

DUPLICATE ORIGINAL

**AGREEMENT BETWEEN
THE CITY OF SAN DIEGO
AND
KITCHELL CEM, INC.**

FOR

**AS-NEEDED CONSTRUCTION MANAGEMENT SERVICES
FOR THE ENVIRONMENTAL SERVICES DEPARTMENT**

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**AGREEMENT FOR CONSTRUCTION MANAGEMENT
PROFESSIONAL SERVICES**

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CONSTRUCTION MANAGEMENT PROFESSIONAL AS-NEEDED EXHIBITS

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

**AS-NEEDED AGREEMENT BETWEEN
THE CITY OF SAN DIEGO
AND KITCHELL CEM, INC.
FOR CONSTRUCTION MANAGEMENT SERVICES**

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation [City], and Kitchell CEM, Inc. [Construction Management Professional] to provide Professional Services to the City for construction management on an as-needed basis.

RECITALS

The City wants to retain the services of a professional construction management firm to provide the Professional Services on an as-needed, hourly fee basis.

The Construction Management Professional represents that it has the expertise, experience and personnel necessary to provide the Professional Services on an as-needed, hourly fee basis.

The City and the Construction Management Professional [Parties] want to enter into an Agreement whereby the City will retain the Construction Management Professional to provide, and the Construction Management Professional shall provide, the Professional Services on an as-needed, hourly fee basis [Agreement].

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
CONSTRUCTION MANAGEMENT SERVICES**

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

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

1.1.1 Task Order. Prior to beginning performance in response to a Task Order, Construction Management Professional shall complete and execute the Task Order which must be approved in writing by the City. Each Task Order shall include a scope of Professional Services, a cost estimate, and the time for completion. The scope of Professional Services shall include all activities or work reasonably anticipated as necessary for successful completion of each Task presented by the City.

1.1.2 Non-Exclusivity. The Construction Management Professional agrees that this Agreement is non-exclusive and that the City may enter into agreements with other

Construction Management Professionals to perform the same or similar Professional Services during the term of this Agreement.

1.1.3 Issuance of Task Orders for Multiple Contracts with the Same Services.

When multiple As-Needed Agreements exist for the same discipline, the Contract Manager will rotate award of Task Orders between the multiple agreements until the contract duration expires or the contract authorization amount is reached. After a Construction Management Professional has been issued a Task Order, that Construction Management Professional will be placed at the end of the list for consideration to perform the next Task Order.

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

1.3 City Modification of Scope of Services. The City may, without invalidating this Agreement, order changes in any Task by altering, adding to or deducting from the Professional Services to be performed. All such changes shall be in writing and shall be performed in accordance with the provisions of this Agreement. If any such changes cause an increase or decrease in the Construction Management Professional's cost of, or the time required for, the performance of any of the Professional Services, the Construction Management Professional shall immediately notify the City. If the City deems it appropriate, an equitable adjustment to the Construction Management Professional's compensation 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 in connection with the Tasks, the Construction Management Professional shall obtain from the City a written authorization to proceed. Further, throughout the term of this Agreement, the Construction Management Professional shall immediately advise the City in writing of any anticipated changes to any Task, including any changes to the time for completion or the Compensation and Fee Schedule, and shall obtain the City's written consent to the change prior to making any changes. In no event shall the City's consent be construed to relieve the Construction Management Professional 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 Construction Management Professional, including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by the Construction Management Professional, 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 Construction Management Professional, at the time that it was disclosed to the Construction Management Professional by the City, (b) subsequently becomes publicly known through no

act or omission of the Construction Management Professional, or (c) otherwise becomes known to the Construction Management Professional other than through disclosure by the City. Except for Subcontractors covered by Section 4.4, neither the documents nor their contents shall be released to any third party without the prior written consent of the City.

ARTICLE II DURATION OF AGREEMENT

2.1 Term of Agreement. This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40. Unless otherwise terminated, this Agreement shall be effective for issuing and completing Task Orders for no more than **sixty (60)** months following the date of its execution by the City, unless said duration is modified in writing by an amendment to this Agreement. Any extension beyond sixty (60) months will require City Council approval via 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 any Task shall be set forth in the Task Order and shall not exceed the contract duration.

2.3 Notification of Delay. The Construction Management Professional shall immediately notify the City in writing if Construction Management Professional experiences or anticipates experiencing a delay in performing the Professional Services within the time frames set forth in the Task Order. The written notice shall include an explanation of the cause for, and a reasonable estimate of the length of, the delay. If in the opinion of the City, the delay affects a material part of the Task, 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 Construction Management Professional to a reasonable extension of time, but such delay shall not entitle the Construction Management Professional 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 Construction Management Professional's work; inability to obtain materials, equipment or labor; required additional Professional Services; or other specific reasons agreed to between the City and the Construction Management Professional; provided, however, that: (a) this provision shall not apply to, and the Construction Management Professional shall not be entitled to an extension of time for, a delay caused by the acts or omissions of the Construction Management Professional; and (b) a delay caused by the inability to obtain materials, equipment, or labor shall not entitle the Construction Management Professional to an extension of time unless the Construction Management Professional furnishes the City, in a timely manner, documentary proof satisfactory to the City of the Construction Management Professional'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 Construction Management Professional'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 Construction Management Professional 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 Construction Management Professional a sum equivalent to the reasonable value of the Professional Services the Construction Management Professional has performed up to the date of suspension. Thereafter, the City may rescind such suspension by giving written notice of rescission to the Construction Management Professional. The City may then require the Construction Management Professional to resume performance of the Professional Services in compliance with the terms and conditions of this Agreement; provided, however, that the Construction Management Professional 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 Construction Management Professional. 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 Construction Management Professional. After termination of this Agreement, the Construction Management Professional shall complete any and all additional work necessary for the orderly filing of documents and closing of the Construction Management Professional's Professional Services under this Agreement. For services rendered in completing the work, the Construction Management Professional shall be entitled to fair and reasonable compensation for the Professional Services performed by the Construction Management Professional before the effective date of termination. After filing of documents and completion of performance, the Construction Management Professional shall deliver to the City all drawings, plans, calculations, specifications and other documents or records related to the Construction Management Professional's Professional Services on all Task(s). By accepting payment for completion, filing and delivering documents as called for in this paragraph, the Construction Management Professional 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 Construction Management Professional fails to perform or adequately perform any obligation required by this Agreement, the Construction Management Professional's failure constitutes a Default. A Default includes the Construction Management Professional's failure to complete the Professional Services within the time for completion as set forth in the Task Order. If the Construction Management Professional 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 Construction Management Professional, and any person claiming any rights by or through the Construction Management Professional 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 Construction Management Professional.

ARTICLE III COMPENSATION

3.1 Amount of Compensation. The City shall pay the Construction Management Professional for performance of all Professional Services rendered in accordance with this Agreement, including all reasonably related expenses, in an amount not to exceed

\$1,000,000. The City agrees to issue at least one or more Task Orders with a minimum aggregate value of \$1,000.00 to the Construction Management Professional.

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

3.3 Additional Costs. Additional Costs are those costs that can be reasonably determined to be related to the Construction Management Professional's errors or omissions, and may include Construction Management Professional, City, or Subcontractor overhead, construction, materials, demolition, and related costs. The Construction Management Professional shall not be paid for the Professional Services required due to the Construction Management Professional's errors or omissions, and the Construction Management Professional 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 Construction Management Professional. Whether or not there are any monies due, or becoming due, the Construction Management Professional shall reimburse the City for Additional Costs due to the Construction Management Professional's errors or omissions.

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

ARTICLE IV CONSTRUCTION MANAGEMENT PROFESSIONAL'S OBLIGATIONS

4.1 Industry Standards. The Construction Management Professional agrees that the Professional Services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent professional construction management 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 Construction Management Professional 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 Construction Management Professional's and any Subcontractor's premises to review and audit the Construction Management Professional'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 Construction Management Professional's premises, of any and all Project related records with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. This information shall be kept by the City in the strictest confidence allowed by law.

4.2.2 Audit. The City's Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the City determines are necessary to discover and verify that the Construction Management Professional 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 Costs, the City's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the City determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

4.2.2.2 Accounting Records. The Construction Management Professional and all Subcontractors shall maintain complete and accurate records in accordance with Generally Accepted Accounting Practices in the industry. The Construction Management Professional and Subcontractors shall make available to the City for review and audit; all Project-related accounting records and documents, and any other financial data. Upon the City's request, the Construction Management Professional 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 Construction Management Professional 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 Construction Management Professional'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 Construction Management Professional shall not begin the Professional Services under this Agreement until it has: (a) obtained, and provided to the City, insurance certificates and endorsements reflecting evidence of all insurance required in Article IV, Section 4.3.1; however, the City reserves the right to request, and the Construction Management Professional shall submit, copies of any policy upon reasonable request by the City; (b) obtained City approval of each company or companies as required by Article IV, Section 4.3.3; and (c) confirmed that all policies contain the specific provisions required in Article IV, Section 4.3.4. Construction Management Professional's liabilities, including but not limited to Construction Management Professional'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 Construction Management Professional'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 Construction Management Professional 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 Construction Management Professional 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 Construction Management Professional's automobiles including owned, hired and non-owned automobiles, the Construction Management Professional 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 Construction Management Professional's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Construction Management Professional 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 Construction Management Professional shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

4.3.1.4 Architects & Engineers Professional Liability. For all of the Construction Management Professional's employees who are subject to this Agreement, the Construction Management Professional 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 Construction Management Professional shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the Professional Services as described in issued Task Orders; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Professional Services as described in issued Task Orders or termination of this Agreement whichever occurs last. The Construction Management Professional 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 Construction Management Professional 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 Construction Management Professional'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 automobiles owned, leased, hired or borrowed by or on behalf of the Construction Management Professional.

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 Construction Management Professional's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to the City. The City will reimburse the Construction Management Professional 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 Construction Management Professional 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 Construction Management Professional'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 Construction Management Professional shall list on the Subcontractor List (Exhibit D, Attachment CC) all Subcontractors known to the Construction Management Professional at the time this Agreement is entered. If at any time after this Agreement is entered into, the Construction Management Professional identifies a need for addition, deletion, or substitution of Subcontractor Services, the Construction Management Professional must submit a written notice to the City requesting approval for the change modifying the Subcontractor Services. The Construction Management Professional'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 Construction Management Professional and any Subcontractor shall contain the information as described in Sections 4.6, 4.7, 4.10.2, and 4.18, and shall also provide as follows:

4.4.1.1 Construction Management Professional 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 Construction Management Professional proportionate to the services performed by the Subcontractor.

4.4.1.2 The Construction Management Professional is obligated to pay the Subcontractor, for Construction Management Professional and City-approved invoice amounts, out of amounts paid by the City to the Construction Management Professional, not later than fourteen working days from the Construction Management Professional's receipt of payment from the City. Nothing in this paragraph shall be construed to impair the right of the Construction Management Professional 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 Construction Management Professional 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 Construction Management Professional shall pay the Subcontractor the amount withheld within fourteen working days of the Construction Management Professional's receipt of the City's next payment.

4.4.1.4 In any dispute between the Construction Management Professional and Subcontractor, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The Construction Management Professional agrees to defend and indemnify the City as described in Article VI of this Agreement in any dispute between the Construction Management Professional 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 Reports.

4.5.1 The Construction Management Professional 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 Construction Management Professional 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 Construction Management Professional must submit the following reporting using the City's web-based contract compliance i.e., Prism® portal:

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

4.6.2 Non-Discrimination Ordinance. The Construction Management Professional 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 Construction Management Professional shall provide equal opportunity for Subcontractors to participate in subcontracting opportunities. The Construction Management Professional 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 Construction Management Professional and any Subcontractors, vendors and suppliers.

4.6.3 Compliance Investigations. Upon the City's request, the Construction Management Professional 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 Construction Management Professional 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 Construction Management Professional for each subcontract or supply contract. The Construction Management Professional 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 Construction Management Professional 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 Construction Management Professional up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. The Construction Management Professional 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 Construction Management Professional 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 Construction Management Professional 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 Construction Management Professional's Notice to Employees. The Construction Management Professional 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 Construction Management Professional shall establish a drug-free awareness program to inform employees about: (1) the dangers of drug abuse in the work place; (2) the policy of maintaining a drug-free work place; (3) available drug counseling, rehabilitation, and employee assistance programs; (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 Construction Management Professional shall post the drug-free policy in a prominent place.

4.7.4 Subcontractor's Agreements. The Construction Management Professional further certifies that each contract for Subcontractor Services for this Project 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. Construction Management Professionals and Subcontractors shall be individually responsible for their own drug-free work place program.

4.8 RESERVED.

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

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

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

4.10.1.1 If a determination is made that certain individuals must disclose relevant financial interests, the statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. The individual shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that the individuals are subject to a conflict of interest code. Each year

thereafter, the individuals shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the individual was subject to a conflict of interest code. A Form 700 (Leaving Office Statement) shall also be filed when the individual discontinues services under this Agreement.

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

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

4.10.3 RESERVED

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

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

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

4.12 Compensation for Mandatory Assistance. The City will compensate the Construction Management Professional for fees incurred for providing Mandatory Assistance as Additional Costs 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 Construction Management Professional, its agents, officers, and employees, the Construction Management Professional shall reimburse the City. The City is then entitled to reimbursement of all fees paid to the Construction Management Professional, its agents, officers, and employees for Mandatory Assistance.

4.13 Attorney Fees related to Mandatory Assistance. In providing the City with dispute or litigation assistance, the Construction Management Professional or its agents,

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

4.14 RESERVED.

4.15 RESERVED.

4.16 RESERVED.

4.17 RESERVED.

4.18 Storm Water Management Discharge Control. Construction Management Professional shall comply with Chapter 4, Article 3, Division 3 of the San Diego Municipal Code, Storm Water Management Discharge Control and the Municipal Storm Water Permit (MS4) Permit, California Regional Water Quality Control Board Order No. R9-2013-0001 (amended by R9-2015-0001 and R9-2015-0100), Storm Water Standards Manual, as amended from time to time, and any and all Best Management Practice (BMP) guidelines and pollution elimination requirements as may be established by the Enforcement Official.

4.19 ADA Certification. The Construction Management 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.

4.20 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 Construction Management Professional and its subconsultants shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

4.20.1 Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, the Construction Management Professional 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.

4.20.1.1 Copies of such prevailing rate of per diem wages are on file at the City of San Diego's Purchasing & Contracting Department (Equal Opportunity Contracting Division) 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>. Construction Management Professional 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.

4.20.1.2 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.

4.20.2 Penalties for Violations. Construction Management Professional 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. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.

4.20.3 Payroll Records. Construction Management Professional 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. Construction Management Professional shall require its subconsultants to also comply with section 1776. Construction Management Professional and its subconsultants shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Construction Management Professional is responsible for ensuring its subconsultants submit certified payroll records to the City.

4.20.3.1 In addition to the requirements in 4.20.3, the Construction Management Professional and its subconsultants shall also furnish records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required by Labor Code section 1771.4.

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

4.20.5 Working Hours. Construction Management Professional and its 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 (8) hours a day and forty (40) hours a week, unless all hours worked in excess of eight (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 eight (8) hours per day and forty (40) hours per week in violation of California Labor Code sections 1810 through 1815.

4.20.6 Required Provisions for Subcontracts. Construction Management Professional 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.

4.20.7 Labor Code Section 1861 Certification. Construction Management Professional in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Agreement, Construction Management Professional 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."

4.20.8 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.

4.20.9 Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. A Construction Management Professional or subcontractor shall not be qualified to bid on, be listed in a bid or proposal, subject to the requirements of section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

4.20.9.1 A Construction Management Professional'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.

4.20.9.2 By submitting a bid or proposal to the City, Construction Management Professional 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 Construction Management Professional shall provide proof of registration for themselves and all listed subcontractors to the City at the time of bid or proposal due date or upon request.

4.20.10 Stop Order. For Construction Management Professional or its subcontractor(s) engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered Construction Management Professional or unregistered subcontractor(s) on ALL public works until the unregistered Construction Management Professional or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.

4.20.11 List of all Subcontractors. The City may ask Construction Management Professional for the most current list of subcontractors (regardless of tier),

along with their DIR registration numbers, utilized on this Agreement at any time during performance of this Agreement, and Construction Management Professional shall provide the list within ten (10) working days of the City's request. Additionally, Construction Management Professional shall provide the City with a complete list of all subcontractors utilized on this Agreement (regardless of tier), within ten working days of the completion of the Agreement, along with their DIR registration numbers. The City shall withhold final payment to Construction Management Professional until at least thirty (30) days after this information is provided to the City.

4.20.12 Exemptions for Small Projects. There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. The Construction Management Professional shall still comply with Labor Code sections 1720 et. seq. The only recognized exemptions are listed below:

4.20.12.1 Registration. The Construction Management Professional will not be required to register with the DIR for small projects. (Labor Code section 1771.1).

4.20.12.2 Certified Payroll Records. The records required in Labor Code section 1776 shall be required to be kept and submitted to the City of San Diego, but will not be required to be submitted online with the DIR directly. The Construction Management Professional will need to keep those records for at least three years following the completion of the Agreement. (Labor Code section 1771.4).

4.20.12.3 List of all Subcontractors. The Construction Management Professional shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in section 4.20.11 above. (Labor Code section 1773.3).

ARTICLE V RESERVED

ARTICLE VI INDEMNIFICATION

6.1 Indemnification. Other than in the performance of design professional services which shall be solely as addressed in Section 6.2 below, to the fullest extent permitted by law, Construction Management Professional shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees [Indemnified Parties] from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Construction Management Professional or its Subcontractors), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by the Construction Management Professional, any Subcontractor, anyone directly or indirectly employed by them, or anyone that they control. The Construction Management Professional's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or sole willful misconduct of the Indemnified Parties.

6.2 Construction Management Professional Services Indemnification and Defense.

6.2.1 Construction Management Professional Services Indemnification. To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8), with respect to the performance of Construction Management Professional services, Construction Management Professional shall indemnify and hold harmless the City, its officers, or employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Construction Management Professional or Construction Management Professional's officers or employees.

6.2.2 Construction Management Professional Services Defense. Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Construction Management Professional or Construction Management Professional's officers or employees.

6.3 Insurance. The provisions of this Article are not limited by the requirements of Section 4.3 related to insurance.

6.4 Enforcement Costs. The Construction Management Professional agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in this Article.

**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, 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 and shall be delivered to the City upon request. The Contractor, 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 Contractor, including its employees, agents, talent and independent Subcontractors pursuant to this Agreement are the sole property of the City. The Construction Management Professional, including its employees, agents, talent, and independent Subcontractor(s), may not use any such Deliverable Materials mentioned in this article for purposes unrelated to Construction Management Professional's work on behalf of the City without prior written consent of the City.

8.3 Intellectual Property Rights Assignment. Construction Management Professional, 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. Construction Management Professional, 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 Construction Management Professional, its employees, agents, talent, and independent Subcontractor(s), may now have or which may accrue to Construction Management Professional, 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 Construction Management Professional 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 Construction Management Professional 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 Design. Professional may not publish or reproduce any Deliverable Materials, for purposes unrelated to Construction Management Professional's work on behalf of the City without prior written consent of the City.

8.7 Intellectual Property Warranty and Indemnification. Construction Management Professional 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 Construction Management Professional to produce, at Construction Management Professional'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. Construction Management Professional 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 Construction Management Professional receives payment under this contract, City shall be entitled, upon written notice to Construction Management Professional, to withhold some or all of such payment.

8.8 Enforcement Costs. The Construction Management Professional 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.

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: Environmental Services Department, 9601 Ridgehaven Court, San Diego, CA 92123 and notice to the Construction Management Professional shall be addressed to: Kitchell CEM, Inc., c/o Kevin Pokrywa (email address: kpokrywa@kitchell.com), 4719 Viewridge Avenue, Suite 130, San Diego, California 92123.

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

9.3 Non-Assignment. The Construction Management Professional 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 Construction Management Professional and any Subcontractors employed by the Construction Management Professional 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 Construction Management Professional concerning the details of performing the Professional Services, or to exercise any control over such performance, shall mean only that the Construction Management Professional shall follow the direction of the City concerning the end results of the performance.

9.5 Construction Management Professional and Subcontractor Principals for Professional Services. It is understood that this Agreement is for unique Professional Services. Retention of the Construction Management Professional's Professional Services is based on the particular professional expertise of the following members of the Construction Management Professional's organization **Wendy Cohen, Principal-in-Charge ; Kevin Pokrywa, Project Director; Brian Cook, Kesi Sekhon & Mark Lawrence, Project Managers** [Project Team]. Accordingly, performance of Professional Services under this Agreement may

not be delegated to other members of the Construction Management Professional's organization or to Subcontractors without the prior written consent of the City. It is mutually agreed that the members of the Project Team are the principal persons responsible for delivery of all Professional Services and may not be removed from the Project Team without the City's prior written approval. Removal of any member of the Project Team without notice and approval by the City may be considered a default of the terms and conditions of this Agreement by the Construction Management Professional. In the event any member of the Project Team becomes unavailable for any reason, the City must be consulted as to any replacement. If the City does not approve of a proposed replacement, the City may terminate this Agreement pursuant to section 2.6 of this Agreement. Further, the City reserves the right, after consultation with the Construction Management Professional, to require any of the Construction Management Professional's employees or agents to be removed from performance of the Scope of Services.

9.6 Additional Construction Management Professionals or Contractors. The City reserves the right to employ, at its own expense, such additional Construction Management Professionals or contractors as the City deems necessary to perform work or to provide the Professional Services in the Scope of Services as described in issued Task Orders.

9.7 Employment of City Staff. This Agreement may be unilaterally and immediately terminated by the City, at its sole discretion, if the Construction Management Professional 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 Construction Management Professional.

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

9.9 Compliance with Controlling Law. The Construction Management Professional shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor Code section 1720 relating to the payment of prevailing wages during the design and preconstruction phases of a project, including inspection and land surveying work. In addition, the Construction Management Professional shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

9.10 Jurisdiction. 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.

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

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

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

9.14 No Waiver. No failure of either the City or the Construction Management Professional 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.

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

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

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

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

9.19 Construction Management Professional Evaluation. City will evaluate Construction Management Professional's performance of Professional Services on the Project using the Consultant Evaluation Form [Exhibit G].

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

9.21 Survival of Obligations. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with this Agreement, as well as all

continuing obligations indicated in this Agreement, shall survive, completion and acceptance of the Professional Services and termination or completion of the Agreement.

9.22 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-20316. All consultants are required to complete the Contractor Standards Pledge of Compliance included herein as Exhibit H.

9.23 Equal Benefits Ordinance. Unless an exception applies, Construction Management Professional 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, Construction Management Professional certifies that Construction Management Professional is aware of, and will comply with, this City-mandated clause throughout the duration of the Agreement.

9.24 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).

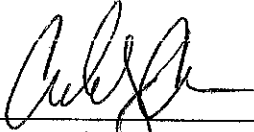
9.25 Equal Pay Ordinance. Unless an exception applies, Construction Management Professional shall comply with the Equal Pay Ordinance (EPO) codified in the San Diego Municipal Code (SDMC) at section 22.4801 through 22.4809. Construction Management Professional shall require all of its subconsultants to certify compliance with the EPO in their written subcontracts. Construction Management Professional must post a notice informing its employees of their rights under the EPO in their workplace or job site. By signing this Agreement with the City of San Diego, Construction Management Professional acknowledges the EPO requirements and pledges ongoing compliance with the requirements of SDMC Division 48, section 22.4801 et seq., throughout the duration of this Agreement.

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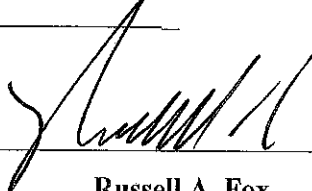
IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor, pursuant to Resolution No. - **R-311322**, authorizing such execution, and by the Construction Management Professional pursuant to Kitchell GEM, Inc. Certified Copy of Resolution.

Dated this 17th day of May, 2018

THE CITY OF SAN DIEGO
Mayor or Designee


By: 
Cindy Crocker
Principal Contract Specialist
Public Works Contracts

I HEREBY CERTIFY I can legally bind Kitchell GEM, Inc. and that I have read all of this Agreement, this 11th day of July

By: 
Russell A. Fox
Principal

I HEREBY APPROVE the form of the foregoing Agreement this 18th day of MAY 2018

MARA W. ELLIOTT, City Attorney

By: 
Deputy City Attorney

CONSTRUCTION MANAGEMENT
PROFESSIONAL AS-NEEDED EXHIBITS

SCOPE OF SERVICES

AS-NEEDED CONSTRUCTION MANAGEMENT SERVICES FOR THE ENVIRONMENTAL SERVICE DEPARTMENT (H176852)

Under the general supervision of the City Mayor or his designated representatives, the Construction Management Professional shall provide as-needed construction management services by Task Orders on an hourly basis. The primary responsibilities of the Construction Management Consultant (CMC) will be to provide staff augmentation, on as needed basis for Environmental Services Department (ESD) energy and sustainability type projects.

1.0 SCOPE OF SERVICES

1.1 ADMINISTRATION

The CMC shall become familiar with City's construction management processes and procedures and its objectives and provide services and assistance as directed by ESD Project Management (PM) staff. The CMC shall work under the direction of PM, develop and maintain open line of communication and cooperation between PM and CMC staff as well as with other consultants and contractors. The CMC may be assigned the full responsibility of the project or limited responsibility supplementing PM in specific area of expertise. PM shall review the qualifications and approve all proposed CMC staff.

- 1.1.1 Provide general construction management and administration to facilitate completion of projects
- 1.1.2 Maintain on-going interaction with appropriate agencies and City staff.
- 1.1.3 Coordinate with City Material Testing Laboratory, Survey and Traffic section (permit) for the projects that requires.
- 1.1.4 Review and become familiar with pertinent predesign, and design procurement documents developed to date.
- 1.1.5 Provide staff having a broad range of experience levels with an

emphasis on Inspectors and Engineers having extensive education and experience in energy field.

1.1.6 Provide staff having broad range of experience with different types of construction contract, such as Design-Bid-Build (DBB), Design Build (DB), Construction Management at Risk (CMAR), Multiple Award Construction Contract (MACC).

1.1.7 Team shall consist of complimentary local resources consisting of both prime and subconsultant individual and shall be available to handle ESD workload peaks.

1.2 MANAGEMENT

The CMC shall assign an administrator in charge of overall coordination of all assigned tasks to maintain adequate staffing, quality control and project schedule. The administrator shall be approved by PM and shall have experience managing as-needed contracts. The CMC shall possess the professional knowledge, skill and expertise in all aspects of project management to facilitate the completion of a variety of construction projects.

1.2.1 CMC will provide a brief written report covering a summary of the status and expenditure associated with each of the tasks described in this scope of work; including highlights of any unusual contractual issues that arise during the reporting period.

1.2.2 Develop a project specific Procedures Manual that is usable for the project utilizing the City's CM Manual.

1.3 CONSTRUCTABILITY REVIEW

On occasion, it may be necessary to perform Constructability Review. The CMC shall assign staff which possess the professional knowledge, skill and expertise in all assigned energy projects specific type of construction to review design submittals.

1.3.1 Design documents shall be reviewed for clarity, conflicts, consistency

and completeness with respect to bidding and construction purposes. CMC shall provide bid ability and constructability comments listed by specification section or drawing sheet. The CMC shall identify potential construction conflicts in relationship to City and industry standards. The CMC will identify potential areas within the contract documents that may require clarification prior to bid, recognizing that there are potential benefits to the city of San Diego to resolve cost or schedule issues prior to the acceptance of bids. The CMC will identify discrepancies within the contract documents and bring to the attention of the City of San Diego but not to decide what information is correct. The decision to determine what information is correct is the prerogative of the designer and the City. The CMC will not be responsible for design errors or omissions that are not noted in its review of the plans and specifications.

- 1.3.2 Based upon those reviews and the staff's construction expertise, the CMC shall make recommendation relative to the projects constructability and document comments.
- 1.3.3 Bid items shall be verified for adequacy in relation to plans, specifications, and standard construction practices.
- 1.3.4 Review design documents and designer response to construction review comments after City/Designer Review.

2.0 AS-NEEDED CONSTRUCTION MANAGEMENT SERVICES

2.1 CONSTRUCTION CONTRACT ADMINISTRATION

The CMC shall have the responsibility for the daily management in conjunction with PM. The CMC shall provide and coordinate construction management services for tasks assigned.

- 2.1.1 Provide effective written and oral communication to the contractor and other stakeholders in the administration of the contract. Develop project directory of key personnel working on the projects.

- 2.1.2 Administer construction contracts and provide technical Construction Management support to PM.
- 2.1.3 Manage the Contractor's Quality Assurance/Quality Control (QA/QC) for assigned projects.
- 2.1.4 Provide for timely, thorough, clear, effective and responsible communication to Request for Information (RFI), Request for Change (RFC), Request for Proposal (RFP), submittals, etc. Receive, log and track RFIs, RFCs, RFPs, Submittals, etc.
- 2.1.5 CMC will provide a short technical review of RFIs to determine if the issue is addressed adequately. CMC will respond where the RFI can be addressed in the contract documents. If not clear in the contract documents, RFI will be forwarded to the PM and designer. RFI responded by the designer will be tracked for a timely response.
- 2.1.6 Prepare and/or review RFPs for all aspects of construction projects including but not limited to structural, mechanical, electrical, photovoltaic panels, landfill gas, civil, etc.
- 2.1.7 Evaluate request for material and equipment substitutions and changes based on compliance with contract specifications and taking into account the impacts to cost and schedule.
- 2.1.8 Monitor the contractor's resource loading and advice on corrective action needed to maintain schedule.
- 2.1.9 Conduct regular job site progress meetings involving the project team and maintain action item minutes of said meetings. Maintain and distribute meeting minutes. Frequency of the meeting will depend on complexity of the projects.
- 2.1.10 Attend contractor partnering session.

2.2 CONTROLS AND SCHEDULING

EXHIBIT A

- 2.2.1 Review and comment on contractor's baseline and project schedule critical path and logic review.
- 2.2.2 Review and monitor contractor's schedule monthly to monitor project progress and detect early delays.
- 2.2.3 Monitor project construction costs, budget and maintain current workflow projections.
- 2.2.4 Prepare and distribute daily, weekly and monthly construction reports per City Construction Manual standard, such as: Daily Inspection Reports, Weekly statement of working days, Job Site Meetings Minutes, Monthly Report, etc.
- 2.2.5 Review and approve monthly contractor's invoices, verify compliance to all terms and conditions of contract and make payment recommendations. Verify the contractor's request for payment does not represent more than the amount for work done on a monthly basis.
- 2.2.6 Review and analyze, and make recommendations on contractor time extensions.
- 2.2.7 Coordinate work to be performed by others. The CMC will not be responsible for contractor or agency workforce means and methods.
- 2.2.8 Receive and review project notices and submit to ESD PM.
- 2.2.9 Provide Contractor performance evaluations during construction.

2.3 ESTIMATING

The CMC shall, within established City's Construction Manual formulas and guidelines, maintain a cost estimating system including:

- 2.3.1 Evaluate contractor's cost reduction proposals.
- 2.3.2 Provide cost estimate for change orders.

2.3.3 Review of Value Engineering (VE) cost reduction incentives.

2.3.4 Provide cost estimates for Claims Evaluation.

2.4 DOCUMENT CONTROL

The CMC shall utilize the latest department filing system and comply with City standard including:

2.4.1 The CMC will be responsible for central receipts, control, storage, distribution, indexing and tracking of all documents. All documents includes incoming and outgoing documents associated with the construction management activity of all assigned projects including, but not limited to: Submittals, RFIs, RFPs, RFCs, correspondence, etc.

2.4.2 Maintain a current set of as-built drawing and specifications.

2.4.3 Provide electronic software for tracking all documents.

2.4.4 City may, at its option, direct CMC, to use Contract Manager (web based) system for tracking and recording project documents.

2.4.5 City may, at its option, provide hardware and software for entering documentation.

2.4.6 Maintain all field documents. Store original documentation and furnish to ESD PM at project completion.

2.5 CHANGE ORDER AND CLAIM MANAGEMENT

The CMC shall implement a comprehensive claims management program to evaluate change order requests and recommend equitable disposition. When agreement cannot be reached the CMC shall support ESD position and assist in formulating a claim defense and participate in resolution including:

2.5.1 Coordinate, assemble and review supporting documentation for change order processing and make final recommendation to ESD PM.

2.5.2 Review request of alleged cost increase and/or time impacts for merit.

- 2.5.3 Thoroughly analyze the proposal and develop a negotiating position. When necessitated by variations between contractor price for change and the CMC's fair cost estimate, initiate negotiations.
- 2.5.4 Expedite approval of negotiated change orders.
- 2.5.5 Provide proper documentation throughout the project in defending against construction claims.
- 2.5.6 Establish a dispute resolution panel to resolve issues that cannot be resolved at the project level.

2.6 SAFETY AND SECURITY MONITORING

Contractor is solely responsible for safety on all projects and it is the CMC's responsibility to monitor and enforce safety and promote a safe overall environment for all workers and visitors to the project site. Safety shall comply with all Federal, State and locally accepted regulations and measures including:

- 2.6.1 Monitor and enforce project safety including OSHA, state and local safety regulations.
- 2.6.2 Check job site security and measures taken to protect the public from hazards.
- 2.6.3 Review Contractor's emergency response plans.

2.7 INSPECTION

The city will agree to the staffing level proposed by the CMC for inspection services and for monitoring the construction site on assigned projects. The CMC resident engineering staff shall verify construction compliance and QA/QC with the applicable permits, codes, construction documents and any environmental mitigation. CMC shall maintain or verify contractors redline as-built on monthly basis.

- 2.7.1 General Inspection

- 2.7.1.1 Provide documentation of construction activities, duration of activities, manpower and equipment allocation.
- 2.7.1.2 Provide daily construction activity reports, manpower, loading on-site equipment, and work conditions.
- 2.7.1.3 Provide non-conformance reports
- 2.7.1.4 Provide weekly photographic/digital records of the project during construction.

2.7.2 Specialties Inspection

The CMC shall provide qualified inspectors to perform monitor and report when special equipment are involved and as required by construction inspection procedure. These specialized areas may include: hazardous material, geotechnical, welding/X-raying, structural (welding, masonry, anchor bolts, concrete and rebar), inspection for compliance with ADA, roof, Permit Compliance Enforcement (SWPPP, hazardous materials), Photovoltaic panel, electric vehicle charging systems, landfill gas conversion, LED lighting and other energy efficiency technologies.

3.0 OPERATION AND MAINTENANCE (O&M) MANUALS

3.1 RECEIVE AND COORDINATE REVIEW

The CMC shall receive final O&M equipment manuals from manufacturers and coordinate their review. Final O&M manuals shall be delivered to ESD PM.

3.2 PARTS INVENTORY AND MAINTENANCE SYSTEM

The CMC shall implement a spare parts inventory and maintenance system, in conformance with City standards, including a final transfer to O&M.

4.0 EQUIPMENT AND SYSTEM TESTING AND START-UP

4.1 COORDINATE SYSTEM START-UP

The CMC shall coordinate equipment start-up with ESD PM, designers, contractors and the manufacturer's field service representatives. System testing shall be coordinated with ESD PM, contractors and the manufacturer's field service representatives.

4.2 COORDINATE AND MONITOR START-UP OPERATIONS PLAN

The CMC shall coordinate and monitor the project start-up operation plan and schedule. The start-up plan and schedule shall be coordinated with ESD PM, designers, vendors, and contractors and shall define specific start-up milestones. The CMC shall assist in resolving any problems which occur during the start-up period.

5.0 CONSTRUCTION CLOSE-OUT

5.1 ADMINISTRATION

The CMC shall manage the turnover of the assigned project to the appropriate City operating unit including contract close-out, management of warranty period activities and demobilization of CMC staff including in accordance with agreed upon plan.

5.2 CONSTRUCTION CONTRACT CLOSEOUT

The CMC shall oversee the contract closeout process and assist in resolving O&M service disputes. The closeout shall entail sign offs by responsible parties and includes:

5.2.1 Coordinate and conduct a final walk-through to verify completion of contract(s) and all related items of work.

5.2.2 Develop punch list and verify completion and obtain final documentation and releases.

5.2.3 Verify and deliver contractor as-built marked up drawings to ESD PM for record drawing preparation.

5.2.4 Review final payment and closeout change order.

5.2.5 Monitor permit and agency sign-offs.

5.2.6 Prepare final summary report in accordance with City standards.

5.2.7 Turnover project files, contract, correspondence and documentations.

5.3 WARRANTY COORDINATION

The CMC shall establish warranty repair procedures, which shall include a notification prior to the expiration of warranty period. As problems are identified by ESD PM the CMC shall investigate, document and coordinate required repairs with the responsible contractor(s).

5.3.1 Establish warranty repair procedures.

5.3.2 Coordinate warranty problems identified by ESD PM with contractor.

6.0 ADDITIONAL SERVICES

The CMC shall provide services which have not been included or implied in this scope of work only after receiving written authorization from the ESD PM Contract representative.

END OF SCOPE OF SERVICES

TASK ORDER AUTHORIZATION FOR PROFESSIONAL SERVICES [TASK ORDER]

Consultant:	
Agreement:	
Task Order No.:	Date:
Pursuant to the Terms and Conditions of the Agreement referenced above and incorporated into this Task Order, Consultant hereby agrees to perform the Professional Services described below. The Consultant shall furnish all necessary facilities, materials, and professional, technical, and supporting personnel required by this Task Order.	
Part A	Scope of Services
1.1	Professional Services rendered under this Task Order shall be performed in accordance with the Agreement. The Scope of Services shall be as set forth in Exhibit A of the Agreement and as more fully set forth below. If necessary, the Scope of Services may be more fully described on one or more separate sheets and attached to this Task Order.
Part B	Task Order Compensation
City shall pay Consultant for the Professional Services required by this Task Order in accordance with Article III of the Agreement.	
The not to exceed cost for the Scope of Services for this Task Order is \$ _____ .	
Part C	Personnel Commitment
The Scope of Services shall be performed by Consultant's personnel in the number and classifications required by City.	
Part D	Time Sequence
All Professional Services to be performed under this Task Order shall be completed by _____, and as set forth in the Task Order Scope of Services.	
City of San Diego	Consultant
Recommended For Approval:	I hereby acknowledge receipt and acceptance of this Task Order for:
Approved By:	By:
Name: (Type)	
Title:	
Date:	

COMPENSATION AND FEE SCHEDULE

Kitchell CEM, Inc. Hourly Rates

The hourly rates below are fully burdened with employee benefits, statutory requirements, overhead and profit and exclude associated material expenses. These rates are applicable to services requested on an individualized hourly billing basis. Our fees for comprehensive services take advantage of savings such as resource allocations and economies of scale, which can result in improved hourly rate calculations.

Position	Hourly Rate
Project Executive	\$ 190
Project Director	\$185
Senior Project Manager	\$175
Project Manager	\$165
Construction Manager	\$155
Estimator	\$145
Structural Engineer	\$145
Civil Engineer	\$145
Scheduler	\$145
Registered Architect	\$145
Electrical Engineer	\$145
Mechanical Engineer	\$145
Senior Project Engineer	\$130
Project Engineer	\$120
BIM Manager/Specialist	\$115
BIM/CAD Operator	\$105
Field Office Manager	\$85

NOTE:

- Mileage reimbursement rate will be at current City of San Diego mileage rate (mileage log required).
- Travel expenses for the lowest cost effective Air Fare, Train, and/or Car Rental, will be reimbursed at actual costs (receipts required).
- Lodging and Per Diem will be reimbursed at actual costs (receipts required) up to the maximum allowance for the San Diego area as published/posted on the U.S. General Services Administration website (<http://www.gsa.gov/portal/category/100120>).

EXHIBIT C

- All subconsultant costs are reimbursed as a "direct expense" at actual costs (invoice/receipts required).
- A request for an annual rate adjustment must be submitted to the City of San Diego in writing for approval. Written justification for the rate adjustment must be submitted to the City of San Diego a minimum of 60 days before the Agreement anniversary date. Said proposed adjustment shall not exceed three percent (3%), and the City of San Diego must approve any rate adjustments in writing before they become effective.

EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)

CONSULTANT REQUIREMENTS

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I. **City’s Equal Opportunity Commitment.** The City of San Diego (City) is strongly committed to equal opportunity for employees and 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.
- 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.
- 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.
- 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 minority 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**

EQUAL OPPORTUNITY CONTRACTING PROGRAM

1. Disclosure of Discrimination Complaints (6.2.7.1)

ATTACHMENT AA

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

Design Professional Name Kitchell CEM, Inc.

Certified By Russell A. Fox Name Russell A. Fox Title President
 Signature *Russell A. Fox* Date November 14, 2016

USE ADDITIONAL FORMS AS NECESSARY



WORK FORCE REPORT - NAME OF FIRM: Kitchell CEM, Inc.

DATE: November 14, 2016

OFFICE(S) or BRANCH(ES): California Managing Office

COUNTY: Sacramento

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

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian
- (4) American Indian, Eskimo
- (5) Filipino, Asian Pacific Islander
- (6) White, Caucasian
- (7) Other Ethnicities

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	0	2	1	0	0	0	0	0	0	3	2	0	0
Professional	0	0	2	2	6	1	1	0	0	0	0	20	3	1	1
A&E, Science, Computer	0	0	2	0	0	0	0	0	0	0	0	2	0	0	0
Technical	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0
Sales	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Administrative Support	0	1	1	2	0	0	0	0	0	0	0	0	6	0	1
Services	0	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	0
Operative Workers	0	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	0
Laborers*	0	0	0	2	0	0	0	0	0	0	0	0	1	2	0

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

Totals Each Column	0	1	6	6	7	1	1	0	0	0	0	27	11	3	2
--------------------	---	---	---	---	---	---	---	---	---	---	---	----	----	---	---

Grand Total All Employees 65

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	0
----------	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---

Non-Profit Organizations Only:

Board of Directors															
Volunteers															
Artists															

WORK FORCE REPORT - NAME OF FIRM: Kitchell CEM, Inc. DATE: November 14, 2016

OFFICE(S) or BRANCH(ES): San Diego COUNTY: San Diego

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

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

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	0	0	0	0	0	0	0	0	2	1	0	0
Professional	1	0	1	0	2	1	0	0	0	0	5	4	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	0	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	0	1	0	2	1	0	0	0	0	7	6	0	0
--------------------	---	---	---	---	---	---	---	---	---	---	---	---	---	---

Grand Total All Employees 18

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
----------	---	---	---	---	---	---	---	---	---	---	---	---	---	---

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.¹ By the same token, if the project is in San Diego, but the work force is from another county, such as Orange or Riverside County, we want a WFR from that county.² 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.¹

MANAGING OFFICE WORK FORCE

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

TYPES OF WORK FORCE REPORTS

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

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

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

Exhibit: Work Force Report Job categories

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

Management & Financial

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

Professional

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

Postsecondary Teachers
Primary, Secondary, and Special Education School Teachers
Religious Workers
Social Scientists and Related Workers

Architecture & Engineering, Science, Computer

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

Technical

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

Sales

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

Administrative Support

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

Services

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

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

Crafts

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

Operative Workers

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

Transportation

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

Laborers

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

3a. Subconsultant Documentation (6.2.7.3a)

ATTACHMENT CC

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, DVBE 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.

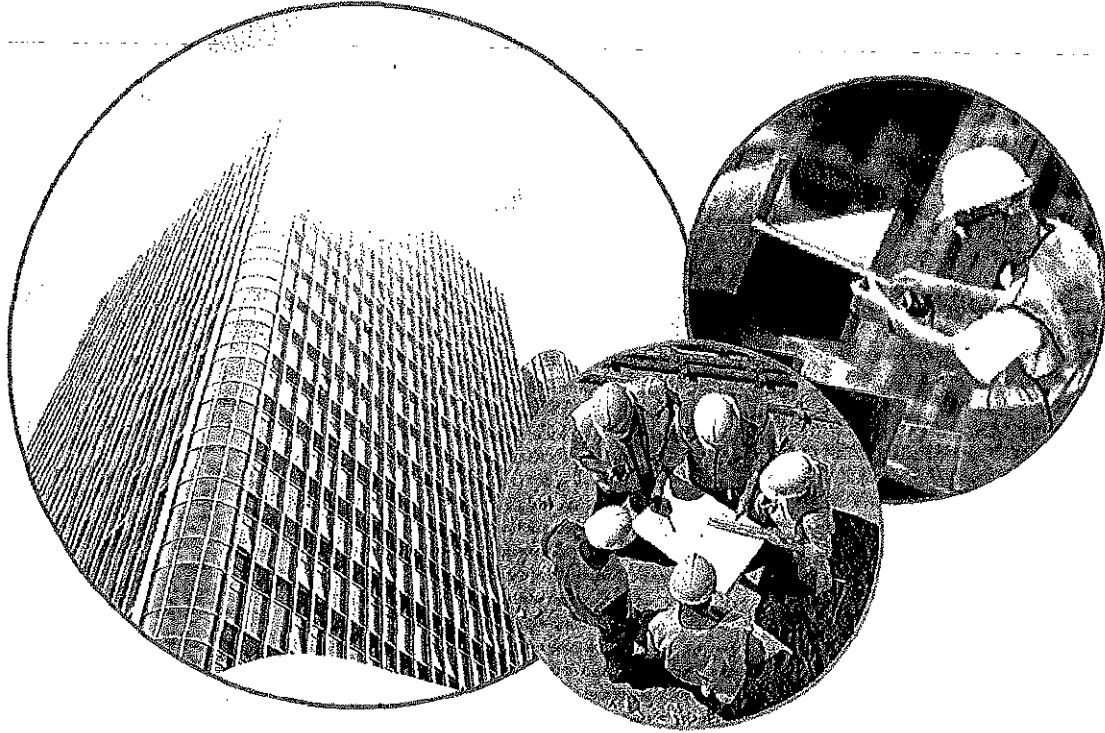
Name and Address of Subcontractors	Scope of Services	Percent of Contract	SBLE/ELBE (MBE/WBE/DBE/DVBE/OBE*)	Where Certified**
Jan Bond, DBA CFO Network 10884 Caminito Arcada San Diego, CA 92131	Administrative	5 to 15 % depending on scope of work	SBE - MICRO B #1735701; SCH WMBE #12050064; DOT DBE #40380; San Diego City SLBE #12JB0708	State of California (SBE, WMBE & DBE) & City of San Diego (SLBE)
SCST, Incorporated 6280 Riverdale Street San Diego, CA 92120	Inspection	0 to 10% depending on scope of work	SLBE # 14SC1042, DVBE # 4956	State of California (DVBE), & City of San Diego (SLBE)

Small Local Business Enterprise	SLBE
Emerging Local Business Enterprise	ELBE
Certified Minority Business Enterprise	MBE*
Certified Woman Business Enterprise	WBE*
Certified Disadvantaged Business Enterprise	DBE*
Certified Disabled Veteran Business Enterprise	DVBE*
Other Business Enterprise	OBE*

* 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

3b. Subconsultant Summary Data (6.2.7.3b)



1. Subconsultant's Legal Name	JAN BOND, DBA CFO NETWORK	SCST, INCORPORATED
Legal Address	10884 Caminito Arcada San Diego, CA 92131	6280 Riverdale Street San Diego, CA 92120
2. Addresses of offices located in San Diego County	10884 Caminito Arcada San Diego, CA 92131	6280 Riverdale Street San Diego, CA 92120
i. Number of years subconsultant has maintained office in San Diego County	9 years	57 years
ii. Number of employees in San Diego County	1 employee	81 employees
3. City of San Diego Business Tax Certificate Number	B2007030236	B1974003302
4. State of California DIR Registration Number	10000030434	1000032659
5. Name, title, address, telephone number, and email of subconsultant contact person	Jan Bond, Chief Executive Officer 10884 Caminito Arcada San Diego, CA 92131 tel. 858.952.1740 jan@cfo-network.com	Emil Rudolph, PE, GE, Principal Engineer 6280 Riverdale Street San Diego, CA 92120 tel. 619.280.4321 erudolph@scst.com

CONSULTANT CERTIFICATION FOR A DRUG-FREE WORKPLACE

PROJECT TITLE: _____

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

 Automa Clean, 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 Subcontractors agreement to abide by the provisions of Section 4.9.1 subdivisions A through C of the policy as outlined.

Signed *[Signature]*
Printed Name *Russell Fox*
Title *President*
Date *7/11/2017*

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: Environmental Services Department
- 2. Name of Specific Consultant & Company: Kitchell CEM, Inc.
- 3. Address, City, State, ZIP: 4719 Viewridge Ave, Suite 130
San Diego, CA 92123
- 4. Project Title (as shown on 1472, "Request for Council Action"): Agreement Between the City of San Diego and Kitchell CEM, Inc for as-needed Construction Management consultant services
- 5. Consultant Duties for Project: Construction management support for energy efficiency, solar, storage, and infrastructure projects for the City of San Diego.

6. Disclosure Determination [select applicable disclosure requirement]:

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.]

By: Jack Clark Deputy Director
[Name/Title]*

7-18-17
[Date]

Once completed, with all questions answered and an authorized signature affixed, please forward the original form to the City Clerk's Office, MS 2A. Keep a copy with the contract.

CITY OF SAN DIEGO

Consultant Performance Evaluation

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

Section I

1. PROJECT DATA		2. CONSULTANT DATA			
1a. Project (title, location):		2a. Name and address of Consultant:			
1b. Brief Description:		2b. Consultant's Project Manager:			
1c. Budgeted Cost: \$ _____ WBS/IO: _____		Phone: (____) _____			
3. CITY DEPARTMENT RESPONSIBLE					
3a. Department (include Division):		3b. Project Manager (address & phone):			
		Phone: (____) _____			
4. & 5. CONTRACT DATA (DESIGN PHASE <input type="checkbox"/> OR CONSTRUCTION SUPPORT <input type="checkbox"/>)					
4. Design Phase					
Agreement Date: _____ Resolution #: R- _____		Initial Contract Amount			
		4a. \$ _____	4b. Prev. Amendment(s): \$ _____		
4c. Current Amendment: \$ _____ / Number: _____		4d. Total Agreement (4a. + 4b. + 4c.): \$ _____			
4d. Type of Work (design, study, as-needed services, etc.):	4e. Key Design Phase Completion Dates:			Final Construction Est. Completion: _____ Actual Completion: _____	
	% of Design Phase Completion	%	%		100%
	Agreed Delivery Date: _____	_____	_____		_____
	Actual Delivery Date: _____	_____	_____		_____
Acceptance of Plans/Specs.: _____		_____	_____	_____	
5. CONSTRUCTION SUPPORT					
5a. Contractor _____		Phone (____) _____			
<i>(name and address)</i>					
5b. Superintendent _____					
5c. Notice to Proceed _____ (date)		5f. Change Orders:			
5d. Working days _____ (number)		Errors/Omissions _____ % of const. cost \$ _____			
5e. Actual Working days _____ (number)		Unforeseen Conditions _____ % of const. cost \$ _____			
		Changed Scope _____ % of const. cost \$ _____			
		Changed Quantities _____ % of const. cost \$ _____			
		Total Construction Cost \$ _____			
6. OVERALL RATING FOR DESIGN PHASE <input type="checkbox"/> OR FOR CONSTRUCTION SUPPORT <input type="checkbox"/>					
	Excellent	Satisfactory	Poor		
6a. Quality of Plans/Specifications/As-Builts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Compliance with Contract & Budget	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Responsiveness to City Staff	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
6b. Overall Rating _____					
7. AUTHORIZING SIGNATURES					
7a. Project Manager _____		Date _____			
7b. Section Head _____		Date _____			

Section II SPECIFIC RATING									
DESIGN EVALUATION					CONSTRUCTION SUPPORT EVALUATION				
	EXCELLENT	SATISFACTORY	POOR	NA		EXCELLENT	SATISFACTORY	POOR	NA
Plans/Specifications accuracy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Drawing reflect existing conditions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Plans/Specs coordination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	As-Built drawings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Plans/Specs properly formatted	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Quality design	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Code Requirements covered	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Change orders due to design deficiencies are minimized	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adherence to City design standards	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Timely responses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Attitude toward Client and review bodies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Attitude toward Client and review bodies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Follows direction and chain of responsibility	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Follows direction and chain of responsibility	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Work product delivered on time	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Timeliness in notifying City of major problems	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
COMPLIANCE WITH CONTRACT & BUDGET	EXCELLENT	SATISFACTORY	POOR	NA	Resolution of Field problems	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reasonable agreement negotiation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Value Engineering Analysis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adherence to fee schedule	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adherence to project budget	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Timely responses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Timeliness in notifying City of major issues	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Work product delivered on time	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Section III SUPPLEMENTAL INFORMATION
 (Please ensure to attach additional documentation as needed.)

Item : _____

Item : _____

Item : _____

Item : _____

(*Supporting documentation attached: Yes No)

**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 Contractor Standards Pledge of Compliance (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:

BID/SOLICITATION TITLE: As-Needed Construction Management Services for the Environmental Services Department

Contract Number H176852

PROPOSER: Kitchell CEM, Inc.

B. BIDDER PROPOSER INFORMATION

Kitchell/CEM Inc

Legal Name	San Diego	DBA	
4719 Viewridge Avenue, Suite 130		CA	92123
Street Address	City	State	Zip
Wendy Cohen, Principal-in-Charge	619.456.7372	619.648.6534	
Contact Person, Title	Phone	Fax	

Provide the name, identity, and precise nature of the interest* of all persons who are directly or indirectly involved** in this proposed transaction (SDMC § 21.0103). Use additional pages if necessary.

* The precise nature of the interest includes:

- the percentage ownership interest in a party to the transaction,
- the percentage ownership interest in any firm, corporation, or partnership that will receive funds from the transaction,
- the value of any financial interest in the transaction,
- any contingent interest in the transaction and the value of such interest should the contingency be satisfied, and
- any philanthropic, scientific, artistic, or property interest in the transaction.

** Directly or indirectly involved means pursuing the transaction by:

- communicating or negotiating with City officers or employees,
- submitting or preparing applications, bids, proposals or other documents for purposes of contracting with the City, or

- directing or supervising the actions of persons engaged in the above activity.

Wendy Cohen Principal-in-Charge

Name Title/Positi

San Diego, CA Kitchell

City and State of Residence Employer (if different than Bidder/Proposer)

Communicating or negotiating with City officers or employees, and directing or supervising the actions of Interest in the transaction persons engaged in the above activity.

Kevin Pokrywa Project Director

Name Title

Carlsbad, CA Kitchell

City and State of Employer (if different than Bidder/Proposer)

Communicating or negotiating with City officers or employees, submitting or preparing applications, bids, proposals Interest in the transaction or other documents for purposes of contracting with the City, and directing or supervising the actions of persons engaged in the above activity.

Kesi Sekhon, PE Project Manager

Name Title

Carlsbad, CA Kitchell

City and State of Employer (if different than Bidder/Proposer)

Communicating or negotiating with City officers or employees, submitting or preparing applications, bids, proposals Interest in the transaction or other documents for purposes of contracting with the City, and directing or supervising the actions of persons engaged in the above activity.

Brian Clark, CFM, FMP Project Manager

Name Title/Positi

San Diego, CA Kitchell

City and State of Residence Employer (if different than Bidder/Proposer)

Communicating or negotiating with City officers or employees, submitting or preparing applications, bids, proposals Interest in the transaction or other documents for purposes of contracting with the City, and directing or supervising the actions of persons engaged in the above activity.

Name Title/Positi

City and State of Residence Employer (if different than Bidder/Proposer)

Interest in the transaction

Name Title/Positi

City and State of Residence Employer (if different than Bidder/Proposer)

Interest in the transaction

Name Title/Positi

City and State of Residence Employer (if different than Bidder/Proposer)

Interest in the transaction

Use Attachment "A" if additional pages are necessary.

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: 06/16/10 State of incorporation: California

List corporation's current officers:

President: Russell A. Fox

Vice Pres.: James T. Swanson (VP/Treasurer),
David Giannelli, Kenneth J. Harms

Secretary: David Koval, Michael Bruggeman (Assistant),
Susan Garin-Hanney (Assistant)

Treasurer: James T. Swanson (VP/Treasurer)

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:

Kitchell is a private corporation that is 100% employee owned

Limited Liability Company

Date formed: mm/dd/yyyy State of formation: _____

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

N/A

Partnership

Date formed: mm/dd/yyyy State of formation: _____

List names of all firm partners:

N/A

Sole Proprietorship

Date started: mm/dd/yyyy

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:

N/A

Joint Venture

Date formed: mm/dd/yyyy

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

N/A

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?

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 (5) years, has your firm filed a voluntary petition in bankruptcy, been adjudicated bankrupt, or made a general assignment for the benefit of creditors?

Yes No

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

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: Bank of America, N.A.

Point of Contact: John Humphries, Service Specialist

Address: 201 E. Washington Street, Phoenix, AZ 85004

Phone Number: 888.715.1000

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. Kitchell certifies and agrees to the above.

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.

- 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 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: San Bernardino Community College District

Contact Name and Phone Number: Mike Strong, Vice President of Administrative Services, Crafton Hills College | tel. 909.382.4000

Contact Email: mstrong@sbccd.cc.ca.us

Address: 11711 Sand Canyon Road | Yucaipa, CA 92399

Contract Date: Aug. 2016

Contract Amount: \$37M

Requirements of Contract: Program & Construction/Project Management and Preconstruction Services for Measure M Bond Program including a Solar Farm Field Project.

Company Name: Mira Costa Community College

Contact Name and Phone Number: Tom Macias, Director of Facilities, tel. 760.757.2121

Contact Email: tmacias@miracosta.edu

Address: 1 Barnard Drive | Oceanside, CA 92056

Contract Date: January 2013

Contract Amount: \$673,252

Requirements of Contract: Construction Management for Modular Science labs at

Company Name: Solano Community College District

Contact Name and Phone Number: Lucky Lofton, Executive Bonds Manager, tel. 707.863.7855

Contact Email: lucky.lofton@solano.edu

Address: 4000 Suisun Valley Road | Fairfield, CA 94534

Contract Date: June 2014. *Note: this project is part of a bond measure program. The contract date reflects the date for the entire program*

Contract Amount: *\$6.3M Note: this project is part of a bond measure program. Kitchell's contract amount reflects the contract for the entire program. The total project cost for the solar utility infrastructure upgrade was \$16.9M.*

Requirements of Contract: Construction Management for solar utility infrastructure upgrade

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 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 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 check here Not Applicable.

Company Name: CFO Network

Contact Name and Phone Number: Jan Bond, Chief Executive Officer | tel. 858.985.1740

Contact Email: jan@cfo-network.com

Address: 10884 Caminito Arcada, San Diego, CA 92131

Contract Date: TBD

Contract Amount: TBD

Requirements of Contract: Provide administrative services in support of Kitchell's project team and construction management services

What portion of work will be assigned to this subcontractor: 5 to 15 % depending on scope of work of each task order

Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE? (Check One)

Yes No

If **Yes**, Contractor must provide valid proof of certification with the response to the bid or proposal. *Please see certifications at the end of this document.*

Company Name: SCST Incorporated

Contact Name and Phone Number: Emil Rudolph, PE, GE

Contact Email: erudolph@scst.com

Address: 6280 Riverdale Street, San Diego, CA 92120

Contract Date: TBD

Contract Amount: TBD

Requirements of Contract: Provide inspection services in support of Kitchell's project team and construction management services

What portion of work will be assigned to this subcontractor: 0 to 10% depending on scope of work of each task order

Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, WBE or OBE? (Check One)

Yes No

If Yes, Contractor must provide valid proof of certification with the response to the bid or proposal. *Please see certifications at the end of this document.*

K. STATEMENT OF AVAILABLE EQUIPMENT:

List all necessary equipment to complete the work specified using Attachment "A". 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 check here Not Applicable.

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

Pledge of Compliance Initial submission.

OR

Update to prior Pledge of Compliance dated 11/14/2016

Complete all questions and sign below.

Under penalty of perjury under the laws of the State of California, I certify that I have read and understand the questions contained in this Pledge of Compliance, that I am responsible for completeness and accuracy of the responses contained herein, and that all information provided is true, full and complete to the best of my knowledge and belief. I agree to provide written notice to the Purchasing Agent within five (5) business days if, at any time, I learn that any portion of this Pledge of Compliance requires an updated response. Failure to timely provide the Purchasing Agent with written notice is grounds for Contract termination.

I, on behalf of the firm, further certify that I and my firm will comply with the following provisions of SDMC section 22.3004:

(a) I and my firm will comply with all applicable local, State and Federal laws, including health and safety, labor and employment, and licensing laws that affect the employees; worksite or performance of the contract.

(b) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of receiving notice that a government agency has begun an investigation of me or my firm that may result in a finding that I or my firm is or was not in compliance with laws stated in paragraph (a).

(c) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of a finding by a government agency or court of competent jurisdiction of a violation by the Contractor of laws stated in paragraph (a).

(d) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of becoming aware of an investigation or finding by a government agency or court of competent jurisdiction of a violation by a subcontractor of laws stated in paragraph (a).

(e) I and my firm will cooperate fully with the City during any investigation and agree to respond to a request for information within ten (10) working days.

Failure to sign and submit this form with the bid/proposal shall make the bid/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.

Russell A. Fox, President
Name and Title


Signature

May 14, 2018
Date

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.

If not using this Attachment "A", please check here Not Applicable.

[Empty rectangular box for providing additional information]

I have read the matters and statements made in this Pledge of Compliance and Attachment "A"(s) 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.

Russell A. Fox, President

Print Name, Title

Russell Fox

Signature

May 14, 2018

Date

2. California Public Records Act

EXHIBIT I

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.

Kitchell CEM, Inc.
Name of Firm
Russell Fox
Signature of Authorized
Representative
Russell A. Fox, President
Printed/Typed Name
November 14, 2016
Date

CONSULTANT CERTIFICATION

AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE CERTIFICATION

PROJECT TITLE: _____

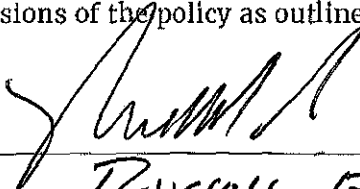
I hereby certify that I am familiar with the requirements of San Diego City Council Policy No. 100-4 regarding the Americans With Disabilities Act (ADA) outlined in Article IV, "ADA Certification", of the Agreement, and that;

Kentman CSM, 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

Russell Fox

Title

President

RESOLUTION NUMBER R- 311322

DATE OF FINAL PASSAGE SEP 20 2017

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING A CONTRACT BETWEEN THE
CITY OF SAN DIEGO AND KITCHELL CEM, INC., FOR
AS-NEEDED CONSTRUCTION MANAGEMENT
CONSULTANT SERVICES.

WHEREAS, the City of San Diego (City) has adopted a Climate Action Plan and it is in the City's interest to obtain specialized services for its various projects related to energy efficiency; and

WHEREAS, the City desires as-needed construction management services to supplement City construction management, inspection, and material testing activities that require expertise for time-sensitive City energy programs and initiatives, on an ongoing basis, based on the availability of City staff; and

WHEREAS, in October 2016, the City advertised a Request for Proposals (RFP) through the City's website for bid and contract opportunities associated with as-needed construction management services, and Kitchell CEM, Inc. (Kitchell) was determined to be the most qualified; and

WHEREAS, the City conducted meet-and-confer proceedings with the Municipal Employees Association (MEA) and it was determined that Kitchell would be allowed to supplement City staff; and

WHEREAS, the City and Kitchell desire to enter into a contract for as-needed construction management services for energy efficiency projects, and which contract cost shall not exceed \$1 million and shall have a maximum duration of five (5) years; and


WHEREAS, the City's Environmental Services Department desires to expend \$1,000 of its Energy Conservation Program Fund for the purpose of executing the contract with Kitchell and meeting minimum contract requirements; NOW, THEREFORE,

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

1. The Mayor or his designee is hereby authorized to execute an agreement between the City of San Diego and Kitchell CEM, Inc., for as-needed construction management services, in an amount not to exceed \$1 million and not to exceed a duration of five years.
2. The Chief Financial Officer is authorized to expend an amount not to exceed \$1 million over five years from future projects using various funding sources, for the purpose of executing this contract, contingent upon City Council approval of those funding sources in the Annual Appropriation Ordinance for the applicable fiscal year, and upon the Chief Financial Officer first furnishing one or more certificates demonstrating that funds necessary for expenditure are, or will be, on deposit with the City Treasurer.
3. The Chief Financial Officer is authorized to expend an amount not to exceed \$1,000 from the Environmental Services Department, Energy Conservation Program Fund, Fund 200224, for the purpose of executing this agreement and meeting the minimum contract requirements.

APPROVED: MARA W. ELLIOTT, City Attorney

By


Frederick M. Ortlieb
Deputy City Attorney

FMO:amc:cm
July 18, 2017
Or. Dept.: Environmental Services
CC No. 3000010169
Doc. No.: 1542738

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of SEP 19 2017.

ELIZABETH S. MALAND
City Clerk

By Linda Bruen
Deputy City Clerk

Approved: 9/20/17
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

The City of San Diego
COMPTROLLER'S CERTIFICATE

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING CC 3000010169
 DEPT. NO: 2115

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: _____

COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Fund	Funded Program	Internal Order	Functional Area	G/L Account	Business Area	Cost Center	WBS	Original Amount
TOTAL AMOUNT									

FUND OVERRIDE

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$1,000.00

Vendor: Kitchell CEM, Inc.

Purpose: Authorizing the expenditure of funds for the agreement with Kitchell CEM, Inc. for As-Needed Construction Management Consultant Services.

Date: July 5, 2017

By: Lina Chim
 COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Fund	Funded Program	Internal Order	Functional Area	G/L Account	Business Area	Cost Center	WBS	Original Amount
01	200224			OTHR-00000000-SH	512059	2115	2115110011		\$1,000.00
TOTAL AMOUNT									\$1,000.00

FUND OVERRIDE

CC 3000010169

Passed by the Council of The City of San Diego on SEP 19 2017, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gomez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage SEP 20 2017

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

(Seal)

By Hinda Irwin, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 311322

Passed by the Council of The City of San Diego on September 19, 2017, by the following vote:

YEAS: **BRY, ZAPF, WARD, COLE, KERSEY, CATE, SHERMAN,**
ALVAREZ, GOMEZ.

NAYS: **NONE.**

NOT PRESENT: **NONE.**

RECUSED: **NONE.**

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: *Linda Irwin* Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. **R-311322**, approved on **September 19, 2017**. The date of final
passage is **September 20, 2017**.

ELIZABETH S. MALAND

City Clerk of the City of San Diego, California

(Seal)

By: *Linda Irwin* Deputy