




THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: March 2, 2016  
TO: James Nagelvoort, Director, Public Works Department  
FROM: Downs Prior, Principal Contract Specialist   
SUBJECT: Sole Source for State Benchmark Committee Study

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Sole Source Number: PW-SS0053

Dept. Est. Total: \$18,500 per year (base year plus 2 optional years)

Consultant: MWH Americas, Inc.

Expiration Date: December 31, 2019 (base year plus 2 optional years)

Recommendation: Approve Sole Source

In accordance with SDMC §22.3016, this is to certify that a sole source agreement (H166724) with MWH Americas, Inc. for the State Benchmark Committee Study (Study) is necessary, and that a strict compliance with a competitive process would be unavailing or would not produce an advantage, and soliciting bids or proposals would be undesirable, impractical or impossible for the following reasons:

JUSTIFICATION:

The State Benchmark Committee was initiated in 2002 to share the collective CIP implementation experiences of seven out of the eight largest cities in California. This will be the fifteenth consecutive year for this study and MWH Americas, Inc. has been the consultant from its inception. Since the participating Cities of Long Beach, Los Angeles, Oakland, Sacramento, San Jose, the City and County of San Francisco, and the City of San Diego first initiated these efforts, delivery process approaches have been shared and efficiencies developed. The Study collects CIP performance data on soft costs (planning, design, and construction management) versus hard costs (construction costs) and the processes used in the delivery of capital projects. This data is compared among participant agencies and a statistical analysis is

performed, observed results and trends are discussed with all agencies to improve performance, execution and incorporate Best Management Practices (BMPs).

The lead of the study is rotated between participating agencies on two to three year periods. Starting with 2016 is the turn for the City of San Diego to take the lead with the committee and to manage the consultant contract. The contract will start with a one year period, to be amended as required to address the needs of a second, and possibly a third year. The administration and management of the contract will then be rotated to the next participating agency.

All of the participating agencies concur with continuing to hire MWH Americas, Inc. and agree that it is the best course of action to complete the Study in the most effective and timely manner.

#### UNIQUE QUALIFICATIONS:

1. MWH Americas, Inc. has been the Consultant for this study since 2002.
2. MWH Americas, Inc. is very familiar with the participating agencies, their data, requirements and they already have many of the necessary resources, tools, and procedures in place to efficiently complete the Study.

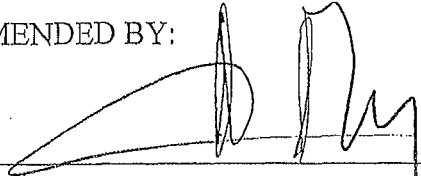
Hiring another consultant to adopt MWH's methodology would be time consuming, more expensive, and may produce risks of inconsistencies with the Study results.

For reasons of timing, cost savings, project familiarity, and technical insight into the needs of the project, staff believes that a sole source award with MWH Americas, Inc. for the Study, is in the best interest of the City and all other participating agencies. Therefore, it is hereby requested a sole source contract be award to MWH Americas, Inc. for accomplishing said requirement.

#### AGREEMENT VALUE & DURATION:

The total fee for these services shall not exceed \$129,500.00 per year (\$18,500 per year for each of the seven participating agencies), and the term of the agreement (H166724) shall not exceed December 31, 2019 (base year plus 2 optional years). This associated sole source, will be in effect from date of the agreement execution, until the agreement is completed/closed, but will not exceed December 31, 2019, without issuance of a modification to duration of both the agreement and this sole source.

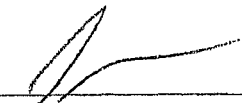
RECOMMENDED BY:

  
\_\_\_\_\_

Date: 3/2/16

Albert P. Rechany, Deputy Director, Public Works Contracts

APPROVED BY:

  
\_\_\_\_\_

Date: 3/3/16

James Nagelvoort, Director, Public Works Department

AG/ag

Attachments: 1. Letter of Proposal dated January 22, 2016

Cc: Marnell Gibson, Assistant Director, Public Works Department  
Richard Leja, Deputy Director, Public Works Department - PI  
Alex Garcia, Senior Civil Engineer, Public Works - AEP  
Albert Rechany, Deputy Director, Public Works - Contracts  
Downs Prior, Principal Contract Specialist, Public Works - Contracts

ORIGINAL

**AGREEMENT BETWEEN  
THE CITY OF SAN DIEGO  
AND  
MWH AMERICAS, INC.**

**FOR**

**State Benchmark Committee Study**

**CONTRACT NUMBER: H166724**

## TABLE OF CONTENTS

### ARTICLE I CONSULTANT SERVICES

1.1	Scope of Services.....	1
1.2	Contract Administrator.....	1
1.3	City Modification of Scope of Services.....	1
1.4	Written Authorization.....	2
1.5	Confidentiality of Services .....	2
1.6	Competitive Bidding.....	2

### ARTICLE II DURATION OF AGREEMENT

2.1	Term of Agreement .....	2
2.2	Time of Essence .....	2
2.3	Notification of Delay .....	3
2.4	Delay .....	3
2.5	City's Right to Suspend for Convenience .....	3
2.6	City's Right to Terminate for Convenience.....	3
2.7	City's Right to Terminate for Default .....	4

### ARTICLE III COMPENSATION

3.1	Amount of Compensation.....	4
3.2	Additional Services .....	4
3.3	Manner of Payment.....	4
3.4	Additional Costs .....	4
3.5	Eighty Percent Notification.....	5

### ARTICLE IV CONSULTANT'S OBLIGATIONS

4.1	Industry Standards.....	5
4.2	Right to Audit .....	5
4.3	Insurance .....	6
4.4	Subcontractors .....	8
4.5	Contract Records and Reports.....	9
4.6	Non-Discrimination Requirements .....	10
4.7	Drug-Free Workplace.....	11

4.8	Product Endorsement .....	11
4.9	Conflict of Interest .....	11
4.10	Mandatory Assistance .....	12
4.11	Compensation for Mandatory Assistance .....	12
4.12	Attorney Fees related to Mandatory Assistance .....	12
4.13	Notification of Increased Construction Cost.....	13
4.14	ADA Certification .....	13
4.15	Prevailing Wage Rates .....	13

**ARTICLE V  
RESERVED**

**ARTICLE VI  
INDEMNIFICATION**

6.1	Indemnification and Hold Harmless Agreement .....	15
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**ARTICLE VII  
MEDIATION**

7.1	Mandatory Non-binding Mediation .....	16
7.2	Mandatory Mediation Costs .....	16
7.3	Selection of Mediator .....	16
7.4	Conduct of Mediation Sessions.....	16

**ARTICLE VIII  
INTELLECTUAL PROPERTY RIGHTS**

8.1	Work For Hire.....	17
8.2.	Rights in Data.....	17
8.3	Intellectual Property Rights Assignment .....	17
8.4	Moral Rights.....	17
8.5	Subcontracting.....	17
8.6	Publication.....	18
8.7	Intellectual Property Warranty and Indemnification .....	18
8.8	Enforcement Costs .....	18
8.9	Ownership of Documents .....	18

**ARTICLE IX  
MISCELLANEOUS**

9.1	Notices.....	18
9.2	Headings .....	19
9.3	Non-Assignment .....	19
9.4	Independent Contractors.....	19
9.5	Consultant and Subcontractor Principals for Consultant Services .....	19

9.6	<b>Covenants and Conditions</b> .....	19
9.7	<b>Compliance with Controlling Law</b> .....	19
9.8	<b>Jurisdiction</b> .....	19
9.9	<b>Successors in Interest</b> .....	20
9.10	<b>Integration</b> .....	20
9.11	<b>Counterparts</b> .....	20
9.12	<b>No Waiver</b> .....	20
9.13	<b>Severability</b> .....	20
9.14	<b>Additional Consultants or Contractors</b> .....	20
9.15	<b>Employment of City Staff</b> .....	20
9.16	<b>Municipal Powers</b> .....	20
9.17	<b>Drafting Ambiguities</b> .....	20
9.18	<b>Signing Authority</b> .....	21
9.19	<b>Conflicts Between Terms</b> .....	21
9.20	<b>Consultant Evaluation</b> .....	21
9.21	<b>Exhibits Incorporated</b> .....	21
9.22	<b>Survival of Obligations</b> .....	21
9.23	<b>Contractor Standards</b> .....	21
9.24	<b>Equal Benefits Ordinance</b> .....	21
9.25	<b>Public Records</b> .....	21

## **CONSULTANT AGREEMENT EXHIBITS**

- Exhibit A - Scope of Services
- Exhibit B - Compensation and Fee Schedule
- Exhibit C - Time Schedule
- Exhibit D - City's Equal Opportunity Contracting Program Consultant Requirements
  - (AA) Disclosure of Discrimination Complaints
  - (BB) Work Force Report
  - (CC) Subcontractors List
- Exhibit E - Consultant Certification for a Drug-Free Workplace
- Exhibit F - Consultant Evaluation Form
- Exhibit G - Contractor Standards Pledge of Compliance
- Exhibit H - Determination Form
- Exhibit I - Regarding Information Requested Under the California Public Records Act
- Exhibit J - Americans With Disabilities Act (ADA) Compliance Certification



**AGREEMENT BETWEEN  
THE CITY OF SAN DIEGO  
AND MWH AMERICAS, INC.  
FOR CONSULTANT SERVICES**

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation [City], and MWH Americas, Inc. [Consultant] for the Consultant to provide Professional Services to the City for Analytics and Research.

**RECITALS**

The City wants to retain the services of a Analytics and Research firm to provide Analytics and Research services [Professional Services].

The Consultant has the expertise, experience and personnel necessary to provide the Professional Services. The City and the Consultant [Parties] want to enter into an Agreement whereby the City will retain the Consultant to provide, and the Consultant shall provide, the Professional Services.

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

**ARTICLE I  
CONSULTANT SERVICES**

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

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

**1.2 Contract Administrator.** The Public Works Department is the contract administrator for this Agreement. The Consultant shall provide the Professional Services under the direction of a designated representative of the Public Works Department. The City's designated representative will communicate with the Consultant on all matters related to the administration of this Agreement and the Consultant's performance of the Professional Services rendered hereunder. When this Agreement refers to communications to or with the City, those communications will be with the designated representative, unless the designated representative or the Agreement specifies otherwise. However, when this Agreement refers to an act or approval to be performed by City, that act or approval shall be performed by the Mayor or his designee, unless the Agreement specifies otherwise.

**1.3 City Modification of Scope of Services.** The City may, without invalidating this Agreement, order changes in the Scope of Services by altering, adding to or deducting from the Professional Services to be performed. All such changes shall be in writing and shall be performed in accordance with the provisions of this Agreement. If any such changes cause an increase or decrease in the Consultant's cost of, or the time required for, the performance of

any of the Professional Services, the Consultant shall immediately notify the City. If the City deems it appropriate, an equitable adjustment to the Consultant's compensation or time for performance may be made, provided that any adjustment must be approved by both Parties in writing in accordance with Section 9.1 of this Agreement.

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

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

**1.6 Competitive Bidding.** If applicable, the Consultant shall comply with the following: Consultant shall ensure that any plans, specifications, studies, or reports prepared, required, or recommended under this Agreement allow for competitive bidding. The Consultant shall prepare such plans, specifications, studies, or reports so that procurement of services, labor or materials are not available from only one source, and shall not prepare plans, specifications, studies, or reports around a single or specific product, piece of major equipment or machinery, a specific patented design, or a proprietary process, unless required by principles of sound engineering practice and supported by a written justification that has been approved in writing by the City. The Consultant shall submit this written justification to the City prior to beginning work on such plans, specifications, studies, or reports. Whenever the Consultant recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Project.

## **ARTICLE II DURATION OF AGREEMENT**

**2.1 Term of Agreement.** This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40. Unless otherwise terminated, it shall be effective until completion of the Scope of Services or December 31, 2017 whichever is the earliest but not to exceed five years unless approved by City ordinance.

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

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

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

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

**2.6 City's Right to Terminate for Convenience.** The City may, at its sole option and for its convenience, terminate all or any portion of the Professional Services agreed to pursuant to this Agreement by giving written notice of such termination to the Consultant. Such notice shall be delivered by certified mail with return receipt for delivery to the City. The termination of the Professional Services shall be effective upon receipt of the notice by the Consultant. After termination of this Agreement, the Consultant shall complete any and all additional work necessary for the orderly filing of documents and closing of the Consultant's Professional Services under this Agreement. For services satisfactorily rendered in completing the work, the Consultant shall be entitled to fair and reasonable compensation for the Professional Services performed by the Consultant before the effective date of termination. After filing of documents and completion of performance, the Consultant shall deliver to the City all documents or records related to the Consultant's Professional Services. By accepting payment for completion, filing and delivering documents as called for in this

paragraph, the Consultant discharges the City of all of the City's payment obligations and liabilities under this Agreement.

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

### **ARTICLE III COMPENSATION**

**3.1 Amount of Compensation.** The City shall pay the Consultant for performance of all Professional Services rendered in accordance with this Agreement, including reasonably related expenses, a total contract amount not exceeding \$129,500.00. The compensation for the Scope of Services shall not exceed \$129,500.00, and the compensation for Additional Services (described in Section 3.2), if any, shall not exceed \$0.00.

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

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

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

due, or becoming due, the Consultant shall reimburse the City for Additional Costs due to the Consultant's errors or omissions.

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

#### **ARTICLE IV CONSULTANT'S OBLIGATIONS**

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

#### **4.2 Right to Audit.**

**4.2.1 Access.** The City retains the right to review and audit, and the reasonable right of access to Consultant's and any Subcontractor's premises to review and audit the Consultant's or Subcontractor's compliance with the provisions of this Agreement [City's Right]. The City's Right includes the right to inspect and photocopy same, and to retain copies, outside of the Consultant's premises, of any and all records related to the Professional Services provided hereunder with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. This information shall be kept by the City in the strictest confidence allowed by law.

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

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

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

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

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

**4.3 Insurance.** The Consultant shall not begin the Professional Services under this Agreement until it has: (a) obtained, and provided to the City, insurance certificates reflecting evidence of all insurance as set forth herein; however, the City reserves the right to request, and the Consultant shall submit, copies of any policy upon reasonable request by the City; (b) obtained City approval of each company or companies as required in Section 4.3.3 of this Agreement; and (c) confirmed that all policies contain the specific provisions required in Section 4.3.4 of this Agreement. Consultant's liabilities, including but not limited to Consultant's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement and Consultant's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by the City.

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

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

**4.3.1.1 Commercial General Liability.** Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate of \$2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

**4.3.1.2 Commercial Automobile Liability.** For all of the Consultant's automobiles including owned, hired and non-owned automobiles, the Consultant shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

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

subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

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

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

#### **4.3.3 Acceptability of Insurers.**

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

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

#### **4.3.4 Required Endorsements**

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

##### **4.3.4.1 Commercial General Liability Insurance Endorsements**

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

**PRIMARY AND NON-CONTRIBUTORY COVERAGE.** The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers,

employees, agents and representatives shall be in excess of Consultant's insurance and shall not contribute to it.

#### **4.3.4.2 Automobile Liability Insurance Endorsements**

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

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

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

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

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

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

**4.4 Subcontractors.** The Consultant's hiring or retaining of any third parties [Subcontractors] to perform services related to the Project [Subcontractor Services] is subject to prior approval by the City. The Consultant shall list on the Subcontractor List (Exhibit D, Attachment CC) all Subcontractors known to the Consultant at the time this Agreement is entered. If at any time after this Agreement is entered into, the Consultant identifies a need for addition, deletion, or substitution of Subcontractor Services, the Consultant must submit a written notice to the City requesting approval for the change modifying the Subcontractor Services. The Consultant's written notice shall include a justification, a description of the scope of services, an estimate of all costs/percentage of contract participation for the Subcontractor Services, and an updated Exhibit D, Attachment CC reflecting the requested change(s). The City agrees to consider such requests in good faith.

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

**4.4.1.1** The Consultant shall require the Subcontractor to obtain insurance policies, as described in Section 4.3.1, and those policies shall be kept in full force and effect during any and all work on this Project and for the duration of this Agreement.



Furthermore, Subcontractor policy limits, and required endorsements shall be determined by the Consultant proportionate to the services performed by the Subcontractor.

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

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

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

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

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

#### **4.5 Contract Records and Reports.**

**4.5.1** The Consultant shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors. Records shall show name, telephone number including area code, and business address of each Subcontractor and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

**4.5.2** The Consultant shall retain all records, books, papers, and documents directly pertinent to the Contract for a period of not less than five (5) years after Completion of the contract and allow access to said records by the City's authorized representatives.

**4.5.3** The Consultant must submit the following reporting using the City's web-based contract compliance i.e., Prism® portal:

**4.5.3.1 Monthly Employment Utilization.** Consultant and their Subcontractors must submit Monthly Employment Utilization Reporting by the fifth (5th) day of the subsequent month.

**4.5.3.2 Monthly Invoicing and Payments.** Consultant and their Subcontractors must submit Monthly Invoicing and Payment Reporting by the fifth (5th) day of the subsequent month.

**4.5.3.3** To view the City's online tutorials on how to utilize PRISM® for compliance reporting, please visit: <http://stage.prismcompliance.com/etc/vendortutorials.htm>

Incomplete and/or delinquent reporting may cause payment delays, non-payment of invoice, or both. The Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.

#### **4.6 Non-Discrimination Requirements.**

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

**4.6.2 Non-Discrimination Ordinance.** The Consultant 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. The Consultant shall provide equal opportunity for Subcontractors to participate in subcontracting opportunities. The Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. This language shall be in contracts between the Consultant and any Subcontractors, vendors and suppliers.

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

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

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

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

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

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

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

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

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

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

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

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

**4.9.1** If, in performing the Professional Services set forth in this Agreement, the Consultant makes, or participates in, a "governmental decision" as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the department's conflict of interest code, the Consultant shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the Consultant's relevant financial interests. The determination as to whether any individual members of the Consultant's

organization must make disclosures of relevant financial interests is set forth in the Determination Form (Exhibit H).

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

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

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

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

**4.9.4** If the Consultant violates any conflict of interest law or any of the provisions in this Section 4.9, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects the Consultant to liability to the City for attorneys' fees and all damages sustained as a result of the violation.

**4.10 Mandatory Assistance.** If a third party dispute or litigation, or both, arises out of, or relates in any way to the Professional Services provided under this Agreement, upon the City's request, the Consultant, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The Consultant's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

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

**4.12 Attorney Fees related to Mandatory Assistance.** In providing the City with dispute or litigation assistance, the Consultant or its agents, officers, and employees may

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

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

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

**4.15 Prevailing Wage Rates:** Prevailing wage rates apply to this Agreement.

Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Agreement is subject to State prevailing wage laws. For construction work performed under this Agreement cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Agreement cumulatively exceeding \$15,000, the Consultant and its subconsultants shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

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

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

**4.15.1.2.** The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Agreement. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and

the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Agreement in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Agreement, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Agreement, such wage rate shall apply to the balance of the Agreement.

**4.15.2. Penalties for Violations.** Consultant and its subconsultants shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed.

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

**4.15.3.1.** For agreements entered into on or after April 1, 2015, Consultant and their subconsultants shall furnish records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required by Labor Code section 1771.4.

**4.15.4. Apprentices.** Consultant and its subconsultants shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Consultant shall be held responsible for the compliance of their subconsultants with sections 1777.5, 1777.6 and 1777.7.

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

**4.15.6. Required Provisions for Subcontracts.** Consultant shall include at a minimum a copy of the following provisions in any contract they enter into with a subconsultant: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

**4.15.7. Labor Code Section 1861 Certification.** Consultant in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Agreement, Consultant certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake

self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Agreement.”

**4.15.8. Labor Compliance Program.** The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego’s Equal Opportunity Contracting Department at 619-236-6000.

**4.15.9. Contractor and Subcontractor Registration Requirements.** This project is subject to compliance monitoring and enforcement by the DIR. As of March 1, 2015, no Consultant or subconsultant may be listed on a bid or proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5. As of April 1, 2015, a Consultant or subcontractor shall not be qualified to bid on, be listed in a bid or proposal, or enter into any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. By submitting a bid or proposal to the City, Consultant is certifying that he or she has verified that all subcontractors used on this public work project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Consultant shall provide proof of registration to the City upon request.

**4.15.9.1.** A Consultant’s inadvertent error in listing a subconsultant who is not registered pursuant to Labor Code section 1725.5 in response to a solicitation shall not be grounds for filing a protest or grounds for considering the bid or proposal non-responsive provided that any of the following apply: (1) the subconsultant is registered prior to proposal due date; (2) within twenty-four hours after the proposal due date, the subconsultant is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subconsultant is replaced by another registered subconsultant pursuant to Public Contract Code section 4107.

## **ARTICLE V RESERVED**

## **ARTICLE VI INDEMNIFICATION**

**6.1 Indemnification and Hold Harmless Agreement.** With respect to any liability, including but not limited to claims asserted or costs, losses, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the Consultant, or Consultant's employees, agents, and officers, arising out of any services performed under this Agreement, the Consultant agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers, and employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents or officers, or any third party. The Consultant's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active or sole negligence or sole willful misconduct of the City, its agents, officers or employees.

## ARTICLE VII MEDIATION

**7.1 Mandatory Non-binding Mediation.** With the exception of Sections 2.5–2.7 of this Agreement, if a dispute arises out of, or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, prior to the initiation of any litigation, the Parties agree to attempt to settle the dispute in an amicable manner, using mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association [AAA] or any other neutral organization agreed upon before having recourse in a court of law.

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

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

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

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

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

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

**7.4.1** Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand,



either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

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

## **ARTICLE VIII INTELLECTUAL PROPERTY RIGHTS**

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

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

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

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

**8.5 Subcontracting.** In the event that Consultant utilizes a Subcontractor(s) for any portion of the Work that is in whole or in part of the specified Deliverable Materials to

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

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

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

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

**8.9 Ownership of Documents.** Once the Consultant has received any compensation for the Professional Services performed under this Agreement, all documents, including but not limited to, original plans, maps, studies, sketches, drawings, computer printouts and electronic files, and specifications prepared in connection with or related to the Scope of Services or Professional Services, shall be the property of the City.

## **ARTICLE IX MISCELLANEOUS**

**9.1 Notices.** In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. For the purpose of this Agreement, unless otherwise agreed in writing, notice to the City shall be addressed to: Public Works Department, Attn: Alex Garcia,

MS908A, 525 B Street, San Diego, CA 92101, and notice to the Consultant shall be addressed to: Parag Kalaria, MWH Americas, Inc., 300 North Lake Ave, Suite 400, Pasadena, CA 91101, Phone: 626-568-6060, email: parag.kalaria@mwhglobal.com.

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

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

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

**9.5 Consultant and Subcontractor Principals for Consultant Services.** It is understood that this Agreement is for unique Professional Services. Retention of the Consultant's Professional Services is based on the particular professional expertise of the following members of the Consultant's organization: Parag Kalaria, Project Manager, Nathan Griffin, Project Engineer, and Adnan Anabtawi, Staff Engineer [MWH Team]. Accordingly, performance of Professional Services under this Agreement may not be delegated to other members of the Consultant's organization or to Subcontractors without the prior written consent of the City. It is mutually agreed that the members of the MWH Team are the principal persons responsible for delivery of all Professional Services and may not be removed from the MWH Team without the City's prior written approval. Removal of any member of the MWH Team without notice and approval by the City may be considered a default of the terms and conditions of this Agreement by the Consultant. In the event any member of the MWH Team becomes unavailable for any reason, the City must be consulted as to any replacement. If the City does not approve of a proposed replacement, the City may terminate this Agreement pursuant to section 2.6 of this Agreement. Further, the City reserves the right, after consultation with the Consultant, to require any of the Consultant's employees or agents to be removed from performance of the Scope of Services.

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

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

**9.8 Jurisdiction.** The jurisdiction and applicable laws for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any

related disputes shall be in accordance with the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

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

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

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

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

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

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

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

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

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

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

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

**9.20 Consultant Evaluation.** City will evaluate Consultant's performance of Professional Services using the Consultant Evaluation Form (Exhibit F).

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

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

**9.23 Contractor Standards.** This Agreement is subject to the Contractor Standards clause of the Municipal Code Chapter 2, Article 2, Division 30 adopted by Ordinance No. O-20148. All consultants are required to complete the Contractor Standards Pledge of Compliance included herein as Exhibit G. The Contractor Standards are available online at [www.sandiego.gov/purchasing/vendor/index.shtml](http://www.sandiego.gov/purchasing/vendor/index.shtml) or by request from the Purchasing & Contracting Department by calling (619) 236-6000.

**9.24 Equal Benefits Ordinance.** Unless an exception applies, Consultant shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (§22.4304(f)). Failure to maintain equal benefits is a material breach of this Agreement. By signing this Agreement, Consultant certifies that Consultant is aware of, and will comply with, this City-mandated clause throughout the duration of the Agreement.

**9.25 Public Records.** This contract is public document subject to the California Public Records Act, and as such may be subject to public review per Exhibit I (Regarding Information Requested under the California Public Records Act).


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

ORIGINAL


IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor, pursuant to San Diego Municipal Code 22.3207, authorizing such execution, and by the Consultant pursuant to MWH Americas, Inc.'s signature authority document.

Dated this 13th day of October, 2016.

THE CITY OF SAN DIEGO  
Mayor or Designee

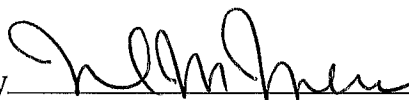
By:   
Frank A. Romero  
Senior Contract Specialist  
Public Works Department

I HEREBY CERTIFY I can legally bind MWH Americas, Inc. and that I have read all of this Agreement, this 4 day of August, 2016.

By:   
Eric M Mills, PE, PMP  
Vice President and Area Manager

I HEREBY APPROVE the form of the foregoing Agreement this 13th day of October, 2016

JAN I. GOLDSMITH, City Attorney

By:   
Deputy City Attorney

**CONSULTANT AGREEMENT EXHIBITS**

**EXHIBIT A**

**SCOPE OF SERVICES**

**Background**

The "Project Team" consists of the City of San Diego and the other participating agencies. The "Study Team" consists of the City of San Diego, MWH, and MWH's subconsultants. The "Consultant Team" consists of MWH, Tidal Basin, and Skanska.

The California Multi-Agency CIP Benchmarking Study (Study) was first published by the Project Team in 2002. Each year since then, an "Update" to the original Study has been produced. This scope of services pertains to the activities associated with producing the Update 2016 Study Report.

The Update consists of the following tasks: Study planning, four Project Team in-person meetings, information management, and annual report production. The Update 2016 Study will begin in February 2016 and end in January 2017.

The Project Team meetings are hosted by the participating agencies on a rotating basis. These are the planned dates and locations of the Update 2016 Project Team meetings:

- o Meeting #1 Sacramento
- o Meeting #2 Long Beach
- o Meeting #3 San Francisco
- o Meeting #4 Los Angeles

This table summarizes the tentatively planned activities for the Update 2016 Study cycle.

Meeting	Tasks
Meeting # 1	<ul style="list-style-type: none"><li>▪ Reevaluate Deeper Dive subjects</li><li>▪ Roundtable discussions on project delivery and Deeper Dives</li></ul>
Meeting # 2	<ul style="list-style-type: none"><li>▪ Review preliminary data analyses</li><li>▪ Agencies report on implementation of BMPs</li><li>▪ Roundtable discussions on project delivery and Deeper Dives</li></ul>
Meeting # 3	<ul style="list-style-type: none"><li>▪ Review finalized data</li><li>▪ Roundtable discussions on project delivery and Deeper Dives</li></ul>
Meeting # 4	<ul style="list-style-type: none"><li>▪ Review draft report</li><li>▪ Roundtable discussions on project delivery and Deeper Dives</li><li>▪ Update 2017 Planning</li></ul>

Information to be managed over the course of the Study consists of:

- Project Team member contact information and email distribution lists
- project delivery cost data analyses
- documentation for electronic applications used in data collection and analyses
- changes to agency information in the annual Study report
- documentation of notes during the four in-person Project Team meetings



Customized electronic applications were created by another consultant for this Study and have been maintained and modified by MWH since Update 2005. These applications are: (1) a Performance Questionnaire (MS Excel 2003 with macros) for the agencies to provide project delivery cost data, (2) a Performance Data spreadsheet (MS Excel 2003 with macros) used to transfer data from submitted Performance Questionnaires into a data table and provide analytical tools for the project delivery cost data, and (3) a customized database (MS Access 2003) used to store data.

MWH has created technical documentation describing the function of the electronic applications, how to make basic changes to their designs, and how to address common technical problems. MWH also maintains a "readme" document for database users and reference library files required for database users to have on their computers in order to use the database.

The services required to complete Update 2016 are described below.

### **Scope of Services**

MWH will perform the following services relating to the Study Update 2016 under this AGREEMENT:

#### **Task 1 Project Management**

- **Procedures:** MWH will employ its global project management procedures, called the "Project Delivery System", to guide delivery of tasks in this Scope of Services. The purpose of the Project Delivery System is to facilitate consistent application of standards to all project inputs and outputs. This framework sets forth requirements during each phase of project delivery, from setup through closeout.
- **Regular Activities:** MWH will plan, monitor, and control project financial performance, scope performance, quality performance, schedule performance, resource allocation/utilization, and subconsultant activities.

#### **Task 2 Meetings**

- **Study Team Meetings:** MWH will participate in one Study Team meeting for conceptual planning and document review prior to each of the four in-person Project Team meetings. This consists of:
  - planning, coordinating, and conducting one Consultant Team meeting prior to each Study Team meeting (for a total of four Consultant Team meetings);
  - planning the purpose and theme of each of the four meetings as embodied in the meeting agenda and meeting documents ("Meeting Book");
  - preparing draft documents ("Meeting Book") for each Study Team meeting (for a total of four draft Meeting Books);
  - planning, coordinating, and attending each Study Team meeting (for a total of four Study Team meetings);
  - collecting comments from the Study Team on the Meeting Books; and
  - completing action items as directed by the lead agency following each Study Team meeting.

It is assumed that MWH will spend a total of 2 hours following each Study Team meeting completing action items.

- **Project Team Meetings:** The agency (or Consultant Team) hosting a Project Team meeting is responsible for the following items:
  - preparing and distributing meeting invitations to participants;
  - collecting confirmations of attendance from participants;
  - coordinating food and facility needs;
  - reproducing and binding Meeting Books;
  - reproducing name badges and reproducing tent name cards for attendees; and

- transporting shipped meeting supplies to the meeting location.

MWH will finalize Meeting Books for and attend each of the four Project Team meetings. This consists of:

- compiling and emailing an electronic file of the Meeting Book (Adobe Portable Document Format [PDF]) to the hosting agency for reproduction;
  - emailing the Project Team Contact List (MS Excel 2007) and example invitation to the hosting agency for sending meeting invitations;
  - emailing a Workshop Checklist (PDF) to the host for determining facility and meeting needs;
  - preparing and shipping meeting supplies;
  - answering questions from and sending information to the hosting agency;
  - attending the Project Team meeting;
  - providing support to the meeting facilitator; and
  - taking meeting notes.
- **Action Items:** MWH shall complete action items identified during each of the four Project Team meetings. These consist of:
    - preparing draft meeting notes for Study Team review;
    - collecting and incorporating comments from the Study Team;
    - distributing final meeting notes to the Project Team; and
    - completing action items agreed upon during the meeting.
 It is assumed that MWH will spend a total of 4 hours per Project Team meeting completing action items.

### Task 3 Information Management

- **Project Team Contact List:** Project Team and Study Team member contact information is summarized in a MS Excel 2007 spreadsheet. This spreadsheet is used to track requests and the status of receipt of requested information from the Project Team; to track the distribution of information to the Project Team; as a sign-in list at the Project Team meetings; and as a basis for preparing an email distribution list for relaying action items to the Project Team. MWH will maintain this document. This consists of:
  - revising, distributing, collecting and incorporating corrections to the Project Team Contact List following each Project Team Meeting; and
  - distributing updated lists to the Project Team via email in an Adobe PDF file as revisions are made.
- **Online Discussion Forum:** MWH will develop a summary of discussions agreed upon by the Project Team and incorporate them into the Update 2016 report (see Task 4 Report Preparation). The report will form the archive of the Discussion Forum exchanges. These discussions will also be summarized and presented at the Project Team Meetings.
- **Project Delivery Cost Data:**
  - MWH will modify, test, and distribute the Performance Questionnaire to the Project Team prior to Meeting #1.
  - MWH will respond to questions posed by Project Team members regarding the use of the Performance Questionnaire.
  - MWH will collect completed Performance Questionnaires; transfer data into project data table; and vet data for completeness, entering 0 or dummy values for required fields that the submitting agency left blank.
  - No changes will be made to data by the Project Team following submission.
  - It is assumed that MWH will spend a total of 20 hours on this effort.
- **Electronic Applications:** Modifying one application will require modifications to all

electronic applications.

- MWH will maintain existing customized applications used to support the Study data analyses.
- **Documentation for Electronic Applications:** MWH will update technical documentation and user readme document to reflect changes made during the Study. In the technical document, MWH will describe detailed requirements and function of changes, describe how to implement other similar changes, and describe solutions to common technical problems when using the electronic applications. The user readme document will provide basic instructions for the database function.
- **Outlier Analysis:** MWH will:
  - evaluate the entire dataset for statistical outliers by the 16 Project Classifications;
  - calculate median (m) and standard deviation (d) of project delivery cost (y) for each set of projects by Project Classification;
  - identify projects that fall outside of the range of  $y = s \pm 3*d$  as statistical outliers;
  - retain outliers in the database but exclude them from the Update 2016 analysis; and
  - mark statistical outliers with a “Yes” in the “Outliers” field of the projects data table in the database.
- **Project Delivery Cost Data Analysis:** Data analysis for the Study will be based on the following criteria: projects completed between 1/1/2011 and 12/31/2015, delivered by the traditional design-bid-build method, total construction cost greater than \$100,000, and projects assigned to one existing Project Classification. Changes to the Study criteria will result in an increased effort and fee to implement the activities described above. MWH will:
  - analyze performance benchmarking data from the Project Team for design cost versus total construction cost, construction management cost versus total construction cost, and project delivery cost versus total construction cost;
  - analyze performance benchmarking data for three ranges of total construction cost (TCC) data: a) full range of TCC, b) 80 percent range of TCC and c) subsets of TCC based on TCC ranges. For example, if a dataset contains 1,000 project data points having a TCC ranging from \$100,000 to \$10 Million, then as per (a) this range of TCC would reflect the full range of TCC for statistical evaluation. If 80 percent of the total projects (800 project data points) have a TCC ranging from \$100,000 to \$1 Million, then as per (b) this range of TCC would reflect the 80 percent range of TCC for statistical evaluation; create these three types of regression models for each of the 4 Project Types and 16 Project Classifications used in the Study. Per (c), the project delivery is determined in terms of ranges of TCC values for each Project Type.
  - display the  $R^2$  (coefficient of determination) value, and N (count of projects) on the curve (display of other values on curves (e.g., p values) is specifically excluded from this effort);
  - create curves using a linear trendline;
  - conduct analysis and prepare a separate table for later report inclusion that lists: p-value,  $R^2$  Value, and descriptive characteristics of the selected regression model (e.g., y-intercept (b) and slope of regression line (m) for linear trendlines);
  - present the results of such analyses in draft form to the Project Team for review and comment at Meeting # 2; and
  - revise analyses once for publication in the final Study Update report.
  - The consultant will also collect projects delivered by alternative delivery methods such as design-build, job-order-contracting, and CM@Risk. These projects will be added to the projects database but will not be analyzed.
- **Miscellaneous Corrections and Requests:** MWH will make minor corrections and requests throughout the Study year as requested by the Project Team. An example of a minor correction is to revise the agency design cost for a project in the project data table.

An example of a minor request is to provide an agency with their project delivery cost data in the database. It is assumed that MWH will spend a total of 16 hours on these corrections and requests.

#### **Task 4 Report Preparation**

- **Outline:** MWH will prepare Study Update report outline for Project Team review and comment prior to Meeting #4. MWH will collect and incorporate comments from the Project Team.
- **Draft Report:** MWH will distribute, collect, and incorporate updates from Project Team on the Agencies' BMP activity, Agencies' Overall Information Table, and Agencies' Indirect Rates table into the draft report. The Study Update 2016 Report is assumed to be similar in length and content to Update 2015 report. MWH will draft the annual report for Update 2016, which will consist of the following sections:
  - Executive Summary
  - Table of Contents
  - Introduction
  - Performance Benchmarking
  - Best Management Practices
  - Online Discussion Forum
  - Acknowledgments
  - Appendix A Performance Questionnaire
  - Appendix B Performance Curves
  - Appendix C Indirect Rates

MWH will provide a complete Draft Report to Consultant Team for review, and collect and incorporate comments from the Consultant Team members. MWH will provide complete Draft Report to Study Team for review, and collect and incorporate comments from Study Team members. MWH will provide a complete Draft Report to Project Team for review and comment during Meeting #4.

- **Final Report:** MWH will incorporate comments from the Project Team into the Final Report. MWH will provide the Final Report to the Study Team for review, and collect and incorporate comments. MWH will prepare layout of Final Report in electronic (InDesign) format for posting on the internet. MWH will make the layout using InDesign project files for Update 2016 report. MWH will provide layout of Final Report to Study Team for review, and collect and incorporate comments. MWH will deliver the Final Report in Adobe PDF format suitable for posting on the internet and a high-resolution Adobe PDF suitable for printing. It is assumed that the electronic and printed reports will be similar in look and length to the Update 2015 report.
- **Report Distribution:** MWH will provide a low-resolution Adobe PDF suitable for posting on the internet. Study reports are currently posted on the City of Los Angeles' website at <http://eng.lacity.org/techdocs/cabm/>. MWH will email the Project Team to notify them when the report is posted on internet. MWH will provide each participating agency with 3 hard copies of the report. MWH will make the high-resolution PDF suitable for printing available to Project Team members who request it in order to print their own copies of the report.

#### **Task 5: Online Discussion Forum**

- **Background:** The Study uses a web-based collaboration (SharePoint\_ tool that allows the Study Team and the Project Team to manage, share, collect, and search information related to the Study.

- **Maintenance:** MWH will perform routine maintenance on the site. This subtask is budgeted assuming 2 hours per month of maintenance activities. No improvements or changes to the structure of the site are budgeted. Maintenance consists of:
  - addressing user questions and issues,
  - monitoring and controlling site activity,
  - posting documents,
  - reclassifying Online Discussion Forum topics or other documents posted by the Project Team,
  - periodically archiving the site and files, and
  - managing user accounts.

EXHIBIT B  
Compensation and Fee Schedule

Task	Update 2016
<b>Task 1 Project Management</b>	<b>\$12,400</b>
Setup	
Monitoring and Control	
Closeout	
<b>Task 2 Project Team Meetings</b>	<b>\$38,300</b>
Planning Update 2016	
Consultant Team Meeting, Meeting Book (x4)	
Study Team Meeting (x4)	
<b>Task 3 Information Management</b>	<b>\$46,000</b>
Project Team Contact List	
Email Distribution List	
Online Discussion Forum	
Collect Project Delivery Cost Data	
Electronic Applications	
Documentation for Electronic Applications	
Outlier Analysis	
Analyze Project Delivery Cost Data	
Special Studies	
Misc Corrections	
Misc Requests	
<b>Task 4 Report</b>	<b>\$29,300</b>
Report Outline	
Executive Summary	
Table of Contents	
Introduction	
Performance Benchmarking	
Best Management Practices	
Online Discussion Forum	
Acknowledgements	
Appendix A Performance Questionnaire	
Appendix B Performance Curves	
Appendix C Indirect Rates	
Collect comments and revise report	
Final Report Production	
Report Distribution	
Database Distribution	
<b>Task 5 Website</b>	<b>\$3,500</b>
Maintenance	
<b>Total</b>	<b>\$129,500</b>

## TIME SCHEDULE

<b>Task</b>	<b>Description</b>	<b>Date</b>
1	Data Analysis	November 30, 2016
2	Draft Report	November 30, 2016
3	Final Report	December 30, 2016

EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)

CONSULTANT REQUIREMENTS

TABLE OF CONTENTS

I. City’s Equal Opportunity Commitment.....1

II. Nondiscrimination in Contracting Ordinance .....1

III. Equal Employment Opportunity Outreach Program .....2

IV. Small and Local Business Program.....2

V. Demonstrated Commitment to Equal Opportunity.....3

VI. Definitions.....4

VII. Certification .....5

VIII. List of Attachments.....5

    AA. Disclosure of Discrimination Complaints .....6

    BB. Work Force Report.....10

    CC. Subcontractors List.....11

I. **City’s Equal Opportunity Commitment.** The City of San Diego (City) is strongly committed to equal opportunity for employees and Subcontractors of Consultants doing business with the City. The City encourages its Consultants to share this commitment. Consultants are encouraged to take positive steps to diversify and expand their Subcontractor solicitation base and to offer consulting opportunities to all eligible Subcontractors. Consultants are encouraged to take positive steps to diversify and expand their subcontractor and supplier solicitation base and to offer opportunities to all eligible business firms.

*Failure to submit the required EOCP documentation indicated below shall result in a determination of the Consultant being non-responsive.*

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

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

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



Contractor shall not discriminate on the basis of race, gender, 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. Consultant shall provide equal opportunity for Subcontractors to participate in opportunities. Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.

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

III. **Equal Employment Opportunity Outreach Program.** Consultants shall comply with requirements of San Diego Municipal Code Sections 22.2701 through 22.2707. Consultants shall submit with their proposal a Work Force Report for approval by the Program Manager of the City of San Diego Equal Opportunity Contracting Program (EOCP).

- A. Nondiscrimination in Employment. Consultant shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Consultants shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Consultant liable for any discriminatory practice of its subcontractors.
- B. Work Force Report. If based on a review of the Work Force Report (Attachment BB) submitted an EOCP staff Work Force Analysis determines there are under representations when compared to County Labor Force Availability data, then the Consultant will also be required to submit an Equal Employment Opportunity (EEO) Plan to the Program Manager of the City of San Diego Equal Opportunity Contracting Program (EOCP) for approval.
- C. Equal Employment Opportunity Plan. If an Equal Employment Opportunity Plan is required, the Program Manager of EOCP will provide a list of plan requirements to Consultant.

IV. **Small and Local Business Program Requirements.** The City has adopted a Small and Local Business Enterprise (SLBE) program for consultant contracts. SLBE program requirements for consultant contracts are set forth Council Policy 100-10.

A. SLBE and ELBE Participation for Contracts Valued Over \$50,000:

1. For all consultant contracts, the City shall apply a maximum of an additional 12 points for SLBE or ELBE participation, to the proposer's subtotal maximum evaluation points. Additional points will be awarded as follows to achieve the proposer's final maximum evaluation points :

- a. If the proposer achieves 20% participation, apply 5 points to the proposer's score; or

- b. If the proposer achieves 25% participation, apply 10 points to the proposer's score; or
  - c. If the prime consultant is a SLBE or an ELBE, apply 12 points to the proposer's score.
- B. Subcontractor Participation List. The Subcontractor Participation List (Attachment CC) shall indicate the Name and Address, Scope of Services, Percent of Total Proposed Contract Amount, Certification Status and Where Certified for each proposed Subcontractor/Subconsultant.

#### V. **Maintaining Participation Levels.**

- i. Bid discounts and additional points are based on the Consultant's level of participation prior to the award of goods, services, or consultant contract. Consultants are required to achieve and maintain the SLBE or ELBE participation levels throughout the duration of the goods, services, or consultant contract.
  - D.
- ii. If the City modifies the original specifications, the Consultant shall make reasonable efforts to maintain the SLBE or ELBE participation for which the bid discount or additional points were awarded. The City must approve in writing the reduction in SLBE or ELBE participation levels.
  - E.
- iii. The Consultant shall notify and obtain written approval from the City in advance of any reduction in subcontract scope, termination, or substitution for a designated SLBE or ELBE subcontractor.
  - F.
- iv. Consultant's failure to maintain SLBE or ELBE participation levels as specified in the goods, services, or consultant contract shall constitute a default and grounds for debarment under Chapter 2, Article 2, Division 8, of the San Diego Municipal Code.
- v. The remedies available to the City under Council Policy 100-10 are cumulative to all other rights and remedies available to the City.

#### VI. **Definitions.**

**Commercially Useful Function:** a Small Local Business Enterprise or Emerging Local Business Enterprise (SLBE/ELBE) performs a commercially useful function when it is responsible for execution of the work and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the SLBE/ELBE shall also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself.

To determine whether an SLBE/ELBE is performing a commercially useful function, an evaluation will be performed of the amount of work subcontracted, normal industry practices, whether the amount the SLBE/ELBE firm is to be paid under the contract is commensurate with the work it is actually performing and the SLBE/ELBE credit claimed for its performance of the work, and other relevant factors. Specifically, a SLBE/ELBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of meaningful and useful SLBE/ELBE participation, when in similar transactions in which SLBE-ELBE firms do not participate, there is no such role performed.

**Disadvantaged Business Enterprise (DBE):** a certified business that is (1) at least fifty-one (51%) owned by socially and economically Disadvantaged Individuals, or, in the case of a publicly owned business at least fifty-one percent (51%) of the stock is owned by one or more socially and economically Disadvantaged Individuals; and (2) whose daily business operations are managed and directed by one or more socially and economically disadvantaged owners. Disadvantaged Individuals include Black Americans, Hispanic Americans, Asian Americans, and other minorities, or individual found to be

disadvantaged by the Small Business Administration pursuant to Section 8 of the Small Business Reauthorization Act.

**Disabled Veteran Business Enterprise (DVBE):** a certified business that is (1) at least fifty-one percent (51%) owned by one or more disabled veterans; and (2) business operations must be managed and controlled by one or more disabled veterans. Disabled Veteran is a veteran of the U.S. military, naval, or air service; the veteran must have a service-connected disability or at least 10% or more; and the veteran must reside in California. The firm shall be certified by the State of California's Department of General Services, Office of Small and Minority Business.

**Emerging Business Enterprise (EBE):** a business whose gross annual receipts do not exceed the amount set by the City Manager, and which meets all other criteria set forth in the regulations implementing the City's Small and Local Business Preference Program. The City Manager shall review the threshold amount for EBEs on an annual basis, and adjust as necessary to reflect changes in the marketplace.

**Emerging Local Business Enterprise (ELBE):** a Local Business Enterprise that is also an Emerging Business Enterprise.

**Local Business Enterprise (LBE):** a firm having a Principal Place of Business and a Significant Employment Presence in San Diego County, California, that has been in operation for 12 consecutive months and a valid business tax certificate. This definition is subsumed within the definition of Small Local Business Enterprise.

**Minority Business Enterprise (MBE):** a certified business that is (1) at least fifty-one percent (51%) owned by one or more minority individuals, or, in the case of a publicly owned business at least fifty-one percent (51%) of the stock is owned by one or more minority individuals; and (2) whose daily business operations are managed and directed by one or more minorities owners. Minorities include the groups with the following ethnic origins: African, Asian Pacific, Asian Subcontinent, Hispanic, Native Alaskan, Native American, and Native Hawaiian.

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

**Principal Place of Business:** a location wherein a firm maintains a physical office and through which it obtains no less than fifty percent (50%) of its overall customers or sales dollars.

**Significant Employee Presence:** no less than twenty-five percent (25%) of a business's total number of employees are domiciled in San Diego County.

**Small Business Enterprise (SBE):** a business whose gross annual receipts do not exceed the amount set by the City Manager, and that meets all other criteria set forth in regulations implementing the City's Small and Local Business Preference Program. The City Manager shall review the threshold amount for SBEs on an annual basis, and adjust as necessary to reflect changes in the marketplace. A business certified as a DVBE by the State of California, and that has provided proof of such certification to the City Manager, shall be deemed to be an SBE.

**Small Local Business Enterprise (SLBE):** a Local Business Enterprise that is also a Small Business Enterprise.

**Women Business Enterprise (WBE):** a certified business that is (1) at least fifty-one percent (51 %) owned by a woman or women, or, in the case of a publicly owned business at least fifty-one percent (51%) of the stock is owned by one or more women; and (2) whose daily business operations are managed and directed by one or more women owners.

**VII. Certifications.**

The City accepts certifications of MBE, WBE, DBE or DVBE from the following certifying agencies:

Current certification by the State of California Department of Transportation (CALTRANS) as DBE.

Current MBE or WBE certification from the California Public Utilities Commission.

DVBE certification is received from the State of California's Department of General Services, Office of Small and Minority Business.

Current certification by the City of Los Angeles as DBE, WBE or MBE.

Current certification by the U.S. Small Business Association as SDB, WOSB, SDVOSB, or Hubzone.

Subcontractors' valid proof of certification status e.g., copy of MBE, WBE, DBE, or DVBE certification must be submitted with RFP. MBE, WBE, DBE, or DVBE certifications are listed for informational purposes only.

**VIII. List of Attachments.**

- AA. Disclosure of Discrimination Complaints**
- BB. Work Force Report**
- CC. Subcontractors List**

**DISCLOSURE OF DISCRIMINATION COMPLAINTS**

As part of its proposal, the Design Professional must provide to the City a list of all instances within the past 10 years where a complaint was filed or pending against the Design Professional in a legal or administrative proceeding alleging that Design Professional discriminated against its employees, subcontractors, vendors or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

CHECK ONE BOX ONLY.

- The undersigned certifies that within the past 10 years the Design Professional has NOT been the subject of a complaint or pending action in a legal administrative proceeding alleging that Design Professional discriminated against its employees, subcontractors, vendors or suppliers.
- The undersigned certifies that within the past 10 years the Design Professional has been the subject of a complaint or pending action in a legal administrative proceeding alleging that Design Professional discriminated against its employees, subcontractors, vendors or suppliers. A description of the status or resolution of that complaint, including any remedial action taken and the applicable dates is as follows:

DATE OF CLAIM	LOCATION	DESCRIPTION OF CLAIM	LITIGATION (Y/N)	STATUS	RESOLUTION/REMEDIAL ACTION TAKEN
	<i>Form attached.</i>				

Design Professional Name MINH Americas, LLC.

Certified By Dana Turner Title Jr. Operations Paralegal

Name

D Turner Date 10/11/16

Signature

USE ADDITIONAL FORMS AS NECESSARY

Discrimination-Related Agency Filings Litigation for the Last 10 Years  
 For City of San Diego Consultant Requirements  
**MWH Americas, Inc.**  
 Prepared 10/08/16 - CONFIDENTIAL

DATE OF CLAIM	LOCATION	DESCRIPTION	LITIGATION (Y/N)	STATUS	REMEDIAL ACTION TAKEN
9/26/2005	CO	Gender	No	Financial settlement	Additional training for supervisors & HR; new postings
11/22/2005	CO	Age and race	No	Complaint withdrawn	None
11/22/2005	CO	Age	No	Complaint withdrawn	None
11/29/2005	CA	Age	No	Financial settlement	Agreement not to violate ADEA or retaliate
2/21/2006	IL	Race and retaliation	No	Complaint withdrawn	Employee was reinstated
11/7/2007	TX	Race and retaliation	No	Financial settlement	None
1/16/2008	CO	Gender	No	Financial settlement	None
2/22/2008	CO	National origin, race and retaliation	No	Financial settlement	None
5/6/2008; 10/22/2009	IL	Race and religion	No	Complaint withdrawn	None
5/4/2009	CO	National origin and age	No	Resolved	None
5/27/2009; 8/3/2010	CO	Age and disability	No	Financial settlement	None
2/12/2010	CO	Age and retaliation	Yes	Financial settlement	None
2/28/2010	CA	Gender and retaliation	Yes	Financial settlement	None
9/15/2010	CO	Race, age and national origin	No	Financial settlement	None

Discrimination-Related Agency Filings Litigation for the Last 10 Years  
 For City of San Diego Consultant Requirements  
**MWH Americas, Inc.**  
 Prepared 10/08/16 - CONFIDENTIAL

DATE OF CLAIM	LOCATION	DESCRIPTION	LITIGATION (Y/N)	STATUS	REMEDIAL ACTION TAKEN
9/15/2010	CO	Race and national origin	No	Financial settlement	None
11/16/2010; 5/16/2012	Washington D.C.	Retaliation	No	Financial settlement	None
11/18/2010	Washington D.C.	Gender and retaliation	No	Financial settlement	None
7/13/2011	FL	Age	No	Financial settlement	None
8/31/2011	CO	National origin and race	Yes	Financial settlement	None
9/29/2011	CO	Gender and retaliation	No	Financial settlement	None
12/29/2011	CO	Gender, wage and retaliation	No	Pending	None
5/7/2012	CO	Race and gender	No	Complaint withdrawn	None



City of San Diego  
**EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)**  
1200 Third Avenue • Suite 200 • San Diego, CA 92101  
Phone: (619) 236-6000 • Fax: (619) 236-5904

**WORK FORCE REPORT**

**ADMINISTRATIVE**

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

**NO OTHER FORMS WILL BE ACCEPTED**

**CONTRACTOR IDENTIFICATION**

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

Name of Company: MWH Americas, Inc.

AKA/DBA: \_\_\_\_\_

Address (Corporate Headquarters, where applicable): 380 Interlocken Blvd, Suite 200

City Broomfield    County Jefferson    State CO    Zip 80021

Telephone Number: (303) 533-1900    FAX Number: (303) 533-1901

Name of Company CEO: Alan Krause

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

Address: 9665 Granite Ridge Dr., Suite 220

City San Diego    County San Diego    State CA    Zip 92123

Telephone Number: (858) 751-1200    FAX Number: ( )    Email: \_\_\_\_\_

Type of Business: Consulting    Type of License: \_\_\_\_\_

The Company has appointed: Heather Euser

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

Address: 380 Interlocken Blvd, Suite 200 Broomfield CO 80021

Telephone Number: (303) 410-4115    FAX Number: (720) 887-4499    Email: Heather.Euser@mwhglobal.com

- One San Diego County (or Most Local County) Work Force - Mandatory
- Branch Work Force \*
- Managing Office Work Force

*Check the box above that applies to this WFR.*

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

I, the undersigned representative of MWH Americas, Inc.

(Firm Name)

Broomfield, Colorado hereby certify that information provided

(County)

(State)

herein is true and correct. This document was executed on this 14 day of April, 2016



Heather Euser

*(Authorized Signature)*

*(Print Authorized Signature)*

**WORK FORCE REPORT** – NAME OF FIRM: MWH DATE: 4/7/2016

OFFICE(S) or BRANCH(ES): Pasadena COUNTY: Los Angeles

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

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

OCCUPATIONAL CATEGORY	(1) African-American		(2) Hispanic or Latino		(3) Asian		(4) American Indian		(5) Asian Pacific Islander		(6) Caucasian		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Management & Financial	0	0	3	3	20	1	0	0	0	0	19	6	0	0
Professional	1	1	2	6	8	2	0	0	0	1	10	13	0	0
A&E, Science, Computer	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Technical	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Sales	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Administrative Support	0	0	0	1	0	0	0	0	0	0	0	1	0	0
Services	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Crafts	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Operative Workers	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Transportation	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Laborers*	0	0	0	0	0	0	0	0	0	0	0	0	0	0

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

Totals Each Column	1	1	5	10	28	3	0	0	0	1	29	20	0	0
--------------------	---	---	---	----	----	---	---	---	---	---	----	----	---	---

Grand Total All Employees 98

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

Disabled	0	0	0	0	0	0	0	0	0	0	0	0	0	0
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Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														





# CITY OF SAN DIEGO WORK FORCE REPORT – ADMINISTRATIVE

## HISTORY

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

## WORK FORCE & BRANCH WORK FORCE REPORTS

When submitting a WFR, especially if the WFR is for a specific project or activity, we would like to have information about the firm’s work force that is actually participating in the project or activity. That is, if the project is in San Diego and the work force is from San Diego, we want a San Diego County WFR.<sup>1</sup> By the same token, if the project is in San Diego, but the work force is from another county, such as Orange or Riverside County, we want a WFR from that county.<sup>2</sup> If participation in a San Diego project is by work forces from San Diego County and, for example, from Los Angeles County and

from Sacramento County, we ask for separate WFRs representing your firm from each of the three counties.<sup>1</sup>

## MANAGING OFFICE WORK FORCE

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

## TYPES OF WORK FORCE REPORTS

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

- <sup>1</sup> One San Diego County (or Most Local County) Work Force – Mandatory in most cases
- <sup>2</sup> Branch Work Force \*
- <sup>3</sup> Managing Office Work Force

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

## **Exhibit: Work Force Report Job categories**

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

### **Management & Financial**

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

### **Professional**

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

Media and Communication Workers
Other Teachers and Instructors
Postsecondary Teachers
Primary, Secondary, and Special Education School Teachers
Religious Workers
Social Scientists and Related Workers

**Architecture & Engineering, Science, Computer**

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

**Technical**

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

**Sales**

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

**Administrative Support**

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

**Services**

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

Other Healthcare Support Occupations
Other Personal Care and Service Workers
Other Protective Service Workers
Personal Appearance Workers
Supervisors, Food Preparation and Serving Workers
Supervisors, Personal Care and Service Workers
Transportation, Tourism, and Lodging Attendants

**Crafts**

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

**Operative Workers**

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

**Transportation**

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

**Laborers**

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



## SUBCONTRACTOR PARTICIPATION LIST

This list shall include the name and complete address of all Subcontractors who qualify as SLBEs or ELBEs. Consultants must also list participation by any MBE, WBE, DBE, DBVE and OBE firms. However, no additional points will be awarded for participation by these firms, except that DVBEs that are certified by the City as local businesses shall be counted as SLBEs.

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

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

NAME AND ADDRESS SUBCONTRACTORS	SCOPE OF SERVICES	PERCENT OF CONTRACT	SLBE/ELBE (MBE/ WBE/DBE/ DVBE/OBE*)	WHERE CERTIFIED**
Skanska USA Building, Inc. 1999 Harrison St. Suite 1950 Oakland CA 94612 Attn: Len Vetrone	Working with the Benchmarking technical team to implement the objectives of the re-chartered Multi-Agency Benchmarking Study	5.56%	No	
BMP Consulting LLC 9 Farra Street Rancho Mission Viejo, CA 92964	Support and Facilitate Benchmarking Studies	7.49%	No	

List of Abbreviations:

- |  |      |
|--|------|
| Small Local Business Enterprise        | SLBE |
| Emerging Local Business Enterprise     | ELBE |
| Certified Minority Business Enterprise | MBE* |
| Certified Woman Business Enterprise    | WBE* |

Certified Disadvantaged Business Enterprise  
Certified Disabled Veteran Business Enterprise  
Other Business Enterprise

DBE\*  
DVBE\*  
OBE\*

*\* Listed for informational purposes only.*

*\*\* Consultant shall indicate if Subcontractor is certified by one of the agencies listed in Section VII of the Equal Opportunity Contracting Program (EOCP) Consultant Requirements.*



## CONSULTANT CERTIFICATION FOR A DRUG-FREE WORKPLACE

**PROJECT TITLE:** California Mutli-Agency Benchmarking Study

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

MWH Americas, Inc.

Name under which business is conducted

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

Signed

  
Printed Name Eric M Mills, PE, PMP

Title: Vice President and Area Manager

Date August 9, 2016

**City of San Diego  
CONTRACTOR STANDARDS  
Pledge of Compliance**

The City of San Diego has adopted a Contractor Standards Ordinance (CSO) codified in section 22.3004 of the San Diego Municipal Code (SDMC). The City of San Diego uses the criteria set forth in the CSO to determine whether a bidder or proposer has the capacity to fully perform the contract requirements and the business integrity to justify the award of public funds. This completed Pledge of Compliance signed under penalty of perjury must be submitted with each bid and proposal. If an informal solicitation process is used, the bidder must submit this completed Pledge of Compliance to the City prior to execution of the contract. All responses must be typewritten or printed in ink. If an explanation is requested or additional space is required, Respondents must provide responses on Attachment A to the Pledge of Compliance and sign each page. Failure to submit a signed and completed Pledge of Compliance may render the bid or proposal non-responsive. In the case of an informal solicitation, the contract will not be awarded unless a signed and completed Pledge of Compliance is submitted. A submitted Pledge of Compliance is a public record and information contained within will be available for public review except to the extent that such information is exempt from disclosure pursuant to applicable law.

**A. BID/PROPOSER/SOLICITATION TITLE:**

California Muti Agency Benchmarking Study

**B. BIDDER/PROPOSER INFORMATION:**

MWH Americas, Inc

Legal Name		DBA	
300 North Lake Ave, Suite 400	Pasadena	CA	91101
Street Address	City	State	Zip
Parag Kalaria, Project Manager	626-241-4834	626-568-1101	
Contact Person, Title	Phone	Fax	

**C. OWNERSHIP AND NAME CHANGES:**

1. In the past five (5) years, has your firm changed its name?  
 Yes       No

If **Yes**, use Attachment "A" to list all prior legal and DBA names, addresses, and dates each firm name was used. Explain the specific reasons for each name change.

2. In the past five (5) years, has a firm owner, partner, or officer operated a similar business?  
 Yes       No

If **Yes**, use Attachment "A" to list names and addresses of all businesses and the person who operated the business. Include information about a similar business only if an owner, partner, or officer of your firm holds or has held a similar position in another firm.

**D. BUSINESS ORGANIZATION/STRUCTURE:**

Indicate the organizational structure of your firm. Fill in only one section on this page. Use Attachment "A" if more space is required.

**Corporation** Date incorporated: 10/18/1954 State of incorporation: California \_\_\_\_\_

List corporation's current officers: President: Alan Krause (MWH Global, Inc)  
 Vice Pres: Marshal Davert (MWH Americas, Inc, President)  
 Secretary: David Tomlinson  
 Treasurer: Thomas Payne

Is your firm a publicly traded corporation?  Yes  No

If **Yes**, name those who own ten percent (10 %) or more of the corporation's stocks:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Limited Liability Company** Date formed: \_\_\_\_/\_\_\_\_/\_\_\_\_ State of formation: \_\_\_\_\_

List names of members who own ten percent (10%) or more of the company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Partnership** Date formed: \_\_\_\_/\_\_\_\_/\_\_\_\_ State of formation: \_\_\_\_\_

List names of all firm partners:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Sole Proprietorship** Date started: \_\_\_\_/\_\_\_\_/\_\_\_\_

List all firms you have been an owner, partner or officer with during the past five (5) years. Do not include ownership of stock in a publicly traded company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Joint Venture** Date formed: \_\_\_\_/\_\_\_\_/\_\_\_\_

List each firm in the joint venture and its percentage of ownership:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Note:** To be responsive, each member of a Joint Venture must complete a separate *Pledge of Compliance*.

**E. FINANCIAL RESOURCES AND RESPONSIBILITY:**

- 1. Is your firm preparing to be sold, in the process of being sold, or in negotiations to be sold?  
 **Yes**  **No**

If **Yes**, use Attachment "A" to explain the circumstances, including the buyer's name and principal contact information.

- 2. In the past five (5) years, has your firm been denied bonding?

**EXHIBIT G**

Yes

No

If **Yes**, use Attachment "A" to explain specific circumstances; include bonding company name.

3. In the past five (5) years, has a bonding company made any payments to satisfy claims made against a bond issued on your firm's behalf or a firm where you were the principal?  
 **Yes**             **No**

If **Yes**, use Attachment "A" to explain specific circumstances.

4. In the past five (5) years, has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?  
 **Yes**             **No**

If **Yes**, use Attachment "A" to explain specific circumstances.

5. Within the last five years, has your firm filed a voluntary petition in bankruptcy, been adjudicated bankrupt, or made a general assignment for the benefit of creditors? NO

6. Please provide the name of your principal financial institution for financial reference. By submitting a response to this Solicitation Contractor authorizes a release of credit information for verification of financial responsibility.

Name of Bank: \_\_\_\_\_

Point of Contact: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

7. By submitting a response to a City solicitation, Contractor certifies that he or she has sufficient operating capital and/or financial reserves to properly fund the requirements identified in the solicitation. At City's request, Contractor will promptly provide to City a copy of Contractor's most recent balance sheet and/or other necessary financial statements to substantiate financial ability to perform.

**F. PERFORMANCE HISTORY:**

1. In the past five (5) years, has your firm been found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for defaulting or breaching a contract with a government agency?  
 **Yes**             **No**

If **Yes**, use Attachment "A" to explain specific circumstances.

2. In the past five (5) years, has a public entity terminated your firm's contract for cause prior to contract completion?  
 **Yes**             **No**

If **Yes**, use Attachment "A" to explain specific circumstances and provide principal contact information.

3. In the past five (5) years, has your firm entered into any settlement agreement for any lawsuit that alleged contract default, breach of contract, or fraud with or against a public entity?  
 **Yes**             **No**

If **Yes**, use Attachment "A" to explain specific circumstances.

**EXHIBIT G**

4. Is your firm currently involved in any lawsuit with a government agency in which it is alleged that your firm has defaulted on a contract, breached a contract, or committed fraud?  
 **Yes**       **No**

If **Yes**, use Attachment "A" to explain specific circumstances.

5. In the past five (5) years, has your firm, or any firm with which any of your firm's owners, partners, or officers is or was associated, been debarred, disqualified, removed, or otherwise prevented from bidding on or completing any government or public agency contract for any reason?  
 **Yes**       **No**

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances.

6. In the past five (5) years, has your firm received a notice to cure or a notice of default on a contract with any public agency?  
 **Yes**       **No**

If **Yes**, use Attachment "A" to explain specific circumstances and how the matter resolved.

7. Performance References:

Please provide a minimum of three (3) references familiar with work performed by your firm which was of a similar size and nature to the subject solicitation within the last five (5) years.

Company Name: \_\_\_\_\_

Contact Name and Phone Number: \_\_\_\_\_

Contact Email: \_\_\_\_\_

Address: \_\_\_\_\_

Contract Date: \_\_\_\_\_

Contract Amount: \_\_\_\_\_

Requirements of Contract: \_\_\_\_\_

Company Name: \_\_\_\_\_

Contact Name and Phone Number: \_\_\_\_\_

Contact Email: \_\_\_\_\_

Address: \_\_\_\_\_

Contract Date: \_\_\_\_\_

Contract Amount: \_\_\_\_\_

Requirements of Contract: \_\_\_\_\_

Company Name: \_\_\_\_\_

Contact Name and Phone Number: \_\_\_\_\_

Contact Email: \_\_\_\_\_

Address: \_\_\_\_\_

Contract Date: \_\_\_\_\_

Contract Amount: \_\_\_\_\_

Requirements of Contract: \_\_\_\_\_

**G. COMPLIANCE:**

1. In the past five (5) years, has your firm or any firm owner, partner, officer, executive, or manager been criminally penalized or found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for violating any federal, state, or local law in performance of a contract, including but not limited to, laws regarding health and safety, labor and employment, permitting, and licensing laws?

Yes       No

If **Yes**, use Attachment "A" to explain specific circumstances surrounding each instance. Include the name of the entity involved, the specific infraction(s) or violation(s), dates of instances, and outcome with current status.

2. In the past five (5) years, has your firm been determined to be non-responsible by a public entity?

Yes       No

If **Yes**, use Attachment "A" to explain specific circumstances of each instance. Include the name of the entity involved, the specific infraction, dates, and outcome.

**H. BUSINESS INTEGRITY:**

1. In the past five (5) years, has your firm been convicted of or found liable in a civil suit for making a false claim or material misrepresentation to a private or public entity?

Yes       No

If **Yes**, use Attachment "A" to explain specific circumstances of each instance. Include the entity involved, specific violation(s), dates, outcome and current status.

2. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a crime, including misdemeanors, or been found liable in a civil suit involving the bidding, awarding, or performance of a government contract?

Yes       No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances of each instance; include the entity involved, specific infraction(s), dates, outcome and current status.

3. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a federal, state, or local crime of fraud, theft, or any other act of dishonesty?

Yes       No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances of each instance; include the entity involved, specific infraction(s), dates, outcome and current status.

**I. WAGE COMPLIANCE:**

In the past five (5) years, has your firm been required to pay back wages or penalties for failure to comply with the federal, state or local prevailing, minimum, or living wage laws? **Yes**  **No**  If **Yes**, use Attachment "A" to explain the specific circumstances of each instance. Include the entity involved, the specific infraction(s), dates, outcome, and current status.

**J. STATEMENT OF SUBCONTRACTORS:**

Please provide the names and information for all subcontractors used in the performance of the proposed contract, and what portion of work will be assigned to each subcontractor. Subcontractors may not be substituted without the written consent of the City. Use Attachment "A" if additional pages are necessary. If no subcontractors will be used, please write "Not Applicable."

Company Name: Skanska USA Building, Inc

Contact Name and Phone Number: Robert Flory,

Contact Email: Robert.flory@skanska.com

Address: 1999 Harrison Street Suite 1950, Oakland, CA 94612

Contract Date \_\_\_\_\_

Sub-Contract Dollar Amount: \$7,200

Requirements of Contract: \_\_\_\_\_

What portion of work will be assigned to this subcontractor: Report review and meeting facilitation

Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE? (Circle One) YES  NO

If YES, Contractor must provide valid proof of certification with the response to the bid or proposal.

Company Name: BMP Consulting, LLC

Contact Name and Phone Number: Bill Lacher

Contact Email: bill.lacher@gmail.com

Address: 9 Farrrah Street, Rancho Mission Viejo, Caalifornia 92694

Contract Date \_\_\_\_\_

Sub-Contract Dollar Amount: \$9,700

Requirements of Contract: \_\_\_\_\_

What portion of work will be assigned to this subcontractor: \_\_\_\_\_

Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE? (Circle One) YES  NO

If YES, Contractor must provide valid proof of certification with the response to the bid or proposal.



**K. STATEMENT OF AVAILABLE EQUIPMENT:**

List all necessary equipment to complete the work specified. Use *Pledge of Compliance Attachment "A"* if additional pages are necessary. In instances where the required equipment is not owned by the Contractor, Contractor shall explain how the equipment will be made available before the commencement of work. The City of San Diego reserves the right to reject any response when, in its opinion, the Contractor has not demonstrated he or she will be properly equipped to perform the work in an efficient, effective manner for the duration of the contract period.

If no equipment is necessary to complete the work specified, please write "Not Applicable."

Equipment Description: Not Applicable

Owned  Rented  Other  (explain below)

If Owned, Quantity Available: \_\_\_\_\_

Year, Make & Model: \_\_\_\_\_

Explanation: \_\_\_\_\_

Equipment Description: Not Applicable

Owned  Rented  Other  (explain below)

If Owned, Quantity Available: \_\_\_\_\_

Year, Make & Model: \_\_\_\_\_

Explanation: \_\_\_\_\_

Equipment Description: \_\_\_\_\_

Owned  Rented  Other  (explain below)

If Owned, Quantity Available: Not Applicable

Year, Make & Model: \_\_\_\_\_

Explanation: \_\_\_\_\_

**L. TYPE OF SUBMISSION:** This document is submitted as:

Initial submission of *Contractor Standards Pledge of Compliance*.

Update of prior *Contractor Standards Pledge of Compliance* dated \_\_\_\_ / \_\_\_\_ / \_\_\_\_.



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

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

**MWH Global Inc is in the process of merging with Stantec**

**Buyers Name: Stantec**

**Contact Information:**

**Andrew Wilson  
Finance Director  
Phone: 303-385-5610**

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

Eric M Mills, Vice President  
Print Name, Title

  
Signature

August 9, 2016  
Date

DISCLOSURE DETERMINATION FOR CONSULTANT

\*Must be signed by department director, agency president or other individual authorized by the appropriate conflict of interest code regarding consultants.

- 1. Department / Board / Commission / Agency Name: City of San Diego
2. Name of Specific Consultant & Company: MWH Americas, Inc.
3. Address, City, State, ZIP: 300 North Lake Ave, Suite 400 Pasadena, CA 91101
4. Project Title (as shown on 1472, "Request for Council Action"): California Multi Agency Benchmarking Study
5. Consultant Duties for Project: Data compilation, statistical analysis, information management and annual report production.

6. Disclosure Determination [select applicable disclosure requirement]:

X Consultant will not be "making a governmental decision" or "serving in a staff capacity." No disclosure required.

- or -

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

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

- or -

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

Blank lines for additional information or comments.

By: [Signature] [Mark Nassar, Deputy Director Public Works]\*

[Date] 9/13/16

**REGARDING INFORMATION REQUESTED UNDER THE  
CALIFORNIA PUBLIC RECORDS ACT**

The undersigned duly authorized representative, on behalf of the named Contractor declares and acknowledges the following:

**The contents of this contract and any documents pertaining to the performance of the contract requirements/Scope of Services resulting from this contract are public records, and therefore subject to disclosure unless a specific exemption in the California Public Records Act applies.**

If a Contractor submits information **clearly marked** confidential or proprietary, the City of San Diego (City) may protect such information and treat it with confidentiality only to the extent permitted by law. However, it will be the **responsibility of the Contractor** to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the California Public Records Act, should the City choose to withhold such information.

General references to sections of the California Public Records Act will not suffice. Rather, the Contractor must provide a **specific and detailed legal basis, including applicable case law** that **clearly establishes** the requested information is exempt from the disclosure requirements of the California Public Records Act.

If the Contractor does not provide a specific and detailed legal basis for withholding the requested information within a time specified by the City, the City will release the information as required by the California Public Records Act and the **Contractor will hold the City harmless** for release of this information.

It will be the **Contractor's obligation to defend**, at Contractor's expense, any legal actions or challenges seeking to obtain from the City any information requested under the California Public Records Act withheld by the City at the Contractor's request. Furthermore, the Contractor shall **indemnify** the City and **hold it harmless** for any claim or liability, and **defend any action** brought against the City, resulting from the City's refusal to release information requested under the Public Records Act withheld at Contractor's request.

Nothing in this Agreement creates any obligation for the City to notify the Contractor or obtain the Contractor's approval or consent before releasing information subject to disclosure under the California Public Records Act.

MWH Americas, Inc.

Name of Firm

  
Signature of Authorized Representative

Eric M. Mills, Vice President

Printed/Typed Name

August 4, 2016

Date

## CONSULTANT CERTIFICATION

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### AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE CERTIFICATION


PROJECT TITLE: State Benchmark Committee Study

I hereby certify that I am familiar with the requirements of San Diego City Council Policy No. 100-4 regarding the Americans With Disabilities Act (ADA) outlined in Article IV, "ADA Certification", of the Agreement, and that;

MWH Americas, Inc.  
(Name under which business is conducted)

has in place workplace program that complies with said policy. I further certify that each subcontract agreement for this project contains language which indicates the subcontractor's agreement to abide by the provisions of the policy as outlined.

Signed



Printed Name Eric M. Mills

Title Vice President