contract.

E. PROTESTS. The City's protest procedures are codified in Chapter 2, Article 2, Division 30 of the San Diego Municipal Code (SDMC). These procedures provide unsuccessful proposers with the opportunity to challenge the City's determination on legal and factual grounds. The City will not consider or otherwise act upon an untimely protest.

F. SUBMITTALS REQUIRED UPON NOTICE TO PROCEED. The successful proposer is required to submit the following documents to P&C **within ten (10) business days** from the date on the Notice to Proceed letter:

1. Insurance Documents. Evidence of all required insurance, including all required endorsements, as specified in Article VII of the General Contract Terms and Provisions.

2. Taxpayer Identification Number. Internal Revenue Service (IRS) regulations require the City to have the correct name, address, and Taxpayer Identification Number (TIN) or Social Security Number (SSN) on file for businesses or persons who provide goods or services to the City. This information is necessary to complete Form 1099 at the end of each tax year. To comply with IRS regulations, the City requires each Contractor to provide a Form W-9 prior to the award of a Contract.

3. Business Tax Certificate. Unless the City Treasurer determines a business is exempt, all businesses that contract with the City must have a current business tax certificate.

4. Reserved.

5. Reserved.

The City may find the proposer to be non-responsive and award the Contract to the next highest scoring responsible and responsive proposer if the apparent successful proposer fails to timely provide the required information or documents.

EXHIBIT B
EXPERIENCE, QUALIFICATIONS, SCOPE OF WORK, AND DISCLOSURES

A. INTRODUCTION

The City of San Diego (City), by and through the Office of the City Attorney (Office), is seeking to retain counsel (Outside Counsel) to provide legal advice and representation on an as-needed basis in situations in which the City Attorney determines that the Office (1) does not have adequate expertise to handle or advise on the matter; (2) does not have adequate personnel to handle or advise on the matter; or (3) has an actual conflict of interest.

There are three areas of law for which services are sought. The City may select more than one firm to provide as-needed legal services. No more than three attorneys and/or law firms TOTAL will be selected to provide services for all three areas of law, and the successful proposers will be used, as specified above, on a rotating basis. Proposers providing legal services must be qualified and licensed to practice law in the State of California.

B. SCOPE OF SERVICES

1. Areas of Law. Outside Counsel would perform general legal services (i.e., legal advice and representation) in all of the following areas of law:

- 1.1** Litigation services and negotiations involving water rights, including Colorado River water rights and Pueblo water rights, CEQA and NEPA review related to water and energy resource development.
- 1.2** Regulatory compliance with water planning and management mandates (e.g. UWMP, IRWMP, SGMA and conservation); Land and water resource development, utilization, management, and protection (surface and subsurface).
- 1.3** Litigation and negotiations involving Public-Private Partnerships related to water, sewer, stormwater and energy resource development; Negotiation and preparation of Multiparty transactional agreements involving local, state and federal agencies.

Attorneys and law firms MUST submit a proposal that addresses all three areas.

2. General Legal Services. Services must be performed as efficiently and expeditiously as possible. The services will be directed by the Office and may include some or all of the following:

- 2.1** Providing review, analysis and application of relevant law;
- 2.2** Assisting City staff with City Council presentations and meetings/hearings;
- 2.3** Representing the City as a plaintiff or defendant in litigation;
- 2.4** Preparing a litigation plan and budget;

- 2.5 Compiling evidence and drafting demand letters, claim notices, and/or complaints;
- 2.6 Drafting and arguing responsive pleadings, pretrial motions and writ proceedings;
- 2.7 Conducting discovery, both offensive and defensive;
- 2.8 Interviewing and deposing witnesses;
- 2.9 Engaging in trial preparation, including the retention of trial consultants and experts;
- 2.10 Conducting trial as well as post-trial motions;
- 2.11 Handling appeals, interlocutory and post-trial;
- 2.12 Representing the City in negotiation and settlement proceedings; and
- 2.13 Participating in meetings, personal conferences, telephone conferences, discussions, and other communications and proceedings.

C. REQUIRED INFORMATION BY AREA OF LAW

- 1. Describe your experience, in detail, for each category of legal services in section B. 1. (*supra*), with specific attention to the following areas:
 - 1.1 Advising on potential consequences of transactions and dealings with the City, including, real estate transactions, financing, pending litigation, and debt collection.
 - 1.2 Representing a public agency in CERCLA litigation and mediation, where the California water quality cleanup standards apply.
 - 1.3 Representing a public agency in cases where the Department of Defense (typically acting through the Navy) is the lead federal agency.
 - 1.4 Representing a public agency where the State or Regional Water Quality Control Board is the lead state agency.
 - 1.5 Handling the hazardous waste cleanup of water bodies, submerged lands, and tidelands.
 - 1.6 Handling other land use issues including property acquisitions, disposal, public improvements, easements, dedications, eminent domain, and the California Environmental Quality Act.
 - 1.7 Handling storm water compliance matters under the Clean Water Act for a public agency, including compliance under National Pollutant Discharge Elimination System permits such as the statewide industrial general permit and municipal separate storm sewer system permits.
 - 1.8 Claims for coverage by the City or another entity arising from environmental contamination.

- 1.9 Providing advice and assistance concerning complex business agreements with private and public corporations and other business entities (drafting, reviewing, negotiating, and related litigation).

D. EXPERIENCE AND QUALIFICATIONS

1. Provide the following information about the individual attorney who will be primarily responsible for advising or representing the City (“Primary Attorney”): (i) education, (ii) employment history, (iii) experience in the legal area or areas for which you are proposing, and (iv) experience advising or representing governmental agencies.
2. Identify any other individuals with your firm who you anticipate would be involved in advising or representing the City and what those individuals’ roles would be with respect to advising the City. Provide a summary of each person’s: (i) education, (ii) employment history, and (iii) experience as described in Section 1. Be aware that for an engagement of this nature, the City expects to deal principally, if not exclusively, with the Primary Attorney.
3. Describe any particular expertise your firm can provide with respect to advising the City for each category of legal services in section B. 1. (*supra*).
4. Provide the names and contact information of at least three (3) representative clients, preferably public entity clients, for which the Primary Attorney or firm currently or has previously served as similar counsel, by area(s) of law.
5. The City seeks to enhance diversity in City contracts. Describe your firm’s commitment to diversity and your efforts to promote diversity. This may include your firm’s policies and procedures; initiatives and strategies to recruit, hire, train, and promote a diverse workforce; awards; in-house diversity programs; training. Describe your firm’s outreach efforts to provide opportunities available to all interested and qualified individuals, including a broader cross-section of the community. List current community activities such as membership and participation in diverse organizations, associations, scholarship programs, mentoring, internships, and community projects.
6. Provide a statement of whether the Primary Attorney and the firm have litigated or settled any past claims related to providing similar services within the past ten (10) years, and whether they have any current claims pending against them related to providing similar services.
7. Provide proof of insurance and coverage amounts for all legal malpractice and professional liability policies the firm carries.
8. Provide a brief history of the firm. Disclose whether there have been any significant business developments within the past three years, such as mergers, restructuring, or changes in ownership. Provide a firm resume if one is readily available.
9. Provide a brief description of the firm’s relevant practice areas.

10. Provide a list of any relevant training, seminars, CLEs, special recognition, or publications attributable to the Primary Attorney for each area of law on which you are proposing.

E. COMMITMENT TO DIVERSITY

Describe your firm’s commitment to diversity. Consider referencing policies and procedures; initiatives to recruit diverse employees; awards; in-house diversity programs; training; evidence of outreach; memberships in diverse organizations.

F. REQUIRED DISCLOSURES

The following questions must be answered as part of your proposal with respect to both the firm and the Primary Attorney:

1. Do you have any potential conflicts of interest or any arrangements or relationships, formal or informal, which may interfere with your ability to provide independent, unbiased advice to the City?

Yes _____ No _____

2. Have you been the subject of any regulatory or administrative agency enforcement action, or any investigation, in the past five years? If so, please explain.

3. Have you been suspended or debarred from performing legal work for any governmental agency? If so, please explain.

4. Are there any investigations, lawsuits, or administrative proceedings involving you that the City should be aware of in considering your capacity to represent the City? Please include any actions, past or current, concerning malpractice claims against you relating to your representation of government agencies.

5. All requested forms shall be complete, signed, and returned with a proposal.

G. TECHNICAL REPRESENTATIVE

The Technical Representative for this Contract is identified in the notice of award and is responsible for overseeing and monitoring this Contract.

H. PRICING PAGE

Proposers shall state the names and positions of any individuals that will be involved in advising the City and the rate at which their time will be billed to the City. Please indicate the discount, if any, the City is receiving from each individual's usual rate.

Hourly rate shall be inclusive of all fees and costs of operations to provide the contract services, including but not limited to photocopying, support services, travel (at the GSA rates), lodging, and any other expenses incurred in the course of representing the City.

| Item No. | Service: Outside Legal Counsel | Hourly Rate \$ |
|----------|--------------------------------|----------------|
| 1 | Attorney: _____ | \$ _____ |
| 2 | Partner: _____ | \$ _____ |
| 3 | Associate: _____ | \$ _____ |
| 4 | Paralegal: _____ | \$ _____ |
| 5 | Law Clerk: _____ | \$ _____ |

EXHIBIT C



THE CITY OF SAN DIEGO
GENERAL CONTRACT TERMS AND PROVISIONS
APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS

ARTICLE I SCOPE AND TERM OF CONTRACT

1.1 Scope of Contract. The scope of contract between the City and a provider of goods and/or services (Contractor) is described in the Contract Documents. The Contract Documents are comprised of the Request for Proposal, Invitation to Bid, or other solicitation document (Solicitation); the successful bid or proposal; the letter awarding the contract to Contractor; the City's written acceptance of exceptions or clarifications to the Solicitation, if any; and these General Contract Terms and Provisions.

1.2 Effective Date. A contract between the City and Contractor (Contract) is effective on the last date that the contract is signed by the parties and approved by the City Attorney in accordance with Charter section 40. Unless otherwise terminated, this Contract is effective until it is completed or as otherwise agreed upon in writing by the parties, whichever is the earliest. A Contract term cannot exceed five (5) years unless approved by the City Council by ordinance.

1.3 Contract Extension. The City may, in its sole discretion, unilaterally exercise an option to extend the Contract as described in the Contract Documents. In addition, the City may, in its sole discretion, unilaterally extend the Contract on a month-to-month basis following contract expiration if authorized under Charter section 99 and the Contract Documents. Contractor shall not increase its pricing in excess of the percentage increase described in the Contract.

ARTICLE II CONTRACT ADMINISTRATOR

2.1 Contract Administrator. The Purchasing Agent or designee is the Contract Administrator for purposes of this Contract, and has the responsibilities described in this Contract, in the San Diego Charter, and in Chapter 2, Article 2, Divisions 5, 30, and 32.

2.1.1 Contractor Performance Evaluations. The Contract Administrator will evaluate Contractor's performance as often as the Contract Administrator deems necessary throughout the term of the contract. This evaluation will be based on criteria including the quality of goods or services, the timeliness of performance, and adherence to applicable laws, including prevailing wage and living wage. City will provide Contractors who receive an unsatisfactory rating with a copy of the evaluation and an opportunity to respond. City may consider final evaluations, including Contractor's response, in evaluating future proposals and bids for contract award.

2.2 Notices. Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the Purchasing Agent. Proper notice is effective on the date of personal delivery or five (5) days after deposit in a United States postal mailbox unless provided otherwise in the Contract. Notices to the City shall be sent to:

Purchasing Agent
City of San Diego, Purchasing and Contracting Division
1200 3rd Avenue, Suite 200
San Diego, CA 92101-4195

ARTICLE III COMPENSATION

3.1 Manner of Payment. Contractor will be paid monthly, in arrears, for goods and/or services provided in accordance with the terms and provisions specified in the Contract.

3.2 Invoices.

3.2.1 Invoice Detail. Contractor's invoice must be on Contractor's stationary with Contractor's name, address, and remittance address if different. Contractor's invoice must have a date, an invoice number, a purchase order number, a description of the goods or services provided, and an amount due.

3.2.2 Service Contracts. Contractor must submit invoices for services to City by the 10th of the month following the month in which Contractor provided services. Invoices must include the address of the location where services were performed and the dates in which services were provided.

3.2.3 Goods Contracts. Contractor must submit invoices for goods to City within seven days of the shipment. Invoices must describe the goods provided.

3.2.4 Parts Contracts. Contractor must submit invoices for parts to City within seven calendar (7) days of the date the parts are shipped. Invoices must include the manufacturer of the part, manufacturer's published list price, percentage discount applied in accordance with Pricing Page(s), the net price to City, and an item description, quantity, and extension.

3.2.5 Extraordinary Work. City will not pay Contractor for extraordinary work unless Contractor receives prior written authorization from the Contract Administrator. Failure to do so will result in payment being withheld for services. If approved, Contractor will include an invoice that describes the work performed and the location where the work was performed, and a copy of the Contract Administrator's written authorization.

3.2.6 Reporting Requirements. Contractor must submit the following reports using the City's web-based contract compliance portal. Incomplete and/or delinquent reports may cause payment delays, non-payment of invoice, or both. For questions, please view the City's online tutorials on how to utilize the City's web-based contract compliance portal.

3.2.6.1 Monthly Employment Utilization Reports. Contractor and Contractor's subcontractors and suppliers must submit Monthly Employment Utilization Reports by the fifth (5th) day of the subsequent month.

3.2.6.2 Monthly Invoicing and Payments. Contractor and Contractor's subcontractors and suppliers must submit Monthly Invoicing and Payment Reports by the fifth (5th) day of the subsequent month.

3.3 Annual Appropriation of Funds. Contractor acknowledges that the Contract term may extend over multiple City fiscal years, and that work and compensation under this Contract is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. This Contract may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by City Council.

3.4 Price Adjustments. Based on Contractor's written request and justification, the City may approve an increase in unit prices on Contractor's pricing pages consistent with the amount requested in the justification in an amount not to exceed the increase in the Consumer Price Index, San Diego Area, for All Urban Customers (CPI-U) as published by the Bureau of Labor Statistics, or 5.0%, whichever is less, during the preceding one year term. If the CPI-U is a negative number, then the unit prices shall not be adjusted for that option year (the unit prices will not be decreased). A negative CPI-U shall be counted against any subsequent increases in the CPI-U when calculating the unit prices for later option years. Contractor must provide such written request and justification no less than sixty days before the date in which City may exercise the option to renew the contract, or sixty days before the anniversary date of the Contract. Justification in support of the written request must include a description of the basis for the adjustment, the proposed effective date and reasons for said date, and the amount of the adjustment requested with documentation to support the requested change (e.g. CPI-U or 5.0%, whichever is less). City's approval of this request must be in writing.

ARTICLE IV SUSPENSION AND TERMINATION

4.1 City's Right to Suspend for Convenience. City may suspend all or any portion of Contractor's performance under this Contract at its sole option and for its convenience for a reasonable period of time not to exceed six (6) months. City must first give ten (10) days' written notice to Contractor of such suspension. City will pay to Contractor a sum equivalent to the reasonable value of the goods and/or services satisfactorily provided up to the date of suspension. City may rescind the suspension prior to or at six (6) months by providing Contractor with written notice of the rescission, at which time Contractor would be required to resume performance in compliance with the terms and provisions of this Contract. Contractor will be entitled to an extension of time to complete performance under the Contract equal to the length of the suspension unless otherwise agreed to in writing by the Parties.

4.2 City's Right to Terminate for Convenience. City may, at its sole option and for its convenience, terminate all or any portion of this Contract by giving thirty (30) days' written notice of such termination to Contractor. The termination of the Contract shall be effective upon receipt of the notice by Contractor. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs

otherwise); and (2) complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's affected performance under the Contract. After filing of documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or received by Contractor in performing this Contract, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Contract with regard to the affected performance.

4.3 City's Right to Terminate for Default. Contractor's failure to satisfactorily perform any obligation required by this Contract constitutes a default. Examples of default include a determination by City that Contractor has: (1) failed to deliver goods and/or perform the services of the required quality or within the time specified; (2) failed to perform any of the obligations of this Contract; and (3) failed to make sufficient progress in performance which may jeopardize full performance.

4.3.1 If Contractor fails to satisfactorily cure a default within ten (10) calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

4.3.2 If City terminates this Contract, in whole or in part, City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, equivalent goods or services and Contractor shall be liable to City for any excess costs. Contractor shall also continue performance to the extent not terminated.

4.4 Termination for Bankruptcy or Assignment for the Benefit of Creditors. If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to, or demand upon Contractor, terminate this Contract, and terminate each and every right of Contractor, and any person claiming rights by and through Contractor under this Contract.

4.5 Contractor's Right to Payment Following Contract Termination.

4.5.1 Termination for Convenience. If the termination is for the convenience of City an equitable adjustment in the Contract price shall be made. No amount shall be allowed for anticipated profit on unperformed services, and no amount shall be paid for an as needed contract beyond the Contract termination date.

4.5.2 Termination for Default. If, after City gives notice of termination for failure to fulfill Contract obligations to Contractor, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of City. In such event, adjustment in the Contract price shall be made as provided in Section 4.3.2. City's rights and remedies are in addition to any other rights and remedies provided by law or under this Contract.

4.6 Remedies Cumulative. City's remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which City may be lawfully entitled in case of any breach or threatened breach of any provision of this Contract.

ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS

5.1 Inspection and Acceptance. The City will inspect and accept goods provided under this Contract at the shipment destination unless specified otherwise. Inspection will be made and acceptance will be determined by the City department shown in the shipping address of the Purchase Order or other duly authorized representative of City.

5.2 Responsibility for Lost or Damaged Shipments. Contractor bears the risk of loss or damage to goods prior to the time of their receipt and acceptance by City. City has no obligation to accept damaged shipments and reserves the right to return damaged goods, at Contractor's sole expense, even if the damage was not apparent or discovered until after receipt.

5.3 Responsibility for Damages. Contractor is responsible for all damage that occurs as a result of Contractor's fault or negligence or that of its' employees, agents, or representatives in connection with the performance of this Contract. Contractor shall immediately report any such damage to people and/or property to the Contract Administrator.

5.4 Delivery. Delivery shall be made on the delivery day specified in the Contract Documents. The City, in its sole discretion, may extend the time for delivery. The City may order, in writing, the suspension, delay or interruption of delivery of goods and/or services.

5.5 Delay. Unless otherwise specified herein, time is of the essence for each and every provision of the Contract. Contractor must immediately notify City in writing if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. City may terminate this Contract as provided herein if City, in its sole discretion, determines the delay is material.

5.5.1 If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, City may allow Contractor to a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by 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 performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Contractor. This provision does not apply to a delay caused by Contractor's acts or omissions. Contractor is not entitled to an extension of time to perform if a delay is caused by Contractor's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof satisfactory to City of Contractor's inability to obtain materials, equipment, or labor, in which case City's approval must be in writing.

5.6 Restrictions and Regulations Requiring Contract Modification. Contractor shall immediately notify City in writing of any regulations or restrictions that may or will require Contractor to alter the material, quality, workmanship, or performance of the goods and/or services to be provided. City reserves the right to accept any such alteration, including any resulting reasonable price adjustments, or to cancel the Contract at no expense to the City.

5.7 Warranties. All goods and/or services provided under the Contract must be warranted by Contractor or manufacturer for at least twelve (12) months after acceptance by City, except automotive equipment. Automotive equipment must be warranted for a minimum of 12,000 miles or 12 months, whichever occurs first, unless otherwise stated in the Contract. Contractor is responsible to City for all warranty service, parts, and labor. Contractor is required to ensure that warranty work is performed at a facility acceptable to City and that services, parts, and labor are available and provided to meet City's schedules and deadlines. Contractor may establish a warranty service contract with an agency satisfactory to City instead of performing the warranty service itself. If Contractor is not an authorized service center and causes any damage to equipment being serviced, which results in the existing warranty being voided, Contractor will be liable for all costs of repairs to the equipment, or the costs of replacing the equipment with new equipment that meets City's operational needs.

5.8 Industry Standards. Contractor shall provide goods and/or services acceptable to City in strict conformance with the Contract. Contractor shall also provide goods and/or services in accordance with the standards customarily adhered to by an experienced and competent provider of the goods and/or services called for under this Contract using the degree of care and skill ordinarily exercised by reputable providers of such goods and/or services. Where approval by City, the Mayor, or other representative of City is required, it is understood to be general approval only and does not relieve Contractor of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.

5.9 Records Retention and Examination. Contractor shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Contract for five (5) years after receipt of final payment by City under this Contract. Contractor shall make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of City, including the Purchasing Agent or designee. Contractor shall make available all requested data and records at reasonable locations within City or County of San Diego at any time during normal business hours, and as often as City deems necessary. If records are not made available within the City or County of San Diego, Contractor shall pay City's travel costs to the location where the records are maintained and shall pay for all related travel expenses. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of the Contract. Contractor must include this provision in all subcontracts made in connection with this Contract.

5.9.1 Contractor shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

5.10 Quality Assurance Meetings. Upon City's request, Contractor shall schedule one or more quality assurance meetings with City's Contract Administrator to discuss Contractor's performance. If requested, Contractor shall schedule the first quality assurance meeting no later than eight (8) weeks from the date of commencement of work under the Contract. At the quality assurance meeting(s), City's Contract Administrator will provide Contractor with feedback, will note any deficiencies in Contract performance, and provide Contractor with an opportunity to address and correct such deficiencies. The total number of quality assurance meetings that may be required by City will depend upon Contractor's performance.

5.11 Duty to Cooperate with Auditor. The City Auditor may, in his sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review Contractor's records to confirm contract compliance. Contractor shall make reasonable efforts to cooperate with Auditor's requests.

5.12 Safety Data Sheets. If specified by City in the solicitation or otherwise required by this Contract, Contractor must send with each shipment one (1) copy of the Safety Data Sheet (SDS) for each item shipped. Failure to comply with this procedure will be cause for immediate termination of the Contract for violation of safety procedures.

5.13 Project Personnel. Except as formally approved by the City, the key personnel identified in Contractor's bid or proposal shall be the individuals who will actually complete the work. Changes in staffing must be reported in writing and approved by the City.

5.13.1 Criminal Background Certification. Contractor certifies that all employees working on this Contract have had a criminal background check and that said employees are clear of any sexual and drug related convictions. Contractor further certifies that all employees hired by Contractor or a subcontractor shall be free from any felony convictions.

5.13.2 Photo Identification Badge. Contractor shall provide a company photo identification badge to any individual assigned by Contractor or subcontractor to perform services or deliver goods on City premises. Such badge must be worn at all times while on City premises. City reserves the right to require Contractor to pay fingerprinting fees for personnel assigned to work in sensitive areas. All employees shall turn in their photo identification badges to Contractor upon completion of services and prior to final payment of invoice.

5.14 Standards of Conduct. Contractor is responsible for maintaining standards of employee competence, conduct, courtesy, appearance, honesty, and integrity satisfactory to the City.

5.14.1 Supervision. Contractor shall provide adequate and competent supervision at all times during the Contract term. Contractor shall be readily available to meet with the City. Contractor shall provide the telephone numbers where its representative(s) can be reached.

5.14.2 City Premises. Contractor's employees and agents shall comply with all City rules and regulations while on City premises.

5.14.3 Removal of Employees. City may request Contractor immediately remove from assignment to the City any employee found unfit to perform duties at the City. Contractor shall comply with all such requests.

5.15 Licenses and Permits. Contractor shall, without additional expense to the City, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to Contract performance. This includes, but is not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the work.

5.16 Contractor and Subcontractor Registration Requirements. Prior to the award of the Contract or Task Order, Contractor and Contractor's subcontractors and suppliers must register with the City's web-based vendor registration and bid management system. The City may not award the Contract until registration of all subcontractors and suppliers is complete. In the event this requirement is not met within the time frame specified by the City, the City reserves the right to rescind the Contract award and to make the award to the next responsive and responsible proposer of bidder.

ARTICLE VI INTELLECTUAL PROPERTY RIGHTS

6.1 Rights in Data. If, in connection with the services performed under this Contract, Contractor or its employees, agents, or subcontractors, create artwork, audio recordings, blueprints, designs, diagrams, documentation, photographs, plans, reports, software, source code, specifications, surveys, system designs, video recordings, or any other original works of authorship, whether written or readable by machine (Deliverable Materials), all rights of Contractor or its subcontractors in the Deliverable Materials, including, but not limited to publication, and registration of copyrights, and trademarks in the Deliverable Materials, are the sole property of City. Contractor, including its employees, agents, and subcontractors, may not use any Deliverable Material for purposes unrelated to Contractor's work on behalf of the City without prior written consent of City. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City, without the prior written consent of the City.

6.2 Intellectual Property Rights Assignment. For no additional compensation, Contractor hereby assigns to City all of Contractor's rights, title, and interest in and to the content of the Deliverable Materials created by Contractor or its employees, agents, or subcontractors, including copyrights, in connection with the services performed under this Contract. Contractor

shall promptly execute and deliver, and shall cause its employees, agents, and subcontractors to promptly execute and deliver, upon request by the 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. Contractor also shall cooperate and assist in the prosecution of any action or opposition proceeding involving such intellectual property rights and any adjudication of those rights.

6.3 Contractor Works. Contractor Works means tangible and intangible information and material that: (a) had already been conceived, invented, created, developed or acquired by Contractor prior to the effective date of this Contract; or (b) were conceived, invented, created, or developed by Contractor after the effective date of this Contract, but only to the extent such information and material do not constitute part or all of the Deliverable Materials called for in this Contract. All Contractor Works, and all modifications or derivatives of such Contractor Works, including all intellectual property rights in or pertaining to the same, shall be owned solely and exclusively by Contractor.

6.4 Subcontracting. In the event that Contractor utilizes a subcontractor(s) for any portion of the work that comprises the whole or part of the specified Deliverable Materials to the City, the agreement between Contractor and the subcontractor shall include a statement that identifies the Deliverable Materials as a “works for hire” as described in the United States Copyright Act of 1976, as amended, and that all intellectual property rights in the Deliverable Materials, whether arising in copyright, trademark, service mark or other forms of intellectual property rights, belong to and shall vest solely with the City. Further, the agreement between Contractor and its subcontractor shall require that the subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to City, all titles, rights and interests in and to the Deliverable Materials, including all copyrights, trademarks and other intellectual property rights. City shall have the right to review any such agreement for compliance with this provision.

6.5 Intellectual Property Warranty and Indemnification. Contractor represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this Contract are either original, or 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 Contractor to produce, at Contractor’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. Contractor further agrees to indemnify, defend, 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 Deliverable Materials, 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 Claim of Infringement). If a Third Party Claim of Infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

6.6 Software Licensing. Contractor represents and warrants that the software, if any, as delivered to City, does not contain any program code, virus, worm, trap door, back door, time or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of licensor-selected conditions or manually on command. Contractor further represents and warrants that all third party software, delivered to City or used by Contractor in the performance of the Contract, is fully licensed by the appropriate licensor.

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

6.8 Royalties, Licenses, and Patents. Unless otherwise specified, Contractor shall pay all royalties, license, and patent fees associated with the goods that are the subject of this solicitation. Contractor warrants that the goods, materials, supplies, and equipment to be supplied do not infringe upon any patent, trademark, or copyright, and further agrees to defend any and all suits, actions and claims for infringement that are brought against the City, and to defend, indemnify and hold harmless the City, its elected officials, officers, and employees from all liability, loss and damages, whether general, exemplary or punitive, suffered as a result of any actual or claimed infringement asserted against the City, Contractor, or those furnishing goods, materials, supplies, or equipment to Contractor under the Contract.

ARTICLE VII INDEMNIFICATION AND INSURANCE

7.1 Indemnification. To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any goods provided or performance of services under this Contract by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

7.2 Insurance. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors.

Contractor shall provide, at a minimum, the following:

7.2.1 Commercial General Liability. Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

7.2.2 Commercial Automobile Liability. Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

7.2.3 Workers' Compensation. Insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

7.2.4 Professional Liability (Errors and Omissions). For consultant contracts, insurance appropriate to Consultant’s profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

7.2.5 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

7.2.5.1 Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

7.2.5.2 Primary Coverage. For any claims related to this contract, Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

7.2.5.3 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

7.2.5.4 Waiver of Subrogation. Contractor hereby grants to City a waiver of any right to subrogation which the Workers' Compensation insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

7.2.5.5 Claims Made Policies (applicable only to professional liability). The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

7.3 Self Insured Retentions. Self-insured retentions must be declared to and approved by City. City may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

7.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to City.

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

7.5 Verification of Coverage. Contractor shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right

to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

7.6 Special Risks or Circumstances. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

7.7 Additional Insurance. Contractor may obtain additional insurance not required by this Contract.

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

7.9 Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as the CG 20 38 04 13 endorsement.

ARTICLE VIII BONDS

8.1 Payment and Performance Bond. Prior to the execution of this Contract, City may require Contractor to post a payment and performance bond (Bond). The Bond shall guarantee Contractor's faithful performance of this Contract and assure payment to contractors, subcontractors, and to persons furnishing goods and/or services under this Contract.

8.1.1 Bond Amount. The Bond shall be in a sum equal to twenty-five percent (25%) of the Contract amount, unless otherwise stated in the Specifications. City may file a claim against the Bond if Contractor fails or refuses to fulfill the terms and provisions of the Contract.

8.1.2 Bond Term. The Bond shall remain in full force and effect at least until complete performance of this Contract and payment of all claims for materials and labor, at which time it will convert to a ten percent (10%) warranty bond, which shall remain in place until the end of the warranty periods set forth in this Contract. The Bond shall be renewed annually, at least sixty (60) days in advance of its expiration, and Contractor shall provide timely proof of annual renewal to City.

8.1.3 Bond Surety. The Bond must be furnished by a company authorized by the State of California Department of Insurance to transact surety business in the State of California and which has a current A.M. Best rating of at least "A-, VIII."

8.1.4 Non-Renewal or Cancellation. The Bond must provide that City and Contractor shall be provided with sixty (60) days' advance written notice in the event of non-renewal, cancellation, or material change to its terms. In the event of non-renewal, cancellation, or

material change to the Bond terms, Contractor shall provide City with evidence of the new source of surety within twenty-one (21) calendar days after the date of the notice of non-renewal, cancellation, or material change. Failure to maintain the Bond, as required herein, in full force and effect as required under this Contract, will be a material breach of the Contract subject to termination of the Contract.

8.2 Alternate Security. City may, at its sole discretion, accept alternate security in the form of an endorsed certificate of deposit, a money order, a certified check drawn on a solvent bank, or other security acceptable to the Purchasing Agent in an amount equal to the required Bond.

ARTICLE IX CITY-MANDATED CLAUSES AND REQUIREMENTS

9.1 Contractor Certification of Compliance. By signing this Contract, Contractor certifies that Contractor is aware of, and will comply with, these City-mandated clauses throughout the duration of the Contract.

9.1.1 Drug-Free Workplace Certification. Contractor shall comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Contract by this reference.

9.1.2 Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations: Contractor shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City's ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor's agreement to abide by the provisions of the City's Council Policy and any applicable access laws and regulations.

9.1.3 Non-Discrimination Requirements.

9.1.3.1 Compliance with City's Equal Opportunity Contracting Program (EOCP). Contractor shall comply with City's EOCP Requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Prime Contractor liable for any discriminatory practice of its subcontractors.

9.1.3.2 Non-Discrimination Ordinance. Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of

subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor 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. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

9.1.3.3 Compliance Investigations. Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor 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 Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.4 Equal Benefits Ordinance Certification. Unless an exception applies, Contractor shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (SDMC). Failure to maintain equal benefits is a material breach of the Contract.

9.1.5 Contractor Standards. Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.6 Noise Abatement. Contractor shall operate, conduct, or construct without violating the City's Noise Abatement Ordinance codified in the SDMC.

9.1.7 Storm Water Pollution Prevention Program. Contractor shall comply with the City's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of City regardless of location.

Contractor shall comply with the City's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended.

Contractor shall comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

9.1.8 Service Worker Retention Ordinance. If applicable, Contractor shall comply with the Service Worker Retention Ordinance (SWRO) codified in the SDMC.

9.1.9 Product Endorsement. Contractor shall comply with Council Policy 000-41 concerning product endorsement which requires that any advertisement referring to City as a user of a good or service will require the prior written approval of the Mayor.

9.1.10 Business Tax Certificate. Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before a Contract is executed.

9.1.11 Equal Pay Ordinance. Unless an exception applies, Contractor shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. Contractor shall certify in writing that it will comply with the requirements of the Equal Pay Ordinance throughout the duration of the Contract.

9.1.11.1 Contractor and Subcontract Requirement. The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of a Contractor to the same extent as it would apply to that Contractor. Contractor shall require subcontractors performing work for contractor under their contract with the City to certify compliance with the Equal Pay Ordinance in their written subcontracts.

9.1.11.2 Notice Requirement. Contractor must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.

ARTICLE X CONFLICT OF INTEREST AND VIOLATIONS OF LAW

10.1 Conflict of Interest Laws. Contractor 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 Ethics Ordinance, codified in the SDMC. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary documents to City.

10.2 Contractor's Responsibility for Employees and Agents. Contractor is required to 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.

10.3 Contractor's Financial or Organizational Interests. In connection with any task, Contractor shall not recommend or specify any product, supplier, or contractor with whom

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

10.4 Certification of Non-Collusion. Contractor certifies that: (1) Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

10.5 Hiring City Employees. This Contract shall be unilaterally and immediately terminated by City if Contractor employs an individual who within the twelve (12) months immediately preceding such employment did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the selection of Contractor.

ARTICLE XI DISPUTE RESOLUTION

11.1 Mediation. If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and City shall use mandatory non-binding mediation before having recourse in a court of law.

11.2 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 the subject matter of this Contract, if possible.

11.3 Expenses. 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, 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.

11.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

11.5 Mediation Results. Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

ARTICLE XII MANDATORY ASSISTANCE

12.1 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the City under a Contract, Contractor, its agents, officers, and employees agree to assist in resolving the dispute or litigation upon City's request. Contractor'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.

12.2 Compensation for Mandatory Assistance. City will compensate Contractor for fees incurred for providing Mandatory Assistance. 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 Contractor, its agents, officers, and employees, Contractor shall reimburse City for all fees paid to Contractor, its agents, officers, and employees for Mandatory Assistance.

12.3 Attorneys' Fees Related to Mandatory Assistance. In providing City with dispute or litigation assistance, Contractor or its agents, officers, and employees may incur expenses and/or costs. Contractor agrees that any attorney fees it may incur as a result of assistance provided under Section 12.2 are not reimbursable.

ARTICLE XIII MISCELLANEOUS

13.1 Headings. All headings are for convenience only and shall not affect the interpretation of this Contract.

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

13.3 Independent Contractors. Contractor and any subcontractors employed by Contractor are independent contractors and not agents of City. Any provisions of this Contract that may appear to give City any right to direct Contractor concerning the details of performing or providing the goods and/or services, or to exercise any control over performance of the Contract, shall mean only that Contractor shall follow the direction of City concerning the end results of the performance.

13.4 Subcontractors. All persons assigned to perform any work related to this Contract, including any subcontractors, are deemed to be employees of Contractor, and Contractor shall be directly responsible for their work.

13.5 Covenants and Conditions. All provisions of this Contract expressed as either covenants or conditions on the part of City or Contractor shall be deemed to be both covenants and conditions.

13.6 Compliance with Controlling Law. Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

13.7 Governing Law. The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

13.8 Venue. The venue for any suit concerning solicitations or the Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

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

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

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

13.12 Drafting Ambiguities. The parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms and conditions of this Contract, and the decision of whether to seek advice of legal counsel with respect to this Contract is the sole responsibility of each party. This Contract 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 Contract.

13.13 Amendments. Neither this Contract nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of City and Contractor. Any alleged oral amendments have no force or effect. The Purchasing Agent must sign all Contract amendments.

13.14 Conflicts Between Terms. If this Contract conflicts with an applicable local, state, or federal law, regulation, or court order, applicable local, state, or federal law, regulation, or court order shall control. Varying degrees of stringency among the main body of this Contract, the exhibits or attachments, and laws, regulations, or orders 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 Contract.

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

13.16 Confidentiality of Services. All services performed by Contractor, and any sub-contractor(s) if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Contractor, are for the sole use of City, its agents, and employees. Neither the documents nor their contents shall be released by Contractor or any subcontractor to any third party without the prior written consent of City. This provision does not apply to information that: (1) was publicly known, or otherwise known to Contractor, at the time it was disclosed to Contractor by City; (2) subsequently becomes publicly known through no act or omission of Contractor; or (3) otherwise becomes known to Contractor other than through disclosure by City.

13.17 Insolvency. If Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the Purchasing Agent and the Contract Administrator responsible for administering the Contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of City contract numbers and contracting offices for all City contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Contract.

13.18 No Third Party Beneficiaries. Except as may be specifically set forth in this Contract, none of the provisions of this Contract are intended to benefit any third party not specifically referenced herein. No party other than City and Contractor shall have the right to enforce any of the provisions of this Contract.

13.19 Actions of City in its Governmental Capacity. Nothing in this Contract shall be interpreted as limiting the rights and obligations of City in its governmental or regulatory capacity.

EXHIBIT D

SAN DIEGO CITY ATTORNEY'S OFFICE

BILLING GUIDELINES FOR OUTSIDE COUNSEL [BG]

These guidelines describe your responsibilities as a lawyer or law firm retained by the City ("Law Firm"). Every effort has been made to be clear and reasonable, so that Law Firm can provide excellent legal services for the lowest possible cost to the taxpayers. **PLEASE NOTE: The City will not approve any invoice without a signed Agreement for Legal Services (ALS), including a signed approval of the Billing Guidelines (BG).**

Each invoice Law Firm submits will be reviewed by the City's representative with these guidelines in mind. We expect Law Firm's compliance and invite any questions or comments you may have about these processes. We look forward to a close and productive relationship, based on this foundation.

Billing Format

Each invoice must list the billing and expenses separately for each person represented.

Each billing invoice (Invoice) must include the total amount of services rendered during the billing period, the fee for these services and the amount of reimbursable expenses. The Invoice must be accompanied by a separate Invoice Support Statement that: (1) describes each item of work performed, (2) identifies the person who performed the work, and (3) itemizes all reimbursable expenses. The Invoice Support Statement must be marked "Confidential -- Attorney-Client and/or Work Product Privilege."

The Invoice may be subject to disclosure under the California Public Records Act; the separate Invoice Support Statement is not.

The billing entries on the Invoice Support Statement must be complete, discrete, and appropriate.

Invoice Support Statement:

Complete

- The Invoice Support Statement should identify each City person represented, and follow with all billing entries and expenses incurred related to that particular person.
- Each billing entry must identify the:
 - person or persons involved (e.g., telephone calls must include the names of all participants);
 - date the work was performed;
 - specific task performed, and

- the work product (e.g., “telephone call re: trial brief,” “interview in preparation for deposition”).
- All time must be billed in .10 hour increments.
- The Invoice Support Statement must include each biller’s professional capacity (partner, associate, paralegal, etc.).
- The Invoice Support Statement must include a breakdown of all expenses by category, along with a receipt a receipt for each expense.

Discrete

- Narrative and block billing are unacceptable; each task must be a discrete billing entry.

Appropriate

- The City does not pay for clerical support, administrative costs, overhead costs, outside expenses or excessive expenses. For example, the City will not pay for secretarial time, word processing time, air conditioning, rental of equipment (including computers), meals served at meetings, postage, online research, or the overhead costs of sending or receiving faxes.
- Absent prior written approval, the City will not pay for delivery fees, outside photocopying, videotaping of depositions, investigative services, computer litigation support services, or overnight mail.
- Due to the nature of the City’s payment process, the City will not pay any late charges. Every effort will be made to pay bills promptly.

Staffing

Every legal matter must have a primary responsible attorney and a paralegal assigned. Staffing is ultimately a City decision, and the Monitoring Attorney may review staffing to ensure that it will achieve the goals of the engagement at the least cost.

The Law Firm should use paralegals to the maximum extent possible to enhance efficiency and cost-effectiveness. All tasks typically considered “associate work” should be considered for assignment to a paralegal.

Once an attorney is given primary responsibility for an engagement, that attorney should continue on the legal matter until it is concluded or the attorney leaves the firm. The City will not pay the costs of bringing a new attorney up to speed.

Written Memoranda

If legal research results in a written memorandum, whether formal or informal, the Law Firm must forward a hard copy and a digital copy to the Office of the City Attorney, to the attention of the Monitoring Attorney.

Internal Conferencing

Regardless of how many people from the Law Firm attend a meeting, only one may bill the time.

Travel

The City will pay for required travel time at the applicable hourly rates set forth in the Agreement, unless otherwise specified in writing by the Parties. However, if Law Firm is billing for work for other clients during this travel time, the Law Firm shall bill such client for the time spent performing such work and not bill the City for such corresponding time spent traveling. As set forth in Exhibit B of the RFP, Pricing Pages, the City will not reimburse for travel expenses or lodging.

Out-of-Pocket Expenses

As set forth in the language of the RFP, Exhibit B, Pricing Pages, “[h]ourly rate shall be inclusive of all fees and costs of operations to provide the contract services, including but not limited to photocopying, support services, travel (at the GSA rates), lodging and any other expenses incurred in the course of representing the City.

Accordingly, the City will not reimburse for expenses including travel (lodging, mileage, airfare, and the like), photocopying, support services, and the Law Firm’s costs associated with overhead. However, upon the City’s prior written consent, the City will reimburse for court filing fees, the retention of experts and consultants, court reporters, deposition transcripts, and similar expenses associated with the cost of litigation.

Records

The individual expense records customarily maintained by the Law Firm for billing evaluation and review purposes must be made available to the City to support the Law Firm’s billings.

Invoices

The Law Firm will send the City an Invoice and Invoice Support Statement for each one-month period of services (or, if requested by the City, each two-week period), and the City will pay the Law Firm on this basis.

The Law Firm will submit all monthly Invoices and Invoice Support Statements to the City Attorney’s Office to the attention of the Monitoring Attorney, as designated in this Agreement, by the fifteenth (15th) of each month for services rendered the previous month. Invoices must include a distinct identification number, and must comply with these BGs. If the City questions any item on an Invoice, the Law Firm must provide all supporting information to substantiate the billing, and must make any appropriate adjustments.

Media Inquiries

The Law Firm must inform the Office of the City Attorney immediately of any media inquiries related to the subject of the Scope of Services, and consult with Office of the City Attorney before issuing any response.



SOMACH SIMMONS & DUNN
ATTORNEYS AT LAW

Response to Request for Proposal
Number 10089538-19-W

City of San Diego
Outside Legal Counsel

WATER • AIR • LAND
LEGAL SERVICES

Cover Letter



SOMACH SIMMONS & DUNN
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

500 CAPITOL MALL, SUITE 1000, SACRAMENTO, CA 95814
OFFICE: 916-446-7979 FAX: 916-446-8199
SOMACHLAW.COM

February 26, 2019

VIA FED EX

Mr. Michael Warner
Senior Procurement Contracting Officer
City of San Diego
1200 Third Avenue, Suite 200
San Diego, CA 92101

Re: Request for Proposal for Outside Legal Counsel
(Solicitation Number: 10089538-19-W)

Dear Mr. Warner:

In accordance with the City of San Diego's (City) Request for Proposal (RFP) for Outside Legal Counsel, I am pleased to submit this proposal on behalf of Somach Simmons & Dunn. Somach Simmons & Dunn has served the City as Special Counsel on water rights and related matters since 2004 and looks forward to the opportunity to continue this relationship in a similar capacity. We have assembled a team with considerable experience providing counsel to the City and other public agencies in the areas of law that the RFP identifies as important to the City. Our proposal demonstrates that Somach Simmons & Dunn has the expertise and qualifications to continue to provide the legal services the City is seeking.

Somach Simmons & Dunn is a 23-lawyer firm that practices environmental, natural resources, and administrative law with a special focus on water law, including both water rights and water quality. The firm has offices in Sacramento, California, Boulder, Colorado, Denver, Colorado, and Washington, D.C. We represent private and public clients throughout California and in many other western states, including Arizona, Colorado, Idaho, Nevada, New Mexico, Oregon, Texas, and Wyoming.

Our firm philosophy is to work closely with our clients and their other counsel to develop legal strategies and otherwise assist our clients in making informed decisions. Our attorneys work as a team, pooling their collective experience for the most effective representation, all while maintaining close communication with our clients.

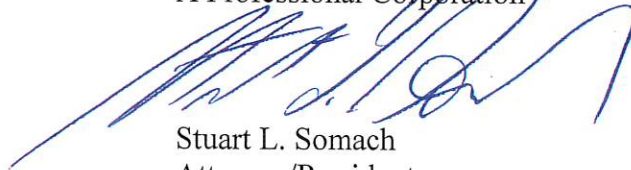
Mr. Michael Warner
RFP (Solicitation No.: 10089538-19-W)
February 26, 2019
Page 2

Somach Simmons & Dunn is an equal employment opportunity employer, maintains a working environment free of discrimination, and uses recruitment resources that promote the growth of diversity in the legal profession.

Thank you for considering our firm. Please do not hesitate to contact me if you have any questions or need additional information.

Very truly yours,

SOMACH SIMMONS & DUNN
A Professional Corporation



Stuart L. Somach
Attorney/President

SLS:lp

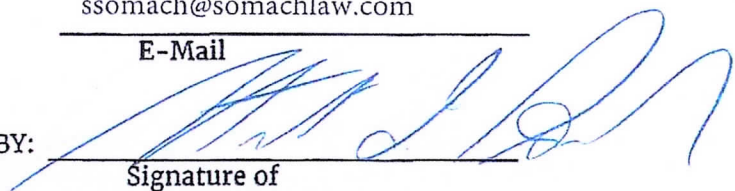
Enclosure

Tab A - Submission of Information and Forms

IN WITNESS WHEREOF, this Contract is executed by City and Contractor acting by and through their authorized officers.

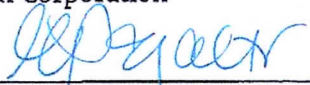
CONTRACTOR

Somach Simmons & Dunn
Proposer
500 Capitol Mall, Suite 1000
Street Address
Sacramento
City
(916) 446-7979
Telephone No.
ssomach@somachlaw.com
E-Mail

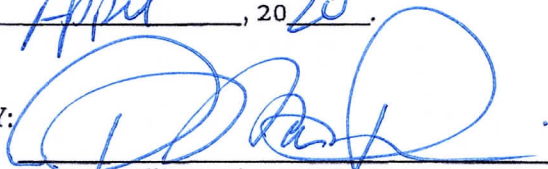
BY: 
Signature of Proposer's Authorized Representative

Stuart L. Somach
Print Name
Attorney/President
Title
2/26/2019
Date

CITY OF SAN DIEGO
A Municipal Corporation

BY: 
Kristina Peralta, Director,
Purchasing & Contracting Department

3 DEC 2019
Date Signed

Approved as to form this 2 day of
April, 2020
BY: 
Mara W. Elliott, City Attorney

**Tab B – Executive Summary
and Responses to Specifications**

Response to Request for Proposal
Number 10089538-19-W

Proposal for Outside Legal Counsel

Proposer: Somach Simmons & Dunn

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Executive Summary

Somach Simmons & Dunn (SSD) is pleased to submit its Proposal for Outside Legal Counsel to the City of San Diego (City) in response to the City's Request for Proposal Number 10089538-19-W.

SSD attorneys have experience and knowledge that makes the firm uniquely positioned to represent the City for the next five years, and beyond. Since 2004, the firm has acted as Special Counsel to the City on various water rights matters related to the City's pueblo water right, groundwater rights, surface water rights, and interests in Colorado River water and the All-American Canal. During this time, the firm has advanced and protected the City's interests by providing strategic legal and transactional advice on a host of water rights, California Environmental Quality Act (CEQA), water development, and regulatory compliance issues, including negotiations with federal, state, and local entities. Further, SSD has successfully represented the City in litigation seeking to protect the City's water rights, provided strategic assistance in CEQA litigation involving the Sweetwater Authority's desalination facility, and currently represents the City in litigation to recover water quality certification fees paid to the State Water Resources Control Board (State Water Board).

SSD provides a unique combination of experience in the fields of water, air quality, natural resources, environmental, public land, public agency, toxics and hazardous waste, and land development law. Firm attorneys are skilled and experienced in all phases of civil litigation before state and federal courts, including the United States Supreme Court. Furthermore, firm attorneys regularly represent clients in state and federal administrative proceedings. SSD attorneys work closely together to provide their private and public agency clients with the benefit of their collective experience, which comprises decades of private law firm practice, as well as prior positions at the federal, state, and local levels.

SSD's public sector clients include cities, counties, joint powers agencies, water and irrigation districts, and public utility districts. Private sector clients include development interests, water companies and other investor-owned utilities, farmers, ranchers, oil companies, small power producers, ski resorts, international shipping companies, cosmetic manufacturers and distributors, and non-profit associations comprised of water, sanitation, and agricultural interests. Since beginning to work for the City, SSD has significantly expanded its regional practice, and now, in addition to working in California, practices throughout Arizona, Colorado, Idaho, Nevada, New Mexico, Oregon, Texas, and Wyoming.

SSD is notable for its creative approaches to delivering results for its clients. SSD attorneys provide practical, cost effective advice. We negotiate with state and federal regulatory agency personnel, and client adversaries, in order to develop workable solutions to difficult issues. When negotiation efforts are not successful, the firm is capable of employing all available options, including alternative dispute resolution and litigation, in order to obtain the best possible results for its clients.

Proposal for Outside Legal Counsel

SSD has thoroughly reviewed the Request for Proposal (RFP) Scope of Work section included in Exhibit B to the RFP and is qualified and prepared to provide legal services to the City in all of the Areas of Law listed in subsection B.1 of Exhibit B. SSD is committed to meeting the City's needs as efficiently and expeditiously as possible. SSD's substantial experience demonstrates that it has the expertise and qualifications to provide all of the general legal services outlined in subsections B.2.1 through B.2.13 of Exhibit B in a way that will exceed the City's expectations. What follows is SSD's experience related to each Area of Law listed in subsection B.1.

Scope of Services

SSD has outlined relevant experience in each area of law by identifying SSD's work for the City as Special Counsel on water matters and our work on behalf of other clients.

1. Areas of Law

1.1 Litigation Services and Negotiations Involving Water Rights, CEQA/NEPA Review

Water Rights Services

- Since 2004, SSD has acted as Special Counsel to the City on water rights matters and has provided the following services:
 - Prepared legal analyses and advised the City with respect to Colorado River water rights to assist the City in its effort to strengthen and/or exercise its rights and create a better level of independence with respect to its water supplies.
 - Prepared legal analyses and advised the City with respect to its rights in the All-American Canal (AAC) to assist the City in developing and implementing arrangements that capitalize on the value of the City's AAC conveyance capacity.
 - Prepared comprehensive legal analyses of the City's groundwater rights and provided recommendations regarding management of the City's groundwater resources to maximize the value of the City's local water supplies.
 - In response to the Padre Dam Municipal Water District's (Padre Dam) proposed Santee Basin Groundwater Recharge and Reuse Project, advised the City on the issue of whether the City's pueblo water right confers a right to control unused storage space in the San Diego River Valley Groundwater Basin. Drafted a mutual acknowledgement of rights between the City and Padre Dam with respect to management of these groundwater resources.

- Advised the City in negotiations with Padre Dam and Helix Water District about potential City participation in the El Monte Valley Groundwater Recharge Project and otherwise protecting the City's water rights in the San Diego River System, including the El Monte Groundwater Basin, through, among other means, the execution of a memorandum of understanding whereby the parties acknowledge their respective water rights.
- Managed experts in the development of a better understanding of the San Diego Formation aquifer, other aquifers, and connected streams to support the City's management of water resources, and in aid of litigation.
- Currently, SSD represents the State of Texas in an Original Action in the United States Supreme Court. This litigation involves an interstate dispute with New Mexico over allocation of the waters of the Rio Grande under the 1938 Rio Grande Compact. SSD has developed and implemented a complex litigation plan, managed expert consultants and litigation budget, and successfully prosecuted pre-trial motions.
- SSD represents the Central Arizona Water Conservation District, providing advice on matters involving water from the Colorado River and the Central Arizona Project. This advice implicates all aspects of the Law of the River, including the various agreements involving water from the Colorado River and various laws enacted over the past 90 years involving the Colorado River.
- Represent the State of Arizona regarding the 2007 Operating Guidelines for the Colorado River.
- SSD continues to protect Byron-Bethany Irrigation District's (BBID) pre-1914 water rights from State Water Board curtailment efforts in both administrative and judicial proceedings (see *California Water Curtailment Cases* JCCP 4838, 2016, Cal. Super. LEXIS 350). SSD successfully defended BBID against a multi-million dollar administrative civil liability complaint issued by the State Water Board for alleged illegal diversions by BBID pursuant to its pre-1914 water rights.
- SSD currently serves as counsel to Palo Verde Irrigation District (PVID). SSD provides advice and counsel on a wide range of water rights and water management issues, including CEQA litigation and contract issues relating to properties within PVID owned by Metropolitan Water District of Southern California.
- SSD currently represents a number of Sacramento River Settlement Contractors participating in federal court litigation brought by the Natural Resources Defense Council against the United States Secretary of the Interior challenging the validity of the Endangered Species Act consultations for renewal of the Sacramento River Settlement Contracts. As one of the lead counsel in this multi-year litigation in both District Court and the Ninth Circuit Court of Appeals, SSD has developed and implemented complex litigation plans and budgets, and manages numerous expert consultants. This representation has required SSD to file and argue pre-trial motions, and engage in discovery, including interviewing and deposing witnesses.

- SSD served as co-counsel representing a municipal water supplier in the water rights adjudication of the Seaside Basin in Monterey County. This matter included issues related to salinity intrusion in a groundwater basin and SSD had the opportunity to work with hydrogeologists to assess conditions in the basin via data analyses and computer modeling.
- SSD has advised Sacramento County and Sacramento County Water Agency for more than 30 years on water rights matters, including the County's appropriative surface water right, Central Valley Project contracts and groundwater rights.
- SSD currently serves as General Counsel to the Glenn-Colusa Irrigation District (GCID). Our representation of GCID, since 1993, has involved the acquisition of new water rights, endangered species issues, and water rights contracting issues. Our representation of GCID also includes providing advice on developing groundwater management policies under both the common law and the Sustainable Groundwater Management Act (SGMA). SSD has also successfully negotiated, drafted, and implemented numerous water transfer agreements for GCID. SSD regularly provides advice on Proposition 218 compliance for imposition of GCID's water rates.
- SSD serves as General Counsel to BBID. Our representation has involved regulatory, transactional, and litigation matters concerning surface water and groundwater law and natural resource issues. We have counseled BBID on SGMA compliance issues and assisted with negotiating and drafting water transfer agreements.

CEQA/NEPA Services

- Represented the City in a lawsuit (*City of San Diego v. Sweetwater Authority*, San Diego County Superior Court Case No. 37-2010-00088653) challenging: (1) Sweetwater Authority's compliance with CEQA in preparation of the Final Environmental Impact Report (EIR) for expansion of a water desalination facility, and (2) Sweetwater Authority's right to take water from the San Diego Formation for the expansion. SSD managed experts to support the City's case in this litigation.
- Advised the City with respect to comments on Sweetwater Authority's Draft EIR for the Richard Reynolds Brackish Groundwater Desalination Facility-Phase II Expansion.
- Assisted the City in developing comments on the environmental analysis for the East County Sand Mining Project prepared pursuant to CEQA and in negotiating with the County of San Diego for recognition of the City's pueblo water right in the San Diego River system, and mitigation that would protect such right and the related water supplies, and/or provide compensation for any damage to the right.
- Assisted the City with preparation of comments on the Draft EIR for the Padre Dam Municipal Water District Comprehensive Facilities Master Plan, asserting potential impacts to the City's pueblo water right in the San Diego River system and the storage of native flows in the Santee-El Monte Basin.

- SSD advises public and private entities throughout California on compliance with and litigation arising under CEQA, NEPA, and the state and federal Endangered Species Acts (ESA) in the water right, water resource, and related ESA permitting contexts, including recycled water projects. Representative clients include the County of Sacramento, Sacramento County Water Agency, Sacramento Regional County Sanitation District, East Bay Municipal Utility District, City of San Bernardino Municipal Water Department, City of Stockton, and Solano County Water Agency, among many others.

1.2 Regulatory Compliance/Land and Water Resource Development

Regulatory Compliance Services

- We assisted the City with its preparation of a Test Claim for submission to the Commission on State Mandates. The Test Claim seeks reimbursement for costs the City has and will incur as a result of an amendment to its domestic water supply permit that requires the City to perform lead testing at K-12 schools.
- Represented the City in negotiating a Memorandum of Understanding for Development of a Groundwater Sustainability Plan (GSP) for the San Diego River Valley Groundwater Basin among the City, County of San Diego, City of Santee, Lakeside Water District, and Padre Dam Municipal Water District.
- Represented the City in negotiating a Memorandum of Understanding for Development of a GSP for the San Pasqual Valley Groundwater Basin between the City and the County of San Diego.
- Advised the City whether it may elect to become a Groundwater Sustainability Agency (GSA) for the San Diego River Valley Groundwater Basin, and if so, how far the scope of its GSA authority extends.
- Advised the City with respect to the potential risks of deciding not to execute a memorandum of understanding for preparation of a GSP in the San Diego River Valley Groundwater Basin.
- In addition to the City, SSD represents BBID, Tulelake Irrigation District, GCID, and various private parties on SGMA issues. SSD has advised these clients on GSA formation issues, fee revenue proceedings under Proposition 218, and matters related to development of GSPs and Alternative Submittals.
- SSD currently represents the Northern California Water Association, the Central Valley Project Water Association, and many individual water rights holders in a challenge to the State Water Board's annual water rights fees. This case has required SSD to appear in superior court twice, including a ten-day bench trial, the Court of Appeal, Third Appellate District on two separate occasions, and the California Supreme Court.
- SSD represented the El Dorado Irrigation District and the El Dorado County Water Agency in acquiring water rights from the American River and related area-of-origin issues. SSD successfully represented the El Dorado County Water Agency in trial, and on appeal, in litigation brought to challenge certain terms imposed by

the State Water Board in the water rights permits. *El Dorado Irrigation District, et al. v. SWRCB, et al.*, 142 Cal.App.4th 937 (2006).

- SSD represents numerous public agency clients in protesting the WaterFix project petition for change in a quasi-adjudicatory evidentiary proceeding before the State Water Board. For the past three years, SSD has assisted our clients with the preparation of testimony that demonstrates that the WaterFix project would injure our clients' water rights, unreasonably affect fish and wildlife, and otherwise be contrary to the public interest. SSD attorneys have actively cross-examined witnesses for other parties in the proceedings.
- SSD defended SSA Containers, Inc., and its affiliates against two civil actions commenced in Los Angeles County by the California Air Resources Board (CARB) under CARB's Cargo Handling Equipment Regulation for allegedly operating noncompliant equipment at several of its California port facilities.
- SSD Defended Liquid Glass, Inc., the manufacturer and distributor of car waxes and cleaning products, in an action commenced in Los Angeles County by CARB for alleged violations of CARB's Consumer Products Program.
- SSD is defending Great American Beauty, Inc., the manufacturer and distributor of women's fragrances and beauty products, in an administrative action commenced by CARB under CARB's Consumer Products Program.
- SSD is advising the City of San Bernardino in an administrative matter pursued by South Coast Air Quality Management District (SCAQMD) alleging the City has violated the air permit for its biodigester facility.
- SSD is advising Plumas-Sierra Rural Electric Cooperative regarding its compliance with CARB's Fleet Rule for Public Agencies.
- SSD is advising the City of San Bernardino regarding its compliance with SCAQMD's Public Fleet Rule (SCAQMD Rule 1196) for the City's fleet of vehicles.
- SSD defended Save Mart Supermarkets, Inc., against an administrative action commenced by the San Joaquin Valley Air Pollution Control District alleging Save Mart's emergency generators at their stores violated the District's rule applicable to stationary emission sources.
- Advised the City of Fairfield in preparation of comments on the State Water Board's Drought Emergency Water Conservation Regulations and the proposed regulatory framework for extending those regulations.
- SSD has advised public and private clients on Senate Bill 88 water measurement and reporting regulations.
- SSD advised the City of Patterson on preparation of a Water Supply Assessment for a project consisting of approximately 961 acres of commercial, business park, and light industrial development.

Land and Water Resource Development Services

- Advising the City in regulatory proceedings before the Federal Energy Regulatory Commission (FERC) with the goal of obtaining a preliminary permit for the San Vicente Pumped Storage Project.
- Currently representing the City and San Diego County Water Authority in litigation against the State Water Board asserting that a water quality certification fee imposed by the State Water Board in 2016/17 and 2017/18 violates the California Constitution.
- Analyzed the potential legal risks to the City if the State Water Board were to designate the City's drinking water reservoirs with beneficial uses that protect tribal traditional and cultural rights and tribal and non-tribal subsistence fishing.
- Advised the City in preparation and submittal of comments to the San Diego Regional Water Quality Control Board concerning Kinder Morgan Energy Partners' Mission Valley Terminal Remediation Dewatering Discharge to Murphy Creek Canyon.
- Advised the City with respect to a potential water exchange arrangement with the Chemehuevi Indian Tribe and Barona Band of Mission Indians.
- SSD served as Special Counsel to the Arizona Power Authority (APA) during the multi-year process of allocating the State of Arizona's share of electric power generated at Hoover Dam. SSD advised the APA in negotiations on two significant contracts – one concerning receipt of electric power from the Western Area Power Administration, and the other regarding distribution of electric power to wholesale entities for ultimate use at the retail level.
- SSD attorneys have assisted numerous Sacramento Valley clients in development and implementation of water transfers, both in-basin and south of the Delta.
- SSD attorneys have successfully filed petitions for change with the State Water Board to change the point of diversion, place of use and purpose of use of appropriate surface water rights.

1.3 Public-Private Partnerships/Multi-Party Transactional Agreements

- On behalf of the City, SSD negotiated the Settlement Agreement Between Sweetwater Authority and City of San Diego Regarding Expansion of the Richard A. Reynolds Desalination Facility, thereby settling the action, *City of San Diego v. Sweetwater Authority*, San Diego County Superior Court Case No. 37-2010-00088653.
- SSD advises the City in its effort to join with a private entity to construct and operate the San Vicente Pumped Storage Project.

- SSD advises Plumas-Sierra Rural Electric Cooperative in its partnership with the U.S. Department of Defense and the Sierra Army Depot to develop and operate a photovoltaic power facility to serve electric power needs at the depot.
- SSD assists municipal clients in complying with Phase 1 and Phase 2 MS4 permits, as well as Industrial clients complying with the State's General Permit for Industrial Facilities by helping to interpret applicable permit provisions, meet with State and Regional Water Board staff, represent clients before these administrative agencies, and defend municipal and industrial clients in actions brought by environmental plaintiffs under the Clean Water Act. SSD has extensive knowledge on statewide policy issues pertaining to stormwater, including bringing Test Claims before the Commission on State Mandates on behalf of municipal stormwater clients. SSD, through its role of providing legal services to the California Stormwater Quality Association, has also filed amicus briefs in courts at all levels on key policy issues that have the potential to critically impact compliance with stormwater permit requirements.
- SSD currently represents GCID in all phases of litigation in the United States District Court, Eastern District of California, against the United States Army Corps of Engineers involving enforcement of a project cooperation agreement. This representation has required preparation of a complex litigation plan and budget, management of expert consultants, and required SSD to file and argue pre-trial motions, and engage in discovery, including interviewing and deposing witnesses.
- SSD represented the Carmichael Water District (CWD) in negotiation of two agreements that provide capacity in CWD's water treatment plant to Golden State Water Company (GSWC) to allow for CWD to divert, treat, and deliver remediated groundwater generated by Aerojet-Rocketdyne, Inc. to GSWC.
- On behalf of Sacramento County and the Sacramento County Water Agency, negotiated an agreement with Aerojet-General Corporation for the permanent annual delivery of 8,900 acre-feet of remediated groundwater for diversion and use in Sacramento County Water Agency's growth areas.
- Assisted clients in negotiation of the 2005 Sacramento Settlement Contracts.
- Advised the Arizona Department of Water Resources during negotiation of the 2007 Colorado River Operating Guidelines.

Experience and Qualifications

SSD has selected a group of attorneys with considerable experience working together to provide legal services to the City. Stuart L. Somach will serve as the Primary Attorney and at least five other attorneys may assist. These SSD attorneys have experience advising the City on a wide range of legal issues, representing the City in litigation, and counseling the City in settlement discussions. All of SSD's attorneys will, however, be available to assist as appropriate.

1. Primary Attorney

Stuart L. Somach. Since 2004, when SSD first began representing the City as Special Counsel, Mr. Somach has been the lead attorney on all water rights matters and related litigation handled by the firm. Mr. Somach assisted the City in successfully settling *City of San Diego v. Sweetwater Authority*, San Diego County Superior Court Case No. 37-2010-00088653.

Mr. Somach's practice emphasis is in water law, natural resources law, and other areas of environmental law. He currently provides legal counsel to public agency clients, including cities, counties, water districts, and irrigation districts, as well as private sector clients, in matters involving groundwater, surface water, water transfers, conjunctive use, and surface water and groundwater basin adjudications. Mr. Somach has successfully argued before the Supreme Court of the United States. See *Orff v. United States*, 545 U.S. 596 (2005). Mr. Somach is currently Counsel of Record for the State of Texas in an Original Action in the Supreme Court. See *Texas v. New Mexico and Colorado*, No. 141, Original.

Mr. Somach has been in private practice since 1984 and is one of the founding partners of Somach Simmons & Dunn. Prior to entering private practice, Mr. Somach served as counsel to the United States Department of the Interior. Mr. Somach has also been an Assistant United States Attorney and a Senior Trial Attorney with the United States Department of Justice. In that capacity, Mr. Somach represented the United States in water rights litigation throughout the western United States.

2. Other Attorneys

Michael E. Vergara. Over the past several years, Mr. Vergara has counseled the City in regulatory proceedings before the FERC with the goal of obtaining a preliminary permit for the San Vicente Pumped Storage Project (Project). Mr. Vergara has also counseled the City in its efforts to explore a private partnership for the Project. Mr. Vergara currently represents the City and the San Diego County Water Authority in litigation against the State Water Board challenging a water quality certification fee imposed by the State Water Board for the Project.

Mr. Vergara has nearly 30 years of experience dealing with the agencies regulating California's businesses and public entities under the state's environmental laws, and litigating environmental cases. Mr. Vergara stays well informed on environmental regulations such as California's evolving cap-and-trade program, regulatory programs administered by the CARB and local air agencies, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Resource Conservation and Recovery Act (RCRA), and the Clean Water Act (CWA). Mr. Vergara has litigated several large multiparty CERCLA and RCRA cases commenced in federal district courts, and defended public agencies against CWA cases commenced by citizen groups. Mr. Vergara has a deep knowledge of air, toxics, hazardous waste, and water quality law, which allows him to help government agencies and private companies with their daily business needs and deal with environmental issues that can quickly inhibit their operations.

Kelley M. Taber. Ms. Taber has devoted much of her 20+ years of law practice to expertly navigating the CEQA and state and federal Endangered Species Acts. Ms. Taber has regularly assisted the City in providing strategic advice regarding CEQA litigation, as well as preparation of comments on environmental analyses performed pursuant to the CEQA

where the project stands to injure the quantity and quality of the City's water resources. Ms. Taber has also assisted the City in negotiation of effective mitigation for the impacts associated with such projects.

Ms. Taber has extensive experience representing public agency clients in a variety of CEQA contexts involving water resources and land use, including both advising agencies through the CEQA review process and litigating the sufficiency of environmental reviews and successfully defending against ESA challenges. For example, Ms. Taber has successfully represented the Sacramento Regional County Sanitation District in CEQA, CEQA Plus, and ESA compliance for a \$2 billion upgrade to the Sacramento Regional Wastewater Treatment Plant and associated water rights permitting for recycled water use. As court-appointed liaison counsel in complex coordinated litigation involving the California WaterFix project, she represents a coalition of water users within and north of the Delta that are challenging the adequacy of the EIR and bond financing for the project, which involves coordinating efforts among nearly 100 other litigants and managing litigation associated with a project that is ten years in the making.

As part of her water resource practice, Ms. Taber also represents public and private entities in securing and protecting water rights permits for the use of surface water and recycled water, and associated ESA permitting.

Aaron A. Ferguson. Mr. Ferguson has advised the City on numerous water rights issues, including the City's pueblo water right and groundwater rights. Mr. Ferguson has advised the City on SGMA compliance issues, including formation of a GSA and development of Memoranda of Understanding for development of GSPs. Mr. Ferguson currently represents the City and the San Diego County Water Authority in litigation against the State Water Board challenging a water quality certification fee imposed by the State Water Board for the San Vicente Pumped Storage Project. Mr. Ferguson has advised numerous clients on Senate Bill 88 water measurement and reporting regulations. Prior to practicing law, Mr. Ferguson worked at a consulting firm for six years preparing water management planning analyses, including Urban Water Management Plans and Water Supply Assessments.

Lauren C. Bernadett. Ms. Bernadett currently counsels the City in the FERC proceedings concerning the San Vicente Pumped Storage Project and related litigation challenging the State Water Board's water quality certification fee. We anticipate that Ms. Bernadett will continue to assist in these areas. Ms. Bernadett is also actively involved in representing BBID in the pre-1914 water rights litigation, and numerous plaintiffs in the water rights fee litigation, both described in more detail above.

Brittany Johnson. Ms. Johnson counsels and advises the City in the FERC proceedings concerning the San Vicente Pumped Storage Project, and the evaluation of developing the hydropower project jointly with a private entity. Ms. Johnson also advises Plumas-Sierra Rural Electric Cooperative on electric transmission matters, and counseled the Arizona Power Authority regarding issues affecting Arizona's share of electricity from the Hoover Dam and related transmission issues.

Additional information regarding the qualifications and experience of the attorneys that will assist the City may be found in the biographies contained in Attachment A.

3. Particular Expertise

Our attorneys have a unique collective experience in the field of water law, particularly with respect to Colorado River issues, pueblo water rights, groundwater rights (including adjudications), appropriative surface water rights, and water supply contracts. SSD's attorneys have held positions with the U.S. Department of Justice, the U.S. Department of the Interior, and the U.S. Department of Agriculture. SSD's lawyers routinely represent public agencies in various capacities, including as special and general legal counsel. SSD's attorneys are also skilled in litigation before state, federal, and appellate courts, including the United States Supreme Court, and various administrative tribunals such as the State Water Board, the Regional Water Quality Control Boards, and the California Coastal Commission.

4. Representative Clients

The following is a list of representative public agency clients that SSD has served for many years. The attorneys selected to assist the City have experience working as a team to provide services to these clients. Additional references are available upon request.

Mr. Thaddeus L. Bettner
General Manager
Glenn-Colusa Irrigation District
P.O. Box 150
Willows, CA 95988
(530) 934-8881
Email: tbettner@gcid.net

Mr. Rick L. Gilmore
General Manager
Byron-Bethany Irrigation District
7995 Bruns Road
Byron, CA 94514
(209) 835-0375
Email: r.gilmore@bbid.org

Ms. Lisa Travis
Supervising Deputy County Counsel
County of Sacramento
700 H Street, Suite 2650
Sacramento, CA 95814
(916) 874-5544
Email: travisl@saccounty.net

(Ms. Travis is the firm's contact for the County of Sacramento, Sacramento County Water Agency, and Sacramento Regional County Sanitation District, all of which are SSD clients.)

5. Firm's Commitment to Diversity

SSD is an equal employment opportunity employer and adheres to its Equal Employment Opportunity Plan and its April 2018 Supplement to that Plan prepared specifically for the City of San Diego. (See Attachment B.)

6. Litigation or Settlement of Past Claims

In the past ten years, neither the Primary Attorney nor the firm have litigated or settled any past claims related to the services that SSD proposes to provide to the City. Nor are there any current claims pending against the Primary Attorney or the firm related to the services that SSD proposes to provide.

7. Proof of Insurance and Coverage Amounts

SSD maintains errors and omissions (E&O) insurance, including professional liability insurance, with CNA. Our liability limits are \$5,000,000.00 per occurrence and \$5,000,000.00 in aggregate, with a \$25,000 deductible. Relevant policies are contained in Attachment C.

8. Brief History of the Firm

SSD formed in 1991 as an environmental law firm specializing primarily in water, natural resources, and administrative law. SSD is located in Sacramento, California, with satellite offices in Boulder and Denver, Colorado, and Washington, D.C. We maintain a robust practice throughout California, as well as in Arizona, Colorado, Idaho, Nevada, New Mexico, Oregon, and Texas.

9. Firm's Relevant Practice Areas

SSD provides a unique combination of experience in the fields of water, natural resources, environmental, public land, public agency, toxics and hazardous waste, and land development law. Our team of 23 attorneys are skilled and experienced in all phases of civil litigation before state and federal courts, including the United States Supreme Court. In addition, SSD's attorneys regularly represent clients in state and federal administrative proceedings.

10. Seminars, CLEs, Publications

The firm regularly conducts presentations for client boards and staff on relevant legal issues and new areas of the law. SSD recently held a "Groundwater 101" and SGMA seminar for City Public Utilities staff and City Attorneys. The Primary Attorneys regularly present at CLE seminars. For example, for more than a decade Ms. Taber has developed curriculum and has been a regular instructor for the Association of Environmental Professionals' annual Advanced CEQA and CEQA Basics workshops, as well as a frequent CLE speaker on a wide variety of issues relating to water resources, including water conservation recycling, and groundwater management. Over the past few years, Mr. Ferguson has presented at CLE seminars on SGMA's implications for groundwater management, stormwater capture and use, water transfers, and the California WaterFix. SSD attorneys regularly draft and

distribute law and policy alerts to firm clients and other interested parties that have registered on the firm's e-mail distribution list.

Commitment to Diversity

SSD is committed to maintaining and promoting a diverse workforce through implementation of its Equal Employment Opportunity Plan and its April 2018 Supplement to that Plan. (See Attachment B.)

Required Disclosures

The following questions and responses are provided with respect to both the firm and the Primary Attorney included in this proposal:

1. Potential Conflicts

SSD does not have any potential conflicts of interest that would interfere with the firm's ability to provide independent advice to the City.

2. Regulatory or Administrative Agency Enforcement Action

In the past five years, neither SSD nor the Primary Attorney has been the subject of any regulatory or administrative agency enforcement action or investigation.

3. Suspension from Performing Legal Work

Neither SSD nor the Primary Attorney has been suspended or disbarred from performing legal work for any governmental agency.

4. Investigations, Lawsuits, or Administrative Proceedings

Neither SSD nor the Primary Attorney has been, or are, the subject of any investigations, lawsuits, or administrative proceedings, including malpractice claims, that would affect SSD's capacity to represent the City.

Conclusion

SSD values its long-standing relationship with the City and would very much like the relationship to continue. We can be available to travel to meet with your team as may be desired while you consider our proposal. Thank you for considering our firm, and of course feel free to contact Mr. Somach or Mr. Vergara with any questions.

Tab C – Cost/Price Proposal

Cost/Price Proposal

A current schedule of rates is set forth below along with the specific billing rate of the key personnel we propose to work on this matter.

| Item No. | Services: Outside Legal Counsel | Hourly Rates \$ |
|----------|----------------------------------|-----------------|
| 1 | Stuart Somach – Primary Attorney | \$ 450.00 |
| 2 | Michael Vergara – Attorney | \$ 350.00 |
| 3 | Kelley Taber – Attorney | \$ 330.00 |
| 4 | Aaron Ferguson – Attorney | \$ 275.00 |
| 5 | Lauren Bernadett – Attorney | \$ 265.00 |
| 6 | Brittany Johnson – Attorney | \$ 270.00 |
| 7 | Paralegal | \$ 180.00 |

The firm has reviewed Exhibit D of the City’s Request for Proposal regarding billing guidelines for outside counsel and is willing and able to comply with said requirements.

Attachment A – Attorney Biographies



Stuart L. Somach
Shareholder

500 Capitol Mall, Suite 1000
Sacramento, CA 95814
ssomach@somachlaw.com
916-446-7979 T
916-446-8199 F



Areas

Endangered Species Act and Wetlands
Litigation
Water Resources

Education

McGeorge School of Law (J.D., 1979)
San Jose State University (B.A., 1970)

Stuart Somach's career in water law has spanned over three decades, encompasses the entire Western United States, and has earned him a national reputation as one of the most respected practicing water law attorneys in the West. Among his career highlights are arguing before the U.S. and California Supreme Courts, testifying before Congress on water issues, and briefing the President at the White House.

Despite a long, prolific career working on most every category of water law issue, Mr. Somach continues to grow and expand his practice into new areas, both geographically and substantively. Over the last decade, Mr. Somach was called upon by the Central Arizona Water Conservation District to represent the Central Arizona Project and provide it with legal advice dealing with Colorado River issues. He was also retained by the State of Arizona to represent Arizona in negotiations that led to current operation of the Colorado River, and was retained by the Arizona Power Authority to represent it with respect to the allocation of Hoover power within Arizona.

Mr. Somach represents the State of Texas in an Original Action Texas brought against the State of New Mexico in the United States Supreme Court dealing with the 1938 Rio Grande Compact.

Mr. Somach developed his expertise in water law in law school and with tenures at the Department of Justice and the Department of the Interior. After serving in Washington, D.C., Mr. Somach returned to California and eventually founded the firm that has grown to become Somach Simmons & Dunn.

Through the years, he has had an effect on most every aspect of water law and reclamation law in California and in the West. His practice has involved transactional work, litigation, and the development of new policy as part of his involvement in the legislative process.

Reported Cases

- *California Farm Bureau Federation v. State Water Resources Control Bd.*, 51 Cal.4th 421 (2011).
- *Morongo Band of Mission Indians v. State Water Resources Control Bd.*, 45 Cal.4th 731 (2009).
- *California Farm Bureau Federation v. California State Water Resources Control Bd.*, 146 Cal.App.4th 1126 (2007).
- *NRDC v. Norton*, 2006 U.S. Dist. LEXIS 94689, December 29, 2006, Decided, January 3, 2007, Filed.
- *Orff v. United States*, 545 U.S. 596 (2005).
- *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings*, 133 Cal.App.4th 154 (2005).
- *Smith v. Cent. Ariz. Water Conservation Dist.*, 418 F.3d 1028 (2005).
- *City of Barstow v. Mojave Water Agency*, 23 Cal.4th 1224 (2000).
- *People ex rel. Lockyer v. Shamrock Foods Co.*, 24 Cal.4th 415 (2000).
- *City of Lompoc v. United States Bureau of Reclamation*, 1999 U.S. App. LEXIS 3087, February 10, 1999, affirmed at 172 F.3d 55 (1999).
- *Central Ariz. Water Conservation Dist. v. United States*, 32 F.Supp.2d 1117 (1998).
- *Southern Cal. Edison Co. v. FERC*, 325 U.S. App. D.C. 163 (1997).
- *Jordan v. City of Santa Barbara*, 46 Cal.App.4th 1245 (1996).
- *State of Cal. ex rel. State Lands Com. v. Superior Court*, 11 Cal.4th 50 (1995).
- *Sayles Hydro Ass'n v. Maugham*, 985 F.2d 451 (9th Cir. 1993).
- *Wackerman Dairy, Inc. v. Wilson*, 7 F.3d 891 (1993).
- *Beck v. United States Dept of Commerce*, 982 F.2d 1332 (1992).
- *Didrickson v. United States Dept of Interior*, 796 F.Supp. 1281 (1991).
- *United States v. Angle*, In Equity No. 30, 760 F.Supp. 1366 (1991).
- *LaFlamme v. FERC*, 852 F.2d 389 (1988).
- *Mega Renewables v. County of Shasta*, 644 F.Supp. 491 (1986).
- *Western Mun. Water Dist. v. Superior Court*, 187 Cal.App.3d 1104 (1986).
- *Grace Geothermal Corp. v. Northern California Power Agency*, 619 F.Supp. 964 (1985).
- *County of Inyo v. City of Los Angeles*, 160 Cal.App.3d 1178 (1984).
- *United States v. California*, 694 F.2d 1171 (1982).
- *National Audubon Society v. Superior Court*, 33 Cal.3d 419 (1983), cert. den. sub nom., *City of Los Angeles Dept of Water & Power v. National Audubon Society*, 464 U.S. 977 (1983).
- *United States v. California*, 529 F.Supp. 303 (1981).



Michael E. Vergara
Shareholder

500 Capitol Mall, Suite 1000
Sacramento, CA 95814
mvergara@somachlaw.com
916-446-7979 T
916-446-8199 F



Areas

Agriculture
Air Quality
Local Government
Toxic and Hazardous Waste
Water Resources
Water Quality

Education

McGeorge School of Law (J.D., 1988)
The Inns of the Court of London and the School of
Law of the Inns of the Court, Certificate in
Comparative Advocacy (1987)
California State University, Stanislaus (B.A., 1983)

Mike Vergara serves as outside litigation and general counsel to businesses and public entities that have environmental law issues. His deep knowledge of air, toxic and hazardous wastes, and water quality law allows him to help government agencies and private companies with not only their daily business needs, but to adeptly deal with environmental issues that can quickly inhibit their operations.

Several industries, in particular, rely on Mike because of his in-depth understanding of how their industries operate. Telecommunications companies, utilities, ports, shipping, and trucking operations hire him because of his ability to combine his specialized knowledge of their industries with environmental compliance expertise and sound business strategies. Before his career in law, Mike spent a number of years as a journeyman parts man selling parts for big rig diesel trucks and semi-trailers—a background he calls upon frequently to understand shipping and trucking operations.

Mike is known among his clients for staying on the cutting-edge of environmental regulations such as California's evolving cap-and-trade program, programs administered by the California Air Resources Board, and CERCLA and RCRA actions. He has 25 years of experience with the agencies that regulate California's environmental laws and with litigating environmental cases. A fierce advocate for clients, Mike can also quickly find areas of agreement between agencies and clients, allowing businesses to spend less time and money arguing issues, freeing them to focus on running their businesses.

One of the most fulfilling aspects of practicing law for Mike is the rewarding client relationships. He likes learning about his clients' businesses and the interests his clients have when they are not working. Mike also makes a point to have a variety of his own pursuits outside of law—the latest of which is finally learning to play piano.

Representative Matters

Water Resources

Represent irrigation district in action seeking declaration of parties' rights under the terms of various agreements. (*Turlock Irrigation Dist. v. Modesto Irrigation Dist.*, Stanislaus County Superior Court Case No. 313589.)

Represent landowner in dispute over water rights. (*Holmes v. Woods*, Mono County Superior Court Case No. 14530.)

Represent water district in dispute over water rights. (*Stevinson Water Dist., et al. v. Greenhouse Ranch*, Merced County Superior Court Case No. 126222.)

Represent water district in action alleging wrongful diversions from canal. (*Toth v. Stevinson Water Dist.*, Merced County Superior Court Case No. 142844.)

Water Quality

Defend and obtain summary judgment in Clean Water Act (CWA) action commenced by citizen group against a Butte County developer. (*California Sportfishing Protection Alliance v. Canyon Oaks, LLC*, USDC Case No. CIV-S-99-1211.)

Advise former landowner regarding Notice of Violation under Water Code section 13267, et al., issued by the Los Angeles Regional Water Quality Control Board alleging violation of California's underground storage tank (UST) and groundwater regulations. (ID No. 900450289.)

Advise lender regarding Cleanup and Abatement Order issued by the Central Valley Regional Water Quality Control Board alleging violation of permit, etc. (Order No. R5-2004-0700.)

Defend commercial property owner against action commenced by Sacramento County District Attorney alleging violation of California UST and groundwater regulations. (*People v. Convenience Acquisition Corp.*, Sacramento County Superior Court Case No. 02AS01581.)

Defend commercial property owner against action alleging violation of state groundwater regulations, etc. (*Rancho Grande Investors v. Convenience Acquisition Corp.*, Sacramento County Superior Court Case No. 05AS02213.)

Defend Yolo County manufacturer in CWA action commenced by a citizen group. (*California Sportfishing Protection Alliance v. Gayle Manufacturing Co.*, USDC Case No. 2:07-CV-01261.)

Advise Sacramento County commercial property owner regarding Cleanup and Abatement Order issued by the Central Valley Regional Water Quality Control Board. (Order No. R5-2003-0702.)

Advise commercial property owner regarding Notice of Violation under Water Code section 13267, et al., issued by the Central Valley Regional Water Quality Control Board.

Defend City of Manteca against CWA action commenced by a citizen group. (*California Sportfishing Protection Alliance v. City of Manteca*, USDC Case No. 99-CV-01392.)

Defend UC Davis against CWA action commenced by a citizen group. (*Waterkeepers of Northern California v. Vanderhoef, et al.*, USDC Case No. CIV-S-00-1140.)

Defend local mosquito control district against CWA action commenced by a citizen group. (*Organic Sacramento, et al. v. Sacramento Yolo Mosquito and Vector Control Dist.*, USDC Case No. 05-CV-01574.)

Defend Peters Trucking Company against Notice of Violation under Water Code section 13267, et al., issued by the Central Valley Regional Water Quality Control Board.

Defend manufacturer against CWA action commenced by a citizen group. (*California Sportfishing Protection Alliance v. Stockton Tri Industries*, USDC Case No. 06-CV-01140.)

Toxics and Hazardous Waste

Represent Sacramento County in CERCLA natural resource damage action against Aerojet-General Corp. (*County of Sacramento v. Aerojet-General Corp., et al.*, USDC Case No. 2:09-CV-01814.)

Defend property owner against large multi-defendant CERCLA action commenced by the State. (*State of California v. M&P Investments, et al.*, USDC Case No. 00-CV-2441.)

Defend trucking company against CERCLA action commenced by an oil recycling company. (*Ramos Oil Recyclers, Inc. v. AWIM, Inc.*, USDC Case No. 07-CV-00448.)

Defend former dry-cleaning operator against CERCLA action. (*Davis Enterprises v. Carrere, et al.*, USDC Case No. 99-CV-02010.)

Defend electronics manufacturer against an enforcement action commenced by the Department of Toxic Substances Control. (*In the Matter of Econco Broadcast Services*, Docket HWCA SRPD02/03NAEO-1285.)

Defend manufacturer of steel roll-up doors against CERCLA action commenced by the State. (*State of California v. Cline and Agee, et al.*, USDC Case No. 92-CV-01600.)

Prosecute a CERCLA cost recovery action on behalf of commercial property owner. (*Kotrous v. Goss-Jewett, et al.*, USDC Case No. 02-CV-01520.)

Advise the City of Reno regarding source control of PCE contamination, and draft ordinance creating permit system for dry-cleaners operating in the City of Reno.

Defend City of Roseville against CERCLA action commenced by the Department of Toxic Substances Control. (*Dept. of Toxic Substances Control v. Brighton Oil Co., et al.*, USDC Case No. 02-CV-00018.)

Advise potential purchaser of commercial property located at McClellan Air Force Base on environmental issues impacting the property, and potential liability.

Advise developer of Mountain House Community Development regarding environmental issues affecting the project.

Advise Shriners Hospital regarding issues relating to remedial action impacting the client's real property located in Yolo County.

Defend recycler of unused military munitions against an enforcement action commenced by the Department of Toxic Substances Control for alleged violations of California's Hazardous Waste Control Law.

Represent landowner against CERCLA cost recovery action. (*Tuthill's, et al. v. Napa Garbage Service, et al.*, USDC Case No. 99-CV-02093.)

Defend City of Rocklin against CERCLA cost recovery action. (*Boroski and Boroski v. City of Rocklin*, USDC Case No. 95-CV-00935.)

Defend sign manufacturer against CERCLA cost recovery action. (*Mountain Company, Inc. v. Norman, et al.*, USDC Case No. 93-CV-05080.)

Defend sign manufacturer against CERCLA cost recovery action commenced by the State of California. (*State of California v. Sylvania Lighting Services*, USDC Case No. CIV-S-89-0976.)

Defend local bank against CERCLA cost recovery action. (*Mid Valley Bank v. North Valley Bank*, USDC Case No. CIV-S-88-1691.)

Defend former dry-cleaning operator against CERCLA action. (*Dep't of Toxic Substances Control v. Payless Cleaners, et al.*, USDC Case No. CIV-S-02-2389.)

Defend trucking company against action alleging contamination claims relating to the release of oil and gasoline. (*Ozark Trucking, Inc. v. Con-Way Western Express, et al.*, Yolo County Superior Court Case No. 71581.)

Natural Resources

Advise oil recycler regarding potential acquisition of used oil transfer facility in Lancaster, California.

Advise aggregate mining company regarding its effort to purchase an aggregate mine located in Alameda County.

Advise client regarding acquisition of three Northern California cement plants.

Advise client regarding issues relating to a chabazite mining claim located in Arizona.

Local Government

Defend City of Roseville against Proposition 218 action commenced by a citizen group. (*Howard Jarvis Taxpayers v. City of Roseville*, Placer County Superior Court Case No. SCV7831.)

Defend City of West Sacramento against action involving allocation of tax increment credits under an Owners Participation Agreement. (*Raley's v. City of West Sacramento*, Yolo County Superior Court Case No. CV-05-1704.)

Advise Mid-Peninsula Open Space District regarding environmental issues affecting demolition of Almaden Air Force Base, and availability of funding from the U.S. Department of Defense under the FUDS program.

Advise Plumas-Sierra Rural Electric Cooperative regarding environmental issues relating to acquisition of Sierra Army Depot.

Represent landowners in Reclamation District No. 1004 regarding effort to qualify recall election.

Serve as contract City Attorney for the City of Isleton.

Defend City of Isleton in Public Records Act case. (*Calvert v. City of Isleton*, Sacramento County Superior Court Case No. 05CS01236.)

Defend City of Isleton against action alleging violations of zoning ordinances, and alleged violations of the Public Records Act. (*Sweepston v. City of Isleton*, Sacramento County Superior Court Case No. 04CS015555.)

Negotiate contract on behalf of the City of Redding for the lease and maintenance of a Catalytic Absorption System for the City's peaking power plant.

Represent the City of Redding in a contract dispute relating to the construction of the City's peaking power plant. (*City of Redding v. National Energy Production Corp.*, USDC Case No. CIV-S-97-0852.)

Advise the City of Redding regarding contamination discovered at its intermodal transportation facility.

Advise the City of Roseville on issues relating to California's electric power restructuring.

Defend the City of Roseville in a dispute regarding its obligation to allocate a portion of its waste treatment plant capacity to an adjacent local utility district. (*City of Roseville v. South Placer Municipal Utility Dist.*, Placer County Superior Court Case No. 98AS02099.)

Represent San Juan Unified School District in an action against a local water district regarding the assessment of a capital improvement fee. (*San Juan Unified School Dist. v. Arcade Water Dist.*, Sacramento County Superior Court Case No. 00AS01425.)

Defend Truckee Donner Public Utility District against a ratepayer lawsuit. (*Baker v. Truckee Donner Public Utility Dist.*, Nevada County Superior Court Case No. CIV-S-99-2326.)

Defend Truckee Donner Public Utility District against an action commenced by a cable television company over access to district owned utility poles. (*Truckee Donner Public Utility Dist. v. USA Media Group, LLC*, USDC Case No. CIV-S-99-2326.)

Defend Turlock Irrigation District in action commenced by adjacent county to enjoin installation of power poles. (*County of Merced Irrigation Dist. v. Turlock Irrigation Dist.*, Merced County Superior Court Case No. 138194.)

Represent the California School Board Association's Education Alliance in case involving assessments for capital improvements. (*Utility Cost Management v. Indian Wells Valley Water Dist.*, 26 Cal.4th 1185 (2001).)

Defend the City of Redding in a contract dispute over claims relating to construction of the City's peaking power facility. (*City of Redding v. National Energy Production Corp., et al.*, USDC Case No. CIV-S-97-0852.)

Defend subsidiary of Plumas-Sierra Rural Electric Cooperative in action alleging misappropriation of trade secrets. (*L.C. Communications, Inc. v. Got SKY Unlimited, et al.*, Placer County Superior Court Case No. SCV26611.)

Agricultural Resources

Defend Arizona milk producer in action commenced by the California Department of Food and Agriculture seeking to enforce California's milk standards. (*People v. Shamrock Foods Co.*, San Diego County Superior Court Case No. 702204.)

Represent various dairies in challenge to California's Pooling Plan for Market Milk. (*Hillside Dairy, Inc., et al. v. Kawamura*, 317 F.Supp.2d 1194 (E.D. Ca. 2004).)

Air Resources

Defend SSA Terminals and related entities in administrative action commenced by the California Air Resources Board (CARB) involving the operation of hundreds of pieces of mobile off-road equipment used at their port facilities in San Diego, Long Beach, Oakland, Stockton, and Sacramento.

Advise SSA Marine and its related entities on compliance with South Coast Air Quality Management District and Bay Area Air Quality Management District regulations.

Defend manufacturer and distributor of cosmetics in administrative action commenced by CARB alleging violation of its Consumer Products Regulation.

Defend company that installs equipment at gasoline service stations for alleged violation of CARB's Vapor Recovery Program.

Advise Plumas-Sierra Rural Utility Cooperative regarding its operation of the High Sierra Cogeneration Plant's compliance with CARB regulations.

Advise Michigan electric utility regarding the impact of Clean Air Act and Climate Change legislation on its operation of a coal-fired electric power plant.

Defend operator of a Placer County co-generation electric plant in action commenced by local air district alleging permit violations. (*People of the State of California v. Sierra Pacific Industries, Inc.*, Sacramento County Superior Court No. SCV 17449.)

Defend distributor of car cleaners and waxes against a consumer products action commenced by CARB for alleged violation of air quality regulations. (*People of the State of California v. Liquid Glass Enterprises, Inc.*, Los Angeles County Superior Court Case No. BC427662.)

Advise Save Mart Supermarkets regarding compliance of its emergency generators with San Joaquin Valley Air Pollution Control District regulations.

Reported Cases

- *United States v. Atl. Research Corp.*, 127 S.Ct. 2331 (2007).
- *Kotrous v. Goss-Jewett*, 2005 US Dist. Lexis 18013 (E.D. Ca. June 16, 2005).
- *Kotrous v. Goss-Jewett*, 2005 US Dist. Lexis 18014 (E.D. Ca. Aug. 23, 2005).
- *Hillside Dairy v. Kawamura*, 317 F.Supp.2d 1194 (E.D. Ca. 2004).
- *Util. Cost Mgmt v. Indian Wells Valley Water Dist.*, 26 Cal.4th 1185 (2001).



Kelley M. Taber
Of Counsel

500 Capitol Mall, Suite 1000
Sacramento, CA 95814
ktaber@somachlaw.com
916-446-7979 T
916-446-8199 F



Areas

Endangered Species Act and Wetlands
Land Use
Water Resources

Education

University of California, Davis, King Hall School of
Law (J.D., 1996)
Harvard University (A.B., *magna cum laude*, 1988)

Clients turn to Kelley Taber to get practical, cost-effective solutions to environmental compliance and natural resource challenges. She helps public entities, developers, farmers, manufacturers, and other types of companies move projects forward, doing so in a manner that is at once compliant with law, environmentally responsible, and meets an organization's strategic goals.

Kelley has devoted much of her law practice to expertly navigating the California Environmental Quality Act (CEQA) and state and federal Endangered Species Acts. The projects she advances are as diverse as wastewater treatment plants, active adult retirement communities, and the responsible administration of vector control programs. She is brought in to work with clients and their experts to solve environmental problems in ways that are efficient in both time and cost.

Some of her most interesting work occurs on matters where legal and scientific issues are uncertain. She can quickly identify areas in question and demonstrate ways the environment and client interests will be protected while solutions are implemented. Throughout her career in environmental permitting, she has followed advances in science, changes in policy, and the ways the courts react to those factors. Her practice continues to grow to address evolving scientific and policy areas, such as groundwater management and multi-species habitat conservation planning.

Outside of work, she spends time with her family—one she describes as a “baseball family in all ways.” A leader in community organizations, she has served as president of the area's largest Little League for several years—a role that has helped her to enjoy the game even more. She has also been a longtime trustee of Sacramento Country Day School, serving as Board President for many years.

Representative Matters

Endangered Species and Wetlands

Assisted family-owned and operated cattle ranch in obtaining the first National Marine Fisheries Service Safe Harbor Agreement and Enhancement of Survival Permit in connection with dedication of pre-1914 water rights to benefit coho salmon in Siskiyou County, providing regulatory assurances and ensuring the long-term sustainability of historic ranching operation.

Represented the City of San Bernardino Municipal Water Department in obtaining a Low Effect Habitat Conservation Plan in connection with providing a supplemental water supply for the benefit of the Santa Ana sucker in the Santa Ana River.

Successfully defended development of eco-adventure resort on San Mateo County coast from federal Endangered Species Act challenge, obtaining favorable verdict in federal district court bench trial.

Advised the California Department of Corrections and Rehabilitation on compliance with the state and federal Endangered Species Acts related to development of the Kern County at Delano II State Prison.

Land Use

Represented applicant in securing General Plan amendments, rezone, adoption of Specific Plan and associated local, state and federal entitlements and permits, as well as ensuring CEQA and NEPA compliance, for 2,500-unit mixed use active adult community in Fresno County.

Assisted developer of eco-adventure resort on San Mateo County coast with processing and implementation of entitlements from San Mateo County, California Coastal Commission.

Natural Resources

As counsel to Sacramento Regional County Sanitation District, provide ongoing advice regarding CEQA compliance for District activities relating to the conveyance, treatment, and disposal of wastewater. Worked extensively with District staff and consultant team to develop comprehensive EIR and extensive supporting technical data evaluating the state's largest discharge of treated wastewater to a surface water body.

Advised nine Northern California mosquito and vector control agencies in development of comprehensive programmatic environmental impact reports for integrated mosquito and vector control programs.

Representing plastic pipe manufacturers, worked closely with staff of California Building Standards Commission and consultant team to develop and complete environmental impact report for adoption of controversial statewide regulations authorizing the use of plastic pipe and defended CEQA challenge to the adoption of regulations. The extensive environmental analysis involved detailed consideration of potential health risks from chemical leaching into drinking water.

Successfully defended CEQA challenge to Lucasfilm's proposed expansion of Skywalker Ranch in Marin County.

Successfully defended CEQA challenges to development of eco-adventure coastal resort on San Mateo County coast.

Water Resources

Lead counsel for public agency and irrigation district petitioners in complex coordinated litigation challenging the California WaterFix EIR/EIS and WaterFix revenue bonds.

Represent developers in the Santa Nella Community Specific Plan, Merced County, in the acquisition of water supply for 1,600 residential units and mixed use development.

Represent the City of San Bernardino Municipal Water Department in water rights and endangered species permitting for a wastewater recycling and groundwater recharge project including successful resolution of protests to wastewater change petition and CEQA litigation.

Represented Conaway Preservation Group in partial assignment of Sacramento River Settlement Contract to Woodland Davis Clean Water Agency, including resolution of protests to state water rights permit proceedings.

General

Successfully represented major national food processor in defense of threatened federal debarment through development of comprehensive environmental compliance program.

On behalf of one of the largest United States poultry processors, negotiated settlement with U.S. EPA of threatened litigation under federal Emergency and Community Right to Know Act (EPCRA), including significant reduction in penalties through development and approval of Supplemental Environmental Projects (SEPs).

Represented steel products manufacturer in defense of threatened EPCRA lawsuit, avoiding litigation by successfully negotiating favorable settlement with U.S. EPA, including major reduction in penalties.

Represented major Central Valley dairy, negotiated settlement with U.S. EPA of threatened EPCRA litigation, resulting in substantial reduction in penalties.

Clients

- AKT Development Corporation
- Conaway Ranch
- Green Acres Nursery
- Hart Ranch
- Palo Verde Irrigation District
- Sacramento County
- Sacramento Regional County Sanitation District
- City of San Bernardino Municipal Water Department
- City of Stockton



Aaron A. Ferguson
Shareholder

500 Capitol Mall, Suite 1000
Sacramento, CA 95814
aferguson@somachlaw.com
916-446-7979 T
916-446-8199 F



Areas

Water Quality
Water Resources

Education

University of the Pacific, McGeorge School of Law
(J.D., 2010)
California State University, Sacramento (M.P.P.A.,
2001)
University of California, Santa Barbara (B.A., 1995)

Aaron Ferguson's expertise in water law is the result of a unique combination of working on high-profile, complex water law issues coupled with previous careers as a water supply analyst and a regulatory affairs specialist. He is able to provide a well-rounded vision on the water issues that face his clients.

Although Aaron has worked on a range of small and large water rights matters, much of his recent work has been helping to address new applications of water supply requirements that have shifted as a result of water scarcity. He is currently working with a large municipality in Southern California to update permit requirements with the State Water Resources Control Board. The new operating requirements will allow the city to work with a partner water agency to provide water to farmers without having to overdraft the groundwater basin, in turn preventing saline intrusion problems.

In another instance, he helps to represent a Western power authority to implement its power allocation process. In doing so, he has wide exposure to federal and state natural resources law.

Outside of his law practice, Aaron enjoys the combination of spending time with his family, taking advantage of the outdoors and physical activity. Among his recent outings was a six-mile overnight backpacking excursion near Lock Leven Lakes with his wife and three children.

Representative Matters

Land Use

Counseled developer on water supply issues associated with development of a solar array farm on land in the San Joaquin Valley.

Drafted memorandum analyzing scope of public agency's groundwater rights on federal land under existing easement agreement.

Drafted water supply assessment pursuant to Water Code section 10910.

Analyzed likelihood of landowner retaining water entitlement following temporary land-use change.

Water Quality

Drafted brief supporting sanitation district's challenge to its National Pollution Discharge Elimination System permit.

Drafted comment letter for publicly owned treatment works association regarding water quality objectives being considered by the State Water Resources Control Board.

Drafted brief opposing a petition for leave to intervene in superior court case.

Counseled client regarding potential impacts of the Delta Plan and Bay Delta Conservation Plan on pesticide use.

Water Resources

Counsels clients regarding water transfers, including development of purchase and sale agreements.

Assisted with drafting brief challenging State Water Resources Control Board frost protection regulations.

Drafted memorandum regarding potential impacts of Clean Water Act Guidance on an agricultural water purveyor.

Drafted advice letter to client regarding the nature, scope and potential outcomes of adjudicating groundwater rights in a specific basin.

Assisted in briefing a motion to enjoin a state agency from implementing irrigation water use regulations.

Drafted memorandum analyzing whether a mutual water company could be classified as a "public utility" subject to CPUC regulation.

General

Advised limited liability company whether its environmental liability can be discharged in bankruptcy.

Drafted legal opinion for state agency regarding the marketing and allocation of power from Hoover Dam under new federal power contracts.

Drafted memorandum analyzing the likelihood of obtaining an injunction against a state agency.

Natural Resources

Drafted comment letter for client regarding environmental review of federal water service contracts.

Drafted memorandum analyzing special use authorizations for power project on U.S. Forest Service land.

Local Government

Provide ongoing general counsel services to Glenn-Colusa Irrigation District.

Advise client on accounting and expenditure of funds pursuant to repayment contract for fire department services associated with new development.

Represent electrical cooperative on various property and contract matters.

Industry

- Association of California Water Agencies (ACWA)
- Northern California Water Association (NCWA)



Brittany K. Johnson
Shareholder

500 Capitol Mall, Suite 1000
Sacramento, CA 95814
bjohnson@somachlaw.com
916-446-7979 T
916-446-8199 F



Areas

Endangered Species and Wetlands
Water Quality
Water Resources

Education

George Washington University Law School
(J.D., 2011)
University of Arizona (B.A., 2008)

Brittany K. Johnson has quickly become a valued resource for Somach Simmons & Dunn’s water quality and water litigation clients. She works directly with clients providing general legal advice on public agency matters, renewing water quality permits, helping to maintain permit compliance, and litigating water issues.

She works with public entities on the renewal of Clean Water Act permits for publicly owned wastewater treatment plants. Outside of permit renewal, she helps treatment plants with compliance issues and addresses problems that occur, helping them to avoid permit violations.

Brittany is well-versed in litigating disputes that arise from the management and implementation of water rights. She works with clients with water rights in California, Arizona, and Texas and has experience helping to litigate issues involving the operation and management of the Sacramento River and the Colorado River. Her client work requires her to be adept at balancing a multitude of state and federal issues that impact water rights holders and contractors, including the Endangered Species Act, National Environmental Policy Act, and reclamation law.

Prior to practicing natural resources law and litigation, Brittany served as a law clerk to the Honorable Laura D. Millman at the U.S. Court of Federal Claims, Office of Special Masters, where she had the unique experience of working on Vaccine Act claims—an experience that required her to not only understand the substantive issues involved but to deal with a wide range of people as they navigated the court system.

A native of Arizona, Brittany spends her time outside of work running and cycling on the trails in Sacramento and finding other outdoor adventures in Northern California.

Representative Matters

Water Resources

Assist in representation of State of Texas in Original Action No. 141 before United States Supreme Court regarding interpretation and enforcement of the Rio Grande Compact, including successfully defending the State of New Mexico's motion to dismiss Texas's Complaint.

Represent Glenn-Colusa Irrigation District and other Sacramento River Settlement Contractors in defense of federal district court lawsuit brought by environmental organizations challenging long-term water rights settlement contract renewals under the federal Endangered Species Act.

Represent numerous water right permit and license holders, including irrigation districts, Central Valley Project contractors, and their representative associations, in *Northern California Water Association v. State Water Resources Control Board*, the long-running litigation challenging the State Water Resources Control Board's water right fees scheme.

Represent irrigation district and growers in federal litigation challenging the management of historical agricultural lands in national wildlife refuges in the Klamath Reclamation Project.

Advise Colorado River water contractor in Arizona on Colorado River management issues, including planning actions under the 2007 Guidelines, *Arizona v. California Consolidated Decree*, and other Law of the River authorities.

Water Quality

Advise POTWs in evaluating, negotiating, and obtaining NPDES permits issued by regional water quality control boards.

Provide regulatory advice and develop comments for POTWs in state water quality control planning processes.

Represent POTWs in litigation of NPDES permit requirements.

Provide ongoing regulatory and legal advice to POTWs.

Power

Advise state power authority in 50-year allocation of Hoover power within the state.

Advise state power authority and negotiate 50-year contract with Western Area Power Administration.

Advise electric cooperative on regulatory compliance and property matters.

Advise cities in evaluating development of hydropower projects and FERC licensing process.

Insights and Activities

- Presenter, "Water and Power at Hoover Dam – New 50-Year Contracts in Arizona, California, and Nevada," Western Water Law Conference, San Diego, CA, February 8, 2017
- Presenter, "Post-2017 Hoover Power Contracting: Managing Risk and Resolving Other Challenges with a 50-Year Contract," APPA Legal & Regulatory Conference, Long Beach, CA, October 17, 2016
- Presenter, "Managing Sacramento River Water Supplies for Agriculture and Multiple Beneficial Uses," California Water Law & Policy Conference, San Francisco, CA, June 14, 2016

- Presenter, "Post-2017 Hoover Power Contracting: Managing Risk and Resolving Other Challenges with a Fifty-Year Contract," Western Conference of Public Service Commissioners, Lake Tahoe, NV, May 23, 2016

Industry

- Association of California Water Agencies
- Northern California Water Association
- Sacramento County Bar Association, Environmental Law Section, 2013-present
- Association of Women in Water, Energy, and Environment, Regional Team Member, 2016-present
- Junior League of Sacramento, Member, 2015-2017



Lauren D. Bernadett
Associate

500 Capitol Mall, Suite 1000
Sacramento, CA 95814
lbernadett@somachlaw.com
916-446-7979 T
916-446-8199 F



Areas

Agriculture
Litigation
Local Government
Water Resources

Education

University of Arkansas, School of Law, Agricultural and Food
Law Program (LL.M., 2014)
University of California, Los Angeles, School of Law (J.D., 2013)
University of California, San Diego (B.A., 2010)

Lauren Bernadett is a natural resources lawyer who has counseled private and public clients through administrative processes and litigation in state and federal courts. Lauren advises clients on compliance with various laws, and values clear communication and problem solving during litigation and in efforts to avoid litigation. Lauren's substantive experience is diverse, covering many aspects of water law, environmental law, public law, administrative law, and contract law.

Lauren earned her J.D. from the UCLA School of Law, where she was the Joyce A. Will Scholar in Environmental Law and served as a Managing Editor for the UCLA Law Review. After law school, Lauren moved to Arkansas to pursue an LL.M. in agricultural and food law at the University of Arkansas School of Law in Fayetteville. During her LL.M. program, Lauren focused on agriculture and water law, wrote and published several law review articles, and co-authored a chapter for the American Bar Association's book on urban agriculture. Lauren's talent for taking initiative and promise in the environmental law field secured her scholarships that fully funded her J.D. and LL.M. education.

Lauren has a particular interest in aquaculture regulation and compliance. She serves as the legal advisor for the California Aquaculture Association and has advised clients on the several legal hurdles aquaculturalists face at the local, state, and federal levels. Lauren has given presentations on aquaculture regulation at several industry meetings and conferences, and planned the first California Aquaculture Law Symposium at UCLA.

Outside of work, Lauren can be found with friends on the soccer field, at the climbing gym, training for her next race, or enjoying Sacramento's food scene. She is mother to a pack of rescue dogs who match her enthusiasm for morning jogs and exploring northern California's great outdoors.

Admissions

California

**Attachment B – Equal Employment
Opportunity Plan**



An Equal Opportunity Employer

**SOMACH SIMMONS & DUNN
EQUAL EMPLOYMENT OPPORTUNITY (EEO) PLAN**

Somach Simmons & Dunn (SSD) is an equal employment opportunity employer and adheres to the following Equal Employment Opportunity (EEO) Plan:

1. SSD maintains a working environment free of discrimination, harassment, intimidation, and coercion at all sites and in all facilities at which the employees of SSD are assigned to work. Its EEO Plan Administrator, Chief Operating Officer and Managing Shareholder continually monitor the environment to make certain it is harassment free and that everyone is treated equally.
2. SSD and the EEO Plan Administrator monitors all employment related activity to ensure the EEO Policy of SSD is being carried out and to submit reports relating to EEO provisions. Any job postings or employment related documentation contain EEO Plan and or EEO Policy Statement language regarding equal opportunity employment.
3. SSD disseminates and reviews its EEO Policy with all employees and applicants. This includes providing EEO documentation with pre-hire applicant documentation, postings in workroom areas accessible and visible to all employees and review at least annually at a regular scheduled meeting.
4. SSD reviews all supervisors' adherence to and performance under the EEO Policy. The EEO Plan Administrator, the Chief Operating Officer or the Managing Shareholder reviews the policy at least annually at a regular scheduled meeting.
5. SSD disseminates its EEO Policy externally through various media, including the media of people of color and women, in advertisements to recruit, maintains files documenting these efforts, and provides copies of these advertisements upon request. Any external, or internal, job postings contain EEO language identifying SSD as an equal opportunity employer.
6. SSD and the EEO Plan Administrator maintains a current list of recruitment sources, including those outreaching to people of color and women, and provides written notification of employment opportunities to these recruitment sources and a record of the organizations' responses.
7. SSD and the EEO Plan Administrator maintains a current file of names, addresses and phone numbers of each walk-in applicant, including people of color and women, and referrals from unions, recruitment sources, or community organizations.



An Equal Opportunity Employer

8. SSD and the EEO Plan Administrator encourages all present employees, including people of color and women employees, to recruit others.
9. SSD and the EEO Plan Administrator maintain all employment selection process information with records of all tests and other selection criteria.
10. SSD and the EEO Plan Administrator develops and maintains documentation for on-the-job training opportunities and/or participates in training programs for all of its employees, including people of color and women, and establishes apprenticeship, trainee, and upgrade programs relevant to the employment needs of SSD.
11. SSD conducts an inventory and evaluation of all employees for promotional opportunities and encourages all employees to seek and prepare appropriately for such opportunities. All SSD employees are given consideration for promotion opportunities or for new or replacement positions and all such opportunities are made available to everyone through public postings and internal announcements.
12. SSD ensures the working environment and activities of SSD are non-segregated except for providing separate or single-user toilets and necessary changing facilities to assure privacy between the sexes. The professional office environment of the SSD offices provides open access to all employees, vendors, visitors, etc.
13. SSD establishes and documents policies and procedures to ensure job classifications, work assignments, promotional tests, recruitment and other personnel practices do not have a discriminatory effect. All employment documentation contains EEO plan and or EEO policy statement language.

Somach Simmons & Dunn shall make a continuous good faith effort to comply with all the requirements of its EEO Plan.

Any questions or concerns regarding the Somach Simmons & Dunn EEO Plan should be directed to Craig W. Price, our EEO Plan Administrator/Chief Operating Officer or the Managing Shareholder who administer the EEO Plan.

Theresa A. Dunham
Managing Shareholder



An Equal Opportunity Employer

(April 2018 Supplemental EEO Information for the City of San Diego)

In response to the City of San Diego's April 19, 2018 evaluation of Somach Simmons & Dunn equal employment policies and practices we provide the following.

- 1) Identify the firm's specific corrective actions for each occupational category where under representation of protected classes exist or identify reasonably attainable goals and timetables.
 - a) As a private law firm with 37 employees our professional occupational category of 25 is comprised of 22 attorneys and 3 paralegals. When the opportunity for replacement or growth arises we reach out to local law schools and colleges, to those individuals who may have interned with us during the school year, to existing professional staff for referrals, and through ad placements with professional associations and organizations. Our existing professional staff, including those responsible for recruitment and hiring, is well informed of our EEO policies and practices and the firm's commitment to EEO compliance.
- 2) Identify the built-in outreach efforts that the firm implements that will likely result in effective means for recruiting applicants from the underrepresented classes.
 - a) As mentioned above the firm reaches out to many diversified resources for the recruitment and hiring of professional staff. We will continue to reach out to local law schools, colleges and organization that promote the growth of diversity in the Sacramento area. In addition our professional staff, including those responsible for recruiting and hiring, actively participate in many of these same associations and organizations and openly share information about the firm and the opportunities which may be available.
- 3) Identify and detail how immediate supervisors are held accountable for carrying forward the firm's policy of non-discrimination and equal employment opportunity within his/her assigned area of responsibility.
 - a) The firm is committed to compliance with all applicable laws providing equal employment opportunities. This commitment applies to all persons involved in the firm's operations and prohibits unlawful discrimination by any employee of the firm, including supervisors and coworkers. If the firm determines that unlawful discrimination has occurred, effective remedial action will be taken commensurate with the severity of the offense. Appropriate action also will be taken to deter any future discrimination. Supervisors and those responsible for recruiting and hiring are regularly reminded of their support of the firm's EEO policy and of the firm's commitment to EEO compliance.

- 4) Detail the firm's methods used to ensure that people of color and women are given full opportunities for transfers and promotions and how they are encouraged to seek such promotions.
 - a) The firm encourages all present employees, including people of color and women employees, to recruit others. The firm participates in training programs for all of its employees, including people of color and women, and upgrade programs relevant to the employment needs of the firm. The firm maintains an inventory of all employees for promotional opportunities and encourages all employees to seek and prepare appropriately for such opportunities. All employees are given consideration for promotion opportunities or for new or replacement positions and all such opportunities are made available to everyone through public postings and internal announcements. The firm establishes and documents policies and procedures to ensure job classifications, work assignments, promotional tests, recruitment and other personnel practices do not have a discriminatory effect.

Somach Simmons & Dunn shall make a continuous good faith effort to comply and commit to the principles of equal employment opportunity and to provide an environment free of discrimination, harassment, and retaliation.

Any questions or concerns regarding the Somach Simmons & Dunn EEO Plan should be directed to Craig W. Price, our EEO Plan Administrator/Chief Operating Officer or the Managing Shareholder who administer the EEO Plan.



Theresa A. Dunham
Managing Shareholder

Attachment C – Proof of Insurance



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/05/2018

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

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

| | | |
|---|--|-----------------------|
| PRODUCER Ahern Insurance Brokerage 9665 Granite Ridge Dr., #500 San Diego, CA 92123 Shawn M. Royle | CONTACT NAME: Josie Noreen, CIC | |
| | PHONE (A/C, No, Ext): | FAX (A/C, No): |
| E-MAIL ADDRESS: jnoreen@aheminsurance.com | | |
| INSURED Somach Simmons & Dunn PC 500 Capitol Mall, Suite 1000 Sacramento, CA 95814 | INSURER(S) AFFORDING COVERAGE | |
| | INSURER A: Sentinel Insurance Company | NAIC # 11000 |
| | INSURER B: Hartford Ins Co of the Midwest | 37478 |
| | INSURER C: | |
| | INSURER D: | |
| | INSURER E: | |

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

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

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|--|-----------|----------|---------------|-------------------------|-------------------------|--|
| A | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO JECT <input checked="" type="checkbox"/> LOC OTHER: | Y | Y | 72SBWUU3805 | 11/25/2018 | 11/25/2019 | EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Ded. \$ 0 |
| A | <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY | | | 72SBWUU3805 | 11/25/2018 | 11/25/2019 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ |
| A | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10000 | | | 72SBWUU3805 | 11/25/2018 | 11/25/2019 | EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 |
| B | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> If yes, describe under DESCRIPTION OF OPERATIONS below | Y/N | N/A | 72WEGDR9712 | 11/25/2018 | 11/25/2019 | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000 |

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

City of San Diego and its respective elected officials, officers, employees, agents and representatives are named as Additional Insured's as their interests appear per written contract. This insurance is Primary & Non-Contributory. Waiver of Subrogation applies. 30 days notice of cancellation (10 days for non-payment) applies.

CERTIFICATE HOLDER **CANCELLATION**

| | |
|--|--|
| CITYOSD City of San Diego Purchasing & Contracting Dept 1200 Third Ave., Ste 200 San Diego, CA 92101-4195 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE |
|--|--|



SOMASI1

OP ID: AO

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
02/26/2019

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

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

| PRODUCER Liberty Mitchell & Mitchell 250 Bel Marin Keys E1 Novato, CA 94949 Daniel J. McKenna | 415-883-2525 | CONTACT NAME: PHONE (A/C, No, Ext): 415-883-2525 FAX (A/C, No): E-MAIL ADDRESS: | | | | | | | | | | | | | | | | | | | | | |
|--|------------------|--|-------------------------------|--|--------|------------|------------------|-------|------------|--|--|------------|--|--|------------|--|--|------------|--|--|------------|--|--|
| INSURED Somach Simmons & Dunn Craig Price 500 Capitol Mall, # 1000 Sacramento, CA 95814 | | <table border="1"> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A:</td> <td>CNA Insurance Co</td> <td>20443</td> </tr> <tr> <td>INSURER B:</td> <td></td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> <td></td> </tr> </table> | INSURER(S) AFFORDING COVERAGE | | NAIC # | INSURER A: | CNA Insurance Co | 20443 | INSURER B: | | | INSURER C: | | | INSURER D: | | | INSURER E: | | | INSURER F: | | |
| INSURER(S) AFFORDING COVERAGE | | NAIC # | | | | | | | | | | | | | | | | | | | | | |
| INSURER A: | CNA Insurance Co | 20443 | | | | | | | | | | | | | | | | | | | | | |
| INSURER B: | | | | | | | | | | | | | | | | | | | | | | | |
| INSURER C: | | | | | | | | | | | | | | | | | | | | | | | |
| INSURER D: | | | | | | | | | | | | | | | | | | | | | | | |
| INSURER E: | | | | | | | | | | | | | | | | | | | | | | | |
| INSURER F: | | | | | | | | | | | | | | | | | | | | | | | |

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

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

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WYD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | |
|----------|---|-----------|----------|---------------|-------------------------|-------------------------|--------------------------------------|-----------|
| | COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOG OTHER: | | | | | | EACH OCCURRENCE | \$ |
| | AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY | | | | | | COMBINED SINGLE LIMIT (Per accident) | \$ |
| | UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$ | | | | | | EACH OCCURRENCE | \$ |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below | Y/N | N/A | | | | PER. STATUTE OTH-ER | |
| A | Prof Liability | | | 287193736 | 12/01/2018 | 12/01/2019 | Each clm | 5,000,000 |
| | | | | | | | Aggregate | 5,000,000 |

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

\$25,000 deductible 12-1-1991 prior acts date

CERTIFICATE HOLDER **CANCELLATION**

| | |
|---|---|
| City of San Diego Purchasing & Contracting Dept 1200 Third Avenue Ste 200 San Diego, CA 92101-4195 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Paul Morris</i> |
|---|---|



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
02/26/2019

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

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| | | | | | | | | | | | | | | | |
|--|--|-------------------------------|--------|-----------------------------|-------|------------|--|------------|--|------------|--|------------|--|------------|--|
| PRODUCER Liberty Mitchell & Mitchell 250 Bel Marin Keys E1 Novato, CA 94949 Daniel J. McKenna 415-883-2525 | CONTACT NAME: PHONE (A/C, No, Ext): 415-883-2525 FAX (A/C, No): E-MAIL ADDRESS: <table style="width: 100%;"> <tr> <td style="text-align: center;">INSURER(S) AFFORDING COVERAGE</td> <td style="text-align: center;">NAIC #</td> </tr> <tr> <td>INSURER A: CNA Insurance Co</td> <td>20443</td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table> | INSURER(S) AFFORDING COVERAGE | NAIC # | INSURER A: CNA Insurance Co | 20443 | INSURER B: | | INSURER C: | | INSURER D: | | INSURER E: | | INSURER F: | |
| INSURER(S) AFFORDING COVERAGE | NAIC # | | | | | | | | | | | | | | |
| INSURER A: CNA Insurance Co | 20443 | | | | | | | | | | | | | | |
| INSURER B: | | | | | | | | | | | | | | | |
| INSURER C: | | | | | | | | | | | | | | | |
| INSURER D: | | | | | | | | | | | | | | | |
| INSURER E: | | | | | | | | | | | | | | | |
| INSURER F: | | | | | | | | | | | | | | | |
| INSURED Somach, Simmons & Dunn Craig Price 500 Capitol Mall, # 1000 Sacramento, CA 95814 | | | | | | | | | | | | | | | |

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|---|-----------|----------|---------------|-------------------------|-------------------------|--|
| | COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOG OTHER: | | | | | | EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ OTHER \$ |
| | AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY | | | | | | COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ OTHER \$ |
| | UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$ | | | | | | EACH OCCURRENCE \$ AGGREGATE \$ OTHER \$ |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes: describe under DESCRIPTION OF OPERATIONS below | | | | | | <input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$ |
| A | Prof Liability | | | 287193736 | 12/01/2018 | 12/01/2019 | Each clm 5,000,000 Aggregate 5,000,000 |

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

\$25,000 deductible 12-1-1991 prior acts date

CERTIFICATE HOLDER

CANCELLATION

| | |
|---|---|
| City of San Diego Water Department 525 B Street, Suite 300 San Diego, CA 92101 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE |
|---|---|